Updated: Legislative Memo for Substitute Ordinance Revisions of the OIM and PCOB

Alders and Members of the PCOB,

I've prepared this **updated memo** to outline the intent and impact behind the **substitute ordinance revisions** to MGO 5.19 and 5.20, which govern the Office of the Independent Monitor (OIM), and the Police Civilian Oversight Board (PCOB).

This substitute replaces the original proposal introduced under Legistar 92386 and reflects a collaborative legislative process. The original ordinance was introduced as a "first draft" to initiate discussion and gather feedback.

While the PCOB did not advance formal amendments and ultimately voted to reject the initial proposal, the two meetings provided meaningful discussion that helped inform this substitute. Additional feedback was also gathered through follow-up conversations with individual PCOB members, Alders, and City staff.

This substitute incorporates that input, including key elements from Amendment #1 to the original proposal, along with targeted refinements. Amendments #2 and #3 are not included. It should be understood as my "final draft" following that process. As with any ordinance, Alders may still introduce additional amendments as they see fit. This legislative memo only covers my proposals.

The goals of these revisions are to:

- Improve transparency and communication between the OIM, PCOB, and the Common Council
- Provide clearer expectations for reporting and oversight
- Clarify the operational and administrative structure of the OIM within City government
- Ensure long-term effectiveness and sustainability of Madison's independent police oversight model

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➢ *Why These Changes are Necessary*

Implementation of the OIM and PCOB over time has revealed persistent issues that extend beyond ambiguity and, in some cases, have resulted in litigation and court findings involving violations of state & federal law, and existing ordinance requirements and City policies. These include:

- **Documented concerns related to data handling, records access, and use of City systems**, including uploading sensitive and confidential MPD data onto personal laptops resulting in MPD temporarily pausing all data-sharing with the OIM
    - MPD Chief Memo to Interim Monitor Hillson (Nov. 7, 2025)
    - OIM Staff Response (Nov. 10, 2025)
- **Unclear or inconsistent adherence to State law and City administrative processes**, including hiring, contracting, budgeting, and technology policies
    - Ald. Govindarajan Email to PCOB Chair Pearson (Mar. 24, 2026)
- **Failure to consistently provide required reporting** to the Common Council despite existing ordinance obligations, along with breakdowns in internal communication that have limited the flow of information to both the PCOB and City leadership
    - Alds. Vidaver, Govindarajan Letter of Concern to PCOB Chair Pearson (Sept. 5, 2025)
    - Mayor's Office Email (Apr. 4, 2026)
- **Ambiguity and conflict in using independent legal counsel**, creating uncertainty in legal responsibility and compliance
- **Various violations of city APMs**, detailed throughout in the linked documents above

In addition, there have been instances where the lack of clear administrative structure has contributed to:

- Delays in responding to public records requests
- Confusion regarding authority and responsibility across City departments
- **Lawsuits which have resulted in legal and financial repercussions** (Details of Lawsuits)

None of these issues are theoretical – they reflect documented operational breakdowns **that have occurred** under the existing structure. This proposal does not alter the mission of the OIM or the role of the PCOB. Instead, it establishes expectations and guardrails to ensure that the system works within the framework required of all City agencies.

The OIM has the potential to be a powerful accountability measure, and I believe it must be preserved, even through difficult budget cycles. However, if the OIM and PCOB continue to claim independence from administrative accountability while operating in violation of state and federal laws or city ordinances and APMs, it makes it much harder for the Council to fund a financial liability during a worsening structural budget deficit.

While not all of these issues are ongoing, they reflect recurring challenges that have required intervention across multiple departments. It displays a pattern where accountability and transparency have failed, which is why I believe this substitute ordinance in its entirety is necessary in preserving and stabilizing the PCOB and OIM for the future.

➢ *Core Principles of this Proposal: Independence and Accountability*

This proposal is guided by two core principles:

1. **Independence in Mission** – The OIM must be free to conduct investigations, issue findings, and make recommendations without interference
2. **Accountability in Administration** – as a City agency, the OIM must operate within the legal and administrative framework that governs all City entities

These principles are not in conflict with one another; effective oversight depends on both principles. This proposal reinforces both.

Nothing in this proposal allows the Common Council, Mayor, or City staff to direct or influence investigations, findings, or recommendations. **Those functions remain fully independent.** Instead, these revisions clarify administrative expectations so that the OIM can function effectively.

