



Lightfoot's Outgoing Executive Orders Defy Precedent; Court Conflicts with Council

Description

Executive-office pens in the City of Chicago saw a flurry of activity during the transition from Lori Lightfoot's mayoralty to Brandon Johnson's. The outgoing mayor issued thirteen executive orders during her last week in office, while Johnson signed four following his May 15th inauguration ceremony.

Neither Illinois' statutes nor Chicago's municipal code contain explicit language defining or limiting executive orders, but judicial review typically has held that chief executives, including mayors, have broad powers to direct city administrative departments via executive orders, so long as the orders do not contradict existing law or reallocate funding appropriated in the budget passed by the City Council.

In analyzing the recent Lightfoot and Johnson orders, as well as those of previous mayors, the Better Government Association policy team found:

- Lightfoot is the first Chicago mayor in modern history to issue a "lame duck" executive orders after voters had selected a new mayor.
- Lightfoot's "Pension Advance Fund" order attempts to establish a new city fund and direct the placement of revenues into it, a move that likely would require City Council budget action.
- A zoning-related executive order attempts to put public pressure on City Council's decision-making process. But the order illustrates the limits of a mayor's power to challenge so-called "aldermanic prerogative" more than it takes any tangible steps to limit the practice.
- Several of Lightfoot's outgoing orders attempt to set far-reaching policy agendas that would long outlast Lightfoot's term in office and commit her successor to the outgoing mayor's agenda. These orders required departments to draft and implement environmental justice action plans; mandated "pillar action plans" for priority areas identified in Lightfoot's We Will Chicago 10-year planning effort, and set racial equity action plans.

In the analysis below, the Better Government Association analyzes each of Lightfoot's executive orders issued since her defeat in the February 28th primary election, as well as Johnson's first four

orders and the use of executive orders by previous mayors.

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An Unprecedented Exit from Office

It is not unusual for incoming mayors to make one or more executive orders during their first days in office as a demonstration of their priorities.

Lori Lightfoot began her term with an order instructing city departments to revise their decision-making processes in an attempt to eliminate so-called âaldermanic prerogative,â the tradition of deferring to aldermanic decisions on ward-level issues such as zoning and permitting. Rahm Emanuel kicked off his administration in 2011 with a series of orders aimed at reforming lobbying, gifts to public officials and other potential avenues for corruption. Richard M. Daley made time in his first full day in office for an impressive 14 orders.

Without precedent, however, is Lightfootâs last-minute sprint of executive orders. Emanuelâs last executive order came months before the election that replaced him. Daley did not issue any at all in 2011, his last year in office.

These mayors were following practices that had been in place at least since the late 1970s. Eugene Sawyer issued no executives orders in the run-up to Daleyâs election in 1989. Harold Washingtonâs unexpected death in office in 1987 came about a month after his most recent order, though interim mayor David Orr then issued several confirming some of Washingtonâs appointments, initiatives, and administrative actions. Jane Byrne issued only two executive orders during her single term in office, neither near the end of her term, and Michael Bilandicâs last order came more than six months before Bryneâs election.

Several of Lightfootâs recent orders also go considerably further in scope and specificity than most executive orders by the mayors who preceded her, reshaping departmental policies at the line-item level and calling for a number of audits, working groups, and long-range planning mandates that Johnsonâs incoming administration will have to either rescind or budget for and execute.

Budgeting by Executive Order

At least one of Lightfoot's recent executive orders seems headed for conflict with City Council's budgeting authority.

Lightfoot's executive order [2023-5](#) calls for the Office of Budget and Management to "establish a Pension Advance Fund" and specifies that the fund shall "hold an assigned fund balance from 2022 and 2023 for the advance payment of pension obligations, beyond the statutorily required amount," with payments starting in 2024.

Under the terms of the order, the Pension Advance Fund would essentially be a lockbox. Money deposited into the fund would then only be available to pay pension contributions above the city's statutory minimums. The order calls for the fund's initial balance to be created out of the leftover amounts from the 2021 and 2022 General Fund revenues minus expenditures, estimated at about \$555 million for 2021 and \$143 million for 2022.

Potentially problematic for any attempt to enact the order: The 2023 budget makes no mention of a separate Pension Advance Fund, although advance payments towards pensions were made from other, existing city funds. Lightfoot made no effort to require her administration to establish a separate Pension Advance Fund during her years in office until the last-minute executive order.

Johnson's administration could call for the new fund in his 2024 budget proposal, but City Council may very well have other uses in mind for any 2021 and 2022 General Fund surpluses, and it's not clear what statutory authority a mayor could claim to lock away some of those funds from the legislature's budgeting process.

