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SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

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## ACRONYMS

DHR Department of Human Resources  
DSS Department of Streets and Sanitation  
OIG Office of Inspector General

SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL

## SHAKMAN EXEMPT TITLES LIST AUDIT CONCERNING WARD SUPERINTENDENTS

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NEVERTHELESS, DSS ALLOWS ALDERMEN TO HAND PICK WARD SUPERINTENDENTS

- Six of the ten ward superintendents interviewed by OIC arguably did not at the time of hire meet the minimum requirements for the job set by the

' Department of Human Resources in

- consultation with DSS

One incumbent ward superintendent was previously recommended to be terminated for misconduct in a prior DSS job and was designated as resigned under inquiry

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## I. EXECUTIVE SUMMARY

The Office of Inspector General (OIG) conducted an audit to determine whether the ward superintendent position within the Department of Streets and Sanitation (DSS) is appropriately classified as Shakman Exempt.<sup>1</sup> More specifically, our objective was to determine whether the ward superintendent position meets the legal standard to qualify for Shakman Exempt status it currently possesses. The City of Chicago is legally bound to comply with court-ordered Hiring Plans when undertaking employment actions, including among others, hiring, promotions, and terminations. Chapter VIII of the City's General Hiring Plan excludes so-called "Shakman Exempt" positions from certain aspects of the otherwise applicable and legally mandated selection processes and standards; most notably, for present purposes in their allowance for consideration of political reasons or factors when making hiring or termination decisions. Outside of these specified Exempt positions,<sup>2</sup> taking political affiliation into account in government hiring decisions generally is not permissible because it violates the First and Fourteenth Amendments of the United States Constitution, which guarantee citizens the right to political association and expression. Courts, however, have carved out an exception for government positions where political affiliation is a relevant qualification to job performance.

### A. CONCLUSION

OIG concluded that the ward superintendent title does not meet the legal requirements for a Shakman Exempt designation and therefore should be subject to the standards and procedures, as well as political factor prohibitions, generally applicable under the City's Hiring Plan.

### B. FINDINGS

OIG found that the ward superintendent job description, the primary focus for analysis based on binding legal precedent, does not include inherent powers and responsibilities that support a determination that the position is Shakman Exempt. In addition, the ward superintendent's placement within the organizational structure of DSS undermines any assertion that the position involves policymaking or discretion for politically sensitive matters, as is required for Shakman Exempt status. We also found the actual day-to-day functions and responsibilities of the position-as described by a cross-section of ward superintendents assigned across the City- confirm the reliability and accuracy of the job description and do not involve political or policymaking duties or authority. Accordingly, the position lacks characteristics necessary to justify its inclusion on the City's list of Shakman Exempt positions for which political considerations may be considered and factored in the selection process.

<sup>1</sup>A Shakman Exempt title is a City of Chicago position that has been excepted from otherwise applicable hiring

processes mandated by law by federal court order in Shakman v. City of Chicago, and for which political considerations therefore may factor into the decision to hire or promote a person into the title.

<sup>2</sup> Positions exempted from aspects of the City's Hiring Plan are set forth in the Department of Human Resources "Exempt Titles List," which most recently was updated on August 18, 2020, accessed January 22, 2021, <<https://www.chicago.gov/content/dam/city/depts/dhr/supp%20info/ShakmanSettlement/Exempt%20List%208-12-20%20-%20FINAL.pdf>>.

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## RECOMMENDATIONS

OIG recommends that DHR revoke the Shakman Exempt designation the ward superintendent title, immediately remove all such positions from the Exempt Titles List, and conduct all future hires into the title in accordance with the process and procedures specified for Shakman covered positions under the City's Hiring Plan, including but not limited to, public posting of vacancies; review by DHR recruiters to identify those that meet minimum qualifications as listed in the job description; forwarding to DSS for a competitive interview process to identify the best qualified candidates; and prohibiting political factors and considerations from the selection process.

## DHR RESPONSE

In response to our audit findings and recommendations, DHR stated that it agrees with the recommendation that the Shakman Exempt designation for ward superintendent be revoked. Additionally, DHR agrees that future hires shall be conducted in accordance with processes and procedures specified for Shakman covered positions under the City's Hiring Plan.

The specific recommendations related to each finding, and DHR's response, are described in the "Finding and Recommendations" section of this report.

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## BACKGROUND

### THE CITY'S HIRING PLAN

The City's General Hiring Plan (the "Hiring Plan")<sup>3</sup> (1) establishes hiring procedures for different types of City positions; (2) prohibits the consideration of political reasons or factors in employment decisions for Shakman covered positions; (3) empowers the Department of Human Resources (DHR) to act as gatekeeper of the City's hiring process; and (4) tasks OIG with ensuring compliance with the Hiring Plan by overseeing, auditing, and monitoring City hiring. Among other responsibilities, OIG is tasked with the "review of adherence to exemption requirements and Exempt Lists and propriety of Exempt List modifications."<sup>4</sup>

Pursuant to the Hiring Plan, the City maintains an Exempt Titles List of positions, commonly referred to as Shakman Exempt positions, which are exempted from certain Hiring Plan standards and processes. The most recent Exempt Titles List contains 1,262 positions.<sup>5</sup> Chapter VIII.C.2 of the Hiring Plan governs the Exempt Position hiring process. It states that "the employing department or official is not required to use any specific selection process in filling a Position using this process and may consider any factor in making its decision, so long as it is not an illegal factor."<sup>6</sup> Notably, for listed Exempt Positions, (i) the City need not use certain otherwise legally mandated processes and standards for hiring and (ii) it may use political reasons and considerations as factors in its employment decisions.

