LEAGUE OF WOMEN VOTERS OF MILWAUKEE COUNTY

A CLARION CALL FOR CHANGE:
Report and recommendations on the Milwaukee Fire and Police Commission

Prepared by members of the League of Women Voters
of Milwaukee County (LWVMC)
Police Policy and Practice Reform Committee

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ABOUT THE LEAGUE OF WOMEN VOTERS AND THIS REPORT

Since 1920, the League of Women Voters (League or LWV) has been an activist, grassroots organization whose leaders and members believe that people should play a critical role in democracy.

The League exists at three levels, all of which work together: national (LWVUS); state (such as LWVWI); and local (such as LWVMC).

Throughout the years, the League has continued its dual purposes of education and advocacy, engaging in studies on representative government, international relations, natural resources, and social policy. Principles and positions adopted by the membership form the basis for League advocacy. Some of those foundational to this report and its recommendations are as follows:

LWVUS Impact on Issues: A Guide to Public Policy Positions

Principle regarding efficient and economical government: "The League of Women Voters believes efficient and economical government requires competent personnel, the clear assignment of responsibility, adequate financing, and coordination among the different agencies and levels of government."

Position regarding representative government: "Promote an open governmental system that is representative, accountable, and responsive."

Position regarding citizen's right to know/citizen participation: "The League of Women Voters of the United States believes that democratic government depends upon informed and active participation at all levels of government. The League further believes that governmental bodies must protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible."

LWVWI Position Papers

Position regarding law enforcement policy: "Law enforcement policy locally developed by cooperative efforts of citizens and law enforcement agencies using state guidelines, but reflecting local needs"

Position regarding community policy: "Promote the fiscal, social, cultural, residential, educational and environmental quality of life for all residents."

TABLE OF CONTENTS

Executive Summary 4
I. Introduction 5
II. Background for this Report and its Recommendations 6
A. Nature of Research 6
B. Motivations 6
III. FPC Framework 7
A. The Board 7
B. Executive Director and Staff 10
C. Additional FPC Responsibilities 11
D. FPC and Collective Bargaining 11
E. FPC Budget 11
F. FPC Transparency 11
IV. Expert Analyses Key to Our Research and Recommendations 12
A. 2006 Consultants' Report 12
B. Draft U.S. DOJ COPS Report 13
C. Collins Settlement Agreement and Follow-Up Compliance Reports 14
D. Milwaukee Inspector General's Report and FPC Response 16
V. Our Concerns and Recommendations 17
A. Overview 17
B. FPC Board Responsibilities 18
C. Maintenance of a Full and Fully Approved FPC Board 22
D. Commissioner Training 23
E. FPC Board and Collective Bargaining 25
F. Relationship of the Executive Director and Staff to the FPC Board 27
G. Responsibilities of the Executive Director and Staff: Enhanced Auditing and Subpoena Power 29
H. MPD Diversity 31
I. MPD and Milwaukee Residency 33
J. Citizen Complaints 34
K. Police Officer Training 36
L. FPC Website 37
M. Staffing and Budget 38
N. Power of Common Council to Effect Community Safety Plan 39
VI. Forward 40
Appendix A 41
Appendix B 47
Appendix C 48
Appendix D 52
Appendix E 57

EXECUTIVE SUMMARY

Policing in Milwaukee suffers from overuse of force, racial disparity and other problems. The Milwaukee Fire and Police Commission is the body vested by state and local law with the most authority over policing and, thus, the most power to make constructive changes but, in recent years, has had its own share of problems. In our view, improvements in policing are dependent on improvements to the FPC.

This report is the product of extensive research and analysis. Following foundational information in Sections I through IV, Section V of this report addresses particular issues (or sets of issues) and makes related recommendations. Implementation of these recommendations would lead to the following outcomes:

- The FPC Board exercises a stronger policymaking role than it does today.
- The Board develops and follows written strategic plans.
- The Board comprises nine commissioners.
- Commissioners engage in initial and continuing education on a variety of subject matters pertinent to their responsibilities.
- The Board has a say in collective bargaining with the police unions.
- The FPC Executive Director has a direct reporting relationship to the Board.
- The Executive Director and staff engage in robust auditing of Milwaukee policing, identifying trends and systemic problems. Findings inform the Board's policymaking, as well as are presented to the public in a clear, easily accessible manner.
- Milwaukee Police Department diversity is a top priority, pursued using a written plan that includes benchmarking tools.

A list of all of the recommendations discussed in Section V appears in Appendix A. Appendix A also provides a sketch of how each recommendation can be effected — for example, whether a change to a statute or ordinance is required and, if so, what it is.

Finally, improvements to policing are very important but are not the ultimate solution to enhancing the welfare of Milwaukee residents. In this report, we call upon the City — with the Common Council playing the lead role — to move to a community safety plan providing residents better opportunities and access to healthcare, education, food, housing, transportation, and employment. Policing must remain a component of public safety, but equity and a high quality of day-to-day life are what make individuals and their communities truly secure.

I. INTRODUCTION

The Police Policy and Practice Reform Committee of the LWVMC was established in 2020 because of members' concerns about such matters as the overuse of force and racial disparities in policing. Committee members wanted to educate themselves and others about police matters and engage in advocacy with respect to such matters. The committee keeps abreast of both local and national developments and trends but, so far, concentrates primarily on the City of Milwaukee. Within Milwaukee, one particular focus has been the Milwaukee Fire and Police Commission (FPC) because it has significant power, authority, and responsibility and, thus, is central to policing in Milwaukee.

This report highlights concerns regarding the structure and functioning of the FPC and related entities in Milwaukee — as they relate to policing (not the fire department, except incidentally). The report makes several recommendations for improvement. The recommendations appear throughout the report and are summarized in Appendix A.

We point no fingers at particular FPC Board members, the FPC staff, or other individuals or entities. Rather, we think that challenges faced by the FPC are the result of collective failures and, likewise, solutions must be arrived at collectively — and diligently. Our goal is for the FPC to become a stronger, more effective body, serving the residents of Milwaukee, the Milwaukee Police Department (MPD), and all others impacted by the FPC.

"There is increasingly broad agreement that law enforcement's business, in general, is the public's business . . ." ("Promoting Police Accountability in Milwaukee: Strengthening the Fire and Police Commission," Police Assessment Resource Center and Richard Jerome, PC, June 2006). This 15-year-old statement is truer than ever. And the public's business is more urgent than ever.

Support of law enforcement policy locally developed by cooperative efforts of citizens and law enforcement agencies using state guidelines, but reflecting local needs (Position of the League of Women Voters of Wisconsin). The recommendations made in this report are not just consistent with this position; they promote it.

II. BACKGROUND FOR THIS REPORT AND ITS RECOMMENDATIONS

A. Nature of Research. This report and recommendations originate from research and analysis conducted by members of the LWVMC Police Policy and Practice Reform Committee, working as a task force. The task force's work has been conducted over many months and has been extensive.

Our research has looked at both primary and secondary sources — including statutes, ordinances, rules, expert analyses, and materials available on the FPC and other websites. We also have observed many meetings, including FPC Board meetings, FPC Board committee and subcommittee meetings, Milwaukee Common Council (Common Council) meetings and Council committee meetings, and Community Collaborative Commission (CCC) meetings. Further, the committee has met with representatives of certain community advocacy groups and the CCC, and the task force has had conversations with FPC Executive Director Leon Todd, Jack McNally from the FPC, and Julie Wilson from the city attorney's office. *Although we think our research is sound, if an individual reading this report identifies actual or possible errors, either factual or ones of interpretation, we would like to learn about them and will consider appropriate changes.*

B. Motivations. The FPC is one of the most longstanding and powerful civilian bodies overseeing a metropolitan police department in the nation. In fact, it is far more than an oversight body that is merely advisory and has no teeth; the FPC *governs* the MPD and its operations. As other places in the country grapple with ways in which to gain more civilian oversight of the police, Milwaukee is fortunate to have a civilian-led structure already in place.

In recent years, however, the FPC has been rocked by controversy and dysfunction — at both the Commissioners and staff levels and, at times, in its relationships with the MPD and City officials. Equally or more important, the FPC, while legally vested with tremendous power over the MPD and policing policies and practices — and, thus, the safety of the community — sometimes has failed to use that power effectively.

The time is ripe for the FPC to do better and to do good. It can and it must. Policing in Milwaukee is fraught with problems — ones that impact individuals and families in terms of civil rights, dignity, freedom from harm, and justice — and ones that impact city residents as taxpayers. We would like to see Milwaukee engage in more community-oriented policing and also move in the direction of a community safety plan that involves better healthcare, education, housing, employment, and other components to improve

quality of life, equity, and safety. We are far from being alone in seeking these outcomes. And we think the FPC should take a role in achieving them.
The Mayor of Milwaukee (Mayor), the Common Council, other city entities, and state lawmakers bear responsibility and also must step up. In fact, we urge the Common Council to be the primary leader in effecting a community safety plan.

To make progress, all must function and work together as a well-oiled machine. That often is not the case now. We urge those who bear any responsibility for the FPC and MPD to follow the national League of Women Voters principle that *efficient and economical government requires competent personnel, the clear assignment of responsibility, adequate financing, and coordination among the different agencies and levels of government.*

And all must work urgently and diligently as if their lives depended on it; the lives of Milwaukee residents and visitors do.

III. FPC FRAMEWORK

A. The Board. The FPC was created by the State of Wisconsin in 1885 with the goal of keeping politics and patronage out of policing and firefighting. (See Appendix B for a brief history of the FPC.) Under current state law (Wis. Stats. Sec. 62.50(1)(h)), the board of the FPC (Board) is comprised of either seven or nine commissioners who are appointed by the Mayor and approved by the Common Council. (Not more than three, if the Board has seven members, and not more than four, if the Board has nine members, may belong to the same political party.) In recent years, the Mayor has limited the number of members to seven, and there have been periods when as few as six commissioners were serving. The Mayor has at times indicated he will appoint nine commissioners, but he has not done so to date. The commissioners serve part-time and, currently, each receives an annual salary of $6,600. Rule III, Section 1(a) of the Rules of the Board of Fire and Police Commissioners City of Milwaukee (RULES of the BOARD OF FIRE AND POLICE COMMISSIONERS CITY OF MILWAUKEE) requires the Board to meet twice monthly, and the Board may meet more regularly. Commissioners also serve on Board committees.

Commissioners generally are appointed for overlapping five-year terms. Under state law, however, if a commissioner's term expires, he or she continues to serve until a successor is appointed and confirmed. Also, under state law, a commissioner may be removed from office by the Common Council if the removal is for cause and if three-quarters of all Council members vote for removal. (Wis. Stats. Sec. 17.12. Other provisions of the statutes define "cause" and the process for removal.)

The FPC Board is the principal governing body for both the MPD and the Milwaukee Fire Department (MFD). State statutes and city ordinances (Wis. Stats. Sec. 62.50 and Milwaukee City Ordinance [MCO] Chapt. 314) outline the principal functions of the FPC. As noted above, the Board also has internal rules.

1. State law — Board responsibilities. Wis. Stats. Sec. 62.50, "Police and fire departments in 1st class cities," provides details on FPC Board responsibilities, some of which are mandatory and some of which are permissive.

Mandatory

- Commissioners must take a training class. (Sec. 62.50(1h))
- Board must undertake at least an annual policy review of all aspects of the MPD and MFD (and may inspect property of the departments, including books and records, needed for this review). (Sec. 62.50(1m))
- Board must approve all appointments to any position with the MPD and MFD. (Sec. 62.50(2))
- Board must adopt rules to govern the selection and appointment of persons employed by the MPD and MFD, designed to secure the best service for the public. (Sec. 62.50(3)(b)) This provision of the statute provides additional details, such as the Board dealing with physical qualifications, experience, and examinations. Also, Sec. 62.50(4) addresses the Board's printing and publication of rules and regulations.
- Board must control all examinations for MPD and MFD positions, although it may designate others to conduct examinations. (Sec. 62.50(5))
- Board must appoint chiefs of MPD and MFD. (Sec. 62.50(6))
- Board must approve certain other senior positions in the MPD and MFD, although candidates for these positions are nominated by the chief. (Sec. 62.50(7) and (8))
- Board must approve filling of vacancies, new appointments, and promotions in the MPD or MFD. (Sec. 62.50(9)) Board must order a trial involving a member of the MPD or MFD — generally, when a complaint is made against a member of the force. (Sec. 62.50(12)) A great deal of detail on the trials and procedures that the departments and Board must follow are set forth in subsequent subsections.