The Office of Budget and Management did not reply to a request for comment or an emailed set of questions regarding the OMB's plans or timeline for implementing the executive order.

Similar to a failed 2022 attempt by Lightfoot to set a curfew for minors by executive order when a different curfew was already laid out in city ordinance, this order may come up against the limits of executive power. The mayor makes the initial budget proposal each year, but ultimately City Council holds the purse strings, and it's not clear that Lightfoot or Johnson, should he choose to retain her order, has independent authority to start a new city fund or carve off "lockbox" dollars from the General Fund.

Zoning Reform! Sort Of

Despite Lightfoot's first executive order in office, aldermanic prerogative is alive and well in Chicago. Requests for a zoning change go to City Council for approval, and members of City Council still habitually defer to the local alderperson's recommendation.

As long as the city's zoning map is established by ordinance, there is no real way for a mayor to force a change in City Council practice. Lightfoot's Executive Order [2023-11](#) attempts to add public pressure to the process by ordering the zoning administrator's office to publish its recommendations publicly before the council votes. The order additionally requires the zoning administrator to reach out to the property owner or their representative in any case where a zoning change introduced by an alderperson would "result in a loss or reduction of development rights" and include the owner's position on the proposed change in the published recommendation.

The order does nothing to change City Council's deliberative process. It's a parting shot from a mayor who came into office vowing to curb aldermanic prerogative and an illustration of how far short those efforts fell.

Long-Range Planning Mandates

Multiple orders from Lightfoot's last week in office seek to require the creation and implementation of action plans by city departments, addressing a number of issues. In most cases these are unfunded mandates and would have to be enacted within the departments' existing budgets and staff allocations:

- Executive Order [2023-3](#) calls for the mayor's new [Office of Climate and Environmental Equity](#), which was created in the most recent package of budget and management ordinances, to continue convening an Environmental Equity Working Group. It additionally calls for a new interagency group to produce by September 1, 2023 an Environmental Justice Action Plan outlining each subject department's environmental justice commitments and policies. The same order also calls for a climate impact assessment study, for which \$9 million of COVID-19 relief funding was budgeted in the Chicago Rescue Plan.
- Executive Order [2023-6](#) orders the Department of Planning and Development to create a "We Will Chicago" steering committee, tasked with completing and implementing recommendations from the city's 10-year planning initiative announced by Lightfoot's administration in 2020. The steering committee would be charged with working with other city departments to draft departmental "pillar action plans," outlining each agency's goals and duties as part of the citywide visioning plan.
- Executive Order [2023-10](#) builds on existing ordinance, passed as part of the 2023 budget and management package, that created a Mayor's Office of Equity and Racial Justice. It requires city departments to create [racial equity action plans](#), and as an enforcement mechanism requires the Office of Budget and Management to add questions about racial equity progress as part of the departmental budget submission process.

Visioning plans and the working groups to create them are nothing new in the city's bureaucracy, though in previous administrations most typically were launched as internal initiatives rather than being explicitly laid out in executive orders. The challenge for Johnson's administration will be to fund and staff all the planning initiatives left by Lightfoot's outgoing orders and to follow through on comparing actual results to the goals laid out by the plans, year over year. Or, if Johnson chooses not to do so, he also could vacate Lightfoot's orders with executive orders of his own presumably after calculating the policy and political impact of doing so.

Emergency Declaration

The first of Lightfoot's orders issued during her final week in office, [2023-2](#) formally declared that a state of emergency exists as a result of migrant inflow exceeding the City's ability to manage that inflow.

The order's direction that departments undertake "whatever efforts are feasible" to manage the declared emergency leaves a great deal of latitude to individual commissioners and other department

leadership, who will now be looking to Johnson rather than Lightfoot for specific direction on how to handle recently arrived migrants's needs.

However, because it formally declares a state of emergency, the executive order has one immediate practical effect: It allows the Department of Procurement Services to enter into emergency contracts or contract modifications related to the emergency up to \$500,000 in value. A [2021 ordinance](#) had previously raised the limit to \$1 million, but after City Council balked at expanding the administration's emergency authority, a sunset clause was added that repealed the increase on Dec. 31, 2022.

Evaluations, Assessments, and Advisory Bodies

Several of Lightfoot's last-minute orders require city departments to provide audits, evaluations, or assessments and issue reports based on their findings. Others create advisory bodies that have no statutory authority but serve to gather information and produce reports and advice for city departments. Working groups and advisory bodies are fairly standard fare for executive orders, and previous mayors used similar orders to highlight their administrative priorities.

