

## DRAFT 7-8-2020

### Chapter 5, Madison General Ordinances, Police Department and Police Regulations

#### 5.16 Office of the Independent Police Monitor

- (1) Creation and Purpose. There is hereby created the Office of the Independent Police Monitor (“OIM”) for the purpose of providing civilian oversight of the Madison Police Department (“MPD”) and ensuring that MPD is accountable and responsive to the needs and concerns of all segments of the community, thereby building and strengthening trust in MPD throughout the community.
- (2) Independent Monitor. The OIM shall be managed and directed by a full-time Independent Monitor (“Monitor”) who shall be recruited and hired as provided below and who shall **report** to the Police Civilian Oversight Board/Committee. The Monitor shall be responsible for hiring, supervising and managing sufficient professional and support staff to effectively perform the duties of the OIM and shall ensure that all OIM work is undertaken in consultation and collaboration with the Police Civilian Oversight Board/Committee.

*Drafter’s Note: Once the Workgroup determines the structural nature of the Monitor’s position (e.g., how hired, supervised, fired) we will clarify the difference where appropriate between reporting in the supervisory sense and providing substantive reports to the Board or Common Council.*

- (3) Minimum Qualifications of the Monitor. In addition to other qualifications developed by the City, the Monitor shall be a person with extensive knowledge of civilian oversight of policing and “best practices” in policing, but who has never been employed by MPD or been employed as a law enforcement officer within the state of Wisconsin in the 10 years prior to appointment as Monitor, the Madison Fire Department, or the Dane County Sheriff’s Office. The Monitor should also —have sufficient background in —civil rights and equity.

- (4) Recruitment and Appointment of the Monitor. The Mayor shall direct the recruitment for the Monitor with the assistance of the Common Council and Office of Human Resources as described below.

- (a) Screening Panel. Prior to the appointment of any person to the position of Monitor, the Mayor and Common Council shall create a screening panel to interview and evaluate candidates for the position. The screening panel shall consist of the following five (5) persons:

- (i) The chairperson of the Civilian Oversight Board/Committee who shall be the chairperson of the screening panel;
- (ii) A member of Common Council as selected by the Common Council President;

- (iii) A current or retired judge as selected by the Mayor;
- (iv) The Office of Human Resources Director; and
- (v) A person with extensive knowledge of internal police investigations or the monitoring of internal police investigations but who has never been employed by the Madison police or fire departments as selected by the Mayor.

(b) Screening Panel Selections. The screening panel shall forward to the Mayor the names of up to three (3) candidates, whose names shall be made available to the public.

(c) Appointment by the Mayor. The Mayor shall appoint the Monitor from the list of names submitted by the screening panel, unless the Mayor decides not to appoint any of those candidates, in which case the Mayor shall request the screening panel to provide additional names.

(d) Confirmation by the Common Council. The appointment of the Monitor by the Mayor shall not be effective unless and until confirmed by the Common Council.

*Drafter's note: See above Drafter's note regarding changes to be made after the Workgroup decides on the formal structure of the Monitor position.*

(5) Independence from MPD. The OIM shall in all respects remain sufficiently independent from MPD in order to prevent the OIM and MPD from becoming so closely aligned that the OIM cannot effectively fulfill the purpose of this ordinance.

(6) Duties of the OIM and Monitor. The OIM and Monitor shall:

(a) Actively and on an ongoing basis monitor the MPD's compliance with its own SOPs, governing laws, and lawful orders from the Common Council, including compliance with or progress toward meeting any recommendations or directives contained in the MPD Policy & Procedure Review Ad Hoc Committee Report (October 18, 2019) and the OIR Report, to the extent they are adopted and approved by the Common Council, as well as the MPD's own stated goals and mission statement.