Permitted

- Board may prescribe general policies and standards for the MPD and MFD. (Sec. 62.50(1m))
- Board may prescribe rules for the government of the members of the MPD and/or MFD and may delegate its rule-making authority to the chief of each department. Board *shall* prescribe a procedure for the review, modification, and suspension of any rule prescribed by the chief. (Also, the Common Council may suspend any rule prescribed by the Board.) (Sec. 62.50(3)(a) and (3)(am))
- Board may review the efficiency and general good conduct of the MPD and MFD (with the chief acting as an adviser to the Board when such review occurs). (Sec. 62.50(23))
- Board may issue written directives to a chief based on a review of the chief's department. (The chief must implement any directive unless the directive is overruled in writing by the Mayor.) (Sec. 62.50(23))
- Board may appoint a chief examiner (and *shall* prescribe the chief examiner's duties and compensation). It also may appoint other examiners. Board may remove the chief examiner at any time by a majority of the Board and also may change the duties and compensation of the chief examiner at any time. (Sec. 62.50(25))

The state law governing the Milwaukee FPC is unique because Milwaukee is the only "first class city" in the State and, thus, the only one covered by Wis. Stats. Sec. 62.50. Other municipalities in the State have similar commissions, but they are governed by other provisions of the Wisconsin statutes. (State classification of cities is based primarily on population.)

2. Milwaukee ordinance — Board responsibilities. MCO Chapter 314 deals with the FPC. It is less detailed than the state statute, but most responsibilities are mandatory. In addition, responsibilities not included in state law are specified.

- Prior to confirmation by the Common Council, Board members *must* go through a background check. (Sec. 314-1.2.a)
- Each new commissioner *must* go through certain training procedures (set forth in more detail under the ordinance than in state law). (Sec. 314-1.2.b) The FPC *must* provide an annual report to the Common Council on commissioners' training. (Sec. 314-1.2.b-3)
- As under state law, the Board *must* conduct a policy review of all aspects of the MPD and FPD and *may* prescribe general policies and standards for the departments (and *may* inspect books and records and other property needed for the mandatory review). (Sec. 314-3.1)

- The Board *must* audit internal police and fire department investigations to ensure thorough, fair, and credible results. (Sec. 314-3.2)
- The Board *must* monitor the citizen complaint process to ensure timely and objective resolutions. (Sec. 314-3.3)
- The Board *must* use oversight authority to identify systemic problems with the MPD and MFD, identify opportunities for improvement through organizational change, and delegate authority for follow-up to the respective chief. (Sec. 314-3.4)

B. Executive Director and Staff.

1. State law. As noted above, Wis. Stats. Sec. 62.50 permits the FPC Board to appoint a "chief examiner."

Sec. 62.51, "Mayoral appointments in 1st class cities," defines the term "public office" to include the "executive secretary" of the FPC Board. It then provides for appointment by the Mayor of a person to serve in this position (and other public office positions) subject to confirmation of the Common Council. Further, the appointee serves "at the pleasure of the mayor until the end of the mayoral term in office" (unless reappointed and reconfirmed or, if later, until a successor is appointed and confirmed). Note that, prior to the late 1980s, the executive secretary was appointed by the Board.

The statute further permits the City to authorize a deputy public official; if authorized, the "lead" public official appoints his or her deputy to serve at his or her pleasure, not longer than the "lead" public official's term unless reappointed.

Last, the statute authorizes the City to "abolish, consolidate or create" a public office or other position.

Aside from these formalities, state law does not contain any detail about FPC staffing.

2. Milwaukee ordinance. MCO Sec. 314-5, "Executive Director," creates the position of an executive director "to comprise the role of executive secretary of the board." This provision further states that "[u]nder the direction of the Board, the executive director shall act as the principal staff of the board in exercising the board's functions and powers" provided in Wis. Stats. Sec. 62.50 and in MCO Sec. 314-3.

MCO Sec. 314-5 then imposes the following specific responsibilities on the Executive Director:

- Review a complaint investigation when a citizen is dissatisfied with the outcome of an investigation that has been completed by the MPD or FPD.
- Evaluate MPD and FPD policies, practices and patterns, including but not limited to deployment of staff, crime and fire prevention training, use of force, search, seizure, citizen interaction, and communication.
- Issue periodic public reports relating to the status and resolution of complaints, timeliness of complaint resolution trends and patterns of concern pertaining to complaint investigations, nature and frequency of complaints, and other performance indicators.

MCO Chapter 314 does not contain detail on FPC staff positions other than that of the Executive Director.

C. Additional FPC Responsibilities. From time to time, FPC responsibilities not included in the above-referenced Wisconsin statutes and City ordinance may be added. For example, the FPC recently was tasked (in cooperation with the MPD and other City departments) with coming up with a new 9-1-1 system for non-emergency calls. We note that the City's Director of Emergency Management and Communications, while a member of the Mayor's cabinet, serves under the direction of the FPC Executive Director, also a member of the Mayor's cabinet.

D. FPC and Collective Bargaining. Members of the MPD belong to one of two (depending on rank) powerful police unions. To our knowledge, even though the Board and Executive Director have significant control over a range of MPD employment-related and police conduct issues, the Board and Executive Director (or other staff) do not participate in collective bargaining with the unions. Rather, that responsibility is vested in the City's labor negotiator.

E. FPC Budget. On May 3, 2019, then City Attorney Grant F. Langley issued an opinion to then FPC Executive Director La Keisha Butler covering several issues. Certain aspects of this opinion are discussed later in this report but, for purposes relevant here, we note that the opinion concludes that solely the FPC Executive Director, and not the Board or any commissioner, has the authority to advocate with respect to the FPC's budget.

F. FPC Transparency. Although, because of internet accessibility, timing, and other issues, it is not easy for all to do, the public can obtain a good deal of information about

FPC Board activities. FPC Board and committee meetings are open to the public and can be accessed (prior meetings included), together with agendas and minutes, on the Milwaukee Legistar website. Milwaukee residents also can watch meetings on a local cable channel. Meetings include public comment periods.

There is much less transparency with respect to the Executive Director, other staff, and their current activities. While certain staff and Board activities are described on the FPC website, the information is spotty and not always up to date. In addition, the website contains no organization chart and no staff directory. (There is a section providing brief information on Board members.)

Also, in some of the information posted on the website, it is not clear whether an action was taken by the Board or the staff; the website may just refer to the FPC even though the responsibilities of the two are different in many respects.

IV. EXPERT ANALYSES KEY TO OUR RESEARCH AND RECOMMENDATIONS

Although our research has taken us well beyond the analyses identified immediately below, these analyses are important in terms of the analysts' investment in them, conclusions reached, and recurring themes. We studied them carefully and summarize them here.

A. 2006 Consultants' Report (sometimes known as the 'PARC Report') DRAFT OF MILWAUKEE FPC REPORT

Consultants Police Assessment Resource Center and Richard Jerome, PC — who were retained by the City of Milwaukee to evaluate the structure, procedures, and practices of the FPC and to make recommendations for improvement — published a report in June 2006 captioned "Promoting Police Accountability in Milwaukee: Strengthening the Fire and Police Commission."

Since the time of the report, some things have changed. These include, for example, how citizen complaints filed with the FPC are handled, and FPC employees being a part of the Milwaukee Department of Employee Relations (they no longer are), as well as an increase in the number of commissioners on the Board. Some things, however, have not changed. For example, although the total number of staff positions has increased since 2006, sufficient staffing seems to be an ongoing problem. And our research points to two of the same fundamental conclusions that the consultants reached:

> The Commission underutilizes its policy review powers, in part because it does not have sufficient staff resources and expertise. It does not [analyze certain MPD data - some of which has been changing], identify patterns and trends, research best practices, document policy recommendations to the Police Department or the Department's responses, or draft policy papers and reports.
>
> The FPC's time-consuming responsibilities for recruiting, testing, hiring, and promoting MPD personnel necessarily detract from its ability to focus on police accountability and policy issues. (2006 Consultants' Report, p. 2)

Key recommendations in the 2006 Consultants' Report include (1) spinning off all of the MPD personnel functions currently handled by the FPC, except appointment of the MPD chief, and placing them in another city department; (2) changing the role of the Executive Director to that of an independent monitor (also known as an independent auditor); (3) having the independent monitor report to the FPC Board instead of to the Mayor (although the individual would still be appointed by the Mayor and confirmed by the Common Council); (4) having the independent monitor work with the FPC board on MPD issues to evaluate, and assisting the Board in developing its agenda on policy matters; (5) focusing on systemic problems and improvements, not just case-by-case issues; and (6) holding FPC Board meetings at least once per calendar quarter in community locations.

B. Draft U.S. DOJ COPS Report (likely mid-2016)
https://graphics.jsonline.com/jsi_news/documents/doj_draftmpdreport.pdf

In November 2015, former MPD Chief Flynn requested that the U.S. Department of Justice's Community Oriented Policing Services (COPS) office assist in assessing the MPD and helping to place it on an accelerated path toward an "evolution of reform" (Draft U.S. DOJ COPS Report, p. 9). A draft report, captioned "Collaborative Reform Initiative Milwaukee Police Department Assessment Report," was produced, but no final report was ever issued, due to constraints on this COPS office work put in place by the Trump administration. The report was leaked to the *Milwaukee Journal Sentinel* in 2017, however. The *Milwaukee Journal Sentinel's* reporters said the draft report was likely produced sometime in mid-2016.

After the draft report was leaked, Chief Flynn offered criticisms of it and also produced a "Milwaukee Police Department Collaborative Reform Planning and Implementation Guide November 2015 - Present" (Sept. 13, 2017). Milwaukee Police Department Collaborative Reform Planning and Implementation Guide November 2015 – Present Also, the draft report led to creation of the Milwaukee Collaborative Community Committee in 2018 and launching, in part by the FPC, of the Milwaukee Collaborative

Reform Initiative Feedback Portal. FPC launches Milwaukee Collaborative Reform Initiative Community Feedback Portal

Some of the recommendations in the COPs report are as follows:

- Making more deliberate efforts to improve diversity in the MPD and ensure that the MPD reflects the demographics of the community (pp. 35-36; p. 134)
- Improving recruitment and hiring procedures, including involving the community more in these procedures (pp. 36-38)
- Bettering police officer promotion practices (pp. 38-39)
- Thoroughly and routinely reviewing standard operating procedures (SOPs) and other policies of the MPD — accounting for case law, trends in MPD operations and outcomes, community concerns, and emerging national best practices — and then publishing a report based on the review and holding a public hearing on this subject. (p. 57)
- Working with the community on the types of reports the FPC should be producing on the MPD (p. 79)
- Creating a new position of independent police auditor. "The position will report to the FPC and serve many of the police-related functions of the FPC, the difference being a dedicated auditor that is responsible solely for MPD oversight. An independent auditor can help rebuild the respect, cooperation and trust between the police and the community. This would be particularly important in Milwaukee since there appears to be a lack of trust between MPD and some Milwaukee residents. A broad and diverse array of community stakeholders should be engaged in the hiring process and in determining the specific roles and responsibilities for the independent auditor." (pp. 125-126)

C. Collins Settlement Agreement (2018) and Follow-Up Compliance Reports

In July 2018, the United States District Court for the Eastern District of Wisconsin entered an order to approve a settlement agreement, arising out of a class action lawsuit brought in the names of several plaintiffs (with "Collins" the lead name). The defendants were the City of Milwaukee, the FPC, and the then chief of the MPD (Alfonso Morales), acting in his official capacity. Collins v. Milwaukee - Settlement Order and Agreement

The lawsuit alleged violations of the Fourth Amendment of the U.S. Constitution (protecting individuals from unreasonable searches and seizures and related behavior) and the Fourteenth Amendment of the Constitution (generally requiring equal protection and prohibiting racial and other forms of discrimination) because of policies, practices, and customs related to stops and frisks by the MPD. The defendants denied the

allegations. Rather than proceed to trial, the parties entered into the settlement agreement, and the District Court approved the agreement. (The lawsuit and settlement sometimes are associated with the American Civil Liberties Union. This is because the plaintiffs were represented by ACLU attorneys, along with the law firm of Covington and Burling.)

