

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2019

COUNCIL BILL NO. 19-0029
COMMITTEE OF REFERENCE:
4 SAFETY

5
6 A BILL

7
8 For an ordinance clarifying and amending the authority of the office of independent
9 monitor

10
11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

12 **Section 1.** That section 2-373, D.R.M.C. shall be amended by adding a new subsection (g)
13 underlined, to read as follows:

14 **Sec. 2-373. - Mandatory oversight by the monitor's office.**

15 (c) Any uniformed personnel involved in any of the incidents described in subsections (4), (5), or
16 (6) of subsection (a) shall self-report such involvement to the monitor's office and the manager of
17 safety within three (3) business days of becoming aware that he or she is under investigation for,
18 or charged with, any of the designated offenses. ~~If the manager of safety, chief of police,~~
19 ~~undersheriff, or any other manager within the department of safety becomes aware of any such~~
20 ~~incident, that person shall report such incident to the monitor's office within three (3) business days~~
21 ~~of becoming aware of the incident.~~

22 (d) In addition, the monitor's office shall monitor any other internal investigation of possible
23 misconduct by uniformed personnel when requested to do so by the board or manager of safety.
24 The board or manager of safety shall advise the monitor's office of the reasons why the board or
25 the manager of safety believes the monitor's office should monitor the investigation. Within three
26 (3) business days of determining to monitor an investigation or of receiving the request from the
27 board or the manager of safety, the monitor's office shall advise the department of safety, police,
28 sheriff's, or fire's IAB only that the monitor's office will monitor the investigation pursuant to this
29 paragraph.

30 (e) The department of safety, police, sheriff's, or fire IAB shall forward to the monitor's office, the
31 board, and the manager of safety:

1 (1) Within three (3) business days of opening a new internal investigation, information regarding
2 that investigation; and

3 (2) Within three (3) business days of closing an IAB case where no disciplinary action was taken,
4 information regarding that investigation.

5 (f) Upon a request by the board or the manager of safety, the monitor's office shall review closed
6 IAB cases in which the IAB investigation has already been completed and the monitor's office did
7 not monitor the investigation. For purposes of this article "closed IAB cases" means cases in which
8 IAB has completed its investigation and either:

9 (1) The case was pending before the PSRC on May 2, 2005; or

10 (2) A complaint regarding the matter was filed with IAB, the monitor's office, or the citizen oversight
11 board on or after November 2, 2004, and no complaint alleging the same alleged misconduct had
12 previously been filed.

13 Based upon that review, the monitor's office may conduct additional investigation. The monitor's
14 office may also make any recommendations to the manager of safety regarding the sufficiency of
15 the investigation, determinations as to whether department rules or policies have been violated,
16 and the appropriateness of disciplinary sanctions, if any. The board may also review citizen
17 complaints for which the monitor did not monitor the investigation and for which the outcomes
18 were unfounded, exonerated, or not sustained. Those complaints reviewed by the board may be
19 referred back to the appropriate department with recommendations from the board pertaining to
20 the outcome of that particular complaint and/or with recommendations pertaining to the
21 department's policies and procedures. For purpose of this article, "unfounded" means the
22 complaint was not based on facts, as shown by the investigation, or the alleged violation or action
23 did not occur; "exonerated" means the alleged action did occur, but the action was reasonable,
24 lawful, and proper; and "not sustained" means insufficient evidence is available to either prove or
25 disprove the allegation.

26 (g) The department of safety, police or sheriff department shall as soon as practicable notify the
27 monitor, or the monitor's designee if the monitor is unavailable, upon becoming aware of:

28 (1) An incident described in subsection 2-373(a); or

29 (2) An incident, whether or not duty-related, in which a police or sheriff department uniformed
30 personnel is under investigation for, or charged by, a jurisdiction with a misdemeanor or felony.