### WARD SUPERINTENDENT POSITION

DSS employs 50 ward superintendents, one for each of the 50 wards-the political subdivisions that comprise the City of Chicago. Administrative records, corroborated in significant part by DSS' senior-most management officials, situate ward superintendents in relation to two operational units within the larger agency structure, the Bureau of Street Operations and the Bureau of Sanitation.

<sup>3</sup> City of Chicago, Department of Human Resources, "City of Chicago Hiring Plans," June 24, 2011, accessed January 22, 2021, <<https://www.chicago.gov/content/dam/city/depts/dhr/supp%20info/ShakmanSettlement/Filed%20General%20Hiring%20Plan%206%202011.pdf>>. City employment actions are generally governed by processes and standards set forth in one of a series of Hiring Plans to which the City is bound as a condition of the resolution of Shakman v. City of Chicago, in which the former patronage-based employment practices of the City were found to violate the First and Fourteenth Amendments of the United States Constitution.

<sup>4</sup> City of Chicago, Department of Human Resources, "City of Chicago Hiring Plans," June 24, 2011, 39, accessed January 22, 2021, <<https://www.chicago.gov/content/dam/city/depts/dhr/supp%20info/ShakmanSettlement/Filed%20General%20Hiring%20Plan%206%202011.pdf>>.

<sup>5</sup> City of Chicago, Department of Human Resources, "Exempt Titles List," August 8, 2020, accessed January 22, 2021 <[https://www.chicago.gov/content/dam/city/depts/dhr/supp](https://www.chicago.gov/content/dam/city/depts/dhr/supp%20info/ShakmanSettlement/Exempt%20List%208-12-20%20-%20FINAL.pdf)> info/ShakmanSettlement/Exempt%20List%208-12-20%20-%20FINAL.pdf.  
<sup>6</sup> City of Chicago, Department of Human Resources, "City of Chicago Hiring Plans," June 24, 2011, 30, accessed January 22, 2021, <[https://www.chicago.gov/content/dam/city/depts/dhr/supp](https://www.chicago.gov/content/dam/city/depts/dhr/supp%20info/ShakmanSettlement/ Filed General Hiring Plan 6 2011.pdf)> info/ShakmanSettlement/ Filed General Hiring Plan 6 2011.pdf.

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### 1. Ward Superintendents in the Bureau of Street Operations Structure

DSS' Bureau of Street Operations is responsible for the provision of certain City services including: snow and graffiti removal, special events, vacant lot weed cutting, the reentry program, neighborhood police blitzes, and responses to homelessness and railroad issues. The Bureau's 2021 organizational chart, included as Appendix A to this report, situates ward superintendents within the Field Operations Program as reporting to an assistant general superintendent, a Shakman covered position. The following positions-also all Shakman covered -are listed below the ward superintendent title: foreman of laborers, foreman of motor truck drivers, motor truck drivers, pool motor truck drivers, sanitation laborer, and general laborer. In ascending order, the following positions are listed above ward superintendent: assistant general superintendent, program director, deputy commissioner, and commissioner. However, there is no mention of the Bureau of Street Operations in the ward superintendent job description (discussed further below).

### 2. Ward Superintendents in the Bureau of Sanitation Structure

The ward superintendent job description (see below) situates it within DSS' Bureau of Sanitation, the component of DSS primarily responsible for refuse collection, which is also one of a ward superintendent's primary responsibilities. However, the title is notably missing from the Bureau's organizational chart, which is included as Appendix B to this report. Yet the other coordinate positions mentioned in the ward superintendent job description-division superintendent and refuse collection coordinator-are included in the Bureau's organizational chart.

### 3. Ward Superintendent Job Description

DHR promulgates job descriptions for, most City positions. The DHR job description for ward superintendent, one of the few that exist for a Shakman Exempt position,<sup>7</sup> is based on a complete description of duties provided by and in consultation with the hiring department, here DSS, regarding necessary experience and training to effectively perform the duties of the position. The description specifically sets forth core functions and responsibilities as well as minimum qualifications. Aldermen did not provide input and were not consulted in the formulation of the job description and minimum qualifications, which in summary include the following:

Under general supervision, ward superintendents monitor sanitation services that include refuse collection, street cleaning, and snow removal for an assigned ward in the Bureau of Sanitation. Essential duties include that the ward superintendent:<sup>8</sup>

<sup>7</sup> The generally prevailing historical absence of job descriptions for Shakman Exempt positions across the City is a significant concern as a matter of law, transparency, accountability, and best practice.

