

## DRAFT 7-23-2020

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

*Editor's Note: Decide whether to keep in Ch. 5, move to Ch. 42, or leave Monitor in Ch. 5 and put Board in Ch. 33 with the City's other Boards, Commissions, and Committees.*

#### 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 the MPD is accountable and responsive to the needs and concerns of all segments of the community, thereby building and strengthening trust in the MPD throughout the community.
- (2) Independent Monitor. The OIM shall be managed and directed by a full-time Independent Monitor ("Monitor"). The Monitor shall be a managerial employee as defined in M.G.O. § 3.54(9), except that the Monitor shall be recruited, hired, and supervised by the Police Civilian Oversight Board ("Board") as provided in M.G.O. § 5.17. The Monitor is responsible for ensuring that the duties of the OIM are fulfilled in consultation and collaboration with the Board. Subject to available funding, the Monitor shall be responsible for hiring, supervising and managing sufficient professional and support staff to effectively perform the duties of the OIM.
- (3) Minimum Qualifications of the Monitor. The Monitor shall be a person with extensive knowledge of civilian oversight of policing, "best practices" in policing, civil rights, and equity. The Monitor shall have never been employed by the MPD, be an immediate family member of current MPD employees, or worked as a law enforcement officer within the State of Wisconsin in the ten (10) years prior to appointment as Monitor.

*Editor's Note: Need to determine degree of relationship with other MPD employees and then make consistent in similar provisions throughout.*

- (4) Recruitment, Appointment, and Confirmation of the Monitor.
  - (a) Recruitment and Appointment by the Board. The Board shall recruit and appoint the Monitor, with the assistance of the Common Council and Office of Human Resources. In fulfilling its duty to recruit and appoint the Monitor, the Board shall develop an appointment process that includes broad community-based outreach and ensures the selection of an individual who will provide the expertise and independence necessary to carry out the duties of the OIM.
  - (b) Confirmation by the Common Council. The appointment of the Monitor by the Board shall not be effective unless and until confirmed by the Common Council.
- (5) Supervision of the Monitor. The Monitor shall report directly to the Board and the Board's Executive Subcommittee. While it is intended that the Monitor have significant independence and discretion in conducting the day-to-day activities of the OIM, the

Monitor shall act as directed by the Board and the Board's Executive Committee unless doing so would jeopardize the Monitor's independence from the MPD.

*Editor's Note: Confirm language added here regarding Board's ability to direct Monitor captures Workgroup's intent.*

(6) Independence of the Monitor.

- (a) Independent from MPD. The OIM shall in all respects remain sufficiently independent from the MPD in order to prevent the OIM and the MPD from becoming so closely aligned that the OIM cannot effectively fulfill its duties. For example, at a minimum, the OIM shall not be physically located in the same office as MPD management, officers, or other personnel.
- (b) Independent from City Staff and Officials. No City employee or official shall attempt to use their political or administrative position to unduly influence or undermine the independence of the Monitor or any employee of the OIM in the performance of their duties and responsibilities as set forth in this ordinance.

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

- (a) Monitor Policy Compliance. The OIM shall actively and on an ongoing basis monitor the MPD's compliance with its own Standard Operating Procedures ("SOPs"), governing laws, and lawful orders from the Common Council, including compliance with or progress toward meeting any recommendations or directives contained in the MPD Policy & Procedure Review Ad Hoc Committee Report (October 18, 2019) and the Independent Police Oversight and Review Report ("OIR") Report, to the extent they are adopted and approved by the Common Council, as well as the MPD's own stated goals and mission statement.
- (b) Monitor MPD Programs, Activities, Investigations, and Use-Of-Force Incidents.
  - (i) Monitor Activities and Conduct Independent Investigations. The OIM shall actively monitor MPD audits of MPD programs and activities, police officer use-of-force incidents, and MPD investigations of personnel. While doing so, the Monitor may submit requests to the MPD and the Chief of Police to investigate or further investigate any matter the Monitor is reviewing. The MPD shall respond to the Monitor's request in writing, stating whether it intends to conduct a further investigation and, if not, stating the reasons it is declining to investigate. At any time, the Monitor may choose to undertake their own independent investigation of personnel, in response to external or internally generated complaints of misconduct.

