

COMMITTEE RECOMMENDATIONS

This section lists specific recommendations to achieve the vision and community safety and equity objectives the Ad Hoc Committee established. Many of these recommendations will provide focus and strategic direction to the MPD. Others relate to topics that aren't effectively addressed in such a plan but are important to achieving the desired future for the area. This section also recommends a planning area that will be the focus of the special area plan. To facilitate action on these recommendations, an implementation matrix is included that identifies suggested next steps, the agencies primarily responsible for each, supporting commissions, general timeframe, and other notes.

In this section, "OIR Report #" refers to the recommendation as listed in the OIR Report; "CRT #" refers to a recommendation generated by the Citizen's Response Team; "PWG #" refers to a recommendation derived from the President's Work Group; "Community E-mail #" refers to a recommendation drawn from an email submitted to the Committee via email; "Findley #" refers to a recommendation proposed by Committee Co-chair Keith Findley; "Community E-mail #" refers to a recommendation received from a community-member at large; "Taylor #" refers to a recommendation from State Representative Chris Taylor; and "AHC #" refers to a recommendation originating from the Ad Hoc Committee itself.

PART I: Civilian Oversight, Public Engagement & Public Confidence

Recommendation #1:

The City should enhance its civilian oversight by establishing an independent police monitor's office staffed by an independent monitor and reporting to a civilian police review body. [OIR Report #146]

"Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

—Recommendation 2.8 President's Task Force on 21st Century Policing – 2015

Discussion: In its final recommendation, Recommendation #146, on page 245 of its report, the OIR Group recommended: "Madison should enhance its civilian oversight by establishing an independent police auditor's office reporting to a civilian police review body." The MPD did not oppose this recommendation, and the Madison Ad Hoc Committee wholeheartedly agrees with it. Indeed, the Committee believes that creating an independent monitor and civilian review body is so critical, both in its own right and to ensure successful implementation of all of the other recommendations the Committee is making, that we have moved this up as our first recommendation, and we pulled it out and forwarded it separately to the Common Council and Mayor prior to completion of the full report so that the City could consider including it in the upcoming budget. The Council voted to accept this recommendation, and the Mayor included funds to create the Office of the Independent Monitor in her budget proposal.

The Ad Hoc Committee believes that civilian oversight is critical to ensuring the vigilance and attentiveness necessary to ensure that the MPD is the progressive department that it says it is, and moreover, that it is making continuous progress toward achieving: 1) its own ideals and the expectations of itself and the requirements its own rules and procedures impose; 2) the requirements imposed on it by the Common Council and Mayor, pursuant to this report; and 3) the mandates emanating from the President's Work Group, as well as other initiatives-to-come.

MPD has, admirably, responded to the OIR Report by agreeing to make changes in accordance with many, but notably not all, of the OIR Group's recommendations, including a number that the Ad Hoc Committee strongly endorses. There is no doubt that community policing is a cornerstone of the Department's philosophy, but as the OIR Group noted, there is what may be described as a tension between the MPD's long history of endorsing and espousing progressive policing ideals and some of its less-than-community-oriented policies and practices. A recurring theme the OIR Group encountered—both from those within the MPD and from Madison citizens—is the question: Is the MPD really what it once was and what it says it is? Does it uphold its own ideals and best practices?

We thus recommend the creation of an independent monitor overseen by a Civilian Review Board as our first recommendation. Our reasons for this are three:

- We have observed that some of Madison’s many diverse communities perceive Madison’s police department as insular and unresponsive to their needs, and, therefore, fail to invest their trust in its officers.
 - Formalized civilian oversight is the most direct way the City can confront this challenge, ensure that the MPD is responsive to the needs and concerns of all segments of the community, and thereby build trust.
- It is our belief that, in a free and democratic society, the policing function must be controlled directly by the people themselves as much as possible.
 - To the extent that the community yields some of its freedoms to the authority of a police force in the interest of public safety and harmony, it must have tools to directly oversee the exercise of that police authority; the community must have a strong voice in deciding how it wants to be policed.
- We see almost all of our other recommendations as contingent or dependent on the establishment of a civilian police review body.
 - In order to keep the process and the promise of reform ongoing, it is essential that the MPD continue to receive input from those outside the Department, including the public it serves and to which it is ultimately responsible.

