

**PROMOTING POLICE
ACCOUNTABILITY
IN MILWAUKEE:**

**STRENGTHENING THE FIRE AND
POLICE COMMISSION**

POLICE ASSESSMENT RESOURCE CENTER

RICHARD JEROME, PC

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PROMOTING POLICE ACCOUNTABILITY IN MILWAUKEE: STRENGTHENING THE FIRE AND POLICE COMMISSION

EXECUTIVE SUMMARY

The City of Milwaukee retained the Police Assessment Resource Center (PARC) and Richard Jerome, PC to evaluate the structure, procedures, and practices of the Milwaukee Fire and Police Commission (FPC), and to make recommendations for improvement.

Established in 1885 by the Wisconsin Legislature, the FPC is the oldest police commission in the United States. While originally founded to bring civil service reform to the Police Department, over the years the Commission has also been authorized to exercise broad oversight over the Milwaukee Police Department (MPD). The FPC has the power to hire the Chief of Police, evaluate the Chief's performance, review any policy of the Department, approve all the MPD's rules, accept complaints from civilians about police misconduct and conduct trials on those complaints, and hear appeals from serious discipline imposed by the Chief.

Despite its broad powers, many community members in Milwaukee view the Commission as weak and ineffective. On the other hand, many officers perceive it as harsh and unfair. While some of this divergence of opinion is the norm for law enforcement oversight entities, we found many structural problems that undermine the good-faith efforts of the Commissioners and staff to effectively conduct police oversight. Our significant findings include the following:

- The FPC's citizen complaint process is badly broken. The FPC does no investigation of complaints, and if a complaint

does get to trial, the complainant has to present his or her own case. Few cases get to trial and even fewer result in sustained findings of officer misconduct. Of cases filed from 2000 to 2005, only eight of 437 complaints have gone to trial, and only two have been sustained. In 14 years (1992-present), there have been only eight sustained complaints, involving 10 officers. Citizens and officers alike are frustrated by long delays in the complaint process. The only part of the process that works is the conciliation procedure, which is successful in 10 percent of the cases filed.

- The Commission underutilizes its policy review powers, in part because it does not have sufficient staff resources and expertise. It does not analyze use of force or citizen complaint data from the MPD, identify patterns and trends, research best practices, document policy recommendations to the Police Department or the Department's responses, or draft policy papers and reports.
- The FPC's time-consuming responsibilities for recruiting, testing, hiring, and promoting MPD personnel necessarily detract from its ability to focus on police accountability and policy issues.
- The FPC has had insufficient contact with and input from the community. Part of this lack of outreach is due to the FPC's meeting structure and to insufficient staff.
- The decision several years ago to make the FPC part of the Department of Employee Relations has diminished the Commission's independence and stature, while budget cuts

have led to reduced staff resources and an inability to effectively exercise its oversight powers.

- Archaic statutory provisions and other problems lead to undue delays in hearing the appeals of officers subject to serious discipline.
- Allowing police officers fired by the Chief to continue being paid while their appeal is pending with the FPC, even if they have been indicted for criminal charges, is inappropriate. No other police department has this provision.

Significant changes must be made to provide the public with the effective police oversight it deserves. These changes are needed to improve police accountability, reduce incidents of police misconduct, and increase community trust in the MPD. Milwaukee, like most large cities in the United States, has a history of troubled relations between the Police Department and the African American community, and a similarly troubled relationship between the Police Department and Milwaukee's Latino population. These police-community tensions have increased in light of recent high-profile events.

We recommend a fundamental overhaul of the FPC. The most significant reform we recommend is to create a capacity to monitor the MPD within the FPC staff. An Independent Monitor would be appointed to the chief FPC staff position. Aided by several other staff members, the Monitor would review the MPD's citizen complaint and internal investigations to ensure thoroughness, fairness, and credible results. Under the leadership of the Independent Monitor, an enhanced policy and research staff would provide the FPC the support necessary to effectively and proactively exercise its policy responsibilities. Based on

its review of MPD procedures, practices, training, and tactics, the FPC should develop recommendations to improve MPD's investigations and policies, and should ensure that the MPD addresses those proposed reforms.

Our recommendations are based upon experiences in other cities that have led police reform experts to conclude that the monitor oversight model is best equipped to achieve systemic reforms and greater accountability in law enforcement agencies.

We are aware that many would like to disband the Fire and Police Commission and start from scratch. We disagree. The powers provided the FPC by state statute are greater than those likely to be granted a new oversight body by the Wisconsin Legislature. Our recommendations, therefore, are directed in large measure to creating the structure and capacity for the FPC to effectively exercise the powers it already has.

We recommend that the City seek necessary legislative changes to allow the 10 percent of civilian complaints currently brought to the FPC to be addressed by the Police Department (90 percent are already filed directly with the MPD), where they will be fully investigated in the internal affairs process, and then thoroughly reviewed by the Monitor. The MPD's internal affairs process, which currently sustains many more complaints than the broken FPC process, will become more credible and transparent when it is subject to the Monitor's audits and evaluation. The Monitor also will audit internally-generated Police Department investigations of misconduct and serious uses of force, including officer-involved shootings. Currently, none of these internal investigations are subject to outside oversight.

Additional significant recommendations call for removing the FPC from the Department of Employee Resources, spinning off the Commission's personnel-related functions to other City agencies, increasing the FPC's community outreach, providing for public comment at all its meetings, streamlining the disciplinary appeals process, ending pay for terminated officers, expanding the number of Commissioners to seven, and improving Commissioner training. We further recommend that these reforms and the quality of their implementation be evaluated in three years.

A number of our recommendations require statutory changes by the Legislature, but even if none of those were to occur, the overall thrust of our proposals can be implemented. Most importantly, assuming that the necessary budgetary authority is sought by the Mayor and approved by the Common Council, the FPC can take the necessary steps to transform its staff to the monitor model as early as November 2006.

The City of Milwaukee and its Mayor Thomas Barrett should be commended for taking the initiative to commission this review. While we have identified problems with the existing system of police oversight, we have also identified solutions that are realistic and attainable, and reflect best practices that are being used in other jurisdictions. With these reforms, Milwaukee has a true opportunity to better police-community relations and to implement effective police oversight and accountability.

Chapter One. Introduction

A. Purpose of Best Practices Review

The Police Assessment Resource Center (PARC) and Richard Jerome, PC, were retained by the City of Milwaukee to conduct an independent evaluation and review of the Milwaukee Fire and Police Commission (FPC). The goal of the project is to promote police accountability, build public confidence in the Commission and its oversight of the Milwaukee Police Department (MPD), and improve the relations between the Milwaukee Police Department and the community it serves.¹ The project was led by Oren Root, Deputy Director of PARC, and Richard Jerome.

PARC and Richard Jerome examined: the structure and composition of the FPC and its oversight authority; its policies and procedures for addressing citizen complaints and disciplinary appeal hearings; its efforts to review police policies and practices; and the community's perceptions and knowledge of the Commission's roles, responsibilities, and responsiveness. In conducting the review, we examined best practices in comparable jurisdictions to guide our recommendations for improving the Commission's work.

This report documents the strengths and weaknesses of the present Commission mechanism. We make concrete, practical recommendations to improve the Commission's operations, including legislative recommendations. The report includes an outline of a proposed schedule and actions for implementing the recommendations. Recommendations on the following topics are included:

¹ This report considers issues related only to the Police Department. The Fire Department was outside the scope of our engagement, as were the FPC's recruiting, testing, hiring, and promotion functions on behalf of the Police Department.

- Changes in the Commission’s organizational structure, oversight authority, and governance procedures
- Sweeping changes to the citizen complaint procedures, including improvements geared to seeing that meritorious complaints result in sustained findings and that the review process is efficient
- Greater efficiency in the Commission’s review of disciplinary appeals
- Improvements in the Commission’s efforts to review Police Department policies and practices
- Development of enhanced community outreach and education, including initiatives to increase public awareness and understanding of the Commission and of the Milwaukee Police Department’s policies and practices

This review is not being done in a vacuum. Milwaukee, like most large cities in the United States, has a history of troubled relations between the Police Department and the African American community. There is also a more recent, but similarly troubled, relationship between the Police Department and Milwaukee’s Latino population. The tensions in police-community relations have increased in light of recent high-profile events. These include the trial and not-guilty verdict for three police officers accused of beating Frank Jude, Jr., and the fatal shooting of Javier Prado by Officer Alfonzo Glover, Officer Glover’s indictment for first degree murder, and his suicide within hours of being released on bail. Much of the impetus for this project is the public’s view that the Fire and Police Commission has not played the role that it could, and should, in police oversight and accountability. Our report and recommendations have been drafted in light of this background, with the hope and expectation that implementing the recommendations will

strengthen the Commission's oversight of the police, improve police accountability and reduce incidents of police misconduct, thus increasing community trust in the Milwaukee Police Department.

B. The Purposes of Police Oversight

The goals for entities engaged in civilian oversight of law enforcement agencies include the following:

- To reduce misconduct by providing an objective review of citizen complaints and identifying improper behavior and ensuring appropriate discipline is imposed;
- To identify patterns of or trends in misconduct;
- To recommend or develop improvements in police policies, procedures, tactics, and training that will serve to increase police integrity and improve the performance of the police department;
- To help create systems that identify and address potentially problematic behavior before discipline is warranted;
- To increase public trust in the police and strengthen the relationship between the community and the police;
- To foster officer trust in the integrity and fairness of complaint investigations and the disciplinary process;
- To provide a forum for public concern and comment regarding the police department, and bring transparency and outside scrutiny to an agency often viewed as insular.