The agreement principally requires new or modified actions regarding the following — in many cases imposing quite specific requirements, some accompanied by time deadlines.

- Policies to ensure that traffic stops and similar actions are constitutional
- Data collection and publication requirements related to traffic stops and similar actions
- Training related to traffic stops and similar actions
- Supervision over police involved in traffic stops and similar actions
- Handling of complaints against MPD conduct, both those initiated by members of the public and those arising from within the MPD
- Auditing data related to conduct in traffic stops and similar actions
- Counseling, re-training, and discipline for police personnel who do not meet certain standards relating to traffic stops and similar actions
- Community engagement

The agreement requires the defendants to comply with its terms for a minimum of five years. The court also appointed the Crime and Justice Institute (CJI) to monitor compliance and issue annual reports on compliance. As of the date of this report, two annual reports (issued in Sept. 2019 and Sept. 2020) and two six-month reports (issued in March 2020 and March 2021 on items found to have been noncompliant in the annual reports) have been issued. These reports are available on the FPC website. Crime and Justice Institute Reports

Points emphasized in these CJI reports, pertinent to the FPC, include the following:

- The FPC, the MPD, the city attorney's office, the Mayor, the Common Council and others in the city must be "all in," committed to fulfilling the requirements of the settlement agreement, coordinating with each other, and ensuring that funding is adequate to meet needs.
- "The Settlement Agreement calls for the FPC as the lead conduit for data to the community and envisions a *more robust oversight role* on the part of the Commission and staff than appears to exist currently." (First Annual Report, p. 6; emphasis added)

- Despite improvement between the First Annual Report and Second Annual Report, compliance on the part of the FPC remains sorely lacking. Two and a half years into the Settlement Agreement, the FPC still did not have sufficient audit staff. (Second Annual Report, p. 8)
- Vacancies on the FPC Board and commissioners serving in expired terms hamper the Board's ability to conduct business and result in delays in review, discussion, and approval of some policies. Commissioners serving in expired terms also limit the roles for interested community members and diminish the community's confidence in the FPC. "The ability of the Commission to fully deliver on its expectations is challenged without a full complement of members." (Second Annual Report, p. 23)
- Repeated turnovers in the Executive Director position and staff, and unfilled staff positions, also impair the conduct of business.
- "The myriad of roles of the FPC Executive Director and the structure of the office causes a lack of clarity in what oversight means in that position. Even though the Executive Director is a direct report to and appointee of the Mayor, they [sic] serve as the secretary to the Commission. In practice, it seems unclear how the trio interact and support a common set of goals" (Second Annual Report, p. 23). This paragraph of the report goes on to describe how the Executive Director is called to frequently testify in various FPC and Common Council hearings while also leading a staff, all of which is time-consuming.
- "[T]o date, there is little evidence that collectively the Defendants takes [sic] seriously the valuable role the CCC can play in achieving the intended outcomes of the Settlement Agreement." (Second Annual Report, p. 12)

D. Milwaukee Inspector General's Report (2020) and FPC Response City of Milwaukee

In March 2020, the Office of the City Clerk of Milwaukee published a document captioned "Audit of the Fire and Police Commission Internal Controls and Processes." The document includes the results of an audit of certain aspects of the FPC — generally focusing on staff only, not the Board — performed by the city's Inspector General, Ronda M. Kohlheim (IG). It also includes a response to the audit written by then FPC Executive Director Griselda Aldrete.

The audit focuses on three areas: (1) recruiting, testing, and hiring controls; (2) citizen complaint investigation controls; and (3) organizational structure and development. The scope of the audit was the period September 2019 through March 30, 2020. The audit concluded "that controls in place over the Commission's citizen complaint investigations and recruiting, hiring and testing are adequately designed. However, some identified

controls have a significant or operational deficiency and require improvements to ensure operational efficiency and effectiveness to eliminate the related exposure to risk." (p. 7). The IG report includes 13 recommendations and one "observation."

Both the IG and Ms. Aldrete attribute certain problems to turnover in the Executive Director position and other staff turnovers and vacancies.

The "observation" made by the IG is that "[t]he Council and the Mayor should collaborate to address structural issues regarding the Fire and Police Commissioner's lack of authority and oversight over the executive director and staff." (p. 43) More specifically, she recommends steps so that the FPC Executive Director and staff are under the jurisdiction of the FPC Board.

V. OUR CONCERNS AND RECOMMENDATIONS

A. Overview

As noted at the outset of this report, we think that policing in Milwaukee is fraught with problems, and we have focused on the FPC because of its significant power over the police and policing outcomes.

Several of our recommendations resemble those made in some of the expert analyses. It is extremely disturbing that problems with the FPC of today (1) existed as long as 15 years ago (when the 2006 Consultants' Report was issued); (2) contributed to a lawsuit as significant as Collins, involving violations of constitutional civil rights; (3) contribute to continued racial disparity and overuse of force in policing; (4) contribute to policing practices and culture that are significantly out of touch with community wants and needs; and (5) have not moved Milwaukee to anything close to a community safety plan. The FPC has long failed to play the leadership role in advancing policies and practices as described and envisioned in the state's statutes and reflected in the founding values of the FPC's creators.

The focus on policing-related problems, nationally and locally, has probably never been greater in contemporary history. So, while recognizing that laws, budgets, and much more will have to be changed to accomplish what we seek, we ask, "If not now, Milwaukee, then when?" This is not a time for tinkering; it is a time for major overhaul.

Without doubt, some of our recommendations will take considerable effort to be effected, including, for example, changing state law. The "fine points" of change — for example, drafting bill language — are outside the scope of our work. We have,

however, included sketches of the major items required to effect our recommendations in Appendix A, where all of the recommendations are summarized.

B. FPC Board Responsibilities

1. Issues

a. Need for more policymaking, fewer personnel-related ministerial duties. In part due to state law, and in part due to longstanding FPC Board practices, the FPC Board spends a significant amount of time on MPD and FPD personnel matters. A look at agendas and minutes, for example, or observation of FPC meetings, evidences that the Board frequently deals with new hires and promotions. These are matters that appear to be largely, if not exclusively, ministerial, not requiring the expertise and discretionary judgment of the commissioners.

Simultaneously, the FPC Board is *not* significantly engaged in the research and development of policies, other than dealing with proposed standard operating procedures (SOPs) that are typically brought to the Board by the MPD (and FPD) for review and approval, or sometimes brought to the Board through resolutions of the Common Council (see, for example, File #200320, dealing with de-escalation and restraint, passed by the Common Council in 2020). In recent years, changes to SOPs also have been mandated as the outcome of litigation, such as under the Collins Settlement Agreement or in the recent Sterling Brown settlement. (The FPC website includes a press release from May 2020, announcing that then Executive Director Aldrete brought an SOP to the Board for its review. It is possible that there are similar instances of SOPs coming to the Board that way, but we have not located any.)

State law gives the Board the power to "prescribe general policies and standards for the department" and to "prescribe rules for the government of the members of each department" (Wis. Stats. Sec. 62.50(1m) and (3)(a)). MCO Sec. 314-3.1 also authorizes the FPC Board to "prescribe general policies and standards for the departments." The FPC Rules state that "[t]he Board may prescribe rules for the governance of each department" (Rule II, Sec. 3(b)), and that "[a]ny Fire or Police Department Rule, regulation, or standard operating procedure shall be subordinate to the Board Rules." Yet the Board seems to have largely, if not exclusively, ceded the responsibility to initiate policymaking (we treat "standards" and "rules" as generally equivalent to "policies" here) to others.

The responsibilities cited in the immediately preceding paragraph are all permissive: the Board is not required to use the various authorities given to it. But, under both state and

city law, the Board is *required* to conduct at least an annual policy review of all aspects of the MPD. The review could and should be foundational to advancing policy change proposals. In recent years, that review has been cursory or even nonexistent. And, under the MCO, the Board is additionally *required* to do the following: (i) audit internal police department investigations to *ensure* thorough, fair and credible results; (ii) monitor the citizen complaint process to *ensure* timely and objective resolutions; (iii) use oversight authority to *identify* systemic problems within the police department, *identify* opportunities for improvement through organizational change, and *delegate* authority for follow-up to the respective chief.

At a minimum, these MCO requirements invite the Board to engage in policymaking; ***arguably, they compel it.*** If the Board is not carrying out the required auditing, monitoring, and oversight responsibilities and then translating them into policies, the MCO is no more than empty words written on a sheet of paper.

b. Policymaking particularly matters now. The Collins settlement and follow-up CJI reports are a clarion call for major change in Milwaukee policing. They are about continued vast racial disparities and violations of constitutional rights. The FPC, as well as the MPD and the City of Milwaukee (generally, acting through the city attorney's office) agreed to the Collins settlement and have been told in no uncertain terms what they must do. The FPC Board, as the lead governing authority over the police under state and local law, should be leading the charge.

We are also in the midst of seeing many constructive new ideas for better policing that involve less systemic racism and diminished uses of force. In part triggered by the President's [Obama] Task Force on 21st Century Policing and in part by events of the last few years, we have seen innovations such as "Eight Can't Wait," "CAHOOTS," and the Denver STAR program. The FPC Board, in collaboration with others, should be deeply engaged in pursuing these types of innovations.

Mounting taxpayer costs also compel a major change in direction. According to the Marshall Project, Milwaukee paid over $40 million in police misconduct settlements over the past decade. Because the city does not insure for settlements, the taxpayers bear the cost directly. Cities Spend Millions On Police Misconduct Every Year. Here's Why It's So Difficult to Hold Departments Accountable.

c. Additional observations regarding the Board and policymaking

i. The fact that SOPs typically come up from the MPD leads to a problem identified by Milwaukee resident and FPC watchdog Paul Mozina: that the MPD can effectively

bypass FPC authority by engaging in operations that never make their way into a written SOP. See OPINION: Where are the teeth? The Fire and Police Commission has no business serving as the MPD's watchdog and, in particular, Commissioner Cocroft's comments about this matter. More of a top-down approach — from the FPC to the MPD — would mitigate this problem.

ii. We think that eliminating ministerial personnel duties from the Board's plate and elevating its role in policymaking would make service on the Board more attractive to incumbents and candidates.

d. Need for collaboration, leadership with the community. This is the time for Milwaukee to get serious, not just about improved efforts in community-oriented policing but also about a community safety plan. This plan can provide the health, education, employment and other supports in place that — together with the police — will make Milwaukeeans stronger and safer.

We are fortunate to have the CCC, with members from diverse communities, considering these issues. Likewise, we are fortunate to have established and newer groups — including, for example, the NAACP, the ACLU, the African-American Roundtable and Liberate MKE — who consider these issues, keep abreast of best practices, and are serious about change.

Both the Draft U.S. DOJ COPS Report and the Collins Settlement Agreement call for enhanced community engagement. As the primary governance body for policing in Milwaukee, the FPC Board is ideal not only to collaborate and partner with groups such as the CCC and the others named, but to be one of the leaders. Having the community inform and shape policies should be a critical part of the Board's policymaking role.

2. Recommendations

a. Engage in more policymaking, fewer personnel matters. First and foremost, the FPC Board should be acting like a board of directors, proactively making policy for the MPD, and not carrying out ministerial, nondiscretionary types of personnel matters such as hires and promotions. (We note that the website for the Los Angeles Board of Police Commissioners — just to cite one example — describes that board as acting like a corporate board of directors.)