Again,

Nothing in this proposal allows the Common Council, Mayor, or City staff to direct or influence investigations, findings, or recommendations made by the OIM.

➢ *Summary of Key Changes*

1. Administrative Structural and Legal Compliance – MGO 5.19(6)(c)

This change clarifies that while the OIM is independent in its mission, it operates within the City's existing framework for all non-mission related matters, such as hiring and management of staff (excluding the Independent Monitor), contracting, budgeting, technology usage, etc. It also clarifies that the OIM must comply with federal and state law, city ordinances, and applicable city Administrative Procedure Memoranda (APMs).

There is one minor addition in this substitute compared to the original proposal.
"Management of staff other than the Independent Monitor" is added in clarifying that the OIM must follow the City's administrative policies and procedures. Previously it only included hiring of staff.

Intent:

- Establish a clear and consistent understanding of how the OIM functions as a City agency
- Ensure alignment with existing City processes and legal requirements
- Reduce ambiguity around administrative authority and responsibility
- Clarify accountability structure for administrative compliance

Context:
This clarification responds to operational challenges in recent months, including:

- Delays in open records responses
- Questions regarding adherence to City policies and procedures
- Issues related to technology usage and data handling
- Specific details can be found under the "Why These Changes are Necessary" section on Page 2 of this Legislative Memo

Important Clarifications:

- This provision is **explicitly limited to matters separate from the OIM's core mission**
- It does not apply to investigations, findings, recommendations, or oversight activities
- It does not grant the Common Council authority over OIM investigative work
- It does not alter the recruitment, appointment, or confirmation process for the Independent Monitor

2. **Clarifications on Use of Independent Legal Counsel – MGO 5.19(6)(d)**

The ordinance already provides for the use of independent legal counsel. This change clarifies the scope and application of that authority, such as that the OIM may retain independent legal counsel **for matters directly related to its oversight mission**. The OIM may utilize independent counsel for investigations, policy recommendations, and other oversight activities. The Office of the City Attorney remains responsible for general legal matters, administrative compliance, employment, and open records and open meetings compliance, etc.

This substitute does not change anything from the original proposal. This revision ensures that the OIM has appropriate legal support in its oversight-related functions, while maintaining consistency with broader City legal structures.

Intent:

- Addresses concerns raised in the OIM Annual Report regarding potential conflicts with the City Attorney
- Clearly define when independent legal counsel is appropriate
- Maintain consistency in how City agencies handle general legal matters
- Maintains city's obligation to fiscal responsibility

Context:

- The Office of the City Attorney (OCA) serves as legal counsel for the City of Madison as a whole and is responsible for ensuring that all City agencies, including the OIM and PCOB, operate in compliance with applicable laws and ordinances
- This role is not discretionary. The OCA does not "choose" between departments, but provides legal guidance based on the City's obligations as a municipal entity
- Independent legal counsel remains appropriate for oversight-specific functions, while the OCA continues to ensure consistency and legal compliance across all City operations

Important Clarifications:

- This provides clarification and and specifies the application of existing authority
- It does not alter the role of the City Attorney for general legal and administrative matters
- It ensures both independence where necessary for oversight functions, and consistency with City legal processes where appropriate

3. **Access to MPD Records – MGO 5.19(7)(i)**

This substitute updates this subsection based on key elements from Amendment #1 to the original proposal, with notable modifications. This change clarifies how the OIM accesses records from the Madison Police Department (MPD), while ensuring compliance with applicable state and federal law. The ordinance continues to affirm that OIM has access to all records necessary to fulfill its duties. The MOU will also define how the OIM manages, stores, and shares information it receives from MPD.

However, it clarifies that:

- The mechanics of access will be governed through a formal Memorandum of Understanding (MOU) between the OIM, MPD, and the Office of the City Attorney.
- The MOU defines **how** information is accessed, managed, and stored – not **what** information the OIM is entitled to access.
- The MOU governs the mechanics of access and shall not restrict the categories of records or data to which the OIM is entitled to under this subsection

The removal of "computer databases" reflects legal and technical constraints, as direct system access is not always permissible under state and federal law. This does not limit access to the data within the computer databases. In essence, OIM staff can not walk into MPD and log in to their computers directly, but they will instead be able to request the data on those computers.