In determining whether the Commission's practices conform to national best practices, we have measured its policies, procedures, and practices against these general goals for oversight bodies.

C. Methodology of Project

Our evaluation of Milwaukee's Fire and Police Commission included a review of the Commission's history and authority, including Wisconsin Statutes 62.50 (Section 62.50) and other state laws relevant to police management and oversight, Milwaukee's City Charter and relevant ordinances, and studies or reports related to the Commission functions. The documents we reviewed included:

- The Commission's annual reports.
- Agendas and minutes of recent Commission meetings.
- Reports, data, and rules of procedure relating to the Commission's citizen complaint process, its disciplinary appeals hearings, and policy review.
- Relevant rules and standard operating procedures (SOPs) of the Milwaukee Police Department, most particularly relating to personnel complaints, use of force, and interaction with the Commission.

We made three visits to Milwaukee to conduct interviews and public meetings, as well as to review FPC files. We attended a Commission meeting, a Rules and Complaints Committee meeting, a conciliation conference, and a citizen complaint trial. We examined records of Commission conciliations, trials, and appeals processes, and reviewed a sample of complaint and disciplinary appeals files for a fuller understanding of how cases before the Commission are handled.

As part of our site visits, we met with and interviewed the FPC Commissioners and staff, past Commissioners, the Mayor, members of the Common Council, members of the state Legislature, the Director of Employee Relations, the City Attorney, and the District Attorney to

determine their views on the effectiveness of the Commission's structure and processes, their perceptions of the accountability fostered by the process, areas of accomplishment, areas that need improvement, recommendations for changes, and the need for amendments to Section 62.50 or the City Charter.

We also met with and interviewed the Police Chief, a Deputy Chief, the commander of the Professional Performance Division (PPD), patrol officers and supervisors, and union representatives. Among the subjects addressed were the Commission's oversight structure and processes, the FPC's and MPD's citizen complaint procedures and practices, use of force statistics and related audits, the MPD's disciplinary processes and other corrective action, the appeals process for cases involving suspensions of more than five days and terminations, the Commission's role and responsibility concerning police policy and procedures, and management oversight of police operations.

Just as important, we met with citizen stakeholders and members of community groups to assess the level of public satisfaction and confidence in the police, the Commission, and the oversight function. In particular, we met with members of the Milwaukee Commission on Police Community Relations (MCPCR),² representatives of the Urban League, NAACP, Urban Underground, Milwaukee Police Accountability Coalition, African American pastors who organized after the acquittal in the Jude

² The Milwaukee Commission on Police Community Relations was created as part of a mediation agreement between community groups, police unions, and the City, facilitated by the Department of Justice's Community Relations Service (CRS) in a series of meetings in 2004 and 2005. The MCPCR's mission "is to improve public/police relations in the City of Milwaukee by encouraging frank communications between the parties and by professionally addressing issues that have historically been sources of concern for the public and for the Department."
<http://www.ci.mil.wi.us/display/displayFile.asp?docid=11923&filename=/User/jdimow/Agreement052505.pdf>.

beating, and other representatives of the Latino and African American communities. The interviews focused on accountability issues and community members' views of Milwaukee's complaint processes, oversight of police policy and practices, the Commission's structure, how its members are selected, and the quality of those selections. We also held three public meetings (at the Latino Community Center, the Holy Redeemer Institutional Church of God in Christ, and a public hearing in Common Council chambers) and made two radio appearances on WMCS 1290 to gain additional public input.

This is not the first review of the FPC in recent years. A 1991 report conducted after the Jeffrey Dahmer murders recommended that a community-oriented policing plan be submitted to the FPC; police training incorporate community-oriented policing and diversity; the citizen complaint system be streamlined; and the FPC "expand its review of Police Department practice" and its public relations (including Spanish and Asian language guides). A 1994 report of the Wisconsin Advisory Committee to the U.S. Commission on Civil Rights noted problems with the FPC complaint process; lack of public information about MPD complaint dispositions; and lack of follow-up on the recommendations from the 1991 report.

Chapter Two. Summary of the Existing FPC System, and its Authority

A. History of the Fire and Police Commission

The Board of Fire and Police Commissioners was established in 1885.³ It is the oldest civil service authority in Wisconsin and the first police commission in the United States. The major reason why the Commission was established was to remove “cronyism” and politics from the hiring and firing of police and fire personnel. The Milwaukee Police Department was established as a full-time municipal police force in 1855. For the 30 years between 1855 and 1885, each time a new mayor was elected, he would fire the police chief and appoint a new chief. Police officers hired during a previous administration would resign; otherwise, they too would be fired. The new mayor would then hire new police officers.

The law that created the Fire and Police Commission gave the Board the authority and responsibility for setting employment standards for police and fire employees, for conducting police and fire examinations (employment tests), and for appointing the chiefs of the Fire and Police Departments. The Commission also had the final authority for removing the chiefs of the Fire and Police Departments. Over the course of the Commission’s existence, the authority and responsibilities of the Commission have expanded significantly, but the Commission’s responsibility over police personnel has continued. Police and Fire Department employees cannot be hired, promoted, or fired, without Commission approval.

³ Chapter 378 of the Wisconsin Laws of 1885. The source for the information in this section of the report is the 1985 Commemorative Booklet on the 100th Anniversary of the Fire and Police Commission. For a more detailed analysis of the legal development of the FPC and other similar commissions in Wisconsin, see Matthew Flynn, *Police Accountability in Wisconsin*, 1974 Wis. L. Rev. 1131.

The legislation establishing the FPC was modified in 1911 to add two new responsibilities: authority to hear complaints of property owners, and the authority to hear appeals of disciplinary actions from Police and Fire Department members discharged, suspended or reduced in rank. An amendment in 1977 allowed the FPC to hear complaints from “any aggrieved person.” The 1977 legislation also gave the Commission the responsibility of conducting an annual policy review of the Police and Fire Departments. In 1984, an amendment gave the Board authority to prescribe policies and standards, and to author rules and regulations, for the departments. This rulemaking authority has been delegated by the Commission to the Fire and Police Chiefs.

B. Overview of the Commission and Its Functions

The Fire and Police Commission consists of five board members, including a chair and vice chair. They are appointed by the Mayor for five-year, overlapping terms, with one member appointed each year. The FPC has two committees: Rules and Complaints, which makes recommendations to the Board on FPC rules and whether to proceed with citizen complaints, and Policy Review. Meetings of the Board are held twice each month. The staff of the FPC, which is now combined with the staff of the Department of Employee Relations (DER), consists of an Executive Director, a hearing examiner, a part-time research analyst, five testing and examinations staff,⁴ two members of the Diversity office of DER who handle intake of complaints part-time, and an administrative assistant.

⁴ Three of the five staff involved in recruiting and testing split their time in varying proportions between FPC and DER work.

1. Personnel Functions

Commission functions include the recruitment and testing for entry level positions in the Police Department, and testing for promotional positions, such as sergeant and lieutenant. The Commission staff develops and administers written, oral, and physical ability tests, and reviews background investigations. For command-level positions that are not based on a competitive exam, such as deputy and assistant chief, the Police Chief nominates a candidate for Commission approval, usually after a Commission interview. The FPC also determines the qualifications for Police Chief when a vacancy occurs, solicits candidates, and selects the new Chief.⁵

2. Citizen Complaint Function

Any person may file a complaint with the Commission against a member of the Milwaukee Police Department. The complaint must identify a specific act that allegedly violates a department rule, and also must identify specific Police Department members. Individuals making a complaint fill out a complaint form and FPC staff provides a summary of the complaint to the Rules and Complaints Committee, which makes a recommendation to the Board whether the complaint should go forward or be dismissed. If the Board determines that it has jurisdiction over the alleged violation and the member accused, the FPC will attempt a “conciliation conference” where the complainant and the member will be encouraged to come to a mutual resolution. If conciliation is unsuccessful, the case may then go to a trial. The FPC does not conduct any investigation of the complaint prior to the trial.

⁵ The MPD Police Chief is appointed for a four-year term (reduced in 2001 by the Common Council from a seven-year term).

3. Disciplinary Appeals Hearings

If the Police Chief orders an officer's dismissal, demotion, or a suspension of more than five days, the officer may appeal that disciplinary decision to the Commission. Disciplinary appeals are heard by the Commission (or a panel of Commissioners) with procedural and legal issues addressed by an FPC hearing examiner. The Commission may sustain, modify, or reverse the Chief's action.

4. Policy Review and Rules

The FPC has statutory responsibility to conduct an annual policy review of the Police Department. It also has rule-making authority, but has delegated this authority to the Police Chief. Any new Police Department rule or a revision to an existing Department rule requires a Commission review and approval before it can be implemented.

Chapter Three. Structure and Staffing

A. Strengthening the FPC Versus Starting from Scratch

Few people in Milwaukee express support for the Fire and Police Commission. Communities of color and activists see the Commission generally as making decisions that favor the police. The Milwaukee Police Association, on the other hand, sees the Commission as biased against the police and too harsh in its treatment of officers. Part of this divergent criticism reflects the reality of oversight bodies. In every community where oversight of law enforcement exists, there will always be those who think the oversight agency is too lenient on officers and others who think it is too critical.

In Milwaukee, however, much of the dissatisfaction results from objective problems. As we will discuss in the Chapter 4, the FPC's citizen complaint process is badly broken. And, as we will discuss in Chapter 5, the disciplinary appeal process needs to be made considerably more efficient. As discussed in Chapters 6 and 7, in recent years, the Commission has only sparingly exercised its important authority to oversee policy and has eliminated most of its community outreach activities.