We generally concur with the 2006 Consultants' Report on remaking the Board into more of a policymaking than a personnel entity. But, while that report recommended spinning off personnel-related functions to another agency (for example, the

Department of Employee Relations or the MPD), we recommend keeping personnel functions with the FPC staff. The Board should retain authority to develop and write policy on personnel matters including for example, qualifications for MPD service, training, and examinations (and other personnel and non-personnel matters); it is the routine, largely non-discretionary tasks that we think are a distraction from more important matters and, thus, should not be in the purview of the Board.

We also concur with the 2006 Consultants' Report's recommendation that the Board should retain the authority to select the chief of the MPD. In a variation from that report, we think that, instead of asking the city to consider whether the Board should retain its function of approving high-level MPD commanders (i.e., the assistant chief, and the offices of inspector of police and captain of police), that function should continue to rest with the Board.

If the Board becomes more engaged in initiating major policymaking, it can deal with the subject matters that have been historically brought to it by the MPD in the form of proposed SOPs and with personnel-related policies and also with other topics, more attention to which is needed. Examples are increasing MPD diversity (racial/ethnic/gender/LGBTQ) and increased attention to which infractions require police police intervention. (Diversity is more specifically addressed in Section V.H below.)

The Board should produce a strategic plan at least every two years, laying out what will be accomplished by the full Board and Board committees in the period covered by the plan — in terms of policymaking and other responsibilities — and the rationale for each item in the plan. In developing and carrying out the plan, the Board should be particularly mindful of the requirements of the MCO and of other directives, such as those of the Collins Settlement Agreement and CJI reports. It should also be reviewing and evaluating national best practices in policing. Community input should be sought from the CCC, other interested parties, and public hearings. Once developed, the strategic plan should be made public and, at the end of every two-year (or other) period covered by the strategic plan, the Board should do a public accounting of what it has accomplished, and how. Of course, any strategic plan may need to be altered because of important, unexpected developments, but such a plan should nevertheless be the blueprint.

b. Collaborate with the community. The Board (or a Board committee) should initiate at least quarterly meetings with the CCC to jointly work on community-oriented policing, community safety plan policies and practices, and other areas of interest to the CCC. The Board also should be collaborating with the CCC to ensure other community groups interested in these matters are contacted and heard. The Board should make a point of

holding several meetings a year in different Milwaukee communities, in addition to downtown.

Working with the CCC and others, specific indicators and related timelines for accomplishing goals should be set. Indicator and timelines should allow for the complexity of the work but also its urgency. Progress reports should be made publicly available.

The Board should ensure that the MPD also actively participates in these collaborative efforts, including creation of a community safety plan.

c. Work closely with the Executive Director and staff on their MPD auditing work and recommendations. Later in this report (see Section V.F), we discuss and make recommendations on the relationship between the Executive Director and staff to the Board, as well as on the responsibilities of the Executive Director and staff. We note here that the Board's success in making a viable strategic plan that includes a significant policymaking component, and in policymaking itself, is highly dependent on receiving reliable information and recommendations from the Executive Director and staff.

C. Maintenance of a Full and Fully Approved FPC Board

1. Issues.

Although state law allows the FPC Board to be comprised of either seven or nine members, the Mayor — while he or his staff sometimes mentions going to nine — has kept the size at seven.

In addition, vacancies on the Board caused by people departing the Board sometimes go unfilled for substantial periods. This creates problems such as that occurring in 2020 when a six-person Board was unable to select a new police chief because the Board was tied in three-three votes.

A related problem is commissioners continuing to serve even though their terms have expired. The case of one commissioner has been highly publicized. Her term expired in 2018, but she continued to serve because a replacement had not been appointed. The Mayor reappointed her in December 2020, but the Common Council voted against the reappointment in March 2021. Still, she has not been replaced and continues to serve.

CJI has highlighted some of these problems in its reports.

On November 23, 2020, the LWVMC joined several other community organizations in a letter to the Mayor calling for the appointment of nine commissioners. Among other things, the letter states that "[a]n FPC composed of the nine members allowed by law would help remedy current problems and provide the short- and long-term benefits of further diversifying the skill set on the commission, enhancing community representation, and better enabling commissioners to tackle the large and important workload they have cut out for them. In addition, all commissioners should serve current, unexpired terms." We reiterated the call for nine commissioners in a letter solely from the LWVMC to the Mayor and alders dated April 27, 2021.

2. Recommendations.

a. Appoint nine commissioners; preclude continued service after expired term. We stand by our earlier letters on these matters. Nine commissioners should be appointed. Further, if a commissioner's term has expired and that commissioner has not been reappointed and reconfirmed, that commissioner should no longer serve on the Board.

b. Make timely appointments; avoid even numbers. In the April 27, 2021, letter, the LWVMC made further process recommendations on filling appointments. Among other things, we asked that the Common Council have at least 45 days to review appointments and that an even number of commissioners on the Board be avoided.

The referenced letters are set forth in Appendix C. We stand by the recommendations included in them.

D. Commissioner Training

1. Issues

Under Wis. Stats. Sec. 62.50(1h) and MCO Sec. 314-1, each newly appointed commissioner must complete training for the Board within the first 12 months after the Common Council approves the commissioner's appointment. The MCO specifies that police department-related training may include attending the Milwaukee police citizen academy and participating in the police department ride-along programs as recommended by the FPC executive director. If a new commissioner has experience as a law enforcement officer, that commissioner is exempt from the police department training program.

There is no requirement for commissioners to engage in continuing education during service on the Board.

2. Recommendations

a. Add components to initial training. Both the initial training requirements, and the absence of any continuing education requirement, are insufficient. Initial training should include significant components on, for example, (i) statutory and other legal responsibilities of Board members; (ii) contemporary and best practices in policing, including community-oriented policing; (iii) police-community relations; (iv) how to develop and write policies; (v) supervision/oversight standards; (vi) keeping abreast of, and complying with, legal requirements; (vii) police unions, collective bargaining, and union contracts; (viii) policing and civil rights; (ix) attraction and retention of a diverse police force; (x) budgeting; (xi) working with attorneys, auditors, and similar experts; and (xii) ethics and conflict-of-interest standards. This last item should cover both the city's ethics and conflict-of-interest standards, generally, and particular issues that may arise because of the FPC's police oversight responsibilities.

b. Remove exemption for experienced law enforcement officers. A new commissioner with experience as a law enforcement officer should not be exempt from any of the initial training requirements, including the police academy and ride-along requirements; what he or she learned in past years may have significantly changed.

c. Require continuing education. Commissioners should be required to engage in continuing education for a reasonable but specified minimum number of hours on a regular basis (possibly 18 hours every 18 months, for example).

d. Require "live" training. Initial and continuing education could be virtual but should be "real time" so that the trainers and trainees can engage in "live" conversations to enhance the quality of learning.

e. Consult best practices. In looking for specifics, the best practices that other cities around the country use to train their civilian oversight boards — especially in cities with boards that have similar powers to those of the FPC — should be investigated, and consultation should occur with organizations specializing in civilian oversight, such as the National Association of Civilian Oversight in Law Enforcement (NACOLE).

E. FPC Board and Collective Bargaining

1. Issues

a. Involvement in the bargaining process. The police associations, through the collective bargaining process and their contracts and leadership, exert a significant amount of influence on the conduct of policing in Milwaukee, on investigations, and on many other matters. Police unions and some of their contract provisions are seen by many, nationally and locally, as obstacles to improvements.

Despite the FPC's immense power over the MPD and its officers, collective bargaining with the police associations is undertaken strictly by the City's labor negotiator, acting in close liaison with the Common Council and Common Council committees. (MCO Sec. 340-11.1 and 3.) Although Sec. 340-11.4 requires City departments to cooperate with the labor negotiator, our understanding is that the FPC Board (and staff) do not act as advisers to the labor negotiator and, at least in recent history, have not directly participated in labor negotiations.

b. Relationship of SOPs, similar policies to collective bargaining agreements. Wis. Stats. Sec. 111.70(3)(a)(5) prohibits a municipal employer from violating any collective bargaining agreement previously agreed upon with respect to wages, hours and conditions of employment affecting public safety employees.

SOP 865 arguably goes further than the state statute. It outlines steps that the Chief of Police or the Chief's designee must take to "assure alignment between the terms of [a collective bargaining agreement] and the department's standard operating procedures." These include "propos[ing] amendments to those standard operating procedures necessary to ensure alignment with the collective bargaining agreement." The quoted language suggests that SOPs pre-dating the effective date of a collective bargaining agreement may have to be amended if such SOPs do not align with that bargaining agreement.

We reviewed certain provisions of the Agreement between the City of Milwaukee and The Milwaukee Police Association Local #21 I.U.P.A., AFL-CIO (Effective January 1,2018 through December 31, 2019) to try to obtain further elucidation on the relationship of SOPs (or similar policy- and rule-making) to this collective bargaining agreement. In particular, we looked at provisions in the Preamble, and in Articles 3, 4, 5, and 59. Unfortunately, these provisions and their interrelationships are somewhat byzantine, and we did not obtain the clarity we sought — either as to SOPs that pre-

date the effective date of this bargaining agreement or as to SOPs that might be issued during the term of the bargaining agreement.

In our opinion, outstanding SOPs should never have to be changed because of a bargaining agreement that is subsequently negotiated. This opinion is based, in part, on the broad powers accorded the FPC in Wis. Stats. Sec. 62.50 and MCO Chapter 314 and, in part, on considerations of sound policing governance policy. Moreover, every future collective bargaining agreement should explicitly state that the FPC can issue SOPs or similar policies or rules during the term of the agreement and that those SOPs, policies, or rules will not be deemed to violate the "conditions of employment" set forth in the bargaining agreement.

2. Recommendations

a. Engage or advise in collective bargaining. The FPC Board, aided by the Executive Director, should work with the City's labor negotiator and the Common Council on negotiation of contracts. Even if the Board does not have an actual seat at the bargaining table, it should be able to advise the labor negotiator on its "demands," provide responses to association "demands," and work with the negotiator and Council on critical contract language and the meaning and implications of various contract provisions.

As indicated in Section V.D, education on police unions, collective bargaining, and contracts also should be a component of initial and continuing commissioner training.

b. Modify SOP 865. Existing SOPs should always trump the terms of collective bargaining agreements, not the other way around. SOP 865 should be modified accordingly.

c. Explicitly deal with SOPs (and like policies and rules) in future bargaining agreements. Any future bargaining agreement should explicitly provide that (i) nothing in the agreement shall require a modification of SOPs (or similar policies and rules) in effect before the effective date of the agreement; and (ii) the FPC has the unfettered right to issue SOPs and similar policies and rules during the term of the agreement, and that any such SOP, policy, or rule will not be deemed to violate any "condition of employment" set forth in the agreement.

F. Relationship of the Executive Director and Staff to the FPC Board

1. Issues

Under current law, the Mayor appoints the Executive Director. That is clear. The key question here is whether the Executive Director (a) serves under the direction of, and reports to, the Board; (b) serves under the direction of, and reports to, the Mayor; or (c) some of both. We think the answer is, at best, muddled, and in need of a straightforward resolution: one that has the Executive Director serving under the direction of, and reporting to, the Board (with the staff serving under, and reporting to, the Executive Director).

a. Governing law and former city attorney's opinion. State law (referenced above in Section III.B.1) provides that the executive secretary of the board serves "at the pleasure of" the Mayor, generally until the end of the Mayor's term in office.

The Milwaukee ordinance (cited above in Section III.B.2) references the applicable section of state law pertaining to the executive secretary but then provides that "[u]nder the direction of the board, the executive director [the MCO term for the executive secretary position] shall act as the principal staff of the board in exercising the board's functions and powers" provided in Wis. Stats. Sec. 62.50 and described under MCO Sec. 314-3. Surely, it seems that the most plausible plain-English reading of "under the direction of the board," "shall act as the principal staff of the board," and the reference to Wis. Stats. 62.50 in its entirety is that the Executive Director serves under the direction of, and reports to, the Board.

