



Ensuring a strong framework for the Office of the Independent Monitor July 2021

Cosponsors

Council Pro Tem Jamie Torres
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Issue Background

The appointment process and authority for the Independent Monitor has been a frequently discussed issue for years by city officials and community advocates, and was brought to the forefront over the past year as local and national attention turned toward policing practices and who is responsible for overseeing our public safety agencies. The appointment of the Monitor by the Mayor, who also appoints the Director of Public Safety, the Chief of Police, and the Sheriff, has created conflict in both public perception of independence and the ability of the Monitor to carry out their charter outlined duty. The Monitor has functioned as a watchdog operating within the same system they are charged with overseeing. The former monitor documented and spoke publicly about challenges in access to evidence and information, even when the access is allowed by ordinance, the denial of which hinders the monitor's ability to carry out their duties. The Office of the Independent Monitor (OIM) staff are in a similarly precarious position, and as at-will employees are hesitant in performing their duties in a contentious environment.

While several options have been floated or proposed in past years, nothing has passed that would achieve the goal of increasing the independence of the OIM and improving their ability to carry out their duties. In June of 2020, the Citizen Oversight Board (COB) produced a list of challenges and policy ideas that they identified as vital to the effectiveness of the OIM. Over the following months, various City Council members began to discuss this information with members of the COB, and the council office worked with legislative staff to identify potential policy options and where each recommendation would require a change in either charter or code.

At the beginning of 2021, collaboration began between Councilwoman Torres, Councilwoman Gilmore, Councilwoman Kniech, and members of the COB, to identify the best solution and determine a package that would best address the issues with potential legislative solutions. Collaborators reviewed peer city research, existing city procedures, and engaged with several city and community partners with expertise in each part of the proposed changes.

At the same time that partners were narrowing down a legislative proposal, the Task Force to Reimagine Policing released their Report with 112 recommendations, including five regarding the OIM. Three of those recommendations are addressed either directly or indirectly by the proposed changes.

The items named herein rose to the top as both requiring a legislative solution and significantly impacting the efficacy of the Office of the Independent Monitor.

1. Assign appointment authority of the Independent Monitor to the Citizen Oversight Board with Council approval

Rationale-



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The Independent Monitor currently serves as a Mayoral appointee alongside other Mayoral appointees, including the ones they are charged with monitoring. This creates an appearance of a conflict of interest for a watchdog to be under the same control as the safety agencies that they oversee and diminishes the efficacy of the Monitor's work.

Precedent-

Within Denver:

- Library Commission selects Head Librarian (**bylaws: IX[2]**)
- Career Service Board hires the Executive Director of the Office of Human Resources (**Sec. 18-2; Sec. 18-3**)
- Civil Service Commission appoints the Executive Director (**Commission Rule 2, Sec. 4[D.]**)
- Council now affirms 14 key appointments by the Mayor (**§ 2.2.6[D]**)

Independent agencies within the City are removed from the Mayor's direct control and appoint their own leadership. It is appropriate for the Office of the Independent Monitor to function with this level of autonomy to enhance both the practical and perceived independence of the office.

Peer Cities:

New Orleans- Independent Police Monitor reporting to Ethics Review Board

Sec. 2-1121. - Office of independent police monitor

"...the ethics review board shall be responsible for appointing a new independent police monitor. The chairperson of the appointing authority may appoint an interim independent police monitor"

Miami- Executive Director of Citizen Investigative Panel, with city commission approval

Sec. 11.5-34. (a)- Executive Director

"The CIP office shall be headed by a full-time professional executive director with education or experience in criminal justice who is appointed by and subject to removal by the CIP, with the approval of the city commission."

2. Give Independent Monitor ability to retain independent general counsel

Rationale-

The Office of the Independent Monitor is represented in legal matters by the City Attorney's Office, an office which also represents the Department of Public Safety, the Mayor's office, and the City overall. This has created barriers to the OIM receiving the advocacy they need to fulfill their duties and unclear delineation of client when there are differences of opinion regarding interpretation of the ordinance, powers of the OIM or obligations of the Safety agencies. The best way to avoid such conflicts of interest and ensure the Monitor has access to legal advice to advocate and resolve disputes without compromising the intent of the oversight function is to have clear and separate counsel.

Precedent-

Miami- Civilian Investigative Panel with independent counsel

Sec. 11.5-34. (b) - Independent counsel

"The CIP shall hire an experienced and competent attorney-at-law in good standing admitted to the practice of law in the State of Florida for at least seven years and generally knowledgeable in municipal law as independent counsel with the approval of the city commission. The CIP shall



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have the power to remove the independent counsel with the approval of the city commission. The independent counsel shall provide legal advice and assistance to the CIP as requested...