(b) Actively monitor MPD audits of Department programs and activities, police officer use-of-force incidents, and MPD investigations of personnel (referring cases back for additional investigation when necessary and recommending findings) and, in its discretion and within the Monitor's staffing and funding capabilities, undertake independent investigations of personnel, in response to external or internally generated complaints of misconduct; make recommendations to the Chief of Police regarding administrative action, including possible discipline, for such personnel; refer appropriate cases to the Police and Fire Commission for disciplinary action; and appoint counsel to provide representation to aggrieved individuals in presenting and litigating complaints against the MPD and its personnel with the PFC, to the extent the Monitor concludes that those complaints have arguable merit.

(c) When a complaint is filed with the MPD against the Chief of Police or high-ranking MPD command staff, determine whether the complaint warrants

appointment of an outside investigator to conduct an independent investigation, and if so, make that appointment.

- (d) Make recommendations regarding policy issues, and address any other issues of concern to the community, the members of the Civilian Oversight Board, the Chief of Police, other MPD personnel, the Mayor or the Common Council.
- (e) Provide input to the Civilian Oversight Board/Committee for its annual review of the Chief of Police.
- (f) Monitor any other internal investigation of possible misconduct or undertake an independent investigation of possible misconduct by personnel when requested to do so by the Civilian Oversight Board/Committee, the Mayor, or the Common Council.
- (g) Provide a process for receiving and investigating complaints from community members about the Madison Police Department, the Chief of Police, or any personnel.
- (h) Submit an annual public report to the Mayor and Common Council by a date certain (e.g., March 15), setting forth the work of the Monitor's office during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of police department personnel, including, but without identifying specific persons, information regarding personnel who were the subject of multiple complaints, complainants who filed multiple complaints, and issues that were raised by multiple complaints; and making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes to policies, rules, and training. Provide other pattern and practice analysis as needed. The annual public report shall also include assessment of the police department's progress in complying with its own SOPs, governing laws, and lawful orders from the Mayor or Common Council, including compliance with or progress toward meeting any recommendations or directives emanating from the work of the Ad Hoc Committee to Review the MPD's Policies and Procedures and the OIR Report, to the extent they are adopted and approved by the Common Council, as well as the MPD's own stated goals and mission statement.
- (i) In addition to submitting the annual report, the Monitor's Office shall maintain an ongoing status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any.
- (j) Engage in community outreach. This could include talking with the community about police policies, procedures or training, gathering input from a range of community members and groups, reaching out to special underserved/marginalized communities, and publicizing processes for handling complaints.

(k) Serve as Executive Secretary to the Police Civilian Oversight Board/Committee and, in collaboration with the Mayor and Common Council, ensure the Board/Committee has the necessary resources to fulfill its duties.

(l) The Monitor shall hire all staff in the OIM. No employees of the OIM shall be former employees of MPD or current or former law enforcement officers who have worked as a law enforcement officer in the state of Wisconsin within 10 years of hire by the OIM. ~~have \_\_\_\_\_ formerly been employees of the MPD, Madison Fire Department, or the Dane \_\_\_\_\_ County \_\_\_\_\_ Sheriff's Office.~~

(7) Powers of the OIM and Monitor. It is the intent of this ordinance that the OIM have sufficient authority and the cooperation of the MPD to ~~permit~~ fulfill the duties of the OIM. Thus, the OIM may do all the following:

- (a) Conduct independent investigations necessary to fulfill the OIM duties listed above;
- (b) Access all MPD records, policies, Standard Operating Procedures, data, and other information necessary to fulfill the OIM duties listed above;
- (c) To the extent permitted by law, issue subpoenas for the purpose of compelling testimony or receiving documents necessary to fulfill the OIM duties listed above;
- (d) Develop and issue recommendations to relevant entities as described above;
- (e) Retain independent legal counsel if necessary to fulfill the OIM duties listed above;
- (f) Develop and issue public reports as described above;
- (g) ...

*Drafter's note: Reminder that the OCA may end up combing sections (6) and (7) into a single section entitled "Powers and Duties."*

(8) Public reporting of the OIM.

