

ORDINANCE 8361

AN ORDINANCE AMENDING TITLE 2 BY ADDING A NEW CHAPTER 2-11, "POLICE OVERSIGHT," B.R.C. 1981, PERTAINING TO THE COMPOSITION, DUTIES AND POWERS OF A NEW CITY ORGANIZATION RELATED TO CIVILIAN OVERSIGHT OF THE POLICE, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A new Chapter 2-11, "Police Oversight," B.R.C. 1981 is added as follows:

2-11-1. – Legislative Intent.

- (a) The council finds that the current system of reviewing complaints against the police does not meet the needs of the community.
- (b) The council finds that the community would benefit from the hiring of a civilian police auditor to review the handling of complaints, to review trends in policing and recommend improvements to police practices, to engage with the public so that the needs of all members of the community are taken into account in connection with police oversight, and to report to the public regularly regarding oversight of the police department.
- (c) In order to improve community trust in the police department, the council intends to increase community involvement in police oversight and ensure that traditionally underserved communities have a voice in that oversight.
- (d) It is intended that this section will provide a system of oversight of the police complaint process that is responsive to the needs of the entire community and a means for continuous improvement of police practices in the City.
- (e) The council recognizes that further work is needed to implement this chapter, and intends that an implementation committee will recommend further changes to this chapter to ensure that the purposes of this chapter are fulfilled.

2-11-2. - Definitions.

Chief of police means the person designated by the city manager as the chief of police.

Community impact case means a complaint involving sworn police officer(s) that alleges excessive force, bias, disparate treatment, or violation of constitutional rights, which the police auditor determines should be reviewed by the police oversight panel.

1 *Conclusion of any criminal investigation or conclusion of any such criminal investigation*
2 means a criminal investigation is deemed concluded when the appropriate criminal prosecutor
3 decides either to press charges or to not press charges.

4 *Critical incident* means an occurrence involving a police action including, but not limited
5 to, a civil disturbance or riot, an officer-involved shooting or other action resulting in serious
6 physical injury or death, or behavior by a sworn police officer that is of great concern to the
7 community.

8 *Immediate family member* means a person's spouse or domestic partner, a parent, step-
9 parent, grandparent, child, stepchild, grandchild, sibling, half-sibling or step-sibling of the person
10 or of the person's spouse or domestic partner.

11 *Police employee* means a city employee who reports directly or through others to the
12 chief of police.

13 *Preliminary investigation* means an initial inquiry by the police auditor or the auditor's
14 designee into the facts and circumstances of a complaint for purposes of deciding how to classify
15 and route the complaint.

16 *Professional standards unit* means the police employees designated by the chief of police
17 to investigate allegations of misconduct against police employees.

18 *Sworn police officer* means a police employee who is also certified and employed as a
19 peace officer under the laws of this state.

20 **2-11-3. – Office of Police Auditor.**

- 21 (a) The Office of the Police Auditor, hereafter "Auditor's Office," shall be established to
22 provide an independent location to lodge complaints involving police employees,
23 monitor internal investigations to ensure objective, thorough and high-quality
24 investigations, and develop recommendations to improve police services and policies.
- 25 (b) The Auditor's Office shall be headed by a professional police auditor who is hired by
and accountable to the city manager. The Auditor's Office shall not be physically
located in the same building as the police department.
- (c) Any findings, recommendations and actions taken shall reflect the police auditor's
independent judgment. No person shall use his/her political or administrative
position to attempt to unduly influence or undermine the independence of the police
auditor, or his/her staff or agent, in the performance of his/her duties and
responsibilities.
- (d) The city manager shall include in his/her recommended budget an allocation
sufficient for the police auditor and the Auditor's Office to carry out their duties and
responsibilities.