Notwithstanding the skepticism about the Commission, we conclude that the best way to achieve effective civilian oversight of the police in Milwaukee is to strengthen the FPC rather than to start from scratch. We come to that conclusion for three reasons. First, under the governing statute, the FPC has the capacity to be a strong oversight body. It has the power to hire the Chief of Police and to evaluate the Chief's performance. It may review any policy of the Department and

must approve all the rules of the Department. It hears the appeals from serious discipline imposed by the Chief.

Second, the Wisconsin Legislature has chosen to set the parameters for police oversight in cities around the state (Section 62.50 for Milwaukee and Wisconsin Statutes 62.13 for other cities). No one we talked to thought it remotely likely that the Legislature would be willing to create an entirely new police oversight body that had greater authority than set forth in the current version of the law

Third, we have seen the creation of new civilian review boards and other oversight entities in a number of jurisdictions around the country, and their startup is often fraught with difficulties. These include obtaining the resources and expertise needed to manage a new agency, setting up systems and procedures, and establishing credibility in the community and with the police, when they often have widely different, and sometimes polar opposite, views of the police department.⁶

⁶ Some advocates for more effective police oversight in Milwaukee have proposed the creation of an elected civilian review board. A resolution introduced in the Common Council in 2004 called for an elected FPC from election districts, each of which would be composed of three aldermanic districts. Experience has shown that civilian review boards function poorly where individual members see themselves as representatives of a single point of view, whether that of the police or of aggrieved community members. Even without elections, such boards become polarized and spend large portions of their energy fighting with board members representing opposing points of view. Adding elections to this recipe for ineffectiveness would increase the polarization and lessen the chance of the board being able to function collaboratively and thus effectively. Interest groups would spend significant money and effort to elect representatives of their point of view, in districts likely to be supportive of that point of view. Already charged relations between the police and the community would be exacerbated by the influences of politics and money from interest groups on all sides. Therefore, we recommend *against* consideration of an elected civilian review board, which would be a serious step in the wrong direction.

Having determined that the FPC should be preserved, the question becomes how can it become an effective oversight body. The rest of this report recommends changes designed to achieve that result.

B. Strengthening the Commission’s Oversight of the Police Department

There are many reasons that the Fire and Police Commission has not realized its potential as a police oversight agency. Chief among these is that, despite sufficient statutory authority, the FPC and its staff are not structured to exercise broad enough oversight of the Police Department, nor do they presently have the capacity and resources to play an effective oversight role. In this chapter, we will discuss how the Commission should change the focus of its oversight activities, together with the structure and staffing needed to implement this more robust oversight.

Before discussing our recommended changes to the FPC’s structure and staffing, we discuss what over the past 15 years has been identified as the most effective way to exercise external oversight of law enforcement.⁷

⁷ See Samuel Walker, *THE NEW WORLD OF POLICE ACCOUNTABILITY* (2005); Merrick Bobb, *Citizen Oversight of the Police in the United States*, 22 ST. LOUIS U. PUB. L. REV. 151 (2003); Samuel Walker, *New Directions in Citizen Oversight: The Auditor Approach to Handling Citizen Complaints*, in *PROBLEM-ORIENTED POLICING* (Tara Shelley & Anne Grant eds., Police Executive Research Forum 1998); PolicyLink, *Community Centered Policing: A Force for Change* 78 (2001), at <http://www.policylink.org/pdfs/ForceForChange.pdf>; City of Sacramento Blue Ribbon Citizens Committee, *Report of the Blue Ribbon Committee on Selected Police Practices* (1998), at <http://www.cityofsacramento.org/cityman/report1.html#f6>.

1. Oversight, Civilian Review Boards, and the Monitor Model⁸

The 1960s gave rise to urgent calls for empowerment of communities of color by placing the police under scrutiny by civilian review boards with substantial membership of persons from racial and ethnic minorities. Advocates of civilian review boards argued that law enforcement agencies rarely conducted thorough and fair investigations of citizens' complaints or undertook substantial internal reform on their own. The solution, they contended, was to create an outside, civilian organization with significant or exclusive responsibility for the investigation and resolution of citizens' complaints.

Civilian review boards were formed in many cities and continue to function to this day, although, by and large, they have not fulfilled their proponents' expectations. Many review boards were enacted with very limited powers. While some boards were given authority to consider matters of policy and to make recommendations, few boards were given the resources to meaningfully exercise that authority. Also, board members' lack of training in police procedures, tactics, and strategy has prevented many review boards from effectively overseeing the police. Additionally, many review boards have lacked adequate staff, leading to a large backlog of unresolved cases. As a result, many review boards have had difficulty providing meaningful oversight.

The videotaped beating of Rodney King in 1991 by officers from the Los Angeles Police Department initiated experimentation with new forms of police oversight. Several communities voluntarily appointed monitors

⁸ One of the anomalies of external oversight of law enforcement is that not one of the more than 100 entities exercising such oversight is the duplicate of the model followed in any other jurisdiction. In 2005, PARC published a *Review of National Police Oversight Models*, www.parc.info/pubs/index.html. In the report, PARC creates a new conceptual framework for analyzing oversight models. What we refer to here as the "monitor model" is termed the "evaluative and performance-based model" in the 2005 report

or auditors who concentrated on systemic reform. In other instances, the United States Department of Justice or state attorneys general initiated investigations and litigation which resulted in the appointment of a monitor. These monitors issue public reports detailing the successes and failures of police departments in achieving widespread reform.

Effective civilian oversight must identify systemic failures, rather than proceeding solely on a case-by-case basis. Police reformers contend that until systemic problems of police culture and procedure are solved, police departments will continue to produce flawed and biased investigations. They further argue that the displacement of investigatory authority lets the police department off the hook and does little to inculcate internal accountability.

These reform advocates argue that the power to adjudicate wrongdoing and impose discipline belongs, at least presumptively, to the law enforcement agency in question. Without responsibility to adjudicate wrongdoing and impose discipline, senior executives in the law enforcement agency cannot be held accountable for dealing with police misconduct, and will simply blame the outside oversight body for its decisions. Unless the police are held strictly accountable up and down the chain of command for actively managing the risk of police misconduct, the self-protective habits of the police will not change. It is one thing to achieve a fair result in a given investigation; it is far more powerful to change police culture in general by requiring strict accountability.

There is increasingly broad agreement that law enforcement's business, in general, is the public's business, and therefore must be open and transparent. The privilege of the police to self-regulate comes

with an obligation to open fully the agency's records to public representatives such as monitors and oversight bodies.

The monitor oversight model (also known as the auditor model) is evaluative in the sense that the goal is to look at the Department in its entirety to make judgments over time regarding how well the Department minimizes the risk of police misconduct, identifies and corrects patterns and practices of unconstitutional and illegal behavior, and finds solutions to systemic failures. This oversight model is performance-based because it examines how individual officers perform, how supervisors and executives respond, and how the department as a whole manages the risk that its employees engage in unconstitutional or illegal behavior. Among the jurisdictions using some form of monitor model are Austin, TX; Boise, ID; Denver, CO; City of Los Angeles, CA; County of Los Angeles, CA; Portland, OR; Sacramento, CA; San Jose, CA, and Tucson, AZ.

A principal strength of monitor models is the ability to address systemic issues and to seek accountability within the police department for eliminating problems and abuses. As opposed to many civilian review boards, monitors are focused on systemic change more than on resolution of specific cases. Many do, however, also have the ability to require the police department to conduct additional investigation in specific cases, if they determine that the initial investigation was insufficient. For instance, the Denver Office of the Independent Monitor has full access to police department records, subpoena power, and the right to attend police interviews. The Monitor can conduct an independent investigation if he finds the departmental investigation insufficient. The Monitor in Austin and the Auditor's office in Portland have similar powers.

2. Creating a Monitor Model Within the FPC

While most monitor/auditor models function without a strongly empowered board or commission, a few are empowered, as the FPC is, to hire the police chief, review policy, process civilian complaints, and hear appeals from discipline.⁹ Since, as discussed above, the FPC has so many inherent strengths (even if it has not generally employed those strengths successfully in the past), it makes eminent good sense to marry the broad statutory strengths of the FPC with the effectiveness of the monitor model. A monitor's powers and functions are parallel in many important respects to the powers and functions of the "special investigator" called for by the coalition of African American pastors who are seeking greater police accountability following the Jude verdict.¹⁰

Two subjects need to be resolved to create a monitor model within the FPC structure: first, what is to be monitored; and second, how to accomplish the monitoring.

One subject to be monitored is civilian complaints. It is important to recognize, however, that no matter what sort of mechanism is being employed, it is rare for even 20 percent of complaints to be sustained, no matter how effective the complaint process is. A sustained rate of approximately 10 percent is more typical. While there are many reasons for the low sustained rate, insufficiency of the allegations and difficulties in proving the alleged violations are chief among those reasons. Therefore, while it is very important to monitor investigations of civilian complaints, to stop there is to miss significant opportunities.

⁹ The Los Angeles Police Commission is such a model, where the monitor is called the Inspector General.

¹⁰ See "Ministers Call for Action," Milwaukee Journal Sentinel, May 16, 2006, <http://www.jsonline.com/story/index.aspx?id=424085>.

In addition to citizen complaints, police departments, including the Milwaukee Police Department, initiate many internal investigations of misconduct, most often generated by a supervisor. In Milwaukee, there were more than 300 internal investigations in 2004 and more than 400 in 2005. A significant percentage of these cases involve charges such as use of excessive force and improper searches and seizures. Internal complaints have a much higher sustained rate. As is true for the Los Angeles County Office of Independent Review and the Denver Office of the Independent Monitor, internal complaint investigations would be an essential second area reviewed by the Monitor.