- (a) No later than \_\_\_\_\_ of each year, the Monitor shall submit an annual public report to the Mayor, Common Council, and the Police Citizen Oversight Board/Committee, setting forth the work of the OIM during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of police ~~and sheriff department~~ uniformed personnel, including, but without identifying specific persons, information regarding uniformed personnel who were the subject of multiple complaints, complainants who filed multiple complaints, and issues that were raised by multiple complaints; and making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes to policies, rules, and training.
- (b) The report shall present information in statistical and summary form, without identifying specific persons except to the extent that incidents involving specific persons have otherwise been made public by the City of Madison.

- (c) In addition to the annual report, the OIM shall publish a status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any. Based upon an analysis of this information and other information available to the monitor, the OIM shall make timely recommendations to the chief of police, ~~sheriff~~, and the manager of safety regarding an early warning system and/or other policy issues.
- (d) The Monitor may publish additional public reports throughout the year about matters within the duties of the OIM.

*Drafter's note: Reminder that this section was taken verbatim from Denver's ordinance. Do we want a separate reporting section, or should we leave that in the duties section as in the ad hoc Report and as seen in sec. (6)(h) above?*

(9) Confidentiality.

- (a) The Monitor, its staff, the board, and all consultants and experts hired by the monitor shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out their duties.
- (b) The OIM, the board, and all persons who participate in the police department's investigative and disciplinary processes are part of the city's deliberative process regarding investigative and disciplinary procedures for personnel. Furthermore, all deliberations and recommendations learned by any of those persons or groups during the exercise of their duties shall be protected by the deliberative process privilege.

## 5.17 Police Civilian Oversight Board/Committee

- (1) Creation. A Police Civilian Oversight Board/Committee is hereby created for the City of Madison.
  
- (2) Purpose. The Common Council recognizes that civilian oversight of the Madison Police Department (“MPD”) is critical to ensuring that MPD responds to the needs and concerns of all segments of the community, thereby building and strengthening the community’s trust in MPD’s services. The purpose of the Police Civilian Oversight Board/Committee is therefore to provide within the City of Madison a body that is independent from the MPD and authorized to work collaboratively with the Office of the Independent Police Monitor (“OIM”) and the community to review and make recommendations regarding police discipline, use of force, and other policies; rules; hiring; training; community relations; and complaint processes.
  
- (3) Board/Committee Composition.
  - (a) Members. The Police Civilian Oversight Board/Committee shall have \_\_\_ ( ) voting members and ( ) alternate members. Members shall be appointed as provided below and in a manner that ensures diversity and inclusion of Madison’s various communities, \_\_\_\_\_ including but not limited to representatives of the African American, Asian, Latino, Native American and LGBTQ communities; members with a diversity of age, socioeconomic status, gender, geographic residence, and work experience; members from organizations in the fields of mental health, youth advocacy and AODA; and members with arrest or conviction records. A majority of the Members shall have been nominated by a designated set of community-based organizations that have an interest in civil rights, immigrant rights, disability rights/mental health, racial equity, and social justice, and that also have an interest in the safety of the City. 20-40% of the Members shall have lived experience with homelessness, mental health, substance abuse and/or arrest or conviction records. No member may be a current or former MPD law enforcement officer. Nor may any Member be a current or former law enforcement officer who has worked as a law enforcement officer in the state of Wisconsin in the 10 years prior to their appointment to the Board/Committee. Alternate members shall act with full power when any other member of the Board/Committee is absent or is unable to act because of a conflict of interest. The second alternate member shall so act only when the first alternate member is unable or is absent. In addition, alternates may participate in Board/Committee discussion and serve on subcommittees.
  
