

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. 19-0029
COMMITTEE OF REFERENCE:
Safety, Housing, Education & Homelessness

AS AMENDED 2-19-19

A BILL

For an ordinance clarifying and amending the authority of the Office of Independent Monitor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) The report shall present information in statistical and summary form, without identifying specific
32 persons except to the extent that incidents involving specific persons have otherwise been made
33 public by the City and County of Denver.

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

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

12 **Sec. 2-376. -Confidentiality.**

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

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

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

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

28 **Sec. 2-378. -Nomination committee, ~~a~~Appointment and qualification of board members.**

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

31 (b) The mayor shall appoint four (4) members, the city council shall appoint four (4) members, and
32 one (1) member shall be appointed jointly by the mayor and city council. ~~subject to confirmation by~~
33 ~~the city council, the members of the board.~~ Each appointment will be made **For vacancies**

1 occurring on or after the effective date of this act, the vacancy must be filled alternately first
2 by the city council and then by the mayor for eight consecutive appointments and made jointly by
3 the mayor and city council for the ninth appointment.

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

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

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

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

26 4. Whenever an incumbent member of the citizen oversight board wishes to apply for
27 reappointment to another term on the board, the member shall so advise the nomination committee in
28 writing at least ninety (90) days in advance of the expiration of the member's current term. The
29 nomination committee shall then proceed to interview the member and determine whether or not to
30 recommend reappointment to the board for another term. If the nomination committee determines that
31 the incumbent should not be reappointed, the committee shall proceed to issue a public vacancy
32 notice for the seat as provided in paragraph 2 above of this subsection. If the nomination committee
33 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~~
27 ~~appointed as follows so as to create staggered terms: Two (2) of the board members shall~~
28 ~~serve one (1) year terms, two (2) shall serve two (2) year terms, two (2) shall serve three (3)~~
29 ~~year terms, and three (3) shall serve four (4) year terms. Three (3) members shall be~~
30 ~~appointed to serve for two (2) years and four (4) members shall be appointed to serve for~~
31 ~~four (4) years. After these initial appointment terms have been served, each member of the~~
32 ~~board shall be appointed thereafter for a four-year term. **As of the effective date of this**~~
33 ~~**act, the seven (7) members who are currently serving on the citizen oversight board**~~
34 ~~**shall continue to serve the remaining portion of their respective terms. The two (2)**~~
35 ~~**new members who will be appointed in accordance with and after the effective date**~~
36 ~~**of this act shall be appointed to serve an initial term of three (3) years. Except as**~~

1 stated in subsection (2) below, after the initial term of three (3) years, the succeeding
2 terms shall be for four (4) years.

3 (2) Of the four (4) members who are currently serving on the citizen oversight
4 board whose terms expire in 2020, the appointing authorities shall determine by lot
5 one (1) of the four (4) new terms, for which the next appointment shall be for a term
6 of three (3) years, rather than a term of (4) years. After that initial term of three (3)
7 years, the succeeding terms shall be for four (4) years.”

8
9 (d) Each member shall continue to serve in such capacity until the member's successor has been
10 duly appointed and is acting, provided, however, that that period shall not exceed ninety (90) days
11 past the expiration of the member's term.

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

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

15 (a) The unexcused absence of a member of the board from four (4) regularly scheduled meetings
16 shall constitute a resignation from the board. Vacancies shall be filled by the process set forth in Sec.
17 2-378.

18 (b) Before ~~Prior to~~ the expiration of his or her appointed term, a member appointed by the mayor to of
19 the board may be removed from the board by the mayor, a member appointed by city council may be
20 removed by the city council, and a member appointed by the mayor and city council may be removed
21 by the mayor and city council. Removal of a member can only be for cause including gross
22 misconduct, incompetence, ~~or~~ a persistent failure to perform his or her duties on the board or if,
23 subsequent to being selected as a member of the board, information becomes known to the
24 appointing authority ~~mayor~~ that, had it been known when the member was selected, the information
25 would have disqualified him or her from being selected.