A variety of models exist for civilian oversight mechanisms. OIR Group recommended a monitor-type oversight mechanism and we concur. A monitor has the capacity to examine policies, patterns, and practices, and can be effective at promoting long-term systemic changes.

The monitor’s office must be strong and have sufficient authority and the cooperation of the MPD to permit the monitor to engage in thorough investigations and develop meaningful prescriptions. Importantly, the monitor must be sufficiently independent of the MPD to ensure that its office does not become subject to administrative “capture,” as happens so often when agencies are monitored by people with whom they are too closely aligned. Civilian oversight mechanisms have been set up in many cities, but most lack key features required to be highly effective. There is a broad expert consensus on organizational elements that are crucial for success in civilian oversight agencies and we have incorporated these into our recommendation. These elements include full independence, adequate jurisdiction, adequate authority (including capacity to conduct independent investigations), unfettered access to records and personnel, full cooperation from police and other city partners, access to independent legal counsel, adequate resources, public reporting and transparency, and community outreach and involvement.

The composition of the civilian oversight board is crucial to its success. A civilian oversight board must truly represent the community in all its diversity, including differences along divides of race, ethnicity, gender, sexual orientation, geographic region within the City, socioeconomic status, and prior experience with the MPD, including those with lived experiences with arrest, criminal conviction, homelessness, substance abuse, and mental health problems. Though civilian oversight boards can provide accountability, relatively few existing boards are considered effective. As the Chicago Police Accountability Task Force report noted, “real and lasting change is possible only when the people most affected by policing have a voice.” Reviews have found that in judging misconduct, civilian oversight boards are often even more deferential to officers than police internal affairs departments, and this appears to be a function of board composition. Civilians who volunteer to serve on oversight boards often have an affiliation with police. Moreover, research shows that education, income, and age are negatively related to reported experience with police mistreatment and positively predict favorability toward police, such that conventional criteria for appointment to city committees inherently create unrepresentative oversight boards. Meanwhile, civilian oversight boards with greater socioeconomic diversity, such as the Syracuse Citizen Review Board, appear to provide greater police accountability. The ACLU has recommended that a majority of board members should be nominated by a designated set of community-based organizations with appropriate characteristics, as implemented for example in Newark, NJ, and we strongly endorse this recommendation. The appointment criteria we specify should ensure a board with sufficient representation of communities most impacted, increasing the likelihood that the board would provide true accountability, and successfully build

trust. It is also critical that the board be provided with access to extensive training, to help ensure sound decision making and credibility.

We recognize that this recommendation will require fiscal outlays. We firmly believe this oversight is well worth the cost, given that it is the most effective way we can see to build true trust in and accountability between the community and the MPD, and to ensure that our recommendations do not become just another report that gathers dust on a shelf. We cannot estimate the total cost of creating a monitor's office at this time because we do not know yet how much the monitor and civilian board will be called upon to undertake investigations and other actions as a part of oversight. We suggest that, at a minimum, the City begin by hiring a highly qualified individual to serve as monitor and provide staff support, an office physically apart from the MPD, and operating expenses for the monitor. With time and experience, the monitor and the City can then gauge what is needed to fully implement the responsibilities of this new position and office.

We thus recommend that the Common Council adopt an ordinance to be signed by the Mayor enacting the following:

Independent Monitor and Civilian Oversight Board

The ordinance to create an independent monitor and civilian oversight board, which the Ad Hoc Committee advocates, includes the following elements:

I. Independent Monitor

A. Duties of the Independent Monitor:

- 1. 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 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 (that is, to ensure that the MPD is who it says it is).**
- 2. 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.**
- 3. 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.**
- 4. Make recommendations regarding policy issues, and address any other issues of concern to the community, the members of the Civilian Oversight Board created pursuant to the Ad Hoc Committee's recommendations (described below), the Chief of Police, other MPD personnel, the Mayor or the Common Council.**
- 5. Provide input to the Civilian Oversight Board for its annual review of the Chief of Police.**
- 6. 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, the Mayor, or the Common Council.**
- 7. Provide a process for receiving and investigating complaints from community members about the Madison Police Department, the Chief of Police, or any personnel.**
- 8. 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 (that is, to ensure that the MPD is who it says it is).