A third area to be monitored would be internal criminal investigations, which involve allegations of criminal misconduct by members of the Department. By the fact that the misconduct alleged involves criminal behavior, these investigations by definition involve serious matters.

A fourth area in the Monitor's jurisdiction would be the administrative (as opposed to criminal) investigations of officer-involved shootings, in-custody deaths, and other serious uses of force, regardless of whether a related complaint is filed. These cases elicit significant community concern, given that they may involve incidents resulting in loss of life. Investigations of officer-involved shootings and in-custody deaths involve three perspectives. The first is the criminal investigation that seeks to determine whether the involved parties, police and civilian, should be charged with a crime. Because of the broad leeway given police officers under the criminal law to use deadly force to defend themselves or others, officer-involved shootings rarely lead to criminal charges and even more rarely to convictions—not only in Milwaukee, but nationally. The investigation by the police from the criminal perspective

is reviewed by the District Attorney's office, and the work of the District Attorney would be outside the scope of the Monitor's authority.

The second perspective from which officer-involved shootings, in-custody deaths and serious uses of force are analyzed is administrative—i.e., whether the involved officers violated the department's policies and procedures and should therefore be subject to discipline. The third perspective is tactical—whether the involved officers followed their training and performed in a tactically sound way. The second and third perspectives—collectively referred to as the administrative investigation—will be subject to review by the Monitor.

Experience has shown that a focus on tactical and training issues is the most productive way to try to change police responses to critical incidents and to lessen the use of deadly force by the police. This is where the strength of the monitor model comes into play. The Monitor can both push behind the scenes to have the Police Department improve its policies and practices with the goals of lessening the incidence of uses of deadly force, and can shine public light on the need for such changes in a public report.

A fifth area of Monitor responsibility—which is discussed in detail in Chapter 6—would be to assist the FPC in its review of Police Department policies and practices.

Having established *what* Police Department processes will be monitored, we now turn to our recommendations on how the Fire and Police Commission should carry out the monitoring.

Monitoring should be conducted by a full-time staff, knowledgeable in law enforcement practices, particularly internal investigations of

wrongdoing and uses of force. The monitoring staff must also understand the principles of law enforcement oversight and be able to relate effectively with all who have a stake in law enforcement and oversight of the police—including, but not limited to, the residents of Milwaukee, the Police Department, the police unions, the Fire and Police Commission, relevant parts of City government, and the District Attorney’s office.

The monitoring work would be led and supervised by the “Independent Monitor,” an individual who would also fill the role of chief staff person for the FPC, now known as the Executive Director. The Independent Monitor would be assisted by a Chief Deputy Monitor and an Assistant Monitor who would share responsibility for the oversight of the four types of Police Department investigations discussed above: citizens’ complaints, internal departmental complaints, internal criminal investigations, and administrative investigations of serious uses of force and in-custody deaths. We recommend that the authority and functions of the Independent Monitor be established in an enabling ordinance passed by the Common Council. Several ordinances establishing monitors in other cities are included in Appendix 4 to this report.

The monitoring staff would review investigations at their inception, while they are proceeding, and at the conclusion of the investigation when the findings have been formulated. Monitoring staff would be empowered to observe interviews and make recommendations to Department investigators as the investigations proceed. Investigations would be reviewed for accuracy, thoroughness, fairness, and timeliness, while discipline would be reviewed for appropriateness and timeliness. The entire files of the Police Department—investigatory, personnel, and policy—would be available to the monitoring staff at all times. Unfettered access to all Police Department files, as the monitors have in Denver,

Portland and Los Angeles County—is critical to the success of the monitor model.¹¹

In the event that an investigation was found deficient in some way, the Police Department would be asked to rectify the problem. For instance, if a witness who should have been interviewed was not, the monitoring staff would initially request that the witness be interviewed and the findings, if already drafted, be reconsidered in light of the additional information. On a day-to-day basis, the monitoring staff would generally deal with supervisory personnel in the Professional Performance Division. But if a disagreement were to arise, the Monitor would have access to all the top managers in the Department, including the Chief.

Although the Monitor staff will audit and review investigations, conducting the investigation is the responsibility of the Police Department, under the direction of the Police Chief. We believe it will be helpful for the Monitor, the FPC, and the Police Department to develop protocols that specify the role and responsibilities of the Monitor and monitor staff in investigations.

Experience from other cities with monitors, such as Portland and Denver, has shown that the overwhelming majority of problems with the conduct of specific investigations are resolved either in response to a monitor's initial request or after further discussion inside the department. Provisions need to be made, however, for options if the Police Department, after the matter had been brought to the Chief's attention, were to fail to address the Monitor's requests to rectify

¹¹ In Denver, for example, the Monitor attends weekly meetings with the Internal Affairs command staff, gaining insights into case investigations as they proceed.

problems relating to a specific investigation. The Monitor and FPC would have the opportunity to use one or more of the following options.

First, the monitoring staff could be empowered to conduct a reopened investigation on its own with such assistance from the Police Department as it might request. Upon conclusion of the investigation, the monitoring staff would present its findings, and disciplinary recommendation, if any, to the Chief. Second, the Commission engages in a quarterly and annual review of the Chief's performance. Systemic investigatory problems should be addressed in these performance reviews. Third, if the failure to comply with the request concerning the proper handling of an investigation was a pattern, the Monitor not only could, but should, discuss the problem in the Monitor's next public report. Shining a light on the problem would provide information that would allow other parts of government and the community to bring their influence to bear to try to ensure that the problem does not recur.¹²

Finally, with respect to the conduct of an investigation, but *not* as to the findings of an investigation, the Monitor could ask the FPC to use its directive power to require the Police Department to rectify the problem in the investigation. Because, as is discussed more fully in Chapter 6, the FPC's directive power should be used only after consultation with the Chief, the FPC would solicit the Chief's view regarding the investigation. After hearing from the Monitor and the Chief, the FPC would determine whether to issue a directive to the Chief with respect to the investigation in question. If the Commission agreed with the Monitor, the Department would be required to reopen the investigation and follow the FPC directive.

¹² Good examples of the value of in-depth public reporting may be found in the reports of the Special Counsel who monitors the Los Angeles County Sheriff's Department, and of the San Jose Independent Police Auditor.

This last option ensures that the Department cannot stonewall the Monitor's objections. But if the relationship between the Monitor and the Department, particularly the Chief, is healthy, these procedures will never need to be invoked.

The monitoring process would also focus in a consistent way on the big picture, seeking to encourage systemic improvements in Police Department policies and practices. It would do this in two principal ways.

First, the FPC's research and policy staff would regularly obtain data and other information from the Police Department and would analyze that information in the Monitor's periodic reports and make recommendations for improvements as appropriate. As is discussed more fully in Chapter 6, the subjects that the FPC could address are as broad as the Police Department's areas of responsibility.

Second, the monitoring staff would identify patterns and trends in the citizen complaint and internal department investigations—both in the behavior that is the subject of investigations and in issues that recur in the investigatory process—and with the assistance of the research and policy staff, would address those patterns and trends with a view toward ameliorating the identified problems. Focus on problematic patterns and trends would take place both in the FPC's quarterly reviews of the Chief's performance and in the Monitor's public reports.

Recommendation 3.1: The Fire and Police Commission should reorganize its staffing and structure to institute a monitor model of oversight that will review citizen complaint and internal Police Department investigations and issue public reports on the quality and fairness of those investigations. The chief FPC staff person will

be designated the Independent Monitor. The Common Council should enact enabling legislation that establishes the Independent Monitor's authority and functions. We also believe that protocols should be developed by the Monitor, the FPC, and the Police Department that specifically set forth the relationship between the Monitor and the Police Department, and the Monitor's role in investigations.

C. The Independent Monitor Position

Until 1988, the Executive Director—then known as Executive Secretary—was selected and appointed by the Fire and Police Commission. Upon the eve of becoming Mayor that year, John Norquist persuaded the Legislature to institute a cabinet-form of government for Milwaukee's executive branch. That legislation—now incorporated in Wisconsin Statutes 62.51 (Section 62.51)—gave the Mayor the power to appoint the Executive Director, subject to confirmation by the Common Council. Also as set forth in that statute, the Executive Director serves at the pleasure of the Mayor and until the end of that term of the Mayor, unless reappointed.

By providing that the Executive Director report to the Mayor and serve at the Mayor's pleasure, the Executive Director has the incentive to be more attentive to the Mayor's wishes and priorities than to those of the Commissioners. Under the present structure, the Commissioners have no formal role in the selection or retention or dismissal, if that were to occur, of the Commission's chief staff member, who manages the work of the entire staff. As a full-time staff member to whom the rest of the staff reports, the Executive Director can play a large role in influencing the agenda of the Commission and the implementation of its goals and programs. Since the Legislature has deemed it appropriate to create an independent body to oversee the Police Department, that body should

have a staff that is responsive to it and has the appropriate incentives to support its work.

Recommendation 3.2: The Independent Monitor should report to the Fire and Police Commission. The Monitor should be appointed by the Mayor for a term of four years from a list of three candidates deemed by the Commission to be well-qualified for the post. The appointment should be subject to the confirmation of the Common Council. Removal of the Monitor during the four-year term should be only for cause as determined by the Commission.

Removing the Executive Director from the Mayor's cabinet and changing the post from serving at the pleasure of the Mayor will require deletion of the mention of this position from Section 62.51(1). The selection process and the terms of the Monitor's appointment may be established by a City ordinance.