1 **2-11-4. – Office of Police Auditor – Powers and Duties.**

- 2 (a) The police auditor is the administrative head of the Auditor’s Office and shall:
- 3 (1) Oversee the operations of the Auditor’s Office, establish program priorities and objectives, and manage the implementation and evaluation of work programs.
- 4 (2) Develop and maintain operating procedures for the Auditor’s Office, including protocols for handling complaints and monitoring investigations.
- 5 (3) Act as liaison and provide staff support to the police oversight panel.
- 6 (4) Receive and process complaints concerning police employees; monitor the complaint investigation; and recommend best practices to the professional standards unit during the course of an investigation.
- 7 (5) Perform a quality assurance function with the goal of identifying systemic changes that will improve police services to the community. These activities include:
- 8 (A) Analyzing complaint trends and recommending changes to police policy, practices and training; and
- 9 (B) Reviewing and reporting trends in completed police employee disciplinary decisions.
- 10 (6) Review and report trends in completed police employee disciplinary decisions.
- 11 (7) Provide status reports to the police oversight panel and community and provide recommendations relevant to police policies and practices to the chief of police and city manager.
- 12 (8) Develop and present to the police oversight panel and city council periodic public reports describing the activities of the Auditor’s Office, its findings and recommendations, the police department’s response to its recommendations, and any other information pertinent to assessing the performance of the Auditor’s Office.
- 13 (9) Provide the community with any other reports deemed necessary.
- 14 (b) The police auditor shall receive timely notification of critical incidents to enable him/her to report to the scene of critical incidents. The police auditor and chief of police shall develop necessary protocols for summoning the police auditor to the incident for purposes of first-hand observation.
- 15 (c) All final case adjudication and employee discipline decisions shall be made by the chief of police. The police auditor may develop adjudication recommendations and may recommend the level of discipline for police employees.

16 **2-11-5. - Complaint Processing.**

- 17 (a) Complaint intake.
- 18 (1) Any person may lodge a complaint or commendation with the Auditor’s Office about the conduct of, or services provided by, a police employee;
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- 1 (2) The Auditor's Office is the intake center for community complaints about police
2 employees. The police auditor shall make available to the public several
3 alternative means of filing a complaint, including but not limited to in person, on-
4 line, or by telephone. Complainants may choose to lodge complaints against
5 either directly to the police department or through the Auditor's Office. The
6 Auditor's Office shall document all contacts and complaints received from any
7 source.
- 8 (3) If the City receives a claim for damages that alleges that a police employee caused
9 the damage, a copy of the claim shall be forwarded to the Auditor's Office for a
10 determination as to whether the claim should also be classified and processed as a
11 complaint.
- 12 (4) If a complaint is received that alleges criminal conduct on the part of the police
13 employee, the police auditor shall forward the complaint and any associated
14 information to the chief of police.
- 15 (5) Classifications of complaints shall be further defined based on recommendations
16 from the implementation committee described in Section 2-11-9.

17 (b) Complaint Investigations.

- 18 (1) Except as provided in paragraph (2) of this subsection, administrative
19 investigations of complaints shall not commence until after the auditor has
20 received, classified and routed the complaint. The investigation shall commence
21 upon classification or as soon as possible after classification.
- 22 (2) Paragraph (1) of this subsection shall not preclude preliminary investigations by
23 the Auditor's Office, or a police supervisor's attempt to address a service
24 complaint, provided that the supervisor prepares and forwards to the auditor
25 within twenty-four hours a report identifying the complainant and contact
information for the complainant, and explaining the nature of the service
complaint and the outcome of the supervisor's conversation with the complainant.
- (3) If the chief of police determines that all or a part of an administrative
investigation should be postponed in order to avoid jeopardizing a criminal
investigation or prosecution, the chief of police shall request the auditor's
agreement on postponement. If the auditor and chief of police are unable to agree
on the postponement, then they shall present in writing their respective positions
to the city manager, who shall then decide whether all or part of an administrative
investigation will be postponed.
- (4) The police auditor shall actively monitor internal investigations to ensure a
thorough, objective, and timely investigation, and is authorized to:
 - (A) Participate in complainant, employee and witness interviews.
 - (B) Propose additional investigation and best practices to the professional
standards unit.
- (5) The police auditor shall have access to all police data including demographics of
complainants and officers.