9. 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.
 10. 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.
 11. Provide staffing for the Civilian Oversight Board.
- B. The Independent Monitor should be a person with extensive knowledge of civilian oversight of policing and "best practices" in policing, but who has never been employed by the MPD. It would be desirable that the person have sufficient background in civil rights and equity.
 - C. The Independent Monitor shall be independent of the MPD line of command, but shall be entitled to full cooperation from the MPD, including access to all records, policies, SOP's, data, and other information needed to perform the duties outlined here. To the extent permitted by law, the Monitor should also have subpoena power to compel testimony from witnesses and production of relevant documents.
 - D. 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, including the transparency and reporting responsibilities of the Monitor's Office.
 - E. The Office of the Independent Monitor should have authority and funding to retain and use independent legal counsel.
 - F. The Independent Monitor should be provided adequate resources (funding and staffing) to be effective.

II. Civilian Oversight Board

- A. The work of the Independent Monitor shall be undertaken in consultation and collaboration with a Civilian Oversight Board, whose members shall be appointed by the Mayor and the Common Council 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 as well as a diversity of ages, socioeconomic status, work experiences, gender, geographic residence, and organizations in the fields of mental health, youth advocacy and AODA, and including individuals with arrest or conviction records. A majority of the members of the board shall be 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. Organizations with budgets under \$1 million shall be given priority in making these nominations. Additionally, 25-40% of the Board shall be composed of members with lived experience with homelessness, mental health, substance abuse and/or arrest or conviction records. The composition of the Board shall be run through the City's Racial Equity and Social Justice Initiative process to ensure equity and inclusion.
- B. The functions of the board should include the following:
 1. Provide input to the Mayor and Common Council to assist them in assessing the effectiveness of the Monitor's Office;
 2. 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.
 3. Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;

4. 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;
 5. 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.
- C. In order to determine whether the Monitor's Office is effectively performing its duties and to make recommendations to the Chief of Police and Monitor's Office regarding investigations, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any, the Board should receive regular reports from the Monitor's office and should be allowed to review pertinent portions of the personnel files of personnel and PSIA files, including statements of personnel.
 - D. The members of the Board should engage in ongoing training to build expertise. The Board should have access to whatever training it needs, with sufficient funding provided.
 - E. The City should ensure socioeconomic standing is not a barrier to serving on the Board. This may be achieved by providing childcare, providing stipends, alternating meeting times, etc.

Recommendation #2:

MPD and the independent auditor should continue to review the MPD disciplinary decisions on significant discipline to determine to what degree the PFC post-disciplinary process is impacting those decisions. [OIR Report #143]

Discussion: The PFC hearing process imposes a significant burden in disciplinary cases. If the Chief notifies an officer of his intent to implement a suspension, demotion, or termination, the officer can request a full hearing before the PFC, where the Chief (as complainant) must prove his or her case through presentation of evidence, after which the PFC can affirm, modify, or reverse the disciplinary decision. This burdensome process provides a strong potential incentive for MPD to compromise serious discipline. One indication that this might be occurring is that no MPD-imposed disciplinary cases have been heard before the PFC in at least six years. Moreover, OIR notes a potential pattern of disciplinary leniency on the part of MPD, and finds that when MPD does impose a sanction of suspension, in the majority of cases all or most of the suspension days are held "in abeyance," such that the officer is not actually suspended so long as they do not commit future transgressions. OIR notes that, "In our experience in working with numerous police agencies, we have yet to encounter one like MPD where years have passed and no officer has challenged a disciplinary determination. It would be akin to a criminal justice system in which every defendant pleaded guilty. In policing it is difficult enough to remain firm in disciplining officers; if there is also strong reticence in participating in the post-disciplinary processes, the likely result is reduced accountability for officers." MPD disagrees with OIR's contention that it "settles" suspension cases (reaching agreements with officers) or that discipline has been compromised by the burdensome PFC post-disciplinary process. Nonetheless, the Committee adopted this OIR recommendation (#143) as drafted by OIR because we agree with OIR's position that the "structural incentives and their potential influence merit ongoing attention.... [I]t will be noteworthy and important to gain the auditor's perspective on this issue after his or her having had an opportunity to dig into individual cases and evaluate trend lines." This is an empirical question on which the auditor would be best placed to make a determination.