1 **Section 2.** That section 2-374, D.R.M.C. shall be amended by adding the language underlined
2 and deleting the language stricken, to read as follows:

3 **Sec. 2-374. - Discretionary oversight by the monitor's office.**

4 (a) The monitor's office shall have the discretion to monitor any internal department of safety, police
5 or sheriff department investigation of any citizen complaint, including but not limited to those, alleging:

- 6 (1) Improper use of force;
7 (2) Discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender
8 variance, disability, religion, or political affiliation;
9 (3) Retaliation for making a complaint against the police or sheriff department or any police or sheriff
10 department uniformed personnel; or
11 (4) Discourtesy.

12 (b) The monitor's office shall also have the discretion to monitor any internal investigation by the
13 department of safety, police or sheriff department as to which the monitor's office believes it is in the
14 city's best interest for the monitor's office to be involved, including investigations into the Sheriff, the
15 Chief of Police or any of their appointees.

16 (c) Upon exercising discretion to monitor an investigation identified in subsection (a) or (b), the
17 monitor's office shall immediately advise:

- 18 ~~(1) The board and the manager of safety that the monitor's office has decided to monitor such~~
19 ~~investigation and of the monitor's office's reasons for monitoring the investigation; and~~
20 ~~(2) The~~ the board, the department of safety, police or sheriff's IAB only that the monitor's office shall
21 monitor the investigation pursuant to the provisions of paragraphs (a) and (b) above.

22 **Section 3.** That section 2-375, D.R.M.C. shall be amended by adding the language underlined
23 and deleting the language stricken, to read as follows:

24 **Sec. 2-375. -Public reporting by ~~Reports~~ of the monitor.**

25 (a) No later than March 15 of each year, the monitor shall submit an annual public report to the
26 mayor, ~~and~~ city council, and the citizen oversight board setting forth the work of the monitor's office
27 during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of
28 police and sheriff department uniformed personnel, including, but without identifying specific persons,
29 information regarding uniformed personnel who were the subject of multiple complaints, complainants
30 who filed multiple complaints, and issues that were raised by multiple complaints; and making
31 recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary
32 actions, if any, and changes to policies, rules, and training.

33 (b) The report shall present information in statistical and summary form, without identifying specific

1 persons except to the extent that incidents involving specific persons have otherwise been made
2 public by the City and County of Denver.

3 (c) In addition to the annual report, the monitor's office shall publish a ~~maintain an on-going~~ status
4 report, which shall be available to the public and which shall include, among other things, patterns
5 relating to complaints and recommendations regarding the sufficiency of investigations, determinations
6 as to whether department rules and policies have been violated, and the appropriateness of
7 disciplinary sanctions, if any. Based upon an analysis of this information and other information
8 available to the monitor, the monitor's office shall make timely recommendations to the chief of police,
9 ~~undersheriff~~, and the manager of safety regarding an early warning system and/or other policy issues.

10 (d) The monitor may publish additional public reports throughout the year about matters within the
11 duties of the monitor's office.

12 **Section 4.** That section 2-376, D.R.M.C. shall be amended by adding the language underlined
13 and deleting the language stricken, to read as follows:

14 **Sec. 2-376. -Confidentiality.**

15 (a) The monitor, its staff, the board, and all consultants and experts hired by the monitor shall treat
16 all documents and information regarding specific investigations or officers as confidential except to the
17 extent needed to carry out their duties.

18 (b) The monitor's office shall not discuss with any person or group, including the members of the
19 board, the status of any criminal investigation, other than the fact that a criminal investigation has not
20 been completed and any anticipated date by which a criminal investigation may be completed.

21 (c) The monitor's office, the board, and all persons who participate in the department of safety,
22 police, sheriff, or fire department's investigative and disciplinary processes are part of the city's
23 deliberative process regarding investigative and disciplinary procedures for ~~uniformed~~ personnel.
24 Furthermore, all deliberations and recommendations ~~information~~ learned by any of those persons or
25 groups during the exercise of their duties shall be protected by the deliberative process privilege. For
26 purposes of this subsection (c), "deliberative process privilege" has the same meaning as under
27 Colorado law.