- 1 (6) The police auditor will not be directly involved in any criminal investigations but
2 shall be kept apprised of the status of such investigations involving police
3 employees. The police auditor shall have access to the case file relevant to the
4 administrative portion of such investigations.
- 5 (7) All case files shall be provided to the police auditor upon conclusion of the
6 investigation for review and a determination that the investigation was thorough
7 and complete. Once the investigation is deemed complete, the involved
8 employee's immediate supervisor will develop a case adjudication
9 recommendation that will be forwarded through the chain of command to the
10 chief of police for final adjudication. If the police auditor disagrees with any
11 recommendation, his/her disagreements and comments will be documented and
12 forwarded to the chief of police as well. The chain of command and police
13 auditor will use their best efforts to complete this process in a timely manner and
14 without unreasonably delaying the final adjudication of the case.
- 15 (8) The Auditor's Office will make every reasonable effort to notify the complainant
16 that an investigation has been conducted, summarize the case findings, and
17 provide an opportunity for the complainant to comment or ask questions about the
18 process.
- 19 (9) The Auditor's Office shall return all case file materials to internal affairs for
20 retention but shall have subsequent access to closed cases.
- 21 (10) The police auditor shall maintain an on-going status report on the work of the
22 Auditor's Office and case investigations and shall share it with the police
23 oversight panel.
- 24 (c) Access to Records and Materials.
- 25 (1) Except to the extent that a specified state or federal law provides to the contrary,
or where information resides on a restricted database governed by a contract that
does not allow access beyond certain law enforcement employees:
- (A) The auditor shall have complete and unrestricted access to all complaints,
investigative records and information obtained or developed by the
professional standards unit related to an administrative investigation of a
complaint, whether the information exists in electronic format or hard copy,
including information stored on an internal affairs database;
- (B) The auditor shall be provided any other information identified by the auditor
that is relevant to a complaint; and
- (C) The identity of any individual involved in an event giving rise to a complaint
shall not be withheld from the auditor. Notwithstanding the foregoing,
complainants may file anonymously.
- (2) The chief of police and police auditor shall develop cooperative interdepartmental
procedures and any necessary infrastructure to coordinate the flow of information
and communication between the Auditor's Office and the police department.

- 1 (d) Nothing in this chapter shall preclude the City from engaging an independent
2 investigator for a particular complaint.

3 **2-11-6. Police Oversight Panel - Qualifications and Appointments.**

4 (a) Qualifications.

- 5 (1) Members of the police oversight panel shall be nominated by a selection
6 committee. The composition of the selection committee shall be recommended to
7 city council by the police oversight implementation committee described in
8 Section 2-11-9 below.
- 9 (2) Members of the police oversight panel shall be volunteers who, immediately prior
10 to appointment, shall demonstrate:
- 11 (A) Strong ties to the city of Boulder. This may include, but is not limited to,
12 residency, employment in the City, or having children enrolled in schools
13 located in the City;
 - 14 (B) An absence of any real or perceived bias, prejudice or conflict of interest;
 - 15 (C) A record of community involvement;
 - 16 (D) An ability to build working relationships and communicate effectively with
17 diverse groups; and
 - 18 (E) A commitment to the purposes of this chapter.
- 19 (3) The police oversight panel shall include at least half of its members identifying as
20 a person of color, notably African American, Latinx, Asian American and/or
21 Indigenous. Preference will be given to individuals who are bilingual and/or
22 bicultural. In addition, the selection committee will strive to include a person with
23 a disability, a person experiencing homelessness or having such lived experience,
24 a person identifying as LGBTQ+, and a person who has experienced
25 incarceration. The selection committee will endeavor to reach out and recruit from
historically underrepresented and underserved communities.
- (4) Members of the police oversight panel shall neither be a current City employee
nor an immediate family member of a current City employee.
- (5) Police oversight panel members shall participate in a training program to be
developed by the police auditor.
- (6) It is the intent that police oversight panel members be free from personal liability
for acts taken within the course and scope of carrying out their official duties and
functions. The City will therefore defend and indemnify members to the
maximum extent permitted under the Colorado Governmental Immunity Act and
other applicable law.
- (7) Current members of the professional standards review panel and the police
oversight task force are eligible to serve on the police oversight panel.

(b) Terms and Vacancies.

1 The police oversight panel shall have eleven members. The terms of panel members shall
2 be recommended to city council by the police oversight implementation committee described in
3 Section 2-11-9 below.

3 **2-11-7. – Police Oversight Panel - Powers and Duties.**

- 4 (a) In collaboration with the police auditor, the police oversight panel shall establish
5 policies, procedures and operating principles for the police oversight panel.
- 6 (b) The police oversight panel may review the completed investigation and adjudication
7 of complaints filed against sworn police officers.
- 8 (1) The police oversight panel shall develop criteria to decide whether to accept a
9 case for review.
- 10 (2) All materials concerning the completed investigations of cases the police
11 oversight panel has selected to review shall be made available to members for
12 their confidential review.
- 13 (3) The police oversight panel shall, at one of its regularly scheduled meetings, report
14 on such case(s), which may include comments on the handling of the complaint,
15 the fairness and thoroughness of the investigation and the reasonableness of the
16 adjudication.
- 17 (4) The comments and any related policy or procedural issues identified by the police
18 oversight panel in the course of its case review shall be provided to the police
19 auditor for further consideration.
- 20 (c) Upon the adjudication of a complaint that the police auditor has identified, and the
21 police oversight panel has accepted as a community impact case, members of the
22 police oversight panel shall be provided all materials concerning the case for their
23 confidential review.
- 24 (d) The police oversight panel shall notify the complainant and involved employee(s) of
25 its decisions on whether to accept a case for review and shall inform the complainant
of its conclusions on the case.
- (e) The police oversight panel shall review trends and statistics of complaints against
sworn police officers and civilian police employees and may develop
recommendations to improve the complaint intake and handling process.
- (f) The police oversight panel shall evaluate the work of the Auditor's Office. In that
regard the police oversight panel:
- (1) Shall establish criteria by which to evaluate the work of the police auditor;
- (2) Shall review, comment on, and assist in maintaining policies, procedures and
operating principles for the Auditor's Office and the police oversight panel;
- (3) Shall monitor status reports from the police auditor; and