Nevertheless, in a May 3, 2019, letter to former Executive Director La Keisha Butler (responding to an April 3, 2019, letter from her) former City Attorney Grant E. Langley determined otherwise. (The letter is set forth in Appendix D.) We find some of the reasoning in the letter questionable, but the bottom-line conclusions (for purposes relevant here) appear to be these:

- Although Mr. Langley *seems* to acknowledge that, under MCO Sec. 314-5, the Executive Director serves under the direction of the Board and acts as principal staff of the Board for certain enumerated purposes, he indicates that the Executive Director does not do so for all purposes. Thus, in answer to one of the questions posed by Ms. Butler, Mr. Langley states that the Board does not have the power to direct the Executive Director to advocate for a particular budget item.

- According to Mr. Langley, the Board does not have authority over day-to-day operations and staff. Rather, "[D]ay-to-day operations of the FPC are the responsibility of the Executive Director, and the Executive Director answers to and serves at the pleasure of the Mayor. There is no line of authority that reaches from the FPC to its department employees." Also, employees are subject to Board of City Service Commissioners rules and regulations, not those of the FPC.

b. Prior "gentleman's agreement." Paul Mozina wrote an opinion piece critical of Mr. Langley's conclusions for *Urban Milwaukee* Op Ed: City Attorney Guts Authority of FPC Board. Mozina points out that, for several years (and after the provision on the executive secretary serving at the pleasure of the Mayor was added to Wisconsin law in the late 1980s), a "gentleman's agreement," spearheaded by then alderman John Kalwitz, existed under which the Mayor and FPC agreed that the Executive Director would continue to serve "under the direction of the Board," pursuant to MCO Sec. 314-5. His *Urban Milwaukee* piece includes supporting documentation. But, according to Mozina, "with the passing of time, fading institutional knowledge, and the arrival of Tom Barrett as mayor in 2004, the legal justification for this 'gentleman's agreement' was forgotten."

c. Experts' opinions and recommendations. For at least 15 years, experts examining the complex relationship among the Board, the Executive Director, and the Mayor have found that relationship to be an impediment to a well-functioning FPC — and, thus, police oversight and governance. As indicated in Section IV above, the 2006 Consultants, CJI, and the Milwaukee IG all have reached this conclusion.

d. Common Council position. The Common Council has worked to seek state legislation so that the Executive Director would be appointed by, and report to, the Board — most recently, in File #201112, dated Dec. 7, 2020. The LWVMC supported the Council's actions in a letter dated December 12, 2020, a copy of which is attached in Appendix E.

e. Frequent turnover of executive directors. In recent years, many executive directors have come and gone. While the reasons for the departures are complex and varied, there have been reports of difficulties between some of them and Board members. This seems to provide at least circumstantial evidence that the current arrangement is problematic.

2. Recommendations

a. Create a direct reporting relationship from the Executive Director to the Board. Ideally, we would like to see state law changed (with conforming changes to the MCO) to provide in no uncertain terms that the FPC Board appoints the Executive Director and that the Executive Director reports to, and can be terminated by, the Board. We further recommend that the term of employment for the Executive Director be four years, subject to renewal, unless terminated earlier by the Board, for cause. Short of that, there are possible compromise solutions. For example, the 2006 Consultants' Report (see p. 30 of that report) would permit the Mayor to continue to appoint the Executive Director (or, in the characterization of that report, the monitor) but the appointment would come from a pool of three candidates proposed by the Board. The Executive Director (monitor) would then report to the Board. The recent Milwaukee IG Report suggests, among other things, that the Mayor and Common Council should collaborate to propose a change in the state statute, "making it clear that the Fire and Police Commission is the 'administrator' over the executive director, staff, and department as a whole, and provides direction to and holds jurisdiction over the department." (p. 44) *At the very minimum*, in our opinion, the "gentleman's agreement" concept that previously existed should be resurrected.

b. Enable Board to advocate for the FPC budget. Because of former City Attorney Langley's position on this matter, we also raise the FPC budget here. The Board, with input from the Executive Director, should prepare and submit the FPC budget request to the Mayor.

G. Responsibilities of the Executive Director and Staff: Enhanced Auditing and Subpoena Power

1. Issues

a. Auditing. Based on our research of best practices and other cities, a key step toward better policing is for a municipality to employ an auditor (sometimes known as a monitor, and supported by an appropriate number of staff) whose principal functions are to investigate and audit police activities, produce data based on findings, and recommend policies and practices based on findings. The idea is to dramatically move from just investigating individual incidents to focusing on trends, systemic problems, and ways to solve those problems.

Although examples exist around the country, a recent case is Madison, Wisconsin. The residents of Madison and an outside consultant studied institutional issues with policing

and police oversight in Madison over a period of years, culminating in the passage of new city ordinances in 2020, creating (separate from Madison's fire and police commission) a new civilian oversight board and an office of an independent monitor (possessing subpoena power).

While it has been difficult for us to get a precise and comprehensive picture of major Executive Director and staff (and related Board) activities over approximately the last 10 years, it appears from the FPC website that, at times, significant auditing work on particular systemic issues has been performed. For example, the website includes reports (some of which were written by an outside expert) on use of force for the years 2009 through 2018; reports on firearms discharges for the years 2011 and 2012; and reports on vehicle pursuits for the years 2002 through 2018. We also understand that even though many of these reports did not contain recommendations, at least some were considered by the Board or Board committees and resulted in certain policy changes.

In the last approximately two or three years, however, systemic auditing work seems not to have been a major focus of the FPC Executive Director and staff — apart from the work required by the Collins Settlement Agreement. In fact, even now when faced with that agreement's compliance issues, the FPC has struggled to fill auditor positions. And Collins Settlement Agreement auditing is focused on stops and frisks and similar encounters, a very important area but not the exclusive issue ripe for auditing.

As indicated in Section IV above, both the 2006 Consultants' Report and the Draft U.S. DOJ COPS Report make *strong* recommendations for the FPC to create a position within the FPC of monitor (auditor), with appropriate staffing. The 2006 Consultants' Report goes as far as recommending that this be essentially the sole function of the Executive Director and his or her staff.

b. Subpoena power. Although, under state law, the Board has subpoena power for trials (both those related to disciplinary appeals and those related to citizen complaints), the Executive Director and staff do not have subpoena power for audits or for other matters, such as investigating citizen complaints. In our opinion, subpoena power would be helpful, if not critical at times, to fact-find in both audits and the investigation of complaints.

2. Recommendations

a. Make the auditing function robust. We strongly recommend that a robust auditing function, with appropriate staffing, exist within the FPC staff. The compliance

responsibilities created by the Collins Settlement Agreement are a springboard, but efforts should be broader and put in place indefinitely. It is appropriate that an experienced auditor is on staff and that two additional auditors are being added but we encourage the FPC Board, the FPC Executive Director and others to be vigilant in determining whether additional staffing is warranted to cover the number and complexity of issues that should be audited.

As indicated above, the auditor/monitor concept is intended to root out trends and systemic problems, leading to systemic changes. An enhanced auditing function at the staff level will further the goals of strong Board policymaking, as we recommend in Section V.B above.

b. Make subpoena power explicit. The Executive Director and staff also should be given subpoena power that can be used both to further the monitor/auditor function and to investigate complaints.

H. MPD Diversity

1. Issues

Although not a panacea, increasing the diversity of a police force so that it is more reflective of the city's population has significant potential to address policing problems. For example, greater diversity can increase the community's trust in the police and provides an opportunity for both adults and youth to see more people in the force who look like them.

Equally or more important, increased diversity can mitigate racial disparities and the overuse of force in policing. In a recent study of Chicago that examined millions of records of daily patrol assignments, researchers found that Black and Hispanic officers, compared to white officers, made fewer stops and arrests and did not use force as often, particularly in Black-majority neighborhoods. Female officers, across races, used less force than males. The role of officer race and gender in police-civilian interactions in Chicago

United States Census Bureau data (US Census Bureau QuickFacts: Milwaukee city, Wisconsin) indicate that 39% of Milwaukee's population identifies as Black or African American alone. MPD 2020 Annual Report data (2020 MPD Annual Report Milwaukee Police Department, p. 23) show that only 17% of the sworn police force (not counting civilian) is Black/African American. Census data indicate that 19% of the population identifies as Hispanic or Latino while the MPD Annual Report indicates that 14% of the

sworn force is Hispanic/Latino. Census data show that men comprise 48% of the population. MPD data show that 84% of the sworn police force is male. Census data show that women comprise 52% of the population. MPD data show that 16% of the sworn force is women. NOTES: The city of Milwaukee Census data are estimates for July 1, 2019, based on data from the 2010 census. The MPD race/ethnicity data is reported for 2019-2020. Due to rounding, the totals for MPD for race/ethnicity total slightly over 100%.

Throughout the years, experts have addressed the lack of sufficient diversity in MPD. For example, the Draft U.S. DOJ COPS Report (see pp. 34-35 and 134) recommends that the FPC and MPD create a Diversity and Inclusion Program to make improvements throughout the entire MPD (not just the sworn force) and throughout all components in recruitment, hiring and promotions. This report further recommends that the FPC, in conjunction with MPD, expand its current examination of barriers to recruitment to also include hiring and promotional practices, specifically focusing on biases against underrepresented groups. In this connection, the report highlights that "underrepresented" includes not just people of color and women but also members of the LGBTQ community and others.

The report further recommends engaging community members to ensure they understand how they can become members of the MPD. And, to ensure diversity at higher levels in the MPD, the MPD should create a career development program to assist all officers, especially minority officers, who aspire to move into leadership positions.

The U.S. DOJ COPS Report recommendations are good ones, but not requirements, whereas the court in the Collins Settlement Agreement *orders* that "Defendants shall recruit, hire and promote a diverse corps of police officers at all levels of the chain of command to reflect the diversity of Milwaukee communities." (Paragraph IV.14, p. 11) The March 2021 CJI report notes that the FPC had submitted a draft recruitment and retention plan but that it contains limited information about efforts to increase diversity. The CJI calls for more work to benchmark and track recruitment, hiring and promotion.

To our knowledge, no comprehensive plan to increase diversity has been made available for public review and input.

2. Recommendations

The FPC Board should make diversity a top priority. Diversity — and what more can be done to promote it in every aspect of MPD personnel practices, including

recruiting, testing, promotions, and other matters affecting the MPD workforce, both sworn and civilian — should be a top priority in an enhanced FPC Board policymaking role. In this vein, we applaud the Board's actions in January 2021 to create a new panel to review appeals from MPD job applications who fail the psychological exams, acknowledging disparate effects on women, people of color, and LGBTQ people. We also applaud efforts such as the Police Aide Program (City of Milwaukee Police Aide Program) which, as noted at the March 18, 2021 FPC meeting, adds an extra layer of diversity to the police force.

We support the CJI focus on a more robust FPC plan that includes benchmarking and tracking, and measurement.

The FPC, in further developing and refining a diversity plan, should draw from successful efforts throughout the country. San Francisco is an example of a comprehensive approach San Francisco Police Department RACIAL EQUITY & INCLUSION ACTION PLAN PHASE 1
Madison is reported to have one of the highest percentages in the country of women in their police force The Madison Police Department Pledges to Advance Women in Policing | City of Madison. In 2019, Bloomberg Cities reviewed successful strategies for improving diversity such as providing guidance throughout the hiring process, keeping in touch with applicants who may drop out of the process, providing help passing the fitness test, and developing a youth pipeline program (6 strategies to recruit a stronger and more diverse police force). The National Center for Women and Policing has developed a Recruiting and Retention Self-Assessment Guide that also could serve as a very helpful resource Recruiting & Retaining Women: A Self-Assessment Guide for Law Enforcement.