<sup>8</sup> City of Chicago, Department of Human Resources, "8173 Ward Superintendent," September 2013, accessed January 22, 2021, <[https://www.chicago.gov/content/dam/city/depts/dhr/supp%20info/JobSpecifications/OperationConstruction/8100 Sanitation Series/8173 WARD SUPERINTENDENT.pdf](https://www.chicago.gov/content/dam/city/depts/dhr/supp%20info/JobSpecifications/OperationConstruction/8100%20Sanitation%20Series/8173%20WARD%20SUPERINTENDENT.pdf)>

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- Monitors the day-to-day work operations within a designated ward to ensure residents receive needed sanitation services
- Assists the division superintendent with work crews engaged in sanitation work activities (e.g., refuse, bulk trash, compost collection, street cleaning, basket pick-up)
- Works with refuse collection coordinators engaged in investigating complaints and issuing sanitation code violation tickets
- Monitors completion of refuse collection routes to ensure all areas of the ward are serviced
- Observes work crews in the field and monitors productivity levels to assess efficiency of operations
- Requests needed non-sanitation services from appropriate bureaus and City departments
- Investigates and follows up on service requests and complaints forwarded from the division office to ensure their proper resolution
- Assists division staff in coordinating snow and ice removal activities within the ward
- Meets with public officials, community groups, ward residents, and attends community meetings to address problems and provide information on the Bureau's sanitation programs
- Drives a vehicle to survey overall conditions in the ward, assessing cleanliness of ward areas and identifying need for additional City services
- Monitors the recycling program and the completion of recycling collection routes to ensure all areas of the ward are serviced

The minimum qualifications include five years of work experience in municipal refuse collection, street cleaning, or snow removal operations, of which three years are in a supervisory role related to the responsibilities of the position; or an equivalent combination of education, training, and experience.

#### 4. Ward Superintendent Job Duties as Performed

Ward superintendents perform duties that span the traditional functions of the Bureau of Street Operations and the Bureau of Sanitation. As described by both DSS senior management and the ward superintendents themselves, ward-level field management of refuse and snow removal are a ward superintendent's primary, but not sole, responsibilities.

Refuse collection, as conducted under the direction of the Bureau of Sanitation, is currently grid based. Ward superintendents are the frontline field managers for the refuse collection grid system within their assigned ward. For refuse collection duties, ward superintendents report to the Bureau of Sanitation division superintendent and assistant division superintendent and functionally oversee the work of refuse collection coordinators.

Snow removal as handled by the Bureau of Street Operations is grid based for the City's main arterial streets and shifts to ward based as resources are deployed to clear residential streets. Ward superintendents have

frontline field responsibility for directing DSS motor truck drivers executing residential street snow removal and are required to be in the field at any given time.

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DSS provides ward superintendents with a set amount of equipment to oversee the residential street snow removal within their assigned ward. For snow removal responsibilities, ward superintendents follow the directions of the Bureau of Street Operations assistant general superintendent, general superintendent, or the program director.

In addition to these primary responsibilities, ward superintendents also are the point persons for the execution of all other DSS ward-level services, including rodent control, pothole and streetlight repair (in coordination with the Chicago Department of Transportation), and sewer cave-ins (in coordination with the Department of Water Management). There are variations in the required services of ward superintendents due to ward-specific characteristics, most particularly business corridors and vacant lots. Ward superintendents are also field managers responsible for refuse collection, surveying the wards and ensuring that customer service requests are being addressed. Ward superintendents typically work a regular schedule of 6:00 a.m. to 2:30 p.m., but are on call 24 hours a day, 7 days a week, for emergency and special duty purposes. Each ward superintendent is assigned a City vehicle with take-home privileges. Additionally, they are required to attend community meetings during which they note constituent service concerns to be passed onto DSS and other City departments. DSS could not provide a percentage of time dedicated to attending community meetings because those numbers vary by ward.

Ward superintendents have supervisory responsibilities and may issue discipline to other DSS employees of lower organizational rank, typically refuse collection coordinators, laborers, or drivers. Ward superintendents also can issue citations for overflowing garbage and high weeds, because they are DSS employees rather than ward employees. According to DSS leadership understanding, per the Department of Law guidance, ward superintendents would not be able to issue tickets if they worked for the ward, i.e., aldermanic office, since the enforcement of regulations is not a legislative function.

Ward superintendents were moved from the Bureau of Sanitation to the Bureau of Street Operations around 2013, in connection with DSS' transition to grid-based garbage collection. This move freed up ward superintendent time respecting garbage removal, which in turn resulted in a change in the range, but not the core nature, of their job duties. For example, under the previous ward-based garbage collection system, ward superintendents supervised garbage collection five days per week. Under the current grid-based system, ward superintendents supervise garbage collection only one to three days per week, depending on the size of the ward. DSS management acknowledged that the ward superintendent job description needed to be updated to reflect that the title now sits structurally within the Bureau of Street Operations, although the position still maintains significant Bureau of Sanitation responsibilities.