*Editor's Note: Review and confirm new language regarding process for requesting further MPD investigation.*

- (ii) Make Recommendations to Chief of Police. Based on its review of MPD programs, activities, investigations, and use-of-force incidents, the OIM may make recommendations to the Chief of Police regarding

administrative action, including possible discipline, for such personnel.

- (iii) Make Referrals to the Police and Fire Commission. Based on its review of MPD programs, activities, investigation, and use-of-force incidents, the OIM may refer appropriate cases to the Police and Fire Commission (“PFC”) for disciplinary action.

*Editor’s Note: We should clarify what we mean by “make referrals to the PFC for disciplinary action.”*

- (iv) Appoint Counsel for Aggrieved Individuals. The OIM may appoint counsel to provide representation to aggrieved individuals in presenting and litigating complaints against MPD personnel with the PFC, to the extent the Monitor concludes that those complaints have arguable merit.

*Editor’s Note: Need to clarify whether there are any parameter within which the City is going to pay for attorneys for individuals. Other cities fund independent counsel for the Board and/or Monitor (like this ordinance does in (7)(m)) below, but not necessarily for individuals litigating claim before a Police Commission. Brian from NACOLE said that he is not aware of another city that pays attorney’s fees for individuals. This could be part of a discussion with the Finance Director related to the projected budget of the OIM so that we can describe it accurately in the ordinance.*

- (v) Other Monitoring Requested by the Board. The OIM shall monitor any other internal investigation of possible misconduct or undertake an independent investigation of possible misconduct by personnel when requested to do so by the Board.

- (c) Review and Investigate Command Staff Complaints. When a complaint is filed with the MPD or the PFC against the Chief of Police or high-ranking MPD command staff, the OIM shall determine whether the complaint warrants appointment of an outside investigator to conduct an independent investigation, and if so, make that appointment.

*Editor’s Note: Should clarify what we mean by “high-ranking MPD command staff.”*

- (d) Make Policy Recommendations. The OIM may make recommendations regarding policy issues, and address any other issues of concern to the community, the members of the Board, the Chief of Police, other MPD personnel, the Mayor or the Common Council.
- (e) Assist in Board’s Annual Review of the Chief of Police. The OIM shall provide input to the Board for its annual review of the Chief of Police.
- (f) Process Complaints. The OIM shall create and support a process for receiving and investigating complaints from community members about the MPD, the Chief of Police, or any personnel.

- (g) Conduct Community Outreach. The OIM shall engage in community outreach which may include talking with the community about police policies, procedures or training, gathering input from a range of community members and groups, reaching out to special underserved/marginalized communities, and publicizing processes for handling complaints.
- (h) Staff Police Civilian Oversight Board. The OIM shall, in conjunction with the Office of Mayor and Common Council, ensure that the Board has the resources it needs to fulfill its duties, including that the Monitor shall serve as Executive Secretary to the Board.
- (i) Hire OIM Staff. The Monitor shall, in collaboration with the Human Resources Department, recruit and hire all staff in the OIM. No employees of the OIM shall be former employees of MPD or be an immediate family member of a current MPD employee. Nor shall they be current or former law enforcement officers who have worked as a law enforcement officer in the state of Wisconsin within ten (10) years of hire by the OIM. It is anticipated that minimum staffing for the OIM will include the Monitor, an administrative support employee and a data analyst.

*Editor's Note: New language anticipates the Monitor, administrative support, and a data analyst as minimum staff required for the OIM.*

- (j) Access MPD Records. The OIM shall have unfettered access to all MPD records, policies, Standard Operating Procedures, data, and other information necessary to fulfill the duties of the OIM.