Miami's office has had an in-house attorney who was nearly full-time in the past, but they currently utilize an attorney from an outside firm. They have a slightly broader model that conducts investigations into officer wrongdoing, not just monitoring. And they also use their independent counsel for all legal matters, including human resources. Therefore, they utilize more legal services than would be anticipated in Denver. Independent counsel has assisted the Miami Monitor with resolving many legal differences of opinion with the safety agencies/city attorneys, without resulting in litigation between the agencies.

Chicago- Civilian Office of Police Accountability

2-78-120 (q) Office and chief administrator – Powers and duties.

“To retain counsel to enforce and defend against subpoenas and to advise and represent the Office with respect to its investigations... Nothing in this provision shall be construed to alter the exclusive authority of the Corporation Counsel to either defend and supervise the defense of claims against the City and/or individual City defendants, or to provide the Office or the Chief Administrator with the authority to settle monetary or other claims against the City and/or individual City defendants.”

The Office has a narrower scope for outside counsel with more oversight from their city attorney office.

3. Move staff of Office of Independent Monitor to Career Service, reserving ability for Monitor to have two (2) additional appointees in any role

Rationale-

As at will employees, OIM staff have found it difficult to carry out their duties while working in a department that has inevitable tension with partner agencies. Moving the staff to Career Services provides a sense of job security that allows for more effective job performance and reduces the limits of fear of retaliation in employee's execution of duties.

Providing two appointees allows the Monitor to still shape the office by appointing two employees to roles that best fit their goals for the work.

Precedent-

Denver Manager of Aviation

§ 2.11.3 (C) - Powers and duties of Department of Aviation, Employment of professional and technical personnel

“... to employ qualified professional or technical personnel for the performance of the duties imposed on or the powers invested in the Department. The Manager of Aviation may, at the Manager's sole discretion, appoint up to five persons to serve at the pleasure of the Manager in executive or other managerial positions within the Department.”

§ 9.1.1 E. (xv) (Career Service)

“up to five employees appointed to serve at the pleasure of the Manager of Aviation in executive or other managerial positions in the Department of Aviation.”

Charter amendment package

Charter amendments:



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Strike [§ 2.6.7](#) to remove Office of the Independent Monitor from Mayoral and Executive Departments;

Create **Article XII. - Independent Monitor**

§12.1.1 Office of Independent Monitor

Add language to **§12.1.1 A(v)** to allow monitor to employ independent general counsel, to be funded by the OIM budget

Add §12.1.1 B(vi) to direct that the Citizen Oversight Board shall appoint the monitor with the consent of Council, and any interim monitor

Amend § 9.1.1 E(xiii) strike existing language, replace with monitor “shall serve at the pleasure of the COB” and two (2) employees serve at the pleasure of the monitor

Companion Code amendments:

Strike sections in code (**2-371 & 2-377**) that are duplicated in charter

Amend **Sec. 2-372** (to be renumbered to 2-371) to reflect appointment role of COB-

- COB shall identify a search committee within 60 days of a vacancy
- Three (3) candidates identified by the screening committee must participate in a community process (to be outlined by COB)
- The COB must nominate a candidate from the list on names within 30 days of the community process
- Submit nominee for Council confirmation

Striking the right balance of responsibility is complex, but there are longstanding issues that need robust solutions. Collaboration and discussion amongst Councilmembers and COB members has been ongoing for some time, as well as conversations with legal experts, the former monitor, other departments, and researching other cities before determining a solution that would best address the concerns that rose to the top.

With the publication of the Task Force Report aligning with the culmination of our conversations, we felt it was both appropriate and necessary to move this package forward this summer for the fall ballot to ensure that from here forward we have a more independent Monitor’s office that is equipped to be as effective as possible.

Giving appointment authority to the COB is appropriate to create greater independence for the office, and the COB already leads the hiring process and oversees the Monitor’s work performance. Requiring Council confirmation is consistent with other major appointments, and appropriate for this particular board appointment because of the nature of the work.

Allowing the Monitor to hire independent counsel is an appropriate and necessary step to create the same appearance and practice of independence from the agencies they are charged with monitoring. This will improve the Monitor’s ability to receive independent legal advice and representation, helping to address many of the concerns raised in recent years around access to records, data, and timely notification.

The OIM is in a necessary state of tension with the Department of Public Safety by the very nature of their charge to oversee two of its agencies. Giving the employees of the OIM Career Service status will allow them to go about their duties without fear of retaliation and with the same sense of security afforded to other City employees both within the Department of Public Safety and throughout Denver.