

DRAFT 7-3-2020

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

Drafter's note: The ordinance(s) for the Independent Monitor and Civilian Oversight Board/Committee could be placed in a number of different Chapters of Madison's ordinances. The Workgroup could create an entire new chapter, Chapter 42, which could be entitled something like "Civilian Oversight of the Madison Police Department" and then include sections establishing the Monitor and the Board/Committee within that new chapter. Another option would be to include both Sections in the existing Chapter 5 related to Police Department and Police Regulations. A third option would be to include the Monitor's ordinance in Chapter 5 and the Board/Committee ordinance in Chapter 33, where the City has tried to migrate all ordinances creating boards, commissions, or committees. At this point, the Office the City Attorney does not have a strong preference for where these ordinance are placed. For this draft, we have used Chapter 5 solely as a way to make the draft easier to reference. These section numbers can be easily changed based on where the group decides it wants the ordinances to live.

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.

Drafter's Note: This language came from pgs. 29-30 of ad hoc report.

- (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: This language came from p. 29-32 of the ad hoc Report. It was not entirely clear from the ad hoc Report whether the committee was using "report to" in the practical or formal human resources "supervisory" sense. Later, in recommendations related to the oversight board, the ad hoc Report lists as a board duty the ability to assess the effectiveness of the monitor's office, but this also may not necessarily be the same as traditional supervision, etc. As noted in other portions of this draft, the Workgroup will need to clarify the formal structure of the position, as well as the practical requirements related to whom the monitor must report on its work. The Workgroup may also wish to schedule a time for the Finance Director to attend an upcoming meeting to discuss how different organizational concepts might work.

- (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, the

Madison Fire Department, or the Dane County Sheriff's Office. The Monitor should also have sufficient background in civil rights and equity.

Drafter's Note: This language come from p. 32 of the ad hoc report and borrows from the Denver Ordinance.

- (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: The ad hoc Report did not make definitive recommendations regarding how the Monitor would be hired, supervised and evaluated during the term of their employment contract. This section borrows heavily from the Denver Ordinance and assumes that the Monitor will be a managerial employee, exempt from the Civil Service System and working on a 5-year managerial contract. The Workgroup will need to discuss, among other things, how the Monitor selection and recruitment process fits within the current structure for hiring managerial employees set out in M.G.O. § 3.54. As noted above, It will also need to discuss and decide who/what the Monitor will report to and if the Monitor's work will be evaluated under M.G.O. § 3.54(9)(c) like other Managerial employees, or some alternate system.

- (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.

Drafter's Note: This section comes from language on p 30 of the ad hoc Report related to "administrative capture."

- (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 have formerly been employees of the MPD, Madison Fire Department, or the Dane County Sheriff's Office.

Drafter's Note: These duties came directly from pgs. 31-32 of the ad hoc Report. As requested by the Workgroup, the wording of these duties in this Draft is exactly as written in the Report. In subsequent drafts, the OCA may wish to edit this language to more closely track established style and language found in other city ordinance and to improve readability. For example, it may be a good idea to break up sub. (b) into multiple parts and subparts. We left the language as is for this initial review so it can be easily related to the ad hoc Report.

Additionally, these duties appear to mostly coincide with the mandatory and discretionary oversight duties contained in the Denver Ordinance. The OCA suggests that when reviewing the above duties the Workgroup compare them to the sections in the Denver Ordinance entitled Mandatory and Discretionary oversight duties, which were not repeated here.

Finally, the OCA may continue to highlight some provisions that need some more thought. For example, for appointment of independent counsel, would that be subject to the fee shifting provisions in Ch. 5 or some similar provision, or would the City always pay? Also, for sub. (c), independent investigations, does the ordinance need to include clarification language regarding any budgetary restraints that may exist at a given time? These are just examples. As the workgroup proceeds to a second draft we can identify areas that may need further fleshing out or clarification.

(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: This provision has been started using ad hoc Report recommendations contained on pgs 29-32, but has been left open for the Workgoup to discuss and fine tune. Further, since these provisions overlap and complement the duties outlined in sub. (6) it may ultimately make sense to combine (6) and (7) into one provision – "Powers and Duties of the OIM and Monitor" – like we did for the Oversight Board Powers and Duties below.