  - (b) Appointment of Members. Members shall be appointed by the Mayor and confirmed by the Common Council. Members shall be residents of the City of Madison at the time of appointment. However, the Common Council recognizes that some residents may experience high housing mobility and, as a result, may move outside city boundaries during their term for housing or financial reasons. Members who move outside of the City of Madison may remain on the Board/Committee for the duration of their term provided that they

~~\_\_\_\_\_ still live in Dane County. Prior to making appointments, the Mayor, in \_\_\_\_\_  
— collaboration with the Department of Civil Rights and the Racial Justice and \_\_\_\_\_  
\_\_\_\_\_ Social Equity Initiative (“RESJI”), shall seek nominations from community-based  
organizations that have an interest in civil rights, immigrant rights, disability  
rights/mental health, racial equity and social justice, and that have an interest in  
the safety. In considering nominations from these organizations, the Mayor shall  
give priority to nominations from organizations with budgets under \$1 million.  
Prior to sending appointments to the Common Council for confirmation,  
the Mayor shall ensure that each proposed appointment is subject to a  
\_\_\_\_\_ Racial Equity and Social Justice Initiative (“RESJI”) analysis to examine whether  
\_\_\_\_\_ the nominations will promote provide a list of all proposed appointments to \_\_\_\_\_  
\_\_\_\_\_ RESJI, which shall \_\_\_\_\_ review the proposed nominations to ensure \_\_\_\_\_  
\_\_\_\_\_ equity and inclusion in \_\_\_\_\_ Board/Committee \_\_\_\_\_  
\_\_\_\_\_ membership. RESJI shall provide a recommendation to the \_\_\_\_\_  
\_\_\_\_\_ Common Council on all of the Mayor’s proposed recommendations and the \_\_\_\_\_  
\_\_\_\_\_ The Common Council shall not confirm an appointment to the Board/Committee \_\_\_\_\_  
\_\_\_\_\_ until it receives a the results of the RESJI analysis. \_\_\_\_\_  
\_\_\_\_\_ recommendation from RESJI.~~

- (c) Terms and vacancies. Members shall have \_\_\_-year terms. Any vacancy occurring during the term of any Member shall be filled by the process set forth above. If a Member is appointed to fill an unexpired term, that Member's term shall end at the same time as the term of the person being replaced.
- (4) Member Training and Support. The City should ensure that Members receive the training necessary to gain and maintain expertise in issues relevant to police oversight and community policing. Similarly, the City should ensure that socioeconomic status is not a barrier to serving on the Board/Committee by considering providing Members with childcare, stipends, or reimbursements and adjusting Board/Committee process, procedures and meeting times to accommodate a wider variety of life schedules and demands.
- (5) Executive Secretary. The Independent Police Monitor (“Monitor”) shall serve as executive secretary of the Police Civilian Oversight Board/Committee, in collaboration with the Mayor and Common Council, shall ensure that the Board/Committee has the resources necessary to fulfill the Board/Committee’s duties.
- (6) Board/Committee Procedures. The Board/Committee shall follow the procedures contained in M.G.O. § 33.01, except that notwithstanding M.G.O. § 33.01(9)(e) the Board/Committee may from time to time suspend the rules related to public comment in order to allow for free-flowing discussion between the Board and community.
- (7) Powers and Duties. The Police Civilian Oversight Board/Committee shall have the following powers and duties:
- (a) Provide input to the Mayor and Common Council to assist them in assessing the effectiveness of the Monitor’s Office;
  - (b) With input from the Independent Monitor, conduct an annual review of the Chief of Police to assess her or his performance in office, and submit a report to the designated City Officials responsible for completing the annual performance

review of the Chief as recommended by the Ad Hoc Committee, including recommendations as to whether the Chief has satisfactorily performed his or her duties or whether the Chief has failed to perform satisfactorily, thereby constituting “cause” for referral to the PFC with a recommendation for dismissal.

- (c) Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;
- (d) Address any other issues of concern to the community, members of the board, the monitor, the Chief of Police, the Mayor, or the Common Council;
- (e) Furnish an annual public report to the Mayor and Common Council regarding the board's assessment of the work of the monitor's office; the board's activities during the preceding year; concerns expressed by community members; the board's assessment of the police investigative and disciplinary processes; recommendations for ways that police department can improve its relationships with the community; and recommendations for changes to police department policies, rules, hiring, training, and the complaint process.

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