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

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

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

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

34 (c) In order to determine whether the monitor's office is effectively monitoring the department of safety.

1 police, sheriff, and fire investigations, the board shall receive regular reports from the monitor's office
2 and shall be allowed to review pertinent portions of the personnel files of uniformed personnel and IAB
3 files including statements of uniformed personnel and to make recommendations to the manager of
4 safety, chief of police, ~~undersheriff~~, fire chief, and monitor's office regarding investigations,
5 determinations as to whether department rules or policies have been violated, and the
6 appropriateness of disciplinary sanctions, if any. However, the board shall not become the custodian
7 of any such records and the board shall not be allowed access to documents protected by the
8 attorney-client privilege or the attorney work product privilege.

9 **Section 9.** That section 2-384, D.R.M.C. shall be amended by adding the language
10 underlined to read as follows:

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

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

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

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

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

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

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

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

1 investigation.

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

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

5 (a) The department of safety and the police, sheriff, and fire departments shall cooperate with the
6 monitor's office in actively monitoring and participating in internal investigations, including being
7 present to actively monitor interviews of witnesses and persons under internal investigation. The
8 departments shall establish departmental policies regarding that cooperation. The policies shall
9 ensure that the department of safety and the police, sheriff, and fire departments provide for the ability
10 the monitor's office with reasonable notice of and opportunity to attend interviews, the opportunity to
11 make recommendations regarding investigations and ~~for~~ reasonable timeframes to complete the steps
12 in the internal investigatory process.

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

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

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

21 (a) receive notice and opportunity to comment prior to entering into agreements, whether written or
22 oral, resulting in the closure of internal investigations or the disciplinary process;

23 ~~(b) attend disciplinary proceedings, and throughout the disciplinary process, to make~~
24 recommendations regarding determinations as to whether department rules or policies have been
25 violated;

26 ~~(c) make recommendations regarding~~ and the appropriateness of disciplinary sanctions, if any;

27 ~~(d) In addition, those policies shall guarantee the participation of citizens on disciplinary boards;~~

28 ~~(e) Furthermore, the policies shall provide for reasonable time frames to complete the steps in the~~
29 disciplinary process.

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

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

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

11 (b) If, in response to a request from the monitor's office records, and/or information cannot be
12 produced at all or produced within a reasonable amount of time, a written explanation, sufficiently
13 detailed for an understanding of why the records and/or documents cannot be produced, shall be
14 promptly provided. The monitor's office shall not be required to pay the department of safety, police
15 department, sheriff department, or fire department for copies of the materials set forth in this section
16 2-390 including copies of documents previously supplied by the departments, provided that OIM may
17 not use those departments as a printing service to make multiple copies of individual documents.

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

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

28 **Section 15.** That Article XVIII of Chapter 2 shall be amended by the addition of a new section
29 2-391 underlined to read as follows:

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

31 The monitor's office shall make recommendations to the department of safety, the chief of police, or
32 the sheriff about matters within the duties of the monitor's office. If requested by the monitor in writing,
33 the department of safety, the chief of police, or the sheriff shall respond in writing within thirty (30)

1 days and shall specify:

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

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

4 (c) A timetable to complete such activities.

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

9 **Section 16.** That Article XVIII of Chapter 2 shall be amended by the addition of a new section
10 2-392 underlined to read as follows:

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

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

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

20

21

1 COMMITTEE APPROVAL DATE: January 30, 2019.

2 MAYOR-COUNCIL DATE: February 5, 2019

3 PASSED BY THE COUNCIL _____ February 19, 2019

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR Feb 21, 2019

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9
10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

11
12 PREPARED BY: Kirsten J. Crawford, Assistant City Attorney DATE: February 7, 2019

13
14 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
15 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
16 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.

18
19 Kristin M. Bronson, Denver City Attorney

20
21 BY: _____, Assistant City Attorney DATE: Feb. 20, 2019

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