1 (4) May conduct periodic evaluations of the complaint intake and handling system to
2 identify process improvements and/or ensure complaints are being treated fairly
and with due diligence.

3 (g) The police oversight panel may provide a forum to gather community concerns about
4 incident-specific police actions and may receive and forward complaint information
to the Auditor's Office for processing.

5 **2-11-8. – Police Oversight Panel - Officers, Meetings, and Procedures.**

6 (a) The police oversight panel shall annually elect from among its membership a chair
and a vice-chair.

7 (b) The police chief shall name a police employee to serve as a non-voting member of the
8 police oversight panel. The police auditor shall also be a non-voting member of the
police oversight panel.

9 (c) Meetings of the police oversight panel shall be open to the public. To facilitate the
10 transparency of the police oversight panel's activities, the police auditor will develop
and present case summaries and status reports in a manner that allows review and
discussion to the maximum extent practicable.

11 (d) The police oversight panel shall prepare and present annual public reports to the city
manager and chief of police that:

12 (1) Summarizes the police oversight panel's activities, findings and
13 recommendations;

14 (2) Assesses the performance of the police auditor; and

15 (3) Evaluates the work of the Auditor's Office, including whether the Auditor's
Office is functioning as intended.

16 (e) In collaboration with the Auditor's Office, the police oversight panel may conduct
17 education and outreach activities to inform the community about the process for filing
18 complaints and commendations about police employees. The police oversight panel
and police auditor shall work together to develop and disseminate information and
forms regarding the police complaint handling and review system.

19 **2-11-9 Police Oversight Implementation Committee.**

20 A police oversight implementation committee shall be formed which shall be comprised
21 of current members of the police oversight task force and city staff, including current police
22 employees, at least one of whom shall be a member of the police officers' union. At the
conclusion of its work, the implementation committee shall report to city council
recommendations on the following:

23 (a) How the selection committee shall be selected;

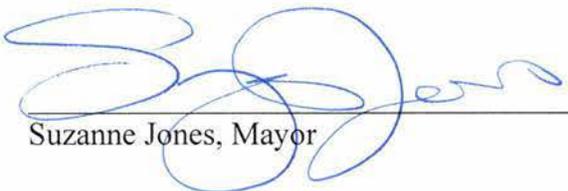
24 (b) Standards of conduct and procedures for removal of members of the selection
25 committee and the police oversight panel;

- 1 (c) Oversight of the police oversight panel;
- 2 (d) Terms of office of police oversight panel members;
- 3 (e) Qualifications of the police auditor;
- 4 (f) Classifications of complaints;
- 5 (g) Mediation and restorative justice options;
- 6 (h) The phasing out of the current police standards review panel; and
- 7 (i) Any other matter related to the implementation of this chapter.

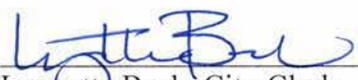
8 Section 2. This ordinance is necessary to protect the public health, safety, and welfare of
9 the residents of the City, and covers matters of local concern.

10 Section 3. The city council deems it appropriate that this ordinance be published by title
11 only and orders that copies of this ordinance be made available in the office of the city clerk for
12 public inspection and acquisition.

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14 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
15 TITLE ONLY this 15th day of October 2019.

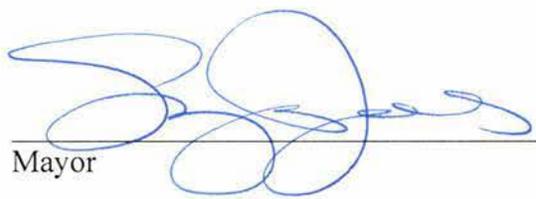
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Suzanne Jones, Mayor

18 Attest:

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Lynnette Beck, City Clerk

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READ ON SECOND READING, PASSED AND ADOPTED this 29th day of October,
2019.



Mayor

Attest:



City Clerk