28 **Section 5.** That section 2-378, D.R.M.C. shall be amended by adding the language underlined
29 and deleting the language stricken, to read as follows:

30 **Sec. 2-378. -Nomination committee, aAppointment and qualification of board members.**

31 (a) The citizen ~~civilian~~ oversight board shall consist of nine (9) ~~seven (7)~~ members who shall be
32 residents of the City and County of Denver.

33 (b) The mayor shall appoint four (4) members, the city council shall appoint four (4) members, and

1 one (1) member shall be appointed jointly by the mayor and city council. subject to confirmation by
2 the city council, the members of the board. Each appointment will be made alternately first by the
3 city council and then by the mayor for eight consecutive appointments and made jointly by the
4 mayor and city council for the ninth appointment.

5 (c) All appointments regardless of who makes the appointment must be selected from a list of at least
6 three (3) nominees per vacancy submitted by a nomination committee.

7 1. The nomination committee shall be composed of three (3) members with one (1) member
8 appointed by the mayor, one (1) member appointed by the council and one (1) member appointed
9 jointly by the mayor and city council, each serving a term of four (4) years and shall meet only
10 whenever a vacancy under this section occurs. Officers, employees and officials of the city shall not
11 be eligible for appointment to or service on the nomination committee. Members of the nomination
12 committee shall not receive any salary or compensation for their services.

13 2. The nomination committee shall issue a public vacancy notice and call for applications for
14 any resignation, removal or non-reappointment no later than fifteen (15) days after the vacancy
15 occurs. The nomination committee may issue a public vacancy notice upon the receipt of notice of the
16 resignation, non-reappointment or removal of any board member under subsection section 2-380
17 below without waiting for the effective date of such notice. The nomination committee shall share all
18 public vacancy notices with the citizen oversight board.

19 3. The nomination committee shall review applications and conduct screening interviews as it
20 deems necessary. The nomination committee shall seek input from the citizen oversight board to
21 address the qualifications required by this section. The nomination committee shall certify a list of at
22 least three (3) nominees for each appointment no later than thirty (30) days after the public application
23 period has closed. If the nomination committee receives fewer than three applications, the committee
24 must submit the names of all applicants. The appointing authority may reject a list for any reason and
25 request a new one. The appointing authority must make an appointment within forty-five (45) days
26 after receiving the certified list of nominees.

27 4. Whenever an incumbent member of the citizen oversight board wishes to apply for
28 reappointment to another term on the board, the member shall so advise the nomination committee in
29 writing at least ninety (90) days in advance of the expiration of the member's current term. The
30 nomination committee shall then proceed to interview the member and determine whether or not to
31 recommend reappointment to the board for another term. If the nomination committee determines that
32 the incumbent should not be reappointed, the committee shall proceed to issue a public vacancy
33 notice for the seat as provided in paragraph 2 above of this subsection. If the nomination committee
34 determines to recommend reappointment of the incumbent for another term, the committee shall

1 forward the recommendation to the incumbent's appointing authority. If the appointing authority
2 decides not to reappoint the incumbent, then the committee shall proceed to issue a public vacancy
3 notice for the seat as provided in paragraph 2 above of this subsection.

4 (c) No officer or employee of the City and County of Denver shall be appointed to the board.

5 (d) Neither the members of the board nor any of their immediate family members (defined as husband,
6 wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, grandmother,
7 grandfather, brother, sister, domestic partner, and in-laws) shall have ever been employed by the
8 Denver police, sheriff, or fire departments.

9 (e) The members of the board ~~shall should~~ reflect the diversity of Denver, including the ethnic, racial,
10 and geographic constitution of the population as well as the diverse professional backgrounds,
11 experience, and expertise of the citizens of Denver.

12 (f) The members of the board shall receive compensation in an amount not to exceed one thousand
13 two hundred dollars (\$1,200.00) per year and be paid necessary expenses incurred in connection with
14 the work of the board.

15 (g) The members of the board shall participate in an appropriate training program to be established by
16 the board and/or the monitor's office so that they shall possess the applicable knowledge to perform
17 their duties.