I. MPD and Milwaukee Residency

1. Issues

Wis. Stats. Sec. 66.0502 permits nonresidents of Milwaukee to serve on the MPD, provided they live within 15 miles of the city. Having nonresidents on the force means that officers do not necessarily closely relate to the people of the communities they serve or reflect the diversity of Milwaukee's populace. Further, the compensation Milwaukee pays to nonresidents results in taxes paid to the suburbs, not to the city. A Milwaukee Journal Sentinel article cites information provided by Marquette University Law School's Milwaukee Area Project, stating that by 2019, 45% of Milwaukee's firefighters and police officers were nonresidents. FPC adds incentives for police, fire employees to live in Milwaukee

As an incentive to Milwaukee residents to seek MPD (and MFD) employment, the FPC Board offers "preference points" to job applicants who live in Milwaukee and, in January 2021, extended the practice to those seeking promotions.

The police unions are supporters of the state law permitting nonresidency.

2. Recommendations

Continue to incentivize Milwaukee residency; seek changes to state law. The Board should continue its creativity in seeking ways to reward residency in Milwaukee. This includes not just in personnel policies that the Board controls but in collective bargaining agreements (see Section V.E of this report, recommending that the Board play a more active role in collective bargaining).

But state-law workarounds are not the ultimate answer; the Common Council and Mayor should work for a change in state law. We agree with the statement published by Common Council President Johnson on January 22, 2021, commenting on the prior day's action to award "preference points" for Milwaukee residents in promotions (FPC action to encourage residency for police officers and firefighters a positive for Milwaukee). His last paragraph reads as follows:

> Yesterday's action by the FPC is a step in the right direction. However, I still strongly believe residency should be reinstated at the state level. It is in the best interest of our communities long term.

J. Citizen Complaints

1. Issues

Citizen complaints serve at least two important purposes. First, individuals involved in interactions with the police should have a right to file complaints in a straightforward and convenient way. This includes assurance that any complaint will be addressed in a serious and respectful manner, that the complainant will receive information on the disposition of his or her complaint and the rationale for that disposition, and that remedial action will be taken if warranted. Second, an analysis of complaint types, who the complainants are, whom complaints are made against, and resolutions of complaints can provide systemic information leading to better policing policies and practices.

Complaints can be submitted to either the FPC staff or to the MPD. It is our understanding that, if a complaint involves an allegation of a crime by an MPD officer, the complaint must end up with the MPD. If a complaint is made to the MPD, it may be referred to FPC staff for additional action if the complainant is dissatisfied with the MPD's resolution; also, the FPC staff is supposed to engage in systemic reviews of MPD complaints and their dispositions.

We understand that the FPC receives more complaints than does the MPD. This may be because the FPC is viewed as less threatening and more impartial. There is, however, no clear guidance for the public that details the differences in procedures and other matters on filing a complaint with the FPC versus filing one with the MPD. Moreover, the process for ensuring that complaints involving a criminal allegation go to the MPD is not transparent.

The Collins Settlement Agreement and CJI impose several requirements regarding complaints. The Milwaukee Inspector General's Report also makes recommendations on improving operational compliance with FPC complaint procedures.

2. Recommendations

a. Enhance the clarity of the complaint process. Individuals have a right to know the differences in procedures and other matters on filing a complaint with the FPC and the MPD. They also have a right to know the process for handling a complaint that involves an allegation of criminal conduct. The FPC should be crystal clear on its website about all aspects of the complaint process.

For example, the FPC website, at a minimum, should post the FPC complaint process and the MPD complaint process in the same location. Alternatively, the website could include a side-by-side chart that compares the processes at the FPC to those at the MPD. The process when a complaint involves a criminal allegation should be highlighted. The MPD website should include the same information as the FPC website.

b. Use Collins/CJI requirements and IG recommendations to develop improvements. The staff should use the Collins Settlement Agreement and CJI requirements regarding complaints as a learning tool for developing improved procedures and documentation for complaints.

c. Engage the public and prior complainants. Finally, the staff should periodically solicit feedback from the public on complaint processes and, to the extent legally possible, get input from actual prior complainants on outcomes and satisfaction levels.

K. Police Officer Training

1. Issues

The recent Derek Chauvin trial showed how “this is how I was trained” and “regardless, I had to make a split-second decision” play into defenses for police officers’ overuse of force and decisions upholding the officers’ actions. Training, both at initial and in-service levels, sets the stage for all of an officer’s conduct.

Experts on police training emphasize integrating more content on matters such as (a) community-oriented policing, including substantial input from community members in the curriculum and actual training; (b) assessment of knowledge of community-oriented policing; (c) viewing mental health and drug and alcohol addiction as community problems rather than crimes; (d) cultural responsiveness; (e) new policies on stop and frisk; and (f) keeping and using data. A good portion of the Collins Settlement Agreement and CJI requirements are about training and related supervision to ensure that officers — in layperson’s language — have an individualized and constitutional “good reason” to have an encounter with an individual, rather than a motivation that is racially or ethnically based.

2. Recommendations

Evaluate and improve training, based on contemporary best practices. As indicated earlier, we think that the Board should continue to engage in policymaking regarding training and other personnel matters. The Board and staff should engage in careful analysis of what is being taught and assessed and what changes need to be made. We urge the FPC to take a leadership role in making changes to the curriculum and instructional development and implementation, as well as establishing benchmarks and remedies for officers who fail to meet the requirements. The Collins Settlement Agreement and CJI requirements should be treated as a springboard to more improvements. Implicit bias and cultural responsiveness need to be important components of initial and ongoing training. We also recommend continued focus on de-escalation training and interacting with citizens suffering from mental health and substance abuse issues, and we urge the involvement of community members in curriculum development and training in multiple areas.

Officers should be taught to be, and think of themselves as, “guardians,” not “warriors,” and to appreciate that the above types of matters are equally or more important in their

training and on-the-job conduct as the ability to, for example, fire a weapon or deal with traffic-chase situations.

L. FPC Website

1. Issues

The data that the FPC recently has been publishing on the website because of the Collins Settlement Agreement and CJI requirements are difficult to find and difficult for members of the public to interpret.

Other data and other information on the website are outdated.

While the website includes brief descriptions of the commissioners, it does not include a staff directory or contact information, other than the main number.

There is no ability for community members to provide their input, pose questions, etc. on the website.

2. Recommendations

Overhaul the website. The website is one of the best ways for the FPC to be transparent and accountable to the public it serves. It needs an overhaul to address the above issues.

- To make the data required by the Collins Settlement Agreement and CJI meaningful, presentation must occur in a way that enables everyone to find and understand the data.
- Older information that is still relevant should be preserved and accessible, but through an archive.
- We understand that most city departments do not include staff directories and employees' contact information. Providing this information — at least for a few key employees — is critical for the FPC, however, since the FPC governs one of the most important and pervasive forces in peoples' lives, the MPD, and since an important function of the staff is dealing with citizens' complaints.
- As indicated in Section 5.J, the website should include an improved description of the FPC complaint process as well as information on the MPD process.
- Creativity should be employed to provide a website opportunity for comments and questions.

M. Staffing and Budget

1. Issues

Besides significant executive director turnover in recent years, major turnovers and vacancies have occurred at lower staff levels. Members of the Common Council and the media have reported great dissatisfaction from some former staff members.

The employees who are currently working are tasked with numerous Collins Settlement Agreement-related responsibilities, as well as more routine tasks.

And, as indicated above, there is a need for enhancement of staff auditing and complaints responsibilities.

2. Recommendations

City authorities should work together to ensure staffing and budget are sufficient. We are optimistic that Mr. Todd will be a highly effective Executive Director and are confident that he is currently doing his best to fill staff positions.

We recommend that the Board and others in the City make every effort to support the hiring — and retention — of a robust staff that is well equipped to handle all FPC staffing functions. If, for example, national searches need to be made to fill positions, they should be. If pay grades for positions need to be increased to get sufficient and "the right" people, they should be. The FPC is much too important to "just get by" with a small, overworked, and sometimes disgruntled staff.

We fully recognize that pension and other costs, combined with diminishing state shared revenue and other constraints, pose significant problems to the Milwaukee budget and taxpayers. But we also are aware of the huge amounts that Milwaukee pays out in settlement costs for alleged or actual wrongdoing by the police — at taxpayer cost for these direct costs and the interest accumulating on the debt used to pay for them. (See Section V.B.1.b above.)

Noted New York University School of Law Professor Barry E. Friedman, founder of the Policing Project, frequently contrasts "back-end accountability" — which he says only kicks in after something has gone wrong or is perceived to have gone wrong — and "front-end accountability." In Friedman's characterization, the latter means the public has a voice in setting policing policies and practices before the police act, with the goal of achieving public safety in a manner that is equitable, nondiscriminatory, and

respectful of public values. We think that the back-end/front-end contrast has an analogy for the budget: that back-end costs for settlements could be significantly mitigated if the city makes front-end investments in the resources necessary to avoid policing problems and resulting settlements. And this includes adequate investments in the FPC.

N. Power of Common Council to Effect Community Safety Plan

1. Issues

We think that a community safety plan is critical and, throughout this report, have encouraged a collaborative effort to develop such a plan.

The Common Council has broad authority to make change. It may enact ordinances (and make rules, by-laws, and regulations) "for the government and good order of the city," pursuant to Section 4-10 of the City Charter. The footnotes to this section also provide that Ord. 203, F#50790, passed Feb. 6, 1933, made Wis. Stats. Sec. 62.11(5) applicable. This provision of state law enables city councils to not only act "for the government and good order of the city" but for the "health, safety, and welfare of the public."

2. Recommendations

The Common Council should use its authority to move to a community safety plan. We continue to think that the 136-year-old purpose of the FPC — to have a civilian board, generally free of politics and political patronage, in charge of the police — is sound. Also, as indicated above, we want to see more policymaking from the FPC Board, more FPC Board leadership in enabling community input into policing, and significant movement toward greater community-oriented policing and a community safety plan.

We think the recommendations made above are realistic and are optimistic that they can and will lead to improvements for the people of Milwaukee. But we also suggest that the Common Council think about what can and should be done through ordinances, the budget process and other actions for the "health, safety, and welfare of the public." In doing so, the Council should be engaged with the CCC and other community advocacy groups, listening to their needs and aspirations.

The Council should play *the* lead role in developing a community safety plan. The Council is particularly suitable for this role since a community safety plan involves such

components as better opportunities and access to healthcare, education, food, housing, transportation, and employment, and the Council's broad powers extend to all of these matters.

We call attention to what the District of Columbia recently accomplished, reflected in the April 1, 2021 report entitled "Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission" https://dccouncil.us/police-reform-commission-full-report/. The commission that worked on the report was created by the DC city council less than a year before the report was issued, yet the substance of the report is at once broad and concrete (including certain budget recommendations). The commission was comprised of a diverse group of community members, aided by professional advisors and staff. Although the community safety-related issues and solutions to explore in Milwaukee will be different than those explored in DC (and should be developed in close collaboration with community members here), the Common Council might consider whether the DC process could serve as a model.

VI. Forward

We like the optimism and drive captured in Wisconsin's one-word motto, "Forward." We know that some of the recommendations included in this report will require difficult work and perseverance but consider all recommendations achievable. The LWVMC looks forward to working with the FPC, members of the Common Council, the Mayor, state officials, and private citizens and groups to achieve them. Realizing our shared goals of enhancing the effectiveness of the FPC and improving public safety could showcase the City as a model of reform.

APPENDIX A

SUMMARY OF RECOMMENDATIONS, STEPS TO EFFECT RECOMMENDATIONS

NOTE: This Appendix restates the recommendations included in Section V of the Report and, under each recommendation, sketches steps necessary to effect that recommendation. In several instances, we observe that changes to law are not required. This means that, for example, the FPC can make the recommended reform without changing a state statute or Milwaukee ordinance. Even in such a case, we urge the FPC (or other body involved, such as the Common Council) to memorialize reforms in writing, to the extent possible.