Ward superintendents also work closely with the elected alderman of their assigned ward, helping to ensure that the constituent services for which DSS is responsible are being properly delivered and associated constituent service needs are being met. The DSS commissioner described this situation as one in which, day to day, ward superintendents are left to respond to two bosses-their DSS chain of command and the alderman



of their assigned ward. Notably, the

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aldermanic ward office does not have any role in ensuring DSS service duties are completed. As a result, a ward superintendent's official and primary report is to their DSS chain. This coordinated working relationship notwithstanding, ward superintendents are not detailed as aldermanic staff nor paid, equipped, or supported out of an alderman's budget allocation, nor are they in some other fashion detailed to or employees of the City Council. The ward superintendents that OIG spoke with offered widely varying explanations of who they understand they report to or for whom they work. One described their job as being the "right hand of the alderman"; another described reporting to the DSS commissioner's office and its deputy commissioner and division superintendent and, simultaneously, the alderman, aldermanic staff, and constituents. Still others, consonant with the organizational chart, stated that they report directly to their division superintendent. While the frequency of contact with their superiors varied, ranging from hourly to weekly, all ward superintendents reported that their directives came from their DSS managers. Frequency of contact with aldermen or their offices varied from seldom to many times a day, and mostly for routine constituent service requests called into the alderman's office (which they turn to after clearing service calls received from 311 and through DSS).

Ward superintendents are paid by DSS. The position is one of a small number of Shakman Exempt titles for which pay is on a seniority/merit grade/step scale (which governs the vast majority of Shakman covered titles). All of the ward superintendents that OIG spoke with explained that their work is reflected in daily activity sheets, which they submit to their immediate DSS chain of command for approval and signature. DSS also provides ward superintendents with take-home vehicles as well as any and all equipment necessary for the execution of their duties. When a new ward superintendent is hired, DSS provides them with a Department training booklet. DSS management approves pay increases, and one DSS senior management recalled recommending that a ward superintendent be denied merit pay increase on at least one occasion.

### C. WARD SUPERINTENDENT SELECTION

The 50 ward superintendent positions are, and have long been included, on the Shakman Exempt Titles List. As such- notwithstanding their positional, operational, and structural relationship within DSS-aldermen traditionally have been afforded significant, and in some instances, determinative, influence on the selection and employment of their ward superintendents, as DSS generally defers to the alderman's preference or choice on this hiring decision. When there is a change of elected ward leadership or a ward superintendent position is vacant, DSS practice (but not formal policy) has been to allow the current alderman to recommend a candidate. DSS then conducts an informal meeting to discuss the job requirements, expectations, and time commitment.

Prior to becoming ward superintendents, the current incumbents OIG spoke with had worked in a number of positions for the City or its sister agencies, including DSS roles as lineman, tree trimmer, laborer, and training agent for the Bureau of Forestry, as well as City Council roles like aldermanic aide and aldermanic staff assistant. DSS has, on limited occasion, recommended that an alderman not hire a specific candidate, but the ultimate discretion and final selection is left to

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the alderman. In at least one instance, a ward superintendent was subsequently hired even though an OIG investigation had recommended termination and this individual to be added to the "Do Not Hire List." This individual resigned prior to being terminated and was designated as "resigned under inquiry." Despite this individual's status, they were subsequently named the ward superintendent for the 34th Ward at the request of the alderman.

## D. LEGAL STANDARD FOR SHAKMAN EXEMPT STATUS

Court precedent establishes the legal standards and analysis for assessing whether a particular position is protected from employment actions based on political factors. The government generally cannot consider political affiliations in hiring because it violates the First and Fourteenth Amendments of the United States Constitution.<sup>9</sup> There are, however, a few exceptions. Government employers may consider political affiliation in employment decisions when the job "cannot be performed effectively" unless the employee and the employer have the same "political beliefs and party commitments."<sup>10</sup> This may arise in situations in which the position involves policymaking, discretion regarding politically sensitive matters, or access to "political superiors' confidential, politically sensitive thoughts."<sup>11</sup> However, "the ultimate inquiry is not whether the label 'policymaker' or 'confidential' fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved."<sup>12</sup>

The analysis for determining whether a job involves policymaking discretion for politically sensitive matters, or confidential political information, which is a question of law, is anchored principally to the job description of a title-assuming the job description is reliable and has not been manipulated.<sup>13</sup> The "focus is on the 'inherent powers' of the office, not what any individual officeholder actually does," and defined "inherent" as, "within the scope of the description."<sup>14</sup> In the event that a job description is unreliable or unclear, additional evidence may be elicited regarding the duties of a position.