Intent:

- Ensure sustainability and legally compliant data-sharing practices
- Clarify roles between ordinance authority and MOU implementation
- Protect sensitive and confidential information, including victim data
- Provide long-term clarity for both OIM and MPD

Context:

- This also addresses past issues involving the handling of sensitive MPD data, including instances where confidential information was moved onto personal devices, as detailed in page 2 under "Why These Changes are Necessary."

Important Clarifications:

- This change does not limit the categories of records the OIM may access
- It clarifies the methods and structure of access to ensure compliance with applicable law
- The MOU governs process, not access rights

4. **Quarterly Reporting Requirements for the OIM – MGO 5.19(8)**

This change requires the OIM to submit quarterly reports to the Mayor and Common Council, in addition to the existing annual report. These reports will appear on the Common Council agenda for consideration and discussion. There are some listed requirements for what must be in the report, but the OIM can add additional information as they see fit.

This substitute removes some reporting requirements which were in the original proposal. It removes average and median time for cases to be resolved, summary of policy recommendations made, and providing information such as staffing levels, vacancies, etc. **The only addition** is a summary of work completed by the OIM in accordance with subsection 7: the powers and duties of the OIM and the Monitor. This is to minimize administrative burden on OIM staff.

Intent:

- Provide regular, concise updates on OIM operations and performance
- Allow Council and the public to better understand:
    - Case volume and backlog
    - Outcomes and recommendations
    - What else the OIM is currently working on

Important Clarifications:

- Reports are intended to be **brief and focused**, to avoid additional staff burden
- This change does not alter the structure of independence of the OIM
- This change does not direct or influence the work of the OIM, it just requires transparency

5. **Annual Reporting Requirement for the PCOB – MGO 5.20(9)(f)**

This change clarifies existing requirements for the PCOB to submit an annual report to the Mayor and Common Council *for consideration*, meaning it would have to appear on our agenda for potential questions and discussion. While this requirement has existed since the creation of the Board, it has not yet been fulfilled.

This substitute removes the word "budget" from the original proposal. It removes the requirement that the PCOB make recommendations on MPD's budget. This authority is explicitly given only to the Finance Committee and the Common Council. The PCOB maintains the authority to add additional information into this report as they see fit.

Intent:

- Provide visibility into the work of the Board as a governing body
- Ensure Council and the public understand:
    - Board activities and priorities
    - Community engagement efforts and outcomes
    - Policy recommendations
- Improve transparency for a body that plays a central role in oversight but has not consistently provided formal reporting to the Common Council

Important Clarifications:

- The report is intended to be a concise summary, recognizing that Board members are community volunteers.
- This is not intended to create an administrative burden or require technical reporting

➢ *What This Proposal Does Not Do*

To be clear, this proposal does **not:**

- Change the authority of the OIM or PCOB in conducting investigations
- Allow the Common Council, Mayor, or City Staff to direct or interfere with oversight activities
- Modify the hiring process for the Independent Monitor
- Implement policy changes related to:
    - Body-worn cameras
    - OIM staffing levels or budget
    - Broader structural reforms

Those issues remain important and I hope that the Council addresses them in due time, likely closer to budget deliberations.

➢ *Final Perspective*

Madison's independent police oversight system is unique in Wisconsin and has the potential to serve as a strong model for accountability and community trust. I genuinely believe in the OIM and PCOB's potential to be a great service for our city, but I believe there are structural issues that must also be addressed.

These revisions are intended to:

- Strengthen transparency
- Improve communication with elected officials and the public
- Clarify administrative structure
- Support the long-term success of the OIM and PCOB

This proposal focuses on **practical, achievable improvements** that can be implemented in the near term, while allowing broader policy discussions to continue. As we approach upcoming budget deliberations, I anticipate continued conversations about the long-term viability of the OIM and PCOB. **The Office has the potential to be a powerful accountability measure, but that depends on its ability to operate consistently and in compliance with applicable laws and City policies.** When that standard is not met, it becomes significantly harder for the Common Council to justify continued investment, particularly given current fiscal constraints.

I believe that adopting **these recommendations will strengthen the trust that the Common Council has in the OIM and PCOB, and will only aid in them continuing their mission more effectively and sustainably.**

Respectfully,
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