As the chief executive of the City who is accountable to the voters, the Mayor should be held accountable for the selection of the person who serves as the FPC's chief staff member. For a post of the importance of the FPC's Monitor, the Common Council should play its "advise and consent" role. Unlike most staff appointments, however, we recommend that the Monitor report to the Commission rather than the Mayor. The Commission should therefore play the key role of identifying a qualified pool of three candidates from which the Mayor will make the final selection. It is important that the Commission make a determination that all the candidates it selects for the well-qualified list sent to the Mayor are people it believes can work effectively with the Commission, as well as fulfill all the job's responsibilities. Thus, both the Commission and the Mayor will share responsibility for selecting a well-qualified person to lead the FPC staff, subject to the Common Council's approval.

If the Mayor were to determine that none of the three candidates on the well-qualified list were suitable for appointment, the Mayor would inform the Commission that none of the three candidates was suitable and request a new list of three well-qualified candidates.¹³

In recommending a term of four years for the Monitor, subject only to removal for cause, we seek to create sufficient job security for a post that requires walking a fine line between groups holding strong opinions. Almost inevitably, some decisions made by the Monitor will cause upset in one constituency or another. The four year term and the protection that a Monitor receives by being removable only for cause are essential to attracting the best qualified candidates from around the country.

Recommendation 3.3: The Fire and Police Commission should conduct a nationwide search for a well-qualified Independent Monitor. The Independent Monitor should be either an attorney with substantial experience in criminal and/or labor law, or an individual with at least five years experience in police oversight, preferably with a relevant graduate degree. Knowledge of law enforcement, particularly of internal departmental investigation processes, is essential. The Monitor must possess impeccable integrity and be able to establish and maintain a high degree of credibility with all stakeholders. In Appendix 4, we have included the job descriptions for the monitor/auditor positions in Denver, Portland, and San Jose.

In light of the fact that the Monitor will need to function with professionalism and credibility with people of divergent points of view about policing and policing oversight, the FPC should involve

¹³ The selection process is in most respects the same as used by Albuquerque, New Mexico in selecting the Independent Review Officer, that city's monitor equivalent.

representatives of both the community and the police in the selection process.

D. Relationship with the Department of Employee Relations

Under the City's current administrative structure the Fire and Police Commission has become a part of the Milwaukee Department of Employee Relations (DER). While Section 62.51(1) makes the Executive Director of the FPC a member of the Mayor's Cabinet, reporting to the Mayor, the Executive Director of the FPC also reports to the Director of DER. The lines of authority over the FPC and its work have become so murky that even the best informed members of City government have a difficult time articulating what they are. Despite the ambiguities, the day-to-day reality is that the FPC Executive Director reports to the Director of DER. Moreover, the FPC does not control its own budget; DER does. The FPC staff has shrunk and those who remain are classified as DER employees.

The FPC was consolidated into DER in 2003 under Mayor Norquist, primarily for budgetary reasons. The underlying logic was based upon the correct factual premise that both agencies engaged in recruitment, testing for hiring and promotions, and other personnel and civil service functions. Because of the similarity of much of their activities, consolidation was seen as a way to achieve efficiencies in both staffing and administrative costs and a synergy on personnel-related functions. There is no evidence, however, that any consideration was given to what effects the merger would have on the independence and stature of the FPC. Despite the absence of consideration of the broader structural issues, the status of the FPC Executive Director position was

overtly considered. The Executive Director was to become the *Deputy* Director of DER.

In addition to staffing and administrative efficiencies, the architects of the consolidation hoped that the high morale of the FPC staff would increase the morale of DER staff. Presciently, the issue paper that advocated the consolidation recognized that the opposite might happen. In discussing the organizational cultures of the two agencies, the issue paper¹⁴ noted that downsizing of DER over a 10-year period had led to “stress ... apprehension ... poor productivity ... inefficien[cy] ... [and] lack of teamwork.” The issue paper continued:

On the contrary, the Fire and Police Commission has very high employee morale and satisfaction. The department operates as a team, with a delineated chain of responsibility [E]mployees feel valued and operate well as a team.

Combining these two organizations could have one of two effects: it could [r]educe morale for the FPC ... or it could increase morale for the DER staff....

Having only minimal contact with DER staff, we are unable to offer an opinion as to whether DER staff morale has changed for the better or the worse since the merger. We are able to say, however, that the merger has been severely detrimental to FPC staff morale.

As important as staff morale is, whether the FPC is effectively fulfilling its role to oversee the Milwaukee Police Department is far more important. On that score there is little doubt that the merger has negatively impacted the autonomy, stature, and effectiveness of the Commission. Almost every person to whom we spoke who voiced an opinion on the efficacy of the merger with DER—regardless of their

¹⁴ Issue Paper: Merging the Fire and Police Commission and DER Department: Employee Relations and Fire and Police Commission, by Jennifer Gonda (undated).

divergent views on most topics relating to the FPC and its work—believed that the consolidation has been a failure, primarily because it has deprived the FPC of autonomy and resources.

The perception of most stakeholders that the consolidation of the FPC into DER has weakened the FPC is corroborated by the facts. The Commission no longer controls its own budget, leading, not surprisingly, to shrinkage in its staff from 11 full-time and one part-time staff in 2002 to six full-time and one part-time staff in 2006. Those numbers, however, exaggerate the loss of personnel because DER employees now provide the staffing for equivalent of two full-time positions dedicated to FPC work. Taking that assistance from DER into account, the FPC has nonetheless had an effective cut in staffing of 26 percent since the merger.

The FPC also has had a loss in autonomy. This is not to say that the DER and its present Director have not endeavored to support and in some ways been quite helpful to the FPC (as opposed to the previous DER Director, who we were told was less supportive of the FPC and its mission). Nonetheless, the Wisconsin Legislature intended that the FPC be an independent body. That intent is subverted by embedding the Commission in a department that is subject to direct mayoral control. The loss of autonomy is most pronounced in making the FPC Executive Director a subordinate of the DER Director. The loss of an independent identity affects perceptions of the Commission, which causes it to lose stature in the eyes of the public. We are aware of no city with an effective police oversight mechanism that is embedded in an administrative department. It is not a model calculated to foster strong police oversight.

Recommendation 3.4: The FPC should be restored to full autonomy, with a budget and staff fully independent of DER. This change does not require legislative approval and should be accomplished as speedily as possible.

E. The FPC's Personnel-Related Functions

As discussed in Chapter 2, the Fire and Police Commission was originally created in 1885 to serve a civil service function, to end the complete turnover of Police Department personnel every time a new Mayor was elected. The personnel-related, civil service functions have evolved into substantial efforts to administer recruiting, testing, hiring, and promotion, as well as enforcing administrative requirements for personnel, such as those related to residency. For the Board itself, personnel-related matters occupy a substantial portion of its efforts, as reflected in the FPC meeting agendas.¹⁵

The transformation of the Commission into an effective law enforcement oversight body makes it desirable that its personnel-related functions be spun off to a different agency. The changes we are recommending in the structure and staffing of the FPC will change its principal focus to one of accountability by the police. The focus on accountability will be central to the efforts of the staff involved in monitoring, in policy and research, and in disciplinary appeals. The

¹⁵ One example is the FPC Board meeting we observed on April 20, 2006, which included time spent on reclassification requests, leaves of absence, appointments of an office assistant, mail processor and microcomputer services assistant, and promotions of heavy equipment operator, office assistant, and fingerprint examiner. Our review of the minutes of Board meetings shows that most of the time of FPC meetings is spent on promotions, appointments, examination issues, and minor personnel issues, including the approval of appointments of substitute crossing guards. The Board's time could better be spent on examining police policies and practices and addressing oversight and accountability.

personnel-related work of the Commission involves a significantly different focus, and requires different knowledge and experience.

As the FPC's chief staff person, the Independent Monitor must have experience in and knowledge about police internal investigations and other accountability processes. While it is possible that the person selected to be Independent Monitor will also have knowledge of recruiting, testing, hiring, promotions, and eligibility requirements, these are not areas of expertise that will be sought. Nor are these the areas of expertise that are key to the criteria for selection of FPC Commissioners. To have the Commission and the Independent Monitor supervise activities that are outside their core mission seems undesirable.

In addition, once the FPC has become an effective oversight agency, its accountability mission will not mesh well with its personnel-related function. This is not to suggest that the personnel-related functions are unimportant or of lesser importance. Quite the contrary, they are of critical significance. And because of their critical importance, they should not be an afterthought in an agency primarily devoted to significantly different work. Other than in Wisconsin, we are unaware of any police oversight bodies that also have the authority to handle personnel functions for the police department. Leaving the two disparate functions combined in one small agency inevitably detracts from the quality of both functions. The hiring function which we believe should be retained by the FPC is the hiring of the Chief of Police (and the hiring of the Chief Engineer of the Fire Department). Developing the criteria for a police chief selection and examining the backgrounds, philosophy and approaches of police chief candidates do in fact coincide with the FPC's mission and oversight responsibilities. We leave it to the City of Milwaukee to consider whether the FPC should retain the authority to approve command-level appointments at the MPD.

Recommendation 3.5: The personnel-related functions of the FPC should be spun off to another agency. The function of selecting the Chief of Police, however, should remain with the FPC. Because these personnel-related functions are provided for in Section 62.50, implementing this recommendation will require action of the Legislature. Since an analysis of the FPC's personnel-related functions was not part of our study, we take no position on whether the recruiting, testing, hiring, and promotion functions presently performed by the FPC should be placed in DER, in the Police Department, or divided between those two agencies. That determination will require further analysis by the City and the departments impacted by the changes. The City will also need to address whether the FPC should retain its function of approving high-level commanders in the Police Department.