Importantly, a job's positioning within the management hierarchy is not determinative. If a position requires policymaking, discretion regarding politically sensitive matters, or confidential political information, an incumbent could be terminated for political reasons. Such was the case in *Selch v. Letts*,<sup>15</sup> where the U.S. Court of Appeals for the Seventh Circuit decided that a subdistrict superintendent with the Indiana Department of Highways was properly fired for political reasons, because, based on the position's job description and trial testimony regarding his duties, he "was a critical and highly visible representative of the state administration and was required to exercise discretion in meeting the needs of public officials and a large number of the

<sup>9</sup> *Branti v. Finkel*, 445 U.S. at 512- 521 (1980).

<sup>10</sup> *Branti*, 445 U.S. at 518.

<sup>11</sup> *Riley v. Blagojevich*, 425 F.3d 357, 359 (7th Cir. 2005).

<sup>12</sup> *Branti*, 445 U.S. at 518.

<sup>13</sup> *Riley*, 425 F.3d 361.

<sup>14</sup> *Riley*, 425 F.3d 357, 360-361.

<sup>15</sup> *Selch v. Letts*, 5 F.3d 1040, 1044-1047 (7th Cir. 1993).

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electorate."<sup>16</sup> Furthermore, the subdistrict superintendent managed 60 employees, oversaw a \$1 million budget, and possessed "almost unbridled authority" to determine when and where work was to be done in his subdistrict."<sup>17</sup>

Reliance on job descriptions is tempered, however, by the requirement that job descriptions be assessed for reliability. The reliability "inquiry must focus on how the description was created; how it is updated and thus kept realistic rather than being allowed to drift far from the actual duties of the position."<sup>18</sup> The Court's general anchoring of the analysis to official job descriptions approach is intended to offer "a provisional safe harbor for elected officials. If the official job description is objective, as shown by the methods by which it is created, vetted, and updated to the present, then the elected officials can rely on it in deciding whom they can replace on political grounds."<sup>19</sup>

<sup>16</sup> Selch, 5 F.3d 1040, 1047.

<sup>17</sup> Selch, 5 F.3d 1040, 1045.

<sup>18</sup> Riley, 425 F.3d 357, 361.

<sup>19</sup> Riley, 425 F.3d 357, 365.

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### III. METHODOLOGY

In order to determine whether the ward superintendent position meets the legal standard to qualify for Shakman Exempt status, OIG reviewed DSS job descriptions, including:

- Ward superintendent
- Assistant division superintendent
- Assistant general superintendent
- Division superintendent
- General superintendent

OIG also reviewed a variety of official organizational and personnel records, including but not limited to, the City's Shakman Exempt Titles List and DSS' 2021 organizational charts for the Bureaus of Sanitation and Street Operations. Additionally, OIG conducted interviews of the following City personnel to understand the duties and supervision of ward superintendents as actually performed, as well as the selection process for the position:

- DSS
  - o Commissioner
  - o Deputy commissioners
  - o Sample of 10 current ward superintendents from different geographic regions of Chicago
- DHR
  - o Acting commissioner o Deputy commissioner
- Office of Budget Management o Deputy commissioner

## SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

**IV. FINDING AND RECOMMENDATIONS****■;fhe""pSS"ward superintend****characteristics necessary to qualify it under the law for designation and****treatment as% Shakman Exempt**

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Government employers are generally not allowed to take political affiliation into account in hiring decisions because hiring or firing a person for their political beliefs violates the First and Fourteenth Amendments of the United States Constitution, which guarantee citizens the right to political association and expression. One exception is when political affiliation is a valid qualification for a position-when it involves policymaking, discretion regarding politically sensitive matters, or access to a "political superiors' confidential, politically sensitive thoughts."<sup>20</sup> The DSS ward superintendent position lacks the characteristics necessary to meet the exception and therefore is not eligible for its Shakman Exempt designation.

1. The ward superintendent position does not include assigned or inherent powers that support a determination that it qualifies as Shakman Exempt.

As set forth in governing federal court jurisprudence, the first step in determining whether ward superintendents can be hired and fired based on their political affiliation is assessing the reliability of the ward superintendent job description.<sup>21</sup> The ward superintendent job description was drafted by DHR professionals in consultation with DSS to capture the core operational functions and mission of the role. The core elements of the job description have not changed since September 2013. Additionally, there is no evidence or information to suggest that the job description has been tampered with, has historically been the subject of tampering for political purposes, or that the description is outdated. As it stands, there are no concerns regarding its reliability.

The second step in determining hiring based on political affiliation involves a review of the job description text to determine whether the ward superintendent position entails policymaking, broad discretion regarding politically sensitive matters, or access to a "political superiors' confidential, politically sensitive thoughts."<sup>22</sup> A review of the job description shows that ward superintendents do not have policy-making responsibilities. In fact, the word "policy" does not appear within the description at all. Additionally, the job description does not make any mention of working in proximity or consultation with aldermen or their aldermanic offices. Although the job description states that the ward superintendent, "meets with public officials, community groups, ward residents, and attends community meetings to address problems," similar language

Riley v. Blagojevich, 425 F.3d 359 (7th Cir. 2005) Riley, 425 F.3d 357.  
Riley, 425 F.3d 357.