(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: This provision is reproduced verbatim from the Denver ordinance. Reporting is also listed in the Duties of the OIM, sub. (6)(h) above. The ordinance probably does not need this in both places, but we provided this separate section for your reference so you can see how it might look to more specifically split out public reporting requirements.

(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 department of safety, police, sheriff, or fire 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.

Drafter's Note: This provision is reproduced verbatim from the Denver ordinance for the Workgroup's consideration and is consistent with ad hoc Recommendation 1.A.D. It may need to be edited to include relevant Madison references. For example, the term "deliberative process" is unique to Denver. Also, note that we removed Denver's sub. (b) because it was not apparent from the ad hoc Report what involvement OIM would have in criminal investigations.

5.17 Police Civilian Oversight Board/Committee

- (1) Creation. A Police Civilian Oversight Board/Committee is hereby created for the City of Madison.

Drafter's note: Per previous discussion regarding the technical difference between a Board and Committee under the MGOs, the Workgroup will decide what to name this entity.

- (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.

Drafter's note: This language was drawn from various parts of the ad hoc Report, pgs 29-30.

- (3) Board/Committee Composition.

- (a) Members. The Police Civilian Oversight Board/Committee shall have ____ (__) voting 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.

Drafter's note: This language was taken directly from the ad hoc Report p. 32 and from the 2d Substitute Resolution creating the Workgroup.

In addition to determining the total number of members for the group, the Workgroup will need to discuss and clarify whether (and how many) individual members "shall" fit any of these descriptions.

An additional consideration for the Workgroup is whether it wants to also include alternate members, who would be able to participate and vote when a voting member is absent. This is a common practice among Madison Boards, Commissions, and Committees ("BCCs").

One point to note is that the ad hoc Report did not specifically recommend that a member of the Board could not be a previous employee of MPD, like they did for the OIM. The Denver Ordinance does. What that intentional? Or should that be added as a requirement for Board/Committee members?

Finally, the Workgroup may discuss whether members must be residents of Madison at the time of appointment and/or throughout the entirety of their

term. While this is the norm and requirement for most Madison BCCs, it may not fit neatly with the Ad hoc's recommendation that socioeconomic status not be a barrier to participation, which is known to impact how frequently any given individual may have to move, including to areas just outside City boundaries.

In reviewing this section, the OCA suggests members review the Denver ordinance provision for appointment of members to consider whether there are any additional provisions it may want to include here.

As with other sections, the OCA may wish to edit this provision for style and readability, perhaps breaking up the lists and requirements into subparts.

- (b) Appointment of Members. Members shall be appointed by the Mayor and confirmed by the Common Council. 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 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 Common Council shall not confirm an appointment until it receives a recommendation from RESJI.

Drafter's note: This language was taken from p. 32 of the ad hoc Report. The language also contained reference to a "designated set" of organizations. The Workgroup should discuss how this list is made and maintained. For example, does DCR and RESJI maintain the list and provide it to the Mayor when an appointment is needed? Does the workgroup actually want to include the designated set language in the ordinance?

- (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.

Drafter's note: The Workgroup will need to determine the length of each term. Similarly, the Workgroup may want to consider whether it wants to initially stagger terms to ensure that the Board does not experience complete turnover every ___ number of years.

- (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.

Drafter's note: This language came from ad hoc Report p. 33 and the 2d Substitute Resolution. If the Workgroup decides to include the possibility of "stipends" it will want to discuss the human resource and possible tax consequences associated with providing a stipend.

- (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.

Drafter’s note: This would be the section to include any other exceptions the group may want to make. The public comment rule is an example.

- (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.

Editor’s note: These duties are listed in the ad hoc report pgs. 31-32 and in the 2d substitute resolution creating the workgroup. When reviewing these provisions, the OCA recommends that the group compare them to the provisions contained in Denver’s Ordinance, Sec. 2-383 (Interaction between the monitor’s office and the citizen oversight board) and 2-384 (Reports of the Citizen Oversight Board), as well as the remaining sections of Denver’s ordinance.