F. Staff To Assist the Monitor

To create an effective monitor-model Fire and Police Commission will require significant additions to the staff. At present, only three full-time and one part-time staff members (the Executive Director, hearing examiner, administrative assistant, and part-time research analyst) are devoted to the police oversight functions of the Commission. They are assisted in the intake and conciliation of citizen complaints by two DER staff members who each spend approximately half their time on FPC functions. In effect, then, the FPC's police oversight functions are staffed by three full-time and three part-time staff members. Our analysis indicates that the revamped police oversight functions will require eight full-time and one part-time staff, a net increase of four full-time-equivalent positions.

Interestingly, at the time of the merger into DER, the FPC's staff devoted to the police oversight functions, as opposed to personnel-related

functions, totaled seven full-time and one part-time individuals. That almost-50-percent reduction in FPC oversight staff over the last few years is part of the explanation for the FPC's weak performance and lack of outreach to the community in the recent past.

The staff of the revamped FPC should include the following positions:

- Independent Monitor
- Chief Deputy Monitor
- Assistant Monitor
- Community Relations Manager
- Research and Policy Manager/Hearing Examiner
- Research and Policy Specialist
- Research and Policy Analyst (part-time)
- Paralegal
- Administrative Assistant

We have already discussed the role of the Independent Monitor at some length. The Chief Deputy and Assistant Monitors would assist the Monitor in the review of the citizen complaint and internal investigations conducted by the Police Department, including identifying patterns in police conduct and in the investigations of the complaints. The Chief Deputy and Assistant Monitors would be expected to have legal and/or police oversight backgrounds, but not necessarily the same degree of experience as would be required for the Independent Monitor.

The Community Relations Manager would be responsible for the FPC's outreach to the community, managing the conciliation process, conducting the conciliations (or supervising mediators conducting conciliations), supervising the intake of civilian complaints, and

supervising and participating in responding to the inquiries of civilians with pending complaints.

The Research and Policy Specialist and part-time Research and Policy Analyst would proactively obtain information from the Police Department that they would analyze and write about, both to assist the Commissioners in their reviews of policy and of the performance of the Chief and also for the FPC's periodic reports. The researchers would also obtain, analyze and write about information concerning patterns and trends identified by the monitoring staff. The research staff would produce public reports on specific policy issues in addition to the periodic reports of the FPC.

The Research and Policy Manager/Hearing Examiner would participate in and supervise the research and policy analysis functions of the FPC. This individual would also act as hearing examiner for the disciplinary appeals heard by the FPC and provide the necessary guidance and support to outside hearing examiners retained, as necessary, by the FPC to ensure the timely completion of disciplinary appeals.

The Paralegal would accept and refer to PPD civilian complaints received by the FPC, respond to questions from civilians with pending complaints, provide appropriate information and referrals to members of the public, perform the administrative tasks associated with the conciliation of civilian complaints, perform the scheduling and other recurring tasks associated with the disciplinary appeals process that do not require the experience of an attorney, and assist the Administrative Assistant with the general administrative tasks.

The Administrative Assistant would act as the assistant to the Monitor and would also provide general administrative support for the Commission. Because of the expanded size of the staff and the FPC's increased activities, the Paralegal would have to assume some of the general administrative tasks and the tracking of disciplinary appeals and civilian complaints.

Recommendation 3.6: The FPC staff should include three monitoring staff, three research/policy/hearing staff, a community relations manager, and two support staff. The search for an Independent Monitor should start as soon as possible, as identifying and bringing on the successful candidate may take a number of months.

G. The Commissioners

1. Expansion of the Size of the Commission

Assuming the necessary legislative approval can be obtained for the FPC to continue to hear disciplinary appeals in panels of three Commissioners, it would be desirable to expand the Commission membership to seven, from the present five. Expanded membership would allow broader representation on the Board which, in light of intense interest in the City in policing misconduct, would be a plus. Mayors Barrett and Norquist have shown appropriate concern for diversity in their appointments to the Board. The present Commissioners include two African Americans, one Latino, and one gay man. Continued sensitivity to broad representation on the FPC that reflects the City's diversity is essential to the credibility of the Commission. An expansion in Commission size would allow for broader representation and would allow the FPC to draw on a broader base of skills from its Commissioner members.

Expanded membership also would allow the work burdens to be spread among a greater number of Commissioners. At present, the most time-consuming part of the Commissioners' responsibilities is hearing disciplinary appeals and the occasional trial of citizens' complaints. Those proceedings are heard by panels of three Commissioners, who constitute a quorum of the five-member Commission and who thus are functioning as the full Commission, not a committee thereof. We recommend that the Legislature include specific authorization for panels of three Commissioners to hear and decide disciplinary appeals. Otherwise, a larger Commission would mean that a larger quorum of four members would be required to hear disciplinary appeals. The difficulties of getting four Commissioners together on a regular basis would be a sufficiently significant scheduling impediment that the increased size of the Commission would be counterproductive. Thus, we support an increase in the membership of the Commission *only* if the legislation authorizes panels of three Commissioners to hear and decide disciplinary appeals.

We do not support the proposals that some have made to either limit Commissioners to a term of shorter than five years, or to prohibit reappointment to a second term, or both. The proponents of those ideas contend that Commissioners lose touch with the community after more than two or three years, or one term, on the FPC. We, however, are more persuaded by the statements of several Commissioners that it took a substantial amount of time before they mastered the position and became fully effective on the Commission. We conclude that a Commissioner's knowledge and experience on the Board is more likely to be an asset than the liability. We nonetheless urge mayors to exercise the appropriate due diligence before re-appointing a Commissioner, to ensure that he or she retains a commitment to the values of citizen oversight, and has not become jaded and cynical.

Recommendation 3.7: Provided that the Commission is authorized to hear and decide disciplinary appeals in panels of three members, the Commission should be expanded to seven members. The Commissioners should continue to serve staggered five-year terms, which foster the right balance of experience and fresh perspectives.

Expanding the number of Commissioners and authorizing panels of three to hear and decide disciplinary appeals would require amendment of Section 62.50.

2. Commission Membership

Opinion in Milwaukee is widely split as to the desirability of having retired law enforcement officers on the Commission. Proponents argue that the Commission needs more members who are familiar with policing and thus will be more knowledgeable about the issues that come before the Commission. Opponents say that retired law enforcement officers would be biased in favor of the police. While we do not assume bias, the fact that a retired member of the Police Department likely would know many of the officers whose conduct would be reviewed by the Commission should be recognized as making it harder to remain impartial.¹⁶ We believe this is a prudent way to avoid conflicts of interest and the appearance of conflicts. The same rule, however, would not apply to individuals who have been members of other law enforcement agencies. They could bring their knowledge of law enforcement without the possible entanglements of having been a colleague of an officer whose actions were being reviewed.

While the FPC does not presently have any Commissioners who are lawyers, we believe that is desirable to have at least one lawyer on the

¹⁶ In Denver, membership on the Citizen Oversight Board is prohibited for persons who have been members of the departments being monitored, or who have immediate family members who have been members of those departments. Revised Municipal Code, City and County of Denver, Chapter 2, Article XVIII, Sec. 2-378 (d).

Commission. Much of the Commission's work involves legal processes, and having a Commissioner with legal training would likely be helpful to all the Board members.

Several people we interviewed commented on the increasing difficulty in filling positions on the FPC. Some commented that 20 years ago some of Milwaukee's most talented citizens served on the FPC, but that the reduced public regard for the Commission made it more difficult to attract high-profile members. Several of those interviewed noted that the position of FPC Commissioner is particularly thankless, for a variety of reasons: decisions the FPC makes inevitably will be unpopular with one or another group with strong opinions on the issues; the FPC involves a great deal of time and work; and other boards, like the Sewerage Commission, pay considerably more than the \$6,600 annual stipend received by FPC Commissioners. The requirement for city residency was perceived as limiting the pool of well-qualified candidates.

We suspect that some well-qualified citizens may have been reluctant to serve in the recent past because the FPC more and more has come to be perceived as ineffectual. We are hopeful that the reforms we propose will make service on the FPC more appealing to Milwaukee's best and brightest citizens from all parts of the community. We also recommend that the City evaluate the compensation of FPC Commissioners in light of the compensation of commissioners on similar boards.

Recommendation 3.8: Steps should be undertaken to encourage talented citizens to serve on the FPC. Commissioners and their immediate family members should not be, or have been, members of the Milwaukee Police Department. Also, it is desirable that at least one Commissioner be a lawyer.

3. Orientation and Training of Commission Members

Civilian oversight of the police is definitely positive; however, it should be informed civilian oversight. Many we interviewed believe that the Commissioners need additional training and knowledge regarding policing.

We recommend that the following training be made mandatory for all FPC Commissioners. First, within six months of their appointment, Commissioners should enroll in and attend a Milwaukee Police Citizen Academy, which educates citizens about police procedures. The academy meets for three hours a week for ten weeks. Second, Commissioners should participate in patrol ride-alongs. We recommend that newly-appointed Commissioners participate in at least four ride-alongs in their first six months on the FPC. Commissioners also should be required to participate in ride-alongs during subsequent years of their service. We believe at least half of a Commissioner's ride-alongs should be in neighborhoods with the highest police-community tensions and rates of complaints.

Recommendation 3.9: Commissioners should attend the Police Citizen Academy shortly after appointment. They should also participate in police ride-alongs.