Subject Matter: FPC Board Responsibilities

Recommendation V.B.2.a. *Engage in more policymaking, fewer personnel matters.*

Steps to Effect

- Change Wis. Stats. Sec. 62.50 to remove hiring, promotion responsibilities from the Board and shift them to the staff (with the exception of the chief, assistant chiefs, inspectors, and captains). No changes to MCO required.
- Although changes to state statute and MCO are not necessary for the Board to initiate policies, may be advisable to beef up those laws (e.g., MCO requirement for a strategic plan every two years).

Recommendation V.B.2.b. *Collaborate with the community.*

Steps to Effect

- Changes to laws not required.

Recommendation V.B.2.c. *Work closely with the Executive Director and staff on their MPD auditing work and recommendations.*

Steps to Effect

- Changes to laws not required.

Subject Matter: Maintenance of a Full and Fully Approved FPC Board

Recommendation V.C.2.a. *Appoint nine commissioners; preclude continued service after expired term.*

Steps to Effect

- Changes to laws not required but optimal result would be obtained by amending both Wis. Stats. Sec. 62.50 and MCO Chapt. 314 to require nine (i.e., not provide the option of seven).
- Change Wis. Stats. Sec. 62.50 to address rules on expired terms (when not reappointed/reconfirmed).

Recommendation V.C.2.b. *Make timely appointments; avoid even numbers.*

Steps to Effect

- Changes to laws not required but would be helpful to incorporate process we recommend in Wis. Stats. Sec. 62.50 or MCO Chapt. 314.

Subject Matter: Commissioner Training

Recommendation V.D.2.a. *Add components to initial training.*

Recommendation V.D.2.b. *Remove exemption for experienced law enforcement officers.*

Recommendation V.D.2.c. *Require continuing education.*

Recommendation V.D.2.d. *Require "live" training.*

Recommendation V.D.2.e. *Consult best practices.*

Steps to Effect

- Change MCO Sec. 314-1.2.b-2 to remove exemption for experienced officers. Other recommendations do not require law changes, but additions to the MCO, together with conforming FPC rules, are advisable to ensure the recommended reforms occur.

Subject Matter: FPC Board and Collective Bargaining

Recommendation V.E.2.a *Engage or advise in collective bargaining.*

Steps to Effect

- Although a change to law may not be essential to allow the FPC to participate in collective bargaining in some capacity, an amendment to MCO Sec. 340-11 to permit (or require) the FPC to participate would be helpful.

Recommendation V.E.2.b. *Modify SOP 865.*

Steps to Effect

- The FPC Board (after consultation with the Common Council and legal counsel, if need be) should make this change.

Recommendation V.E.2.c. *Explicitly deal with SOPs (and like policies and rules) in future bargaining agreements.*

Steps to Effect

- Regardless of whether the FPC participates in the negotiation of future agreements, the FPC and Common Council should insist on inclusion of the recommended provisions in such agreements.

Subject Matter: Relationship of the Executive Director and Staff to the FPC Board

Recommendation V.F.2.a. *Create a direct reporting relationship from the Executive Director to the Board.*

Steps to Effect

- Ideally, change Wis Stats. Sec. 62.51 and include conforming language in MCO Chapt. 314.
- Short of state law change, effect lesser reform through a change to just MCO (e.g., have Mayor appoint ED but from three candidates selected by FPC Board) or write a new "gentlemen's agreement."

Recommendation V.F.2.b. *Enable Board to advocate for the FPC budget*.

Steps to Effect

- Incorporate this right into action(s) suggested immediately above.

Subject Matter: Responsibilities of the Executive Director and Staff: Enhanced Auditing and Subpoena Power

Recommendation V.G.2.a. *Make the auditing function robust.*

Steps to Effect

- Changes to laws not required.

Recommendation V.G.2.b. *Make subpoena power explicit*.

Steps to Effect

- Change MCO Chapt. 314 to confer subpoena power. Ideally, also make same change to Wis. Stat. Sec. 62.50.

Subject Matter: MPD Diversity

Recommendation V.H.2. *The FPC Board should make diversity a top priority.*

Steps to Effect

- Changes to law not required. The FPC should create a diversity and inclusion plan with goals and indicators. And diversity should be a component of the required strategic plan (see Recommendation V.B.2.a).

Subject Matter: MPD and Milwaukee Residency

Recommendation V.I.2. *Continue to incentivize Milwaukee residency; seek changes to state law.*

Steps to Effect

- Changing Wis. Stats. Sec. 66.0502 should continue to be urged.
- The FPC, joined by the Common Council and Mayor, should continue to seek ways to “reward” residency for MPD officers and applicants.

Subject Matter: Citizen Complaints

Recommendation V.J.2.a. *Enhance the clarity of the complaint process.*

Recommendation V.J.2.b. *Use Collins/CJI requirements and IG recommendations to develop improvements.*

Recommendation V.J.2.c. *Engage the public and prior complainants.*

Steps to Effect

- Changes to laws not required.

Subject Matter: Police Officer Training

Recommendation V.K.2. *Evaluate and improve training, based on contemporary best practices.*

Steps to Effect

- Changes to laws not required.

Subject Matter: FPC Website

Recommendation V.L.2. *Overhaul the website.*

Steps to Effect

- Changes to laws not required.

Subject Matter: Staffing and Budget

Recommendation V.M.2. *City authorities should work together to ensure staffing and budget are sufficient.*

Steps to Effect

- Changes to laws not required. The FPC, Common Council, and Mayor should collaborate to adequately fund all FPC functions, including a robust auditing capacity.

Subject Matter: Power of Common Council to Effect Community Safety Plan

Recommendation V.N.2. *The Common Council should use its authority to move to a community safety plan.*

Steps to Effect

- Changes to laws not required. The Common Council should engage with the CCC, the FPC, other City and county services, and City residents to create a comprehensive plan.

APPENDIX B

HISTORY OF THE FPC

The Milwaukee Board of Fire and Police Commissioners was established in 1885 by state law and is one of the oldest police oversight agencies in the nation. The Commission was originally created to remove the fire and police services from the influences of politics. Until that time, in Milwaukee, as in most cities, chiefs of both departments were appointed by the mayor, who used these appointments, and the appointment of police officers, as a form of political patronage. The new law made the Fire and Police Commission responsible for setting employment standards, testing candidates for positions in the Fire and Police Departments, and appointing both chiefs. In 1911, the Commission's authority was expanded to include all aspects of operational oversight of the Fire and Police Departments. The Commission's authority and responsibility are specified in Wisconsin Statute section 62.50, and in the Milwaukee City Charter.

Source: Milwaukee Fire and Police Commission website
https://city.milwaukee.gov/fpc/About

APPENDIX C

LETTERS FROM LWVMC SINGLY AND IN COLLABORATION WITH OTHER ORGANIZATIONS TO THE MAYOR WITH RECOMMENDATIONS FOR QUALIFICATIONS OF FPC COMMISSIONERS AND THE PROCESS FOR SELECTING THEM

November 23, 2020

Mayor Tom Barrett
City Hall
200 E Wells St # 201
Milwaukee, WI 53202

Dear Mayor Barrett,

You have previously committed to appointing additional commissioners to bring the complement of the Fire and Police Commission (FPC) to nine. We think the time to do that is now.

The FPC's critically important duties include oversight of the Milwaukee Police Department (MPD) to ensure adherence to the rule of law and provide unbiased professional public safety service in every neighborhood. Recently, however, the FPC has been going through a period of disarray at both the commission and staff levels. An FPC composed of the nine members allowed by law would help remedy current problems and provide the short- and long-term benefits of further diversifying the skill set on the commission, enhancing community representation, and better enabling commissioners to tackle the large and important workload they have cut out for them. In addition, all commissioners should serve current, unexpired terms.

Over the last several years, critical incidents, including deaths in custody, aggressive responses to largely peaceful demonstrations, and policing strategies such as racial profiling and unconstitutional stops, have contributed to tension between some members of the community and the MPD. In considering potential nominees to the FPC, we think it is important to consider the FPC as a whole and how a nominee would improve the work of the commission. It is vital that the commission uses its oversight function to enhance police-community relations, that it be independent from political pressure, and that commissioners are able to ask the MPD and Milwaukee Fire Department (MFD) chiefs tough questions until they get satisfactory answers.

It is also key that the FPC appointment and confirmation processes be transparent to the community and that nominees be thoroughly vetted for potential conflicts of interest.

Specifically, we would like to encourage nominees who:

1. Have first-hand knowledge about the issues young people are facing.
2. Represent targeted populations that have high degrees of police contact.
3. Have the ability to analyze data and think critically.
4. Have the ability to ask difficult questions of authority figures.
5. Have the abilities to advocate for the community regarding police issues in the City of Milwaukee and to work with diverse constituencies (i.e., the MPD, the MFD, elected officials, and the community) in an oversight role.
6. Have the ability to make policy and procedural recommendations.
7. Have the ability to develop and use outreach strategies to obtain and incorporate input into consideration of MPD policies and procedures and their impacts on the community.
8. Are committed to attending substantially all FPC meetings, to actively participate in those meetings and other non-meeting work of the commission, and to work collaboratively with fellow commissioners.

At this moment, it is critical that the City of Milwaukee and the MPD rebuild trust with the public. Meaningful oversight will go a long way towards this goal. Please add three new commissioners and give the FPC the tools it needs to help ensure this happens.

Signed:

League of Women Voters of Milwaukee County
ACLU of Wisconsin
Anita Johnson
Black Leaders Organizing Communities (BLOC)
Black Lives Matter to Wisconsin Unitarian Universalists
Camille Mays
Great Lakes Urban Empowerment Center
Jump at the Sun Consultants, LLC
Lorraine Lathen
Martin Luther King Justice Coalition
MIlwaukee County Human Rights Commission
Milwaukee Inner-city Congregations Allied for Hope (MICAH)
The Milwaukee Turners
NAACP Milwaukee Branch
National Lawyers' Guild - Milwaukee Chapter
Progressive Baptist Church
Walter Lanier
Wisconsin Justice Initiative
Youth Justice Milwaukee

LEAGUE OF WOMEN VOTERS® OF MILWAUKEE COUNTY

April 27, 2021

[VIA EMAIL]
Mayor Tom Barrett

Dear Mayor Barrett,

Since its founding in 1920, the League of Women Voters (LWV) has been promoting informed voting and engagement with elected officials. In our advocacy for government policies that serve the public interest, we engage in objective, nonpartisan analysis of issues, and adopt policy positions based on consensus among our membership.

In light of the impending expirations of two commissioners' terms, the two other vacancies, the national and local tensions between police departments and their communities, the success of police community collaborative initiatives in other cities, and on-going study of the Fire and Police Commission by our local LWV, we have developed the following recommendations for commissioner qualifications and the
selection process. We are asking you to adopt these for the upcoming selection of commissioners as well as for future selections.

Qualifications of Commissioners

Required Core Commitments

- Commitment to prepare for, and attend, all meetings
- Commitment to adopt and abide by rigorous ethics and conflict-of-interest standards
- Commitment to proactively initiate policies and procedures, including community-oriented policing
- Commitment to keep abreast of best practices in policing and police reform
- Commitment to advocate for positions that reflect concerns of the community
- Commitment to collaborate on community efforts, especially working with the Community Collaborative Commission
- Commitment to lead in community reimagining of public safety

Required "Day-One" Skill Sets

- Understanding of the FPC's mission
- Knowledge of contemporary best practices in policing and police reform
- Demonstrated ability in policymaking
- Demonstrated ability in group decision making
- Demonstrated ability to collaborate and/or negotiate with other authorities in the city (e.g., Mayor, Common Council, city attorney)
- Demonstrated ability in analytical thinking
- Demonstrated ability in interpreting data
- Demonstrated experience in dealing with complex legal and technical requirements such

as the Collins Settlement

Mayor's Process for FPC Commissioner Candidates

- Ensure candidates reflect the diversity of the city, including representing populations that have high degrees of police contact
- Submit Commission appointees' names to the Common Council at least 45 days prior to the expiration of the current term
- Provide information (including on the FPC website) about the qualifications, process and timeline for the nominations
- Keep a running list of eligible candidates, including alternates to be used should a candidate fail to be confirmed
- Use applications and ensure that they reflect the above criteria
- Appoint nine commissioners; do everything possible to ensure there is not an even number
- Act nimbly to fill vacancies resulting from resignations and expired terms

I appreciate the opportunity to provide input on this critical matter, and thank you for your consideration of our recommendations.

