

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2019

COUNCIL BILL NO. \_\_\_\_\_  
COMMITTEE OF REFERENCE:

4  
5 A BILL

6  
7 For an ordinance clarifying and amending the authority of the office of independent  
8 monitor

9  
10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

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

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

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

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

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

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

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

- 1 (1) The case was pending before the PSRC on May 2, 2005; or
- 2 (2) A complaint regarding the matter was filed with IAB, the monitor's office, or the citizen oversight
- 3 board on or after November 2, 2004, and no complaint alleging the same alleged misconduct had
- 4 previously been filed.

5 Based upon that review, the monitor's office may conduct additional investigation. The monitor's

6 office may also make any recommendations to the manager of safety regarding the sufficiency of

7 the investigation, determinations as to whether department rules or policies have been violated,

8 and the appropriateness of disciplinary sanctions, if any. The board may also review citizen

9 complaints for which the monitor did not monitor the investigation and for which the outcomes

10 were unfounded, exonerated, or not sustained. Those complaints reviewed by the board may be

11 referred back to the appropriate department with recommendations from the board pertaining to

12 the outcome of that particular complaint and/or with recommendations pertaining to the

13 department's policies and procedures. For purpose of this article, "unfounded" means the

14 complaint was not based on facts, as shown by the investigation, or the alleged violation or action

15 did not occur; "exonerated" means the alleged action did occur, but the action was reasonable,

16 lawful, and proper; and "not sustained" means insufficient evidence is available to either prove or

17 disprove the allegation.

18 (g) The department of safety, police or sheriff department shall as soon as practicable notify the

19 monitor, or the monitor's designee if the monitor is unavailable, upon becoming aware of:

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

21 (2) An incident, whether or not duty-related, in which a police or sheriff department uniformed

22 personnel is under investigation for, or charged by, a jurisdiction with a misdemeanor or felony.

23 **Section 2.** That section 2-374, D.R.M.C. shall be amended by adding the language underlined

24 and deleting the language stricken, to read as follows:

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

26 (a) The monitor's office shall have the discretion to monitor any internal department of safety, police

27 or sheriff department investigation of any citizen complaint, including but not limited to those, alleging:

28 (1) Improper use of force;

29 (2) Discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender

30 variance, disability, religion, or political affiliation;

1 (3) Retaliation for making a complaint against the police or sheriff department or any police or sheriff  
2 department uniformed personnel; or

3 (4) Discourtesy.

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

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

10 (1) The board and the manager of safety that the monitor's office has decided to monitor such  
11 investigation and of the monitor's office's reasons for monitoring the investigation; and

12 (2) The department of safety, police or sheriff's IAB only that the monitor's office shall monitor the  
13 investigation pursuant to the provisions of paragraphs (a) and (b) above.

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

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

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

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

28 (c) In addition to the annual report, the monitor's office shall publish a ~~maintain an on-going~~ status  
29 report, which shall be available to the public and which shall include, among other things, patterns  
30 relating to complaints and recommendations regarding the sufficiency of investigations, determinations  
31 as to whether department rules and policies have been violated, and the appropriateness of  
32 disciplinary sanctions, if any. Based upon an analysis of this information and other information  
33 available to the monitor, the monitor's office shall make timely recommendations to the chief of police,

1 undersheriff, and the manager of safety regarding an early warning system and/or other policy issues.  
2 (d) The monitor may publish additional public reports throughout the year about matters within the  
3 duties of the monitor's office.

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

6 **Sec. 2-376. -Confidentiality.**

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

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

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

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

22 **Sec. 2-378. -Appointment and qualification of board members.**

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

25 (b) The mayor shall appoint four (4) members, the city council shall appoint four (4) members, and one  
26 (1) member shall be appointed jointly by the mayor and city council. For each appointment, the citizen  
27 oversight board shall solicit applicants from the community and will submit a list of three nominees that  
28 should reflect the qualities set forth in subsection (e) below. If the list is rejected for any reason, the  
29 citizen oversight board will submit a new list of three nominees. A list of three is not required in the  
30 event there is a recommendation by the board to reappoint a sitting board member and such  
31 recommendation is accepted by the board. , subject to confirmation by the city council, the members  
32 of the board.

33 **Section 6.** That section 2-379, D.R.M.C. shall be amended by adding the language underlined

1 and deleting the language stricken, to read as follows:

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

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

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

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

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

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

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

20 (a) The unexcused absence of a member of the board from four (4) regularly scheduled meetings  
21 shall constitute a resignation from the board. Vacancies shall be filled by the process set forth in Sec.  
22 2-378.