Commissioners told us that they received little training concerning FPC policies, standards, and practices, and MPD policies, standards and practices. Most Commissioners learned as they went along, and some commented that for the first year or two on the Commission, they thought they did not fully understand everything they should have. In light of the need for such training and its absence to-date, the FPC staff and Commissioners should develop a written training curriculum for new Commissioners. We recommend at least 15 hours of instruction by staff

and Commissioners (and possibly others) on relevant FPC and MPD policies and practices. Most importantly, new Commissioners should be fully conversant with the standards they are to employ in decision-making. If the standard is “a preponderance of the evidence,” for example, new Commissioner training should ensure that the standard is clearly and meaningfully understood.

Recommendation 3.10: FPC staff, in conjunction with the Commissioners, should develop an internal training program for new Commissioners that includes instruction on the policies and practices of the FPC and MPD.

Recommendation 3.11: As part of their initial training, Commissioners should also meet with representatives of the African American, Latino, Asian, and Gay/Lesbian/Bisexual/Transgender communities to hear their perspectives on the Police Department and police misconduct. Just as Commissioners should be knowledgeable about police perspectives, they should also be knowledgeable about the perspectives of those in communities whose members are overrepresented among victims of police misconduct.

Chapter Four. Citizen Complaints

A. The Present Broken Process

The FPC citizen complaint process is broken beyond repair. We talked to several hundred people in Milwaukee about the Fire and Police Commission, individually and in groups, over a three-month period. We did not find a single person, inside or outside the Commission, who stated that the complaint process was effective or even acceptable.¹⁷ The only part of the process that generated positive comments was the conciliation (or mediation) process. Notably, not only was conciliation the only part of the complaint process that was identified as working, but those supporting it also represented a broad range of divergent opinions on policing issues.

Civilian complaints in Milwaukee can be initiated with the Police Department, or with the Fire and Police Commission, or both. In most instances, civilians in Milwaukee choose to make their complaints to the Police Department. For the six years from 2000 through 2005, 4,741 civilian complaints were generated. Only nine percent (437) were initiated with the Fire and Police Commission.¹⁸ The remaining 91 percent (4,304) were initiated with the Police Department.

The FPC complaint process is structurally flawed in ways that make it very difficult for a citizen to establish a claim of misconduct, even if meritorious. The civilian is required at every stage to be able to articulate (sometimes in writing and sometimes orally) the claim of misconduct against the accused officer, generally without any

¹⁷ This criticism came from both community activists and from the police union, from Police Department members of varying ranks and from FPC Commissioners and staff.

¹⁸ The FPC also received nine complaints against Fire Department personnel in those six years.

investigative or representational assistance. Officers, on the other hand, are almost always represented by counsel. If the complainant does not specifically identify the misconduct alleged, as well as the officers who were alleged to have engaged in the misconduct, the complaint is often dismissed by the FPC.

The FPC does not help the civilian fill out the complaint form (though it will refer those who need such help to community organizations such as the NAACP). Moreover, there is no way that complaints can be made to the FPC other than by completing the written form. The FPC does not take anonymous complaints or complaints by phone, fax, or e-mail. If an individual calls the FPC with a complaint, that person will be mailed a complaint form, which must be completed and mailed back to the FPC.

While the citizen completes the complaint form setting forth the factual allegations, it is the FPC staff (or since the merger, DER staff) who choose the charges they believe are made out by the factual allegations. The selection of charges by staff is sometimes flawed and may lead to the dismissal of charges that might well have been sustained, had the correct rule violation been alleged. We examined several closed FPC files where we saw examples of failures to allege rule violations that were made out by the facts alleged by the complainant. We also saw this problem in the complaint trial we observed in April 2006.

The FPC has no investigators. If the case needs investigation, it is the complainant's responsibility to conduct the investigation on his or her own. There are some cases where the FPC determines that investigation is needed, and dismisses the case but refers it to the Police Department. This is often the case in complaints that allege potential

criminal violations. The Milwaukee Police Department, on the other hand, has 11 investigators in the Internal Affairs Section of its Professional Performance Division, which handles citizen- and department-generated complaints.¹⁹

Once a complaint is submitted and the FPC staff determine what charges they believe are appropriate, the staff present a summary of the complaint to the Rules and Complaints Committee, which makes a recommendation to the Board as to whether the complaint should be dismissed or proceed. Many complaints are dismissed at this stage for a variety of reasons, including lack of jurisdiction, lack of “prosecutorial merit,” the complainant’s unavailability, or “passivity” of the complainant. For those complaints over which the FPC Board determines it has “provisional jurisdiction,” the FPC has, as a policy matter, required that all complaints proceed to a conciliation conference. If the conciliation conference is not successful in resolving the case, the complaint may then proceed to an FPC trial after significant pre-trial procedures. Even in these situations, however, the FPC does not conduct any investigation.

A remarkably small number of complaints have actually made it all the way to an FPC trial. From 2000 to the present, there have been only ten complaint trials. There were no trials at all in 2000 and in 2002, and only one trial in 2001 and one trial in 2003. Eight of the ten trials in the past six years involved cases filed from 2000 through 2005.²⁰ By

¹⁹ PPD also has eight detectives in its Criminal Investigative Section, which handles internal criminal investigations.

²⁰ There are also 19 cases from 2003, 2004, and 2005 that are awaiting trial, and there will likely be additional 2005 complaints that are referred to trial as those cases progress. Data from prior years indicate, however, that many of the cases currently awaiting trial will not in fact be tried.

comparison, there were 44 trials on complaints filed from 1992 through 1999.

For the very small percentage of civilian complaints that do go to trial, the complainant must engage in a quite formal adversarial proceeding against the accused officer(s) who are virtually always represented by counsel. Moreover, cases routinely take two to three years to be brought to trial, in part because disciplinary appeals are given priority over trials of citizen complaints.

The results are troubling, and demonstrate the FPC's structural defects. Charges have been sustained against only two officers from complaints filed from 2000 to 2005, out of 437 complaints and eight trials held.²¹ For complaints filed from 1992 to 1999, charges were sustained in only six cases, against only eight officers,²² out of 550 complaints and 44 trials held.²³

In light of the facts that the FPC complaint process is structurally flawed and realizes almost no sustained results, and in light of the further fact that the overwhelming majority of complaints already are made to the Police Department, we recommend a significant change in the way citizen complaints should be addressed in Milwaukee.²⁴ We

²¹ One trial that was conducted in February, 2005 by the hearing examiner without Board members present is awaiting a determination by the Commissioners based upon their reading of the transcript and the hearing examiner's report.

²² The charges against one officer were later reversed on an appeal to the Circuit Court.

²³ Two of the 44 trials each resulted in two officers being found guilty. Thus, six of the 44 trials resulted in sustained findings.

²⁴ Much the same problems were discussed in "A Report to Mayor John O. Norquist and the Board of Fire and Police Commissioners" by the Mayor's Citizen Commission on Police Community Relations, October 15, 1991. That report, prompted by dissatisfaction with the poor police response to a call that, if handled correctly, would have saved a 14-year-old boy from being strangled by serial killer Jeffrey Dahmer, made

recommend that the small minority of complaints that have been processed by the FPC be referred to the Police Department where they will in fact be investigated by the Professional Performance Division. For cases filed from 2000 to 2005, the Milwaukee Police Department sustained 219 citizen complaints. With the addition of the Independent Monitor's review and audit of civilian complaints investigated by the Police Department, there will be a confidence-inducing check to determine whether the PPD process is thorough and fair.

The only aspect of the FPC complaint process that appears to have worked is conciliation. Of the 437 complaints filed with the FPC from 2000 to 2005, 45, or 10 percent, had been successfully conciliated by early in 2006.²⁵ After a successful conciliation, the charges against the officer are dismissed by the FPC.

Recommendation 4.1: The FPC complaint process should be discontinued. Civilian complaints made to the FPC should be referred to the Police Department for a thorough investigation and the results reviewed by the FPC's new monitoring staff. Even though the Police Department is now processing 90 percent of the civilian complaints made in Milwaukee, the literal language of Section 62.50 requires the FPC to process these complaints. While the current practice suggests that a legislative amendment may be unnecessary, we believe it would be prudent and recommend conforming the statute to the practice.

a number of recommendations for improving the FPC complaint system. Fifteen years later, with the problems not only not rectified but aggravated, we think that discontinuing the structurally flawed complaint system is the better option.

²⁵ Two of the nine complaints against members of the Fire Department had also been successfully conciliated.

The Revamped Complaint and Conciliation Processes

1. Intake

Under the recommended revision of the civilian complaint process, the 90 percent of complaints that were made to the Police Department will be resolved following current Police Department procedures except in three respects: (1) the Police Department will immediately notify the FPC of receipt of the complaint, with pertinent details; (2) the FPC monitoring staff will review the investigation and findings for accuracy, completeness, and fairness, and can take appropriate action if the requisite standards have not been met;²⁶ and (3) the case may be identified for conciliation, as discussed below.

Under the recommended process, the FPC will still be able to receive civilian complaints, but when it does, it will immediately refer the complaint to PPD for investigation and resolution. The Commission will also still be able to have other organizations, such as the NAACP, receive complaints on its behalf. Those complaints will likewise be immediately referred to PPD. It is desirable to make the intake of complaints as user-friendly as possible, in particular creating options for those who are reluctant to file their complaints directly with the police.

Recommendation 4.2: The FPC will continue to accept complaints of police misconduct from the public and may arrange, as it does currently, for community organizations to also accept complaints.

²⁶ The steps listed in items (1) and (2) above are similar to the manner in which complaints are reviewed in Austin and San Jose.