Sincerely,

Peggy Creer, president

APPENDIX D

LETTER FROM CITY ATTORNEY TO FPC EXECUTIVE DIRECTOR REGARDING COMMISSIONER AUTHORITY OVER FPC ADMINISTRATION

GRANT F. LANGLEY
City Attorney

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PETER J. BLOCK
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HEATHER H. HOUGH
ANDREA J. FOWLER
PATRICK J. MCCLAIN
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WILLIAM G. DAVIDSON
MEIGHAN M. ANGER
Assistant City Attorneys

May 3, 2019

La Keisha Butler
Board of Fire and Police Commissioners, Executive Director
200 East Wells Street, 7th Floor
Milwaukee, WI 53202

Re: Commissioner Authority over FPC Administration

Dear Ms. Butler:

On April 24, 2019, you requested an opinion from our office on the following issues: Can the Board of Fire and Police Commissioners ("FPC" or "Commission"), or an individual commissioner, direct the Executive Director of the FPC to advocate for a particular budget item if said item was rejected by the Mayor's office? Does the Commission have the power to lobby members of the Common Council in their capacity as commissioners? Does the Commission have authority over the day-to-day operations and employees that work in the FPC? Each of these issues is addressed separately below.

1. *Can the FPC or an individual commissioner direct the Executive Director of the FPC to advocate for a budget item if the item has been rejected by the Mayor's office?*

The budget process for the City of Milwaukee ("City") is governed primarily by Chapter 65 of Wisconsin Statutes and Chapter 18 of the City Charter. To begin the process, it is the duty of each department to file with the Mayor's office, not later than August 1, "an estimate in detail of the department's needs for the ensuing fiscal year." Wis. Stat. § 65.03(1).[1] A "department" is defined as "any department, board, commission or other body under the control of the common council which expends city funds or incurs obligations for the city, and unless otherwise expressed refers to the head of such department." Wis. Stat. § 65.02(1).

[1] The statute instructs departments to submit the estimate to the "board of estimates," but the City has exercised its authority under Wis. Stat. § 65.20(1) to transfer the duties and responsibilities of the board of estimates to the Mayor. Also, the City Charter moves the due date for department estimates to the 2nd Tuesday in May. City Charter 18-03-1.

The FPC qualifies as a "department" under this definition because it is a commission and its budget is under the control of the Common Council. The definition also indicates that the Executive Director, in her capacity as the head of the FPC,[2] is responsible for acting on behalf of the FPC's department in budgetary matters.

The Mayor has the power and responsibility to appoint "public officials" to "serve in the unclassified service in each public office." Wis. Stat. §62.51(2). The list of public offices includes the "executive secretary of the board of fire and police commissioners." Wis. Stat. §62.51(1). The appointment of the executive secretary (known within the City and in the Milwaukee Code of Ordinances ("MCO") as "Executive Director") is subject to confirmation by the Common Council, and the incumbent serves at the pleasure of the mayor. Wis. Stat. §62.51(2).

The jurisdiction of the FPC, as described in state statutes, applies only to employees of the Police and Fire Departments. There is nothing in the statutes that gives the FPC any direct authority over the Executive Director. However, the MCO states that the Executive Director's primary duties are to "[u]nder direction of the board…act as the principal staff of the board in exercising the board's functions and powers provided in s. 62.50, Wis. Stats." MCO 314-5. The MCO summarizes the "functions and powers" of the FPC as conducting policy review of the fire and police departments, auditing internal police and fire department investigations, monitoring the citizen complaint process, and identifying systemic problems within the fire and police departments. MCO 314-3-1 through 4.

Based on the foregoing statutes and ordinances, the FPC does not have the power to direct the Executive Director to advocate for a particular budget item, regardless of whether said item has been rejected by the Mayor. The Executive Director, in her capacity as department head, is responsible for submitting the FPC's budget estimate to the Mayor's office. The Executive Director serves at the pleasure of the Mayor, and there is no direct line of authority from the FPC to the Executive Director. Although the Executive Director's primary duties are to act as the principal staff of the FPC "in exercising the board's functions and powers

[2] Our conclusion that the FPC Executive Director is the "head of the department" is based on the fact that the FPC's jurisdiction is exhaustively described in s. 62.50, Wis. Stats., and Chapter 314 of the MCO, but there is nothing in either of those laws that suggests that the FPC or its individual commissioners has any control over the budget or the day-to-day operations and staff of the FPC. In addition, the Executive Director has traditionally been responsible for all budgetary and personnel matters within the FPC, as evidenced by the Executive Director job announcement which states that the position "is responsible for all policy, financial, operational, and strategic matters of the Fire and Police Commission." The jurisdiction of the FPC and responsibilities of the Executive Director are discussed more thoroughly below.

provided in s. 62.50," there is nothing in state statute, nor in the MCO or City Charter, that gives the FPC any power over the City's budget process. Therefore, the FPC could take the position that a certain item should or should not be included in the budget, but it could not direct the Executive Director to advocate for the item. If the FPC issued such a directive, there is no legal recourse for the Commission if the Executive Director refuses or fails to comply with it.[3]

2. *Does the Commission have the power to lobby members of the Common Council in their capacity as commissioners?*

The City addresses lobbying in Chapter 305, Subchapter 3 of the MCO. The ordinance defines lobbying as "any attempt to influence legislative or administrative action by oral or written communication with any city official." MCO 305-43-5. The list of exceptions to the lobbying rules states that Subchapter 3 shall not apply to a "city official, provided he or she is solely engaged in matters of governmental interest concerning his or her respective governmental body and the city." MCO 305-51-1-a. "City official" is defined as any person holding a position with the city who is required to file a statement of economic interest with the city's Ethics Board. MCO 305-43-2. The city's 2019 Positions Ordinance states on page 36 that Fire and Police Commissioners are required to file a statement of economic interests in accordance with MCO Chapter 303.

Based on these provisions of the MCO, commissioners of the FPC qualify as "city officials" under Chapter 305, Subchapter 3 and are therefore excepted from the city's lobbying rules so long as they are advocating on issues that concern the FPC. As such, we are not aware of anything that would prevent commissioners from communicating their views to the Common Council in an effort to influence the Council's actions. In the case of budget matters, any such communication would be purely advisory and would have no binding effect on the budget process.

3. *Does the Commission have authority over the day-to-day operations and employees that work in the FPC?*

As noted above, the FPC derives its authority and jurisdiction from Wis. Stat. §62.50, which gives the Commission power over the City's police and fire

[3] It is possible that the FPC believes that a particular budget item is necessary for the Commission to exercise its powers and functions under 62.50, Wis. Stats., in which case they may be authorized under the MCO to direct the Executive Director to advocate for the item. Even in this case, however, there is still no direct legal recourse under state statute or the MCO if the Executive Director refuses to comply with the directive.

departments regarding appointments, promotions, examinations, and certain disciplinary actions, among other things. Wis. Stat. §§62.50(2), (5), (9), and (13). There is nothing in sec. 62.50 that gives the FPC direct authority over the "department" of the FPC.[4] The administrative staff of the FPC answers directly to the Executive Director in her capacity as "the principal staff of the board in exercising the board's functions and powers provided in s. 62.50, Wis. Stats." MCO 314-5.

The Milwaukee Board of City Service Commissioners ("CSC"), which acts as the counterpart of the FPC for departments other than police and fire, derives its authority from Chapter 63 of the Wisconsin Statutes, which states that the CSC "shall investigate the enforcement of ss. 63.18 to 63.53…and the conduct and action of the appointees in the official service in its city, and may inquire as to the nature, tenure and compensation of all offices and places in the public service thereof." Chapter 63 also provides a list of exceptions, employees who are not subject to the authority of the CSC:

> Officers who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created and exists by reason of statute, the members of the board of school directors, persons enumerated in s. 63.53 (2), heads of principal departments of the city, *all members of the* law, *fire and police departments*, permanent or temporary technical advisers and experts employed by the board of assessment under s. 32.52 (4), one private secretary of the mayor, the appointees of the mayor under s. 62.51.

(emphasis added). Employees of the fire and police departments are excepted from CSC authority, but there is no exception for employees of the FPC's department. FPC employees are therefore subject to CSC rules and regulations and not those of the FPC.

In summary, there is nothing that gives the FPC any direct control over the operations of its department. To the contrary, state statute and the MCO indicate that day-to-day operations of the FPC are the responsibility of the Executive Director, and the Executive Director answers to and serves at the pleasure of the mayor. There is no line of authority that reaches from the FPC to its department employees. Finally, the CSC's rules and regulations apply to FPC employees as they are not listed in the exception to CSC jurisdiction in sec. 63.27, stats.

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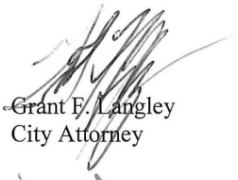
[4] The Executive Director and the staff who work under the Executive Director qualify as a "department" as described in state statute Chapter 65, as well as Chapters 18 and 314 of the MCO.

Very truly yours,



Grant F. Langley
City Attorney

Benjamin J. Roovers
Assistant City Attorney

c: Tom Barrett, Mayor
Jim Owczarski, City Clerk

1095-2019-767:259076

APPENDIX E

LETTER FROM LWVMC TO MAYOR AND ALDERS IN SUPPORT OF FPC APPOINTMENT, SUPERVISION OF EXECUTIVE DIRECTOR

December 12, 2020

(VIA EMAIL)
Mayor Tom Barrett & Members of the Milwaukee Common Council
City Hall, 200 E. Wells Street
Milwaukee, WI 53202

Dear Mayor Barrett and Alders,

I am writing on behalf of the League of Women Voters in support of File #201112, of the "Meeting Minutes" of the City of Milwaukee (MKE) Judiciary & Legislation Committee, dated Monday, December 7, 2020, which states "Substitute resolution directing the Department of Administration – Intergovernmental Relations Division to seek introduction and passage of State legislation relating to the appointment of the executive secretary of the board of fire and police commissioners for cities of the 1st class."

The Fire and Police Commission (FPC) was created — and continues to be designed — to serve the public interest and to remove politics from the management and oversight of the Police and Fire Departments. Having the Executive Director/ Secretary selected and supervised by the FPC would reduce the impact of politics. Additionally, FPC selection and oversight would increase the efficiency and effectiveness of the FPC and have the potential to reduce the chaos currently characterizing this critical oversight body.

The Second Annual Report of the Crime and Justice Institute (September 2020), in relation to the Collins Settlement, highlights a lack of clarity due to the "myriad of roles of the FPC Executive Director and the structure of the office…" and resultant interference with reform and lessening of community confidence. And the March 2020 City Inspector General's Audit states that the Council and the Mayor should collaborate to address structural issues regarding the FPC's lack of authority and oversight over the executive director and staff.

A recent letter co-signed by the League of Women Voters of Milwaukee County asked to give the FPC the tools it needs to help ensure that trust is rebuilt with the public. One of these tools is a smoother structure of the FPC, one that is consistent with the original intent to remove politics from the management and oversight of the Police and Fire Departments. We strongly encourage that the FPC Executive Director be appointed by the FPC and serve under its leadership.

Sincerely,

Peggy Creer, president

Sent via e-mail only to:

Mayor Tom Barrett Ald. Cavalier Johnson Ald. Ashanti Hamilton Ald. Nicholas Kovac Ald.Robert Bauman Ald. Nikiya Dodd Ald. Milele A. Coggs Ald. Khalif J. Rainey Ald. JoCasta Zamarripa	Ald. Chantia Lewis Ald. Michael J. Murphy Ald. Mark A. Borkowski Ald. Jose G. Perez Ald. Scott Spiker Ald. Marina Dimitrijevic Ald. Russell W. Stamper, II