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and duties appear within the job description for non-Shakman Exempt DSS positions, including assistant division superintendent, assistant general superintendent, and general superintendent. Notably, although ward superintendents have discretion regarding how they perform their jobs, their discretion is exercised in the performance of decidedly non-political activities. "Almost all jobs in government above the lowest levels require the holder of the job to exercise at least a modicum of discretion...Above the lowest levels of civil service the question is not discretion or no discretion but less or more..."<sup>23</sup> The ward superintendent's discretion bears no connection to any politically sensitive matters or actions in a legal sense, as corroborated by both the language of the job description and by interviews. Ward superintendents are responsible for day-to-day work operations within the ward, including assisting the division superintendent, working with refuse collection coordinators, and assisting with coordination of snow and ice removal. Also, the job description does not include any duties related to accessing "political superiors' confidential, politically sensitive thoughts," nor confidential information more generally.<sup>24</sup>

Though some ward superintendents perform duties that others do not, one individual's performance in the position is not persuasive or determinative of the group as a whole nor as the job is generally devised, described, and performed. The focus is on the inherent powers of the office, not what any individual officeholder actually does. Regardless, the differences revealed through OIG's interviews of ward superintendents reflect variations of a routine operational nature consonant with the varying mix of constituent service needs from ward to ward, and not in any way related to policymaking or access to confidential information or activities.

The job descriptions for the three positions that rank higher than ward superintendent exhibit greater supervisory authority and, going up the chain, progressively greater potential to affect policy. Of note, the non-Shakman Exempt title of assistant division superintendent exhibits supervisory authority over ward superintendents and the title of assistant general superintendent arguably possesses greater policy-creating authority.<sup>25</sup> Comparatively, the job description for the non-Shakman Exempt general superintendent has clear indications of policymaking responsibilities, e.g., evaluating operations, modifying and developing new procedures and policies to improve productivity, and overseeing an operating budget.<sup>26</sup> But even these areas are operational rather than political or legislative in nature.

Comparatively, the higher-ranking titles of assistant division superintendent, assistant general superintendent, and general superintendent are not Shakman Exempt and therefore are filled in full accordance with the City's Hiring Plans. These vacancies are publicly posted, reviewed by

<sup>23</sup> Riley, 425 F.3d 359.

<sup>24</sup> Riley, 425 F.3d 357.

<sup>25</sup> City of Chicago, Department of Human Resources, "8185 Assistant General Superintendent," February 2019,

accessed January 22, 2021, <[https://www.chicago.gov/content/dam/city/depts/dhr/supp/info/JobSpecifications/OperationConstruction/8100 Sanitation Series/8185 ASSISTANT GENERAL SUPERINTENDENT.pdf](https://www.chicago.gov/content/dam/city/depts/dhr/supp/info/JobSpecifications/OperationConstruction/8100%20Sanitation%20Series/8185%20ASSISTANT%20GENERAL%20SUPERINTENDENT.pdf)>.

<sup>26</sup> City of Chicago, Department of Human Resources, "8184 General Superintendent," May 2014, accessed January 22, 2021, <[https://www.chicago.gov/content/dam/city/depts/dhr/supp/info/JobSpecifications/OperationConstruction/8100 Sanitation Series/8184 GENERAL SUPERINTENDENT.pdf](https://www.chicago.gov/content/dam/city/depts/dhr/supp/info/JobSpecifications/OperationConstruction/8100%20Sanitation%20Series/8184%20GENERAL%20SUPERINTENDENT.pdf)>.

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#### SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

DHR recruiters to identify applicants that meet minimum qualifications as listed in the job description, and forwarded to DSS for a competitive interview process to identify the best qualified candidates. The inherent unfairness in the selection process undercuts DSS' core mission and ability to deliver consistent quality City services regardless of regional ward boundaries.

Concern over this potential adverse effect is further propelled by the fact that six of the ten ward superintendents OIG interviewed arguably do not meet the minimum qualifications of the position. DHR and DSS worked collaboratively to identify the necessary skills, prior experience, and training that should be demonstrated to effectively perform as a ward superintendent. However, DHR indicated that the minimum qualifications reflected in the job description "do not technically apply" since there is no specific Hiring Plan mandate requiring the application of minimum qualifications for positions designated as Shakman Exempt. Even if the ward superintendent position cleared the Shakman bar under the law, which it does not, the outcome is manifestly less than optimal-the minimum qualifications that the City's professionals and subject matter experts deem necessary to successful job performance are waived, leaving community members in need of service to bear the burden of the risks and consequences of potentially substandard performance.

2. The organizational positioning of DSS ward superintendent undermines any assertion that it involves policymaking or discretion for politically sensitive matters as is required for Shakman Exempt status.