Recommendation #3:

The PFC should consider the routine use of hearing examiners for any complaints received by the community or MPD to conduct any hearings emanating from those complaints. [OIR Report #144]

Discussion: One structural impediment to the current PFC hearing structure is the makeup of the PFC itself. Commissioners are appointed by the Mayor and often have additional full-time responsibilities. Thus, there can be scheduling challenges to hearing any particular case. One ameliorative measure that has been used in Madison in the past (though not recently) and for which the PFC has promulgated rules is to have the responsibility to conduct the hearing assigned to a hearing examiner. This approach is routinely used in some other Wisconsin cities. A hearing examiner can conduct both initial and evidentiary hearings, more efficiently hear the case, and prepare a comprehensive report for the PFC, including recommendations on outcome. All hearings are videotaped, with transcripts prepared. Case law in Wisconsin has approved this approach as long as the ultimate decision remains with the PFC. The Committee believes that this could facilitate PFC processing of complaints and MPD has stated

that it “supports the use of hearing examiners when appropriate.”

Recommendation #4:

When MPD receives a complaint against the Chief of Police or high-ranking MPD command staff, the Independent Monitor should review the complaint and decide whether an outside investigator should be appointed and produce a transparent public document about that decision-making process. If the PFC receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation. In the absence of an Independent Monitor, the decision must be based on an objective evaluation process like just culture to establish an internal decision tree process. [OIR Report #145]

Discussion: As OIR noted, “When a complaint is lodged against the Chief or high-ranking command staff of a police agency, it presents questions regarding how an investigation can be effectively and fairly conducted. Obviously, there are challenges for any such investigation to be undertaken objectively by the agency itself.” Due to the inherent conflicts of interest, in many municipalities, such a complaint is regularly assigned to an outside investigator.

The original OIR recommendation stated: “When the PFC [Police & Fire Commission] or MPD receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation.” The Committee recognizes that some complaints might be frivolous or trivial, and do not require outside investigation.

But for a complaint submitted to MPD, inherent conflicts of interest would affect not just the capacity of the Department to conduct an unbiased investigation, but also its capacity to make an unbiased decision on whether an outside investigation was warranted. Command officers would have an inherent conflict of interest about whether to appoint an outside investigator to investigate themselves or one of their colleagues (i.e., it would be asking the people against whom the complaint has been lodged to decide whether it’s frivolous enough to not warrant an outside investigation).

Fortunately, the existence of an Independent Monitor could resolve this issue. The Independent Monitor could review the complaint and make a decision on whether an outside investigator should be appointed, and publicly document the decision-making process in a transparent fashion. In the absence of an Independent Monitor, the Committee believes that it would be necessary to build an objective evaluation process for making this decision – an institutional mechanism that would remove bias with a structured algorithmic analysis, so the decision was not just a personal opinion. Potentially, a decision tree process could incorporate factors such as whether the complaint alleged violation of a law or departmental policy (i.e., was alleging misconduct), whether it involved a potentially intentional or reckless act, whether an attorney of ordinary competence would recognize it as so lacking in merit that there is no substantial possibility that it would be sustained, etc.

A complaint could also be brought to the PFC. One major weakness of the current PFC process is that it provides no real mechanism to investigate the facts of a case prior to proceeding to hearing. Moreover, the complainant does not have appointed counsel whereas the officer is always represented by counsel, creating a difficult, asymmetric situation. As OIR noted: “The current mechanism provides no formal discovery process akin to civil litigation through which facts could be developed.... Instead of requiring a complainant to proceed to a hearing conducted by the PFC itself, as was recently undertaken, PFC could refer any such future complaint to an outside independent investigator. That way, facts could be collected efficiently and objectively, and PFC and the complainant could rely on the facts developed during the investigation resulting in a streamlined hearing process. There is precedent for such a process in Madison; in the 1960’s a complaint made by the [Madison Professional] Police [Officers] Association against the Chief was referred out for an independent investigation.” As Mike Gennaco of OIR further explained: “I do think there is an advantage to telegraphing to the PFC that when there is an allegation against the Chief, it shouldn’t necessarily be processed by the complainant, which is what has happened the most recent couple times that there have been complaints against the Chief. The citizen who makes a complaint has either had to hire counsel or find counsel to go forward and there wasn’t any outside investigator collecting the facts.” Using outside investigations should enable fairer and better-informed adjudication by the PFC. (Note also that this recommendation works in tandem with the Committee’s Recommendation #1 to improve the PFC process. Recommendation #1 urges the City to create the office of the Independent Monitor with authority to appoint counsel for individuals who have brought potentially meritorious complaints to the PFC.)