18 **Section 6.** That section 2-379, D.R.M.C. shall be amended by adding the language underlined
19 and deleting the language stricken, to read as follows:

20 **Sec. 2-379. -Terms and vacancies.**

21 (a) The term of each member of the board shall be four (4) years.

22 (b) Any vacancy occurring during the term of any member shall be filled by the process set forth in
23 Section 2-378 above. ~~appointment by the mayor and confirmed by city council. If a member is~~
24 ~~appointed to fill an unexpired term, that member's term shall end at the same time as the term of the~~
25 ~~person being replaced.~~

26 (c) The members first appointed after the effective date of this section shall be appointed as follows
27 so as to create staggered terms: Two (2) of the board members shall serve one (1) year terms, two (2)
28 shall serve two (2) year terms, two (2) shall serve three (3) year terms, and three (3) shall serve four
29 (4) year terms. ~~Three (3) members shall be appointed to serve for two (2) years and four (4) members~~
30 ~~shall be appointed to serve for four (4) years.~~ After these initial appointment terms have been served,
31 each member of the board shall be appointed thereafter for a four-year term.

32 (d) Each member shall continue to serve in such capacity until the member's successor has been
33 duly appointed and is acting, provided, however, that that period shall not exceed ninety (90) days

1 past the expiration of the member's term.

2 **Section 7.** That section 2-380, D.R.M.C. shall be amended by adding the language underlined
3 and deleting the language stricken, to read as follows:

4 **Sec. 2-380. -Removal from board office.**

5 (a) The unexcused absence of a member of the board from four (4) regularly scheduled meetings
6 shall constitute a resignation from the board. Vacancies shall be filled by the process set forth in Sec.
7 2-378.

8 (b) Before ~~Prior to~~ the expiration of his or her appointed term, a member appointed by the mayor to ~~of~~
9 the board may be removed from the board by the mayor, a member appointed by city council may be
10 removed by the city council, and a member appointed by the mayor and city council may be removed
11 by the mayor and city council. Removal of a member can only be for cause including gross
12 misconduct, incompetence, ~~or~~ a persistent failure to perform his or her duties on the board or if,
13 subsequent to being selected as a member of the board, information becomes known to the
14 appointing authority ~~mayor~~ that, had it been known when the member was selected, the information
15 would have disqualified him or her from being selected.

16 **Section 8.** That section 2-383, D.R.M.C. shall be amended by adding the language underlined
17 to read as follows:

18 **Sec. 2-383. - Interaction between the monitor's office and the citizen oversight board.**

19 (a) The monitor's office shall inform the board of the status of the department of safety, police, sheriff,
20 and fire department investigations and disciplinary proceedings and the actions of the monitor's office
21 in monitoring those investigations and disciplinary proceedings.

22 (b) The board shall establish both qualitative and quantitative criteria for evaluating the effectiveness
23 of the monitor.

24 (c) In order to determine whether the monitor's office is effectively monitoring the department of safety,
25 police, sheriff, and fire investigations, the board shall receive regular reports from the monitor's office
26 and shall be allowed to review pertinent portions of the personnel files of uniformed personnel and IAB
27 files including statements of uniformed personnel and to make recommendations to the manager of
28 safety, chief of police, ~~undersheriff,~~ fire chief, and monitor's office regarding investigations,
29 determinations as to whether department rules or policies have been violated, and the
30 appropriateness of disciplinary sanctions, if any. However, the board shall not become the custodian
31 of any such records and the board shall not be allowed access to documents protected by the
32 attorney-client privilege or the attorney work product privilege.

33 **Section 9.** That section 2-384, D.R.M.C. shall be amended by adding the language

1 underlined to read as follows:

2 **Sec. 2-384. - Reports of the citizen oversight board.**

3 (a) The board shall furnish an annual public report to the mayor and city council regarding the board's
4 assessment of the work of the monitor's office; the board's activities during the preceding year;
5 concerns expressed by citizens; the board's assessment of the department of safety, police, sheriff,
6 and fire department investigative and disciplinary processes; recommendations for ways that those
7 four three (43) departments can improve their relationships with the citizens; and recommendations for
8 changes to police, sheriff, and fire department policies, rules, hiring, training, and the complaint
9 process.