OIG found inconsistent information regarding who supervises ward superintendents. However, the overwhelming evidence supports that the position's placement within DSS invalidates its nominal Shakman Exempt status. In an OIG interview, the DSS commissioner stated that ward superintendents primarily report to the Department. The Bureau of Street Operations' organizational chart shows that all 50 ward superintendents report to a DSS assistant general superintendent. A DSS deputy commissioner affirmed that for duties related to garbage collection, ward superintendents report to the assistant division superintendent and division superintendent. For duties related to street operations, ward superintendents report to the assistant general superintendent and general superintendent. This interpretation was further confirmed by the ward superintendent interviews. Notably, a number of positions immediately above ward superintendent in the organizational charts, to whom the ward superintendents directly report and receive directives, are not Shakman Exempt.

Figure 1 below lists relevant DSS positions in descending rank order, as well as their Shakman Exempt status. Of note, the three positions immediately above ward superintendent-general superintendent, assistant general superintendent, and assistant division superintendent-are not Shakman Exempt titles, nor is the refuse collector position immediately below it.

SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

FIGURE 1: Shakman Exempt Status of Bureau of Sanitation Positions Surrounding Superintendent  
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Division Superintendent

^Assislan General<sup>1</sup> Superintendent

Assistant Division Superintendent

r'dfS.Q p'er-i n te n,ci e nt""

Refuse Collection Coordinator Source: OIG analysis.

On its face, there is no organizational logic or support for the notion that an employee would have policymaking authority, or politically sensitive discretion, when their supervisors do not have such status and responsibilities.

Also notably missing from the ward superintendents' organizational structure is any consultation with the legislative branch of government which would constitute the proximity to politics or politically sensitive matters. Garbage collection and sanitation services are increasingly moving from ward-based to grid-based services, further reducing even operational judgment to say nothing of policy judgment or discretion in how ward superintendents execute their job functions. Additionally, DSS' second most critical service, snow removal, is largely prioritized on a grid basis for the main corridors and a ward basis for the smaller streets. Delivering City services on the basis of ward boundaries is a relic of the past with a limited importance in the present day, since DSS services are increasingly being distributed on a grid basis.

3. Ward Superintendent duties as performed do not qualify the position for Shakman Exempt status.

While the job description itself is the best evidence of the inherent powers of the ward superintendent position, description of the day-to-day activities by current ward superintendents is instructive and further reveals that the current position should not be Shakman Exempt. The ward superintendents interviewed for this audit provided examples of their work: removing signs from light poles, collecting animal carcasses, overseeing car accident clean up, removing fallen tree debris, coordinating streetsweepers and snow removal, assisting the division superintendent and assistant division superintendent with the distribution of manpower, and redressing service calls. The DSS commissioner agreed with this summary, explaining that ward superintendents' primary job duties include refuse collection and snow removal-duties that are the very heartland of services delivered by DSS. The ward superintendents interviewed for this audit stated that much of their work comes from addressing 311 service requests, such as pothole complaints and streetlight repair requests. Whether in its individual constituent parts or in the aggregate, none of these duties, responsibilities, or activities indicate discretion of a political or confidential nature.



#### SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

Additionally, nearly all of the ward superintendents interviewed stated that they neither make policy recommendations nor have any confidential duties. Two ward superintendents reported giving recommendations for improvements but provided as examples the placement of garbage cans and flyers for a recycling campaign, neither of which are of a nature that constitutes input into meaningful policy decision making. As noted by a ward superintendent, their "job is to provide City services regardless of who you voted for."

## RECOMMENDATIONS

OIG recommends that DHR revoke the Shakman Exempt designation for the ward superintendent title, immediately remove all such positions from the Exempt Titles List, and conduct all future hires into the title in accordance with the process and procedures specified for Shakman covered positions under the City's Hiring Plan, including but not limited to, public posting of vacancies; review by DHR recruiters to identify those that meet minimum qualifications as listed in the job description; forwarding to DSS for a competitive interview process to identify the best qualified candidates; and prohibiting political factors and considerations from the selection process.

## MANAGEMENT RESPONSE

DHR stated that it agrees with the recommendation that the Shakman Exempt designation for ward superintendent be revoked. Additionally, DHR agrees that future hires shall be conducted in accordance with processes and procedures specified for Shakman covered positions under the City's Hiring Plan.

DHR, in consultation with DSS, proposed that the process for filling the ward superintendent position become its own Chapter of the City of Chicago Hire Plan. Because ward superintendent serves as a liaison between DSS and the alderperson for a specific ward, DHR stated that additional discretion is warranted for filling these positions, including allowing the alderperson to recommend, in writing, candidates for consideration. All candidates will be required to meet minimum qualifications for the position and be vetted by DSS through an interview process. Any candidates who are selected for further consideration will be entered into a pool. When a vacancy arises, DSS, in consultation with the alderperson of the ward, will make a final selection from the pool of qualified candidates. An alderperson will also be permitted to request, in writing, the removal of a ward superintendent. The DSS commissioner will have the discretion to accept or reject those requests.

Notice of the proposed change to the Hiring Plan will be posted in accordance with the requirements outlined in Chapter I of the Plan.

SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

## V. CONCLUSION

Ward superintendents play a vital role in City operations by redressing service complaints, assisting with coordinating snow and ice removal, and monitoring refuse collection. Ward superintendents have discretion in how they operate, and their performance could certainly impact elected officials. But poor performance by almost any government employee could reflect poorly on elected officials and this is not the appropriate standard of review for whether a position is Shakman Exempt. The appropriate inquiry is whether the position entails significant political or policy-making discretion or access to confidential political communications.

According to the job description, corroborated as reliable through the provenance, stability, and anecdotal accounts of the ward superintendents interviewed about their actual day-to-day activities, ward superintendents have no policy-making responsibilities, political discretion, or access to confidential political communications. As such, the position does not fall within the exception to First and Fourteenth Amendment protection outlined in Branti. Moreover, the position's placement within DSS' organizational structure and first-hand reports of incumbent ward superintendents further illustrate that the position is not appropriately designated as Shakman Exempt. Accordingly, political considerations should not factor into employment decisions for ward superintendents and the position should not be classified as Shakman Exempt.

OIG therefore recommends that DHR revoke the Shakman Exempt designation the ward superintendent title, immediately remove all such positions from the Exempt Titles List, and conduct all future hires into the title in accordance with the process and procedures specified for Shakman covered positions under the City's Hiring Plan, including but not limited to, public posting of vacancies; review by DHR recruiters to identify those that meet minimum qualifications as listed in the job description; forwarding to DSS for a competitive interview process to identify the best qualified candidates; and prohibiting political factors and considerations from the selection process.

SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

## APPENDIX A: BUREAU OF STREET OPERATIONS ORGANIZATIONAL CHART

DEPARTMENT OF STREETS AND SANITATION BUREAU OF  
STREET OPERATIONS FY 2021 ORGANIZATIONAL CHART  
CORPORATE FUND (FUND 100)

PAGE 19

Commissioner Fund .100

Deputy Commissioner™ Fund 300

SHAKMAN EXEMPT LIST AUDIT FOR WARD SUPERINTENDENTS

## APPENDIX B: BUREAU OF SANITATION ORGANIZATIONAL CHART

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## APPENDIX B: CHAPTER XI WARD SUPERINTENDENTS PROPOSED PROCESS

### CHAPTER XI WARD SUPERINTENDENTS

#### A. Applicability and Principals

Ward Superintendents serve as a liaison between the Department of Streets and Sanitation and the Alderman for a specific ward. One Ward Superintendent may be hired for each ward.

#### B. Process

1. Application Process. At the request of the Commissioner of Streets and Sanitation, Applications for Ward Superintendent can be accepted throughout the year and posted on the ATS. The Commissioner may solicit recommendations from members of City Council of applicants to be considered for Ward Superintendent. All applicants must complete an applicant profile in the ATS in order to be considered for the position. Only applicants who meet the minimum qualifications will be given further consideration in the process.
2. Screening. The Department of Human Resources will screen applicants and refer those who meet the minimum qualifications for the position to the Commissioner of Streets and Sanitation or their designee for further consideration. All minimally qualified applicants who are referred shall be considered eligible for further consideration for one year. At the request of the Commissioner of Streets and Sanitation, eligibility may be extended for an additional one-year period.
3. Interview Selection. As vacancies for the position of Ward Superintendent arise, the Commissioner of Streets and Sanitation or their designee shall review the submissions of eligible candidates and shall schedule and conduct interviews for those Candidates, if any, who in the sole discretion of the department, merit hiring consideration.
4. Interviews. Every Candidate selected for an interview must be interviewed by at least two interviewers from Streets and Sanitation who are familiar with the Position's requirements. Candidates shall be asked the same core interview questions. Follow-up questions are encouraged as long as they relate to previous questions asked to draw out more detailed information from the Candidate.
5. Creation of Pool. At the conclusion of any interviews conducted, the Commissioner of Streets and Sanitation shall review all of the assessment forms prepared by the interviewers and prepare in writing the reasons for recommending any Candidates for further consideration the Position. Candidates who are recommended for further consideration for the Position at the end of the preceding steps will be entered into a Pool of pre-qualified candidates, maintained by DHR, for a period not to exceed two years.
6. Selection. Any time a vacancy for Ward Superintendent needs to be filled, the Commissioner of Streets and Sanitation may consult with the Alderman for the specific

Ward and recommend a Candidate or Candidates for hire who are part of the Pool of pre-qualified candidates as described above. The Alderman may elect to interview or meet with the Candidate(s) before a final selection is made.

### **C. Removal**

Ward Superintendents shall be subject to regular, periodic documented performance review by the Commissioner of Streets and sanitation or his/her designee and may be removed at the discretion of the Commissioner so long as the removal is not for Political Reasons or Factors or Improper Considerations. The Alderman for the Ward to which the Ward Superintendent is assigned can request the removal of the Ward Superintendent in writing to the Commissioner of the Department of Streets and Sanitation. The Commissioner of the Department of Streets and Sanitation may accept or reject such a request.

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Christine Norton, Compliance Officer

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