2. Conciliation²⁷

Within two business days of referring a complaint to the Police Department or of being notified of a complaint by PPD, the FPC will start the voluntary conciliation process. For a case to move forward in the conciliation process, both the FPC and the Police Department must agree that the case is appropriate for conciliation. Furthermore, both the complainant and officer must agree to participate in conciliation. If there is any disagreement or the case is determined to be unsuitable for conciliation, the PPD will proceed with the formal complaint investigation and resolution process. If a complaint is successfully resolved through conciliation, the charges against the officer would be dismissed and the complaint could not be considered in subsequent disciplinary proceedings.

Step one of the conciliation process would involve the FPC screening the case against a set of established criteria to determine whether the case is facially eligible for conciliation. The criteria, which the FPC will formulate in conjunction with the Police Department, will screen out cases where the nature of the allegation makes conciliation undesirable as a policy matter. For types of cases that the FPC and the Police Department determine are too serious to be subject to conciliation, the FPC and the Department are making a judgment that it is important that discipline and/or other corrective action be taken in such a case if the allegations are sustained. The FPC will promptly communicate its threshold eligibility decision to PPD.

If the case is facially eligible for conciliation, the Police Department will determine in its discretion whether both the case and the officer are

²⁷ For a general discussion of mediation of citizen complaints, see Sue Quinn, *Citizen Complaints and Mediation*, in Citizen Oversight of Law Enforcement, ABA Section of State and Local Government (Justina Cintron Perino, ed.), 2006.

suitable for conciliation. One reason the Department might oppose conciliation is if the officer has a pattern of similar rule violations or allegations that make the possibility of a dismissal of a similar allegation undesirable.²⁸

Since the complaint process was initially begun by the complainant, the next step would be to seek the complainant's consent to participate in conciliation. If the complainant agrees, the consent of the officer will be sought next. If the officer agrees, the conciliation will take place. The entire process of determining eligibility and obtaining consent should take place in a short period of time so as not to unduly delay the investigation if it is to proceed.

The conciliation will be conducted either by the Community Relations Manager or by a trained mediator arranged for by the Community Relations Manager. The conciliation session should generally take place within 30 days of the complaint being made so that the investigation of the complaint will not be unduly delayed if the conciliation is not successful.²⁹ Both the officer and the complainant will be expected to agree that what occurs during conciliation is confidential and that what is said during the conciliation cannot be used in any subsequent proceedings. If the conciliation is successful, the complaint will be dismissed. If the conciliation is unsuccessful, or at any point either the complainant or the officer wishes to stop the conciliation process, the case will be referred back to PPD for a formal investigation.

²⁸ The police departments in Seattle and Pasadena, CA exclude some cases from mediation because of the officer's complaint history.

²⁹ This is the timeframe used by the Auditor's office in Portland.

Recommendation 4.3: The FPC should collaborate with PPD in establishing protocols for a conciliation process which will be administered by the FPC.

3. Police Department Investigation

A citizen complaint to the Police Department can be initiated by telephone or by a third party reporting what s/he has heard about alleged police misconduct. MPD SOP 3/450.05. This compares favorably to the requirement in Section 62.50(19) that the complaint not only be in writing, but be “duly verified.” If the complaint involves “minor, non-repetitive infractions,” it may be assigned to a supervisor in the officer’s chain of command. More serious infractions require a PPD investigation. MPD SOP 3/450.05.

The fact that there is investigative capacity in PPD and the fact that all but minor cases are fully investigated is a key advantage of having the complaints handled by PPD rather than the FPC. Complainants are not expected to investigate and prove their own cases, a daunting task for a civilian who may need evidence from other police officers. Even if an allegation is deemed to be minor and appropriate to be handled by the officer’s supervisor, the Police Department takes all complaints made to it, regardless of their apparent merit.

Another key advantage—which was evident from our review of FPC’s disciplinary appeals files—is that PPD is fully familiar with the Department’s rules and regulations. If a complaint’s allegations make out a particular rule violation, the correct rule would be cited in the charges—which we found too often was not the case with complaints processed by the FPC.

A third important advantage of the PPD investigations over the FPC process is that investigations are required to be completed within six months, unless the allegations included violations of the criminal law. In that case the criminal investigation must be completed first and the time spent on the criminal investigation does not count toward the six-month limit.

We have not examined PPD investigative files, as PPD's investigative work is outside the scope of the study we were retained to conduct. We thus are unable to speak to the thoroughness and integrity of those investigations. However, the audits and reviews that the FPC monitoring staff will conduct will examine those questions and will seek improvements if problems exist. What we do know is that, as of earlier this year, 219 of the 4,304 citizen complaints brought to PPD from 2000 through 2005 have resulted in sustained charges, while only two of 437 complaints brought to the FPC during the same period have resulted in sustained charges. (An additional 45 complaints brought to the FPC were successfully conciliated. No equivalent process currently exists at PPD for comparison.)

One of the most frequently voiced complaints of those who have lodged complaints against the police in Milwaukee is that after they make the complaint, they do not hear anything for long periods of time, if ever, about what is happening concerning their complaints. Setting requirements for communication that will be initiated by PPD and creating channels for complainants to make inquiries should be the subject of a comprehensive protocol between PPD and the FPC. One of the important responsibilities of the Community Relations Manager would be to ensure that complainants can promptly find out what is happening on their cases at any stage of the process.

Finally, if a complainant is dissatisfied with the outcome of a Police Department investigation, the complainant may request that the file of the investigation be reviewed by a member of the monitoring staff to determine whether there is anything further that can be done to try to sustain the charges. If new evidence becomes available or different avenues of pursuing the complaint present themselves, the FPC may request PPD to reopen the investigation. After this extra file review, the complainant may request a meeting by telephone or in person with the member of the monitoring staff who has conducted the extra review so that the complainant may learn what the member of the monitoring staff determined.³⁰

Recommendation 4.4: The FPC and PPD will establish a protocol on proactive communication with complainants while their complaints are being investigated and will develop procedures for answering complainants' inquiries. The FPC will develop a procedure for an extra review of a file when the complainant is dissatisfied with the result, for requesting a reopened investigation when appropriate, and for communicating with the complainant about the results of the extra review.

³⁰ Similar review processes are used in San Jose and Denver.

Chapter Five. Disciplinary Appeals Hearings

The FPC's work in conducting appeals of police department discipline garners public attention principally when the FPC is reviewing the appeal of officers discharged because of a high profile incident, such as the appeals of the officers involved in the Frank Jude beating. There has been significant public concern about the time that it takes to resolve appeals. The fact that fired officers continue to be paid during what is perceived as a prolonged appeals process has increased public dissatisfaction.

A. Procedures

A member of Police Department can appeal discipline imposed by the Chief of Police if the discipline involves a suspension for more than five days, a demotion, or a discharge. When the Police Chief issues a disciplinary order against an officer, the officer has ten days to appeal the Chief's determination to the FPC. Section 62.50 (13).

After the FPC receives a notice of appeal from the officer, the Board must serve the officer with a notice of the time and place of the FPC appeal trial, which "may not be less than five days, nor more than 15 days" after the FPC's notice. Section 62.50 (14). The five-to-15 day "speedy trial" period for the appeal (set out in Section 62.50) is recognized by the Department, the union and the FPC as unworkable. Under the FPC's rules, officers are able to waive their rights to the five-to-15 day statutory timeline, so as to have sufficient time to prepare their case. All members do waive this trial deadline.

If department members waive their right to a five-to-15 day trial period, the FPC sets a more realistic schedule. A scheduling order is

issued setting a pre-trial conference within 30 days and a trial within 60 days. This schedule, however, is never kept. To start, there is a statutory right to an automatic adjournment of the trial, not to exceed an additional 15 days. Section 62.50 (16). This right has often been exercised by officers on the day before, or morning of, the hearing. A case may be set for trial, with witnesses subpoenaed, and the City's attorneys prepared for trial, but the trial is then adjourned. When this happens, a new date is set.

Disciplinary appeal hearings are given higher scheduling priority than citizen complaint trials. The FPC now schedules one appeal hearing per week, but it is considering scheduling two hearings a week to reduce the delays and the resulting backlog of appeals.

Appeals are conducted before a hearing examiner, who handles procedural and legal matters. Three Commission members sit as the finders of the facts.³¹ The accused officers are represented by union attorneys, and the Chief is represented by the City Attorney's office. Although Section 62.50 does not require it, the FPC applies the Wisconsin Rules of Evidence to appeal hearings, which has meant that statements and other evidence from the Police Department's investigation are generally not admitted into evidence; instead, the appeal hearing is equivalent to a full-blown trial.

The FPC Rules for disciplinary appeals state that the parties have two minutes for their opening statements and 60 minutes for each party to present its case. Rule XV, Section 12. Of course the actual trial takes

³¹ The FPC has also used a procedure whereby the hearing examiner hears the case and then the FPC Commissioners read his report and the transcript, and make their decision based on the record.

much more time, and can often last 10 to 12 hours. Some take several days.

Almost all appeals are heard by a panel of three members of the FPC. The full five-member Board has heard the appeals of only a few matters in the last 25 years, including termination of the officers involved in the Jude incident, the officers involved in the Jeffrey Dahmer matter, and the Ernest Lacy case in 1981.³² The FPC can sustain the discipline, reduce it, or increase it. If the Board sustains the violation, it then addresses the appropriateness of the penalty and examines a list of “comparable” discipline imposed in prior cases involving similar allegations. The hearing examiner writes up the decision of the FPC with findings of fact, and a Commissioner signs the opinion. After the decision is filed, the MPD officer has 