

DRAFT 7-13-2020 (track changes)

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

Drafter's note: For this draft, I took the 7-8-20 draft and made a few changes based on comments made by the workgroup about that draft. For example, I added "related" to the qualification of the monitor and board members. Then, I accepted those changes and started a new draft. Next, I edited the draft for structure and readability without using track changes. Then, I applied track changes and made the changes and additions requested at the last meeting. For example, adding the length of terms, OIM structure, etc.

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 a managerial employee as defined in M.G.O. § 3.54(9) except that the Monitor shall be recruited, hired, supervised by the Police Civilian Oversight Board ("Board"). The Monitor shall recruited and hired as provided below. ~~The Monitor shall~~ report to the Police Civilian Oversight Board ("Board") and ensure that ~~all OIM~~ work is undertaken in consultation and collaboration with the Board. Finally, subject to available funding, the Monitor shall be responsible for hiring, supervising and managing sufficient professional and support staff to effectively perform the ~~_____~~ duties of the OIM.
- (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, "best practices" in policing, and civil rights and equity. The Monitor shall be a person who has never been employed by MPD or who is related to someone who has been employed by MPD. The Monitor shall also be someone who has not been employed as a law enforcement officer within the state of Wisconsin in the 10 years prior to appointment as Monitor.
- (4) Recruitment, and Appointment, and Confirmation of the Monitor.
 - (a) Recruitment and Appointment by the Board. The Board Mayor shall recruit and appoint direct the Monitor, with recruitment for _____ the _____ Monitor with the assistance of the _____ Common Council and Office _____ of Human _____ Resources. In fulfilling its duty to recruit and appoint the Monitor, the Board shall develop an appointment process that ensures the selection of an individual who will provide the expertise and independence necessary to carry out the duties and purposes of the OIM and the Board, 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.

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

(5) Supervision of the Monitor. Monitor shall report to and take direction from the Board regarding all substantive work flow issues and shall report to _____ for day-to-day human resource issues, such as time off, payroll, and other similar issues.

(6) 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. For example, at a minimum, the OIM shall not be co-located with MPD such that it is contained within the same office as MPD management, officers, or other personnel.

(7~~e~~) Powers and Duties of the OIM and Monitor.

(a) Monitor Policy Compliance. The OIM shall actively and on an ongoing basis monitor the MPD's compliance with its own Standard Operation Procedures ("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 Independent Police Oversight and Review Report

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("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) Monitor MPD Programs, Activities, Investigations, and Use-Of-Force Incidents.
- (i) Conduct Independent Investigations and Make Recommendations. The OIM shall 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.
 - (ii) Make Recommendations to Chief of Police. Based on its review of MPD programs, activities, investigations, and use-of-force incidents, the OIM may make recommendations to the Chief of Police regarding administrative action, including possible discipline, for such personnel.
 - (iii) Make Referrals to the Police and Fire Commission. Based on its review of MPD programs, activities, investigation, and use-of-force incidents, the OIM may refer appropriate cases to the Police and Fire Commission for disciplinary action.
 - (iv) Appoint Counsel for Aggrieved Individuals. The OIM may 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.
 - (v) Other Monitoring Requested by the Board, Mayor, or Common Council. The OIM shall 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 Board, the Mayor, or the Common Council.
- (c) Review and Investigate Command Staff Complaints. When a complaint is filed with the MPD against the Chief of Police or high-ranking MPD command staff, the OIM shall determine whether the complaint warrants appointment of an outside investigator to conduct an independent investigation, and if so, make that appointment.
- (d) Make Policy Recommendations. The OIM shall 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) Assist in Board's Annual Review of Police Chief. The OIM shall provide input to the Police Civilian Oversight Board for its annual review of the Chief of Police.
- (f) Complaint Processing. The OIM shall create and support a process for receiving and investigating complaints from community members about the MPD, the Chief of Police, or any personnel.

- (g) Community Outreach. The OIM shall 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.
- (h) Police Civilian Oversight Board Staffing. The OIM shall, in conjunction with the Office of Mayor and Common Council, ensure that Police Civilian Oversight Board has the resources it needs to fulfill its duties, including that the Monitor shall serve as Executive Secretary to the Police Civilian Oversight Board.
- (i) OIM Staffing. The Monitor shall hire all staff in the OIM. No employees of the OIM shall be former employees of MPD or related to former employees of MPD. Nor shall any staff of the OIM be 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.
- (j) Access MPD Records. The OIM shall have access all MPD records, policies, Standard Operating Procedures, data, and other information necessary to fulfill the OIM.
- (k) Issue Subpoenas. The OIM and Monitor may, to the extent permitted by law, issue subpoenas for the purpose of compelling testimony or receiving documents necessary to fulfill the OIM;
- (l) Develop and Issue Reports and Policy Recommendations. The OIM and Monitor may develop and issue reports and policy recommendations to relevant entities as described above and to the public as described in sec. (7) below; and
- (m) Retain Independent Legal Counsel. The OIM may retain independent legal counsel if necessary to fulfill the OIM duties.

(87) Public Reporting. One of the key components of the OIM is its duty to develop and issue independent reports and recommendations to the Mayor, Common Council, and community. Accordingly the OIM is authorized to issue the following public reports.

- (a) Annual Public Report. The OIM shall 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.

- (b) Ongoing Public Status Reports. In addition to submitting the annual report, the OIM 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.
- (c) Additional Public Reports. The OIM, as determined within the discretion of the Monitor, may publish additional public reports throughout the year about matters within the duties of the OIM.

(98) 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

- (1) Creation. A Police Civilian Oversight Board 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 ("Board") 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 Composition.

- (a) Members. The Police Board shall have 11 voting members and 2 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. ~~All 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. The designated set of organizations shall be initially created in conjunction with the adoption of this ordinance and the Monitor Board, and Common Council shall ensure that it is updated at least every two (2) years. 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 or related to 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. Alternate members shall act with full power when any other member of the Board 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 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 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, 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.

(c) Terms and vacancies.

(i) Terms. Members shall have 4-year staggered terms, except that when the Board is initially created and filled, 4 members shall be appointed for 4-year terms, 3 Members shall be appointed for 3-year terms, and 5 Members, including the 2 alternate Members, shall be appointed for 2-year terms.

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(ii) Vacancies. 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.

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(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 by considering providing Members with childcare, stipends, or reimbursements and adjusting Board 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 Board, in collaboration with the Mayor and Common Council, shall ensure that the Board has the resources necessary to fulfill the Board duties.

(6) Board Procedures. The Board shall follow the procedures contained in M.G.O. § 33.01, except that notwithstanding M.G.O. § 33.01(9)(e) the Board 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) Meetings. The Board shall meet at least quarterly and may meet more frequently as determined necessary by the body to fulfill its duties.

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(7) Powers and Duties. The Board shall have the following powers and duties:

(a) Recruit, appoint, and supervise the Independent Monitor.

(b) Provide input to the Mayor and Common Council to assist them in assessing the effectiveness of the Monitor's Office;

(cb) 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.

- | (de) Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;
- | (ed) 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;
- | (fe) 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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