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

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

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

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

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

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

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

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

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

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

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

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

33 **Section 11.** That section 2-387, D.R.M.C. shall be amended by adding the language

1 underlined to read as follows:

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

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

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

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

11 (a) The department of safety and the police, sheriff, and fire departments shall cooperate with the  
12 monitor's office in actively monitoring and participating in internal investigations, including being  
13 present to actively monitor interviews of witnesses and persons under internal investigation. The  
14 departments shall establish departmental policies regarding that cooperation. The policies shall  
15 ensure that the department of safety and the police, sheriff, and fire departments provide for the ability  
16 the monitor's office with reasonable notice of and opportunity to attend interviews, the opportunity to  
17 make recommendations regarding investigations and for reasonable time frames to complete the  
18 steps in the internal investigatory process.

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

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

22 The department of safety and the police, sheriff, and fire departments shall cooperate with the  
23 monitor's office in actively monitoring and participating in the disciplinary process ~~proceedings~~. The  
24 departments shall establish departmental policies regarding that cooperation. The policies shall  
25 ensure that the department of safety and the police, sheriff, and fire departments provide for the  
26 ability of the monitor's office with reasonable notice and opportunity to:

27 (1) make recommendations regarding agreements, whether written or oral, resulting in the closure  
28 of internal investigations of the disciplinary process;

29 ~~(2) attend disciplinary proceedings, and throughout the disciplinary process, to make~~  
30 recommendations regarding determinations as to whether department rules or policies have been  
31 violated;

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

1 (4) In addition, those policies shall guarantee the participation of citizens on disciplinary boards;

2 (5) Furthermore, the policies shall provide for reasonable time frames to complete the steps in the  
3 disciplinary process.

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

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

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

16 (b) If, in response to a request from the monitor's office records, and/or information cannot be  
17 produced at all or produced within a reasonable amount of time, a written explanation, sufficiently  
18 detailed for an understanding of why the records and/or documents cannot be produced, shall be  
19 promptly provided. The monitor's office shall not be required to pay the department of safety, police  
20 department, sheriff department, or fire department for copies of the materials set forth in this section  
21 2-390 including copies of documents previously supplied by the departments, provided that OIM may  
22 not use those departments as a printing service to make multiple copies of individual documents.

23 **[discussion on-going on how to approach a more efficient and consistent way for the OIM to**  
24 **share input on policy changes]**

25 **Section 15.** That Article XVIII of Chapter 2 shall be amended by the addition of a new section  
26 2-391 underlined to read as follows:

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

28 The monitor's office shall make recommendations to the executive director of safety, the chief of  
29 police, or the sheriff about matters within the duties of the monitor's office. If requested by the monitor  
30 in writing, the executive director of safety, the chief of police, or the sheriff shall respond in writing  
31 within thirty (30) days and shall specify:

32 (1) Either agreement with recommendations or reasons for disagreement with recommendations;

33 (2) Plans for implementing solutions to issues identified; and

1 (3) A timetable to complete such activities.  
2 Upon receiving a request in writing from the executive director of safety, the chief of police, or the  
3 sheriff, the monitor may extend the time for a response to any recommendations. Recommendations  
4 made by the monitor and any responses shall be open to inspection except as otherwise not subject to  
5 disclosure under state, federal, or local law or regulation.

6 **Section 16.** That Article XVIII of Chapter 2 shall be amended by the addition of a new section  
7 2-392 underlined to read as follows:

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

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

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

17  
18 COMMITTEE APPROVAL DATE: \_\_\_\_\_, 2019.

19 MAYOR-COUNCIL DATE: \_\_\_\_\_, 2019.

20 PASSED BY THE COUNCIL \_\_\_\_\_ 2019

21 \_\_\_\_\_ - PRESIDENT

22 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2019

23 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
24 EX-OFFICIO CLERK OF THE  
25 CITY AND COUNTY OF DENVER

26  
27 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2019; \_\_\_\_\_ 2019

28 PREPARED BY: Kirsten J. Crawford, Assistant City Attorney; DATE: \_\_\_\_\_

29  
30 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
31 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
32 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §  
33 3.2.6 of the Charter.

1  
2 Kristin M. Bronson  
3 City Attorney  
4  
5 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney  
6 DATE: \_\_\_\_\_  
7  
8  
9

DRAFT