

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

**IN RE VIDEO CONFERENCING FOR DISCIPLINARY)
HEARINGS)
)**

GENERAL OMNIBUS ORDER

WHEREAS the Governor of the State of Illinois has declared a public health emergency in response to the public health crisis resulting from the spread of COVID-19, and the Center for Disease Control and Prevention and other public health authorities have advised public and private entities to take precautions in order to reduce the spread of the virus, and the Mayor of the City of Chicago has placed restrictions on the size of public gatherings, as well as travel into and out of the City of Chicago, the Police Board of the City of Chicago recognizes the need to take measures to effectuate these goals and restrictions, while also continuing to fulfill its mission and keep its necessary functions operating.

In accordance with the above, and to protect the public health and the health of persons appearing before the Board (*e.g.*, respondents, witnesses, and attorneys), some of whom may have medical conditions that put them at added risk of contracting COVID-19, reduce the number of public gatherings, and reduce any non-essential travel, while also recognizing the public need to proceed with disciplinary hearings in a timely manner, ensure a fair and timely process for accused officers and to avoid costs to the public, while also allowing public access to the hearings, the Police Board hereby adopts the following measures for disciplinary proceedings, applicable to all pending and future filed cases before the Board, effective immediately and until further Order.

The Board will consider conducting disciplinary hearings *via* two-way video conferencing (such as the Zoom platform). Such arrangement is beneficial given the public

health crises, as it will allow for meaningful examination of the parties while also ensuring that the public has access to the hearing. It will also allow the Police Board to proceed with disciplinary hearings, which is necessary to the public's interest in and officers' rights to prompt and fair adjudication of the accusations against public officers, as well as to avoid incurring unnecessary costs. Accordingly, each party must file with the Board its position, in writing, prior to the scheduled hearing by a date set by the Hearing Officer, as to the whether the hearing should be conducted by two-way video conferencing. Each party's position paper must note the basis for its position, with specificity. Each party must also note which witnesses, if any, it contends must be subject to in-person examination and provide a basis for that contention.

The Police Board will review each request individually, and will decide each based on the facts specific to the case and witness, but notes the following precedent that allows for video conferencing where, as here, public necessity so requires. *See, e.g., Maryland v. Craig*, 497 U.S. 836, 850 (1990) (holding that the right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial where denial of such confrontation is necessary to further an important public policy and where the testimony's reliability is otherwise assured); *United States v. Yates*, 438 F.3d 1307, 1313 (11th Cir. 2006) (recognizing that video testimony may be necessary to preserve the health and safety of a witness). Note that the testimony by two-way video conferencing of any witnesses called by the Respondent will be presumptively valid. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 313 (2009) (stating that the Sixth Amendment guarantees a defendant the right "to be confronted with the witnesses *against him*") (emphasis in original); *see Craig*, 497 U.S. at 845 (noting that the word "confront," in the context of the Confrontation Clause, connotes "the notion of adversariness").

Should the Police Board determine that an in-person hearing is required for particular witnesses or for the hearing as a whole, for the health and safety of the participants and the public all participants must follow the requirements issued by the State of Illinois and the City of Chicago, including but not limited to the requirement that any individual who is able to medically tolerate a face covering (a mask or cloth face covering) shall be required to cover their nose and mouth with a face covering when in a public place and unable to maintain a six-foot social distance.. In order to protect the health and safety of the participants and the public, only Respondent and his/her counsel, the witness, the hearing officer, counsel for the Superintendent, court reporter, videographer, and Police Board staff will be allowed into the facility. The public shall have access to the proceeding via audio conference.

In the case of a video conference, counsel and all case participants shall behave as if they were present in person. For example, counsel is prohibited from communicating with witnesses during the hearing, and the Respondent shall have the ability to confer privately with counsel during the conference. Recording the proceeding is not allowed by anyone except the Executive Director or Hearing Officer of the Police Board through the approved recording system. All participants must begin the hearing in Mute status and may unmute themselves to speak or respond to questions. For security and enforcement of Police Board standards, the Board may disable certain video conferencing features (including but not limited to chat, screen share, whiteboard, Q&A, raise hand, or react). The public shall have access to the proceeding via audio conference.

The Hearing Officer is authorized on a case-by-case basis to adopt additional measures not inconsistent with this Order.

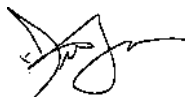
This Order is adopted and entered by a majority of the members of the Police Board:

Ghian Foreman, Paula Wolff, Matthew Crowl, Michael Eaddy, Steve Flores, Jorge Montes, John

P. O'Malley Jr., Rhoda D. Sweeney, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 24th DAY OF JULY, 2020.

Attested by:



GHIAN FOREMAN

President



MAX A. CAPRONI

Executive Director