10 **Section 10.** That section 2-386, D.R.M.C. shall be amended by adding the language
11 underlined to read as follows:

12 **Sec. 2-386. - Citizen complaints.**

13 (b) Whenever a citizen files a complaint with the monitor's office, the board, or the department of
14 safety, or the police or sheriff departments, the agency receiving the complaint shall, within three (3)
15 business days, advise all of the other agencies (the board; the monitor's office; the manager of safety;
16 and, when received by the board or the monitor's office, either the police department or sheriff
17 department) that it has received the complaint and provide a copy of the complaint to each of them.

18 **Section 11.** That section 2-387, D.R.M.C. shall be amended by adding the language
19 underlined to read as follows:

20 **Sec. 2-387. - Investigations by the Denver district attorney's office.**

21 (b) Upon completion of the DA's investigation, but not later than sixty (60) calendar days from the date
22 of the incident, the IAB from either the department of safety, police or sheriff department shall open a
23 file and initiate an administrative investigation of the incident unless the manager of safety in
24 consultation with the DA determines that the administrative investigation would jeopardize the DA's
25 investigation.

26 **Section 12.** That section 2-388, D.R.M.C. shall be amended by adding the language
27 underlined and deleting the language stricken, to read as follows:

28 **Sec. 2-388. -Internal investigations.**

29 (a) The department of safety and the police, sheriff, and fire departments shall cooperate with the
30 monitor's office in actively monitoring and participating in internal investigations, including being
31 present to actively monitor interviews of witnesses and persons under internal investigation. The
32 departments shall establish departmental policies regarding that cooperation. The policies shall
33 ensure that the department of safety and the police, sheriff, and fire departments provide for the ability

1 the monitor's office with reasonable notice of and opportunity to attend interviews, the opportunity to
2 make recommendations regarding investigations and ~~for~~ reasonable timeframes to complete the steps
3 in the internal investigatory process.

4 **Section 13.** That section 2-389, D.R.M.C. shall be amended by adding the language
5 underlined and deleting the language stricken, to read as follows:

6 **Sec. 2-389. -Role of the monitor's office in the disciplinary process.**

7 The department of safety and the police, sheriff, and fire departments shall cooperate with the
8 monitor's office in actively monitoring, attending and participating in the disciplinary process
9 ~~proceedings~~. The departments shall establish departmental policies regarding that cooperation.
10 The policies shall ensure that the department of safety and the police, sheriff, and fire departments
11 ~~provide for the ability of~~ the monitor's office with reasonable notice and opportunity to:

- 12 (a) receive notice and opportunity to comment prior to entering into agreements, whether written or
13 oral, resulting in the closure of internal investigations or the disciplinary process;
- 14 (b) ~~attend disciplinary proceedings, and throughout the disciplinary process, to make~~
15 recommendations regarding determinations as to whether department rules or policies have been
16 violated;
- 17 (c) make recommendations regarding ~~and~~ the appropriateness of disciplinary sanctions, if any;
- 18 (d) In addition, those policies shall guarantee the participation of citizens on disciplinary boards;
- 19 (e) Furthermore, the policies shall provide for reasonable time frames to complete the steps in the
20 disciplinary process.

21 **Section 14.** That section 2-390, D.R.M.C. shall be amended by adding the language
22 underlined and deleting the language stricken, to read as follows:

23 **Sec. 2-390. -Monitor access to records, and other items.**

24 (a) The department of safety, police department, sheriff department, and fire department and all
25 employees of those departments shall fully cooperate with the monitor's office by providing the
26 monitor's office, within a reasonable amount of time, complete access to department of safety, police
27 department, sheriff department, and fire department records, information, documents, files, reports,
28 evidence, databases, and all other items, whether in paper, electronic, or other form, that the monitor's
29 office requests in order to perform its duties set forth in the provisions of this Article XVIII, but not
30 including documents protected by the attorney-client privilege or the attorney work product privilege or
31 any document that must not be disclosed to the monitor's office pursuant to federal, state, or local law

1 or federal or state regulation.