*Editor's Note: Discuss whether to clarify whether there are any documents to which the Monitor would not have access because disclosure would be prohibited by law, or whether to include "to the extent permitted by law" like we do for subpoenas. For example, MPD cannot turn over officer medical records without an authorization from the officer.*

- (k) Issue Subpoenas. The Monitor may, to the extent permitted by law, issue subpoenas for the purpose of compelling testimony or receiving documents necessary to fulfill the duties of the OIM.
- (l) Develop and Issue Reports and Policy Recommendations. The OIM and Monitor may develop and issue reports and policy recommendations to relevant entities as described above and to the public as described in sec. (8) below.
- (m) Retain Independent Legal Counsel. The Monitor may retain independent legal counsel if necessary to fulfill the duties of the OIM.

*Editor's Note: Note that this is different than the authority to appoint counsel for individuals found in Sec. (7)(b)(iv) above. Confirm that this would be independent counsel to assist the Monitor, not to represent individuals.*

- (n) Issue Public Reports. The OIM shall issue public reports as described in sec. (8) below.
- (8) Public Reporting. One of the key components of the OIM is its duty to develop and issue independent reports and recommendations to the Police Civilian Oversight Board,

Mayor, Common Council, and community. Accordingly, the OIM is authorized to issue the following public reports.

- (a) Annual Public Report. The OIM shall submit an Annual Public Report (“Annual Report”) to the Mayor and Common Council by March 15. At a minimum, the Annual Report shall:
- (i) Set forth the work of the OIM during the prior calendar year;
  - (ii) Identify trends regarding complaints, investigations, and discipline of MPD 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;
  - (iii) Make recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes to policies, rules, and training;
  - (iv) Provide other pattern and practice analysis as needed; and
  - (v) Assess the MPD’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.

*Editor’s Note: Is March 15 each year a good date?*

- (b) Ongoing Public Status Reports. In addition to submitting the annual report, the OIM shall maintain an ongoing status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any.
- (c) Additional Public Reports. The OIM, as determined within the discretion of the Monitor or as requested by the Board or the Executive Subcommittee of the Board, may publish additional public reports throughout the year about matters within the duties of the OIM.

(9) Confidentiality.

- (a) The Monitor, OIM staff 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 Monitor, OIM staff and all persons who participate in the MPD’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.

*Editor's Note: This provision is still a bit of a holdover from Denver's Ordinance. Review and clarify.*

(10) Relationship of Monitor and MPD.

(a) The Monitor, MPD, and Chief of Police shall jointly develop standard operating procedures to govern the relationship and flow of communication between the OIM, Monitor, MPD, and the Chief of Police regarding complaints, investigations, appeals and findings involving MPD and MPD law enforcement officers.

(b) The Monitor, MPD, and Chief of Police shall provide each other with notice of complaints, investigations, appeals and findings involving MPD and MPD police officers as soon as possible, including with such information and cooperation as is appropriate and necessary for the receiving party to take meaningful action or conduct a meaningful review of the matter.

*Editor's Note: Replaced "timely manner" with "as soon as possible...as is appropriate and necessary for the receiving party to take meaningful action or conduct a meaningful review of the matter." Is this specific enough, or do you want to include a stated amount of time?*

(c) As provided in sub. (7)(b)i. above, the Monitor may submit requests to MPD and the Chief of Police to investigate or further investigate any matter the Monitor is reviewing. MPD shall respond to the Monitor's request in writing stating whether it intends to conduct further investigation and, if not, stating the reasons it is declining to conduct further investigations.

(d) As provided in sub. (7)(j). above, the Monitor shall have unfettered access to MPD records MPD records, policies, Standard Operating Procedures, data, and other information necessary to fulfill the duties of the OIM, and the MPD and Chief of Police shall ensure the Monitor's requests such documents are fulfilled as soon as possible.