- Lightfoot's Executive Order [2023-1](#) requires the Department of Human Resources to conduct a pay equity audit and publish comparisons of city salaries by job title, bargaining unit, sex, race and ethnicity on the department's website. Unlike the other recent orders, 2023-1 was issued after the primary election that eliminated Lightfoot as a candidate for reelection, with Johnson and Paul Vallas qualifying for the runoff.
- Lightfoot's Executive Order [2023-4](#) calls for recommendation memoranda on several of the Lightfoot administration's debt relief programs for individuals with outstanding city debt: the Utility Billing Relief program for water or sewer debt, the Clear Path Relief program for various types of vehicle-related debt and the Administrative Debt Relief Program launched in 2023 for other debts arising out of various administrative hearings.
- Executive Order [2023-9](#) creates a Youth Commission of members aged 14 through 19 to advise on youth issues, similar to existing advisory councils on veteran's affairs, LGBTQ+ issues and others.

Audit and evaluation orders highlight a weakness of executive power: The mayor's office can require city departments to collect information and report on it, but significant changes in operations or services typically require action from City Council, either to expand or alter a department's authority or to allocate budget funds, or both.

Other Executive Orders

The remainder of Lightfoot's outgoing executive orders formalize already-existing practices, expand or update specific departments' policies, and attempt to put momentum behind the LaSalle Street Initiative announced during the waning months of the Lightfoot administration:

- Executive Order [2023-7](#) formalized the Mayor's Office of New Americans, which has existed since the Emanuel administration as part of the mayor's office but had no ordinance or executive order mandating its existence. The order is largely symbolic, though it adds the step of

rescinding or altering the executive order if any future mayor wants to dismantle or reorganize the ONA.

- Executive Order [2023-8](#) expanded the list of city departments that will process applications for U-visas and T-visas, two specialized immigration programs for victims of violent crimes and of human trafficking. Previously only the Chicago Police Department, the Commission on Human Relations, and the Office of Labor Standards issued certifications for either of the visas at the city level. Under the executive order, the Chicago Department of Business Affairs and Consumer Protection, Department of Administrative Hearings, and Civilian Office of Police Accountability must also develop processes for U-visa and T-visa applications, and additionally face a 90-day deadline for processing applications, or 21 days for individuals in federal immigration removal proceedings or detained.
- Executive Orders [2023-12](#) and [2023-14](#) both attempt to update and expand city contracting practices. New measures from the executive orders include:
 - Requiring departments with independent contracting authority to use a standardized set of contracting practices determined by the Department of Procurement Services
 - Instructing contracting departments to collect demographic data on delegate agency leadership and geographic data on agency headquarters locations.
 - Requiring departments, except where prohibited by law or terms of a grant, to include contract-specific minority business enterprise and woman business enterprise participation goals in contracts and to collect participation data and submit to DPS quarterly
 - Requiring contracting departments to attempt to unbundle contracts by breaking individual services out into separate contracts so that smaller firms can bid for parts of the work, and to submit memos outlining their unbundling efforts with each contract requisition sent to DPS
 - Requiring department commissioners personally to certify competitive bid waivers and submit in writing their reasoning upon determining that a no-bid contract is in the city's best interests.
- Executive Order [2023-13](#) orders departments to make the LaSalle Street development initiative a department priority. It also instructs several city departments to assist in the formation of a chamber and/or delegate agency to represent the corridor. However, actual formation of a chamber of commerce or SSA would be an external process and not something done by executive order.

Johnson's First Executive Orders

Mayor Brandon Johnson's four first-day orders were more modest and conventional than the most ambitious of Lightfoot's outgoing orders.

Three of the new mayor's orders were appointments of deputy mayors with titles not used by prior mayors. The titles Johnson chose are a clear staking-out of priorities: Immigrant, Migrant and Refugee Rights; Community Safety; and Labor Relations. Since deputy mayor positions already are funded in the 2023 city budget, announcing these via executive order was more a formality than a necessity.

The other order directs the Office of Budget and Management to identify funds in the current budget that could be spent on youth employment and enrichment programs; to identify existing city-funded youth employment and enrichment programs towards which those funds could be reallocated, and to

• examine opportunities for delegate agencies to subcontract with nondelegate agencies subject to applicable funding restrictions. •

That prioritization of funding for youth services could come up against the limits of the current city budget, setting up Johnson for his first request for a budget amendment, should OBM determine that eligible programs exceed budgeted funds.

Outside of his executive order, Johnson's first big opportunity to plow more funds into youth programming will come with his 2024 budget recommendations. Meanwhile, the executive order makes it clear that his administration wants to make resources available even before the new budget is introduced this fall.

What remains to be seen is how aggressive Johnson will be in setting departmental priorities and programming via executive orders, rather than through internal management and communication and the new mayor will need to decide what to do with the list of mandates, studies and long-range planning left for him by orders Lightfoot issued on her way out the door.