2 (b) If, in response to a request from the monitor's office records, and/or information cannot be
3 produced at all or produced within a reasonable amount of time, a written explanation, sufficiently
4 detailed for an understanding of why the records and/or documents cannot be produced, shall be
5 promptly provided. The monitor's office shall not be required to pay the department of safety, police
6 department, sheriff department, or fire department for copies of the materials set forth in this section
7 2-390 including copies of documents previously supplied by the departments, provided that OIM may
8 not use those departments as a printing service to make multiple copies of individual documents.

9 (c) The department of safety, police department, and sheriff department shall provide the monitor
10 or his or her designee with an opportunity to participate in any committee or working groups involving
11 external stakeholders convened to draft or revise policies or practices concerning matters within the
12 purview of the monitor's office.

13 (d) The department of safety, police department, and sheriff department shall provide the monitor
14 or his or her designee with reasonable notice and an opportunity to make recommendations before
15 implementing an existing or adopting a new substantive policy or practice concerning matters within
16 the purview of the monitor's office. When a policy or practice necessitates an immediate revision or
17 implementation due to a change in the law, the monitor will be notified as soon as practicable about
18 the change.

19 **Section 15.** That Article XVIII of Chapter 2 shall be amended by the addition of a new section
20 2-391 underlined to read as follows:

21 **Sec. 2-391. -Response to monitor recommendations.**

22 The monitor's office shall make recommendations to the department of safety, the chief of police, or
23 the sheriff about matters within the duties of the monitor's office. If requested by the monitor in writing,
24 the department of safety, the chief of police, or the sheriff shall respond in writing within thirty (30)
25 days and shall specify:

26 (a) Either agreement with recommendations or reasons for disagreement with recommendations;

27 (b) Plans for implementing solutions to issues identified; and

28 (c) A timetable to complete such activities.

29 Upon receiving a request in writing from the department of safety, the chief of police, or the sheriff, the
30 monitor may extend the time for a response to any recommendations. Recommendations made by
31 the monitor and any responses shall be open to inspection except as otherwise not subject to
32 disclosure under state, federal, or local law or regulation.

33 **Section 16.** That Article XVIII of Chapter 2 shall be amended by the addition of a new section

1 2-392 underlined to read as follows:

2 **Sec. 2-392. -Retaliation prohibited.**

3 (a) No person shall retaliate against, punish, intimidate, discourage, threaten or penalize any
4 other person for reporting misconduct, making a misconduct complaint, conducting an investigation,
5 complaining to officials, providing information, testimony or documents in an investigation or
6 cooperating with or assisting the Office of the Independent Monitor in the performance of its powers
7 and duties as set forth in this chapter. Any employee who violates this provision shall be subject to
8 appropriate disciplinary action, up to and including termination from employment.

9 (b) Any person who violates any section of the Denver Revised Municipal Code may be subject
10 to criminal prosecution.

11
12 COMMITTEE APPROVAL DATE: _____, 2019.

13 MAYOR-COUNCIL DATE: _____, 2019.

14 PASSED BY THE COUNCIL _____ 2019

15 _____ - PRESIDENT

16 APPROVED: _____ - MAYOR _____ 2019

17 ATTEST: _____ - CLERK AND RECORDER,
18 EX-OFFICIO CLERK OF THE
19 CITY AND COUNTY OF DENVER

20
21 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2019; _____ 2019

22 PREPARED BY: Kirsten J. Crawford, Assistant City Attorney; DATE: _____

23
24 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
25 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
26 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
27 3.2.6 of the Charter.

28
29 Kristin M. Bronson
30 City Attorney

31
32 BY: _____, _____ City Attorney

33 DATE: _____

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DRAFT