*Editor's Note: As above, discuss whether this provision needs a clarification of whether law would prohibit the disclosure of any document.*

## 5.17 Police Civilian Oversight Board

- (1) Creation. A Police Civilian Oversight Board (“Board”) is hereby created for the City of Madison.
- (2) Purpose. The Common Council recognizes that civilian oversight of the Madison Police Department (“MPD”) is critical to ensuring that the MPD responds to the needs and concerns of all segments of the community, thereby building and strengthening the community’s trust in the MPD’s services. The purpose of the Board is therefore to provide within the City of Madison a body that is independent from the MPD, authorized to hire and supervise the Independent Police Monitor (“Monitor”), and required 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 and activities, including related to rules, hiring, training, community relations, and complaint processes.
- (3) Board Composition.
  - (a) Members.
    1. Number. The Board shall have eleven (11) voting members and two (2) alternate members. Alternate members shall act with full power when any other member of the Board is absent or is unable to act because of a conflict of interest. The second alternate member shall so act only when the first alternate member is absent or unable to act because of a conflict of interest or when two Board members are absent or unable to act because of a conflict of interest. In addition, alternates may participate in Board discussion and serve on subcommittees.

*Editor’s Note: Do you want an alternate to be able to serve on the Executive Subcommittee? If not, we should remove the last part of the last sentence.*
    2. Diverse Composition. The Board’s composition shall be diverse and include individuals:
      - a. From Madison’s various communities, including, but not limited to, representatives of the African American, Asian, Latino, Native American and LGBTQ communities;
      - b. With a diversity of age, socioeconomic status, gender, geographic residence, and work experience;
      - c. Who are from organizations in the fields of mental health, youth advocacy and AODA; and members with arrest or conviction records.

*Editor’s Note: Clarify whether it is mandatory that there be a member from each category, if all members must be from at least one of these categories, or if there is a strong preference that the Board be comprised of individuals from these categories.*
    3. Nominated by community-based organizations. All 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 public safety administration of the City. The designated

set of organizations shall be initially created in conjunction with the adoption of this ordinance and the Monitor, Board, and Common Council shall ensure that it is updated at least every two (2) years.

4. Emphasis on lived experience. 20-40% of the Members shall have lived experience with homelessness, mental health, substance abuse and/or arrest or conviction records.
5. Limited law enforcement experience. No Member may be a current or former MPD law enforcement officer or related to a current or former MPD law enforcement officer. Nor may any Member be a current or former law enforcement officer who has worked as a law enforcement officer in the state of Wisconsin in the ten (10) years prior to their appointment to the Board.

*Editor's Note: Here, and in other portions of the ordinances including this language, confirm what degree of relation we are seeking to prohibit (immediate family member?) and make all similar provisions consistent.*

6. Compensation. Members shall receive a stipend as set by the Common Council for their service to the Board and, if applicable, the Board's Executive Committee, as set and determined by the Common Council.

*Editor's Note: This requires a stipend but leaves the specifics to the Common Council. Do you want to set the specifics in the ordinance?*

(b) Appointment and Residency of Members.

1. Appointment. 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, 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 public safety administration of the City. In considering nominations from these organizations, the Mayor shall give priority to nominations from organizations with budgets under \$1 million.
2. Residency of Members. Members shall be residents of the City of Madison at the time of appointment. However, the Common Council recognizes that some residents may experience high housing mobility and, as a result, may move outside city boundaries during their term for housing or financial reasons. Members who move outside of the City of Madison may remain on the Board for the duration of their term provided that they still reside in Dane County.

*Editor's Note: Can they be reappointed if they still reside outside Dane County when their term ends?*

(c) Terms and vacancies.

1. Terms. Members shall have staggered four-year terms, except that when the Board is initially created and filled, five (5) members shall be appointed for four-year terms, three (3) Members shall be appointed for

three-year terms, and five (5) Members, including the two (2) alternate Members, shall be appointed for two-year terms.

2. Vacancies. Any vacancy occurring during the term of any Member shall be filled by the process set forth above. If a Member is appointed to fill an unexpired term, that Member's term shall end at the same time as the term of the person being replaced.

- (4) Member Training and Support. Members shall receive the training necessary to develop expertise in police oversight and community policing, including, at a minimum, training regarding \_\_\_\_\_. Members shall maintain and further develop their expertise through annual training provided by the City. In addition to training, the City should ensure that socioeconomic status is not a barrier to serving on the Board, by considering providing Members with childcare, reimbursements, and other financial support, and by adjusting Board processes, procedures and meeting times to accommodate a wider variety of life schedules and demands.

*Editor's Note: Still need to specify substance of annual training.*

- (5) Executive Secretary. The Independent Police Monitor ("Monitor") shall serve as executive secretary of the Board and, in collaboration with the Mayor and Common Council, shall ensure that the Board has the resources necessary to fulfill the duties of the Board. Staff from MPD and the Office of the City Attorney shall attend each Board meeting to answer any questions that may arise. The Board may request other City staff to attend meetings on an as-needed basis.

*Editor's Note: Suggest replacing last two sentences with "Staff from MPD, the Office of the City Attorney, and other City Departments shall attend meetings as requested by the Board and the Office of Independent Monitor"?*

- (6) Executive Subcommittee. The Board shall create a three-member Executive Subcommittee, consisting of the Board Chair and two (2) additional members selected by the Board. Members shall service two-year terms on the Executive Subcommittee. The Executive Subcommittee shall meet at least monthly in order to provide feedback and direction to the Monitor in between Board meetings. At all times, the Executive Subcommittee shall keep the Board informed of the Monitor's work.

*Editor's Note: Do we want to set a maximum number of terms a Member can serve on the Subcommittee?*

- (7) Board Procedures. With the assistance of the OIM, the Board shall create a policy and procedure manual including information related to the jurisdiction of the Board, relationship of the Board to the OIM, Board Member roles, required training, and special Board rules and procedures, including any authorized exceptions to the procedures contained in M.G.O. § 33.01. In creating those special rules, the Board is strongly encouraged to adopt a rule, notwithstanding M.G.O. § 33.01(9)(e), to allow for free-flowing discussion between the Board and community during meetings as a way to encourage and ease community input.

*Editor's Note: This provision now requires the Board to create a procedure manual. Is there anything else you want to specifically require be included in it (e.g., process for hiring a Monitor)?*

- (8) Meetings. The Board shall meet at least quarterly and may meet more frequently as determined necessary by the body to fulfill its duties.
- (9) Powers and Duties. The Board shall have the following powers and duties:

- (a) Appoint and Supervise the Independent Monitor. The Board shall recruit, appoint, and supervise the Independent Police Monitor as provided in M.G.O. § 5.16(4)-(5).
- (b) Evaluate Effectiveness of the Monitor's Office. The Board shall provide input to the Mayor and Common Council regarding the effectiveness of the Office of the Independent Monitor.
- (c) Conduct Annual Review of the Chief of Police. With input from the Monitor, the Board shall conduct an annual review of the Chief of Police to assess their 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 their duties or whether the Chief has failed to perform satisfactorily, thereby constituting "cause" for referral to the PFC with a recommendation for dismissal.

*Editor's Note: This provision needs some clarification.*

- (d) Conduct Community Outreach. The Board shall engage in community outreach, including holding public hearings to receive community input regarding police policies, procedures, training, and processes for handling complaints. In doing so, the Board should seek to gain input from a range of community members and groups, including underserved/marginalized communities.
  - (e) Make Policy Recommendations. The Board shall make policy-level recommendations regarding discipline, use of force, and other policies, including those related to rules, hiring, training, and community relations, and address any other issues of concern to the community, Board, Monitor, Chief of Police, Mayor, or Common Council.
  - (f) Annual Public Report. The Board shall furnish an Annual Public Report ("Annual 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 MPD investigative and disciplinary processes; recommendations for ways that MPD 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: Possibly discuss how this relates to the Monitor's Annual Report.*
- (g) Issue Subpoenas. The Board may, to the extent permitted by law, issue subpoenas for the purpose of compelling testimony or receiving documents necessary to fulfill the duties of the Board.
- (10) Relationship between the Board and the Police and Fire Commission. The Board's various duties give it the authority to review disciplinary decisions and process, evaluate MPD standard operating procedures, and conduct independent investigations, but does not give the Board the authority to impose discipline, reverse disciplinary decisions, or mandate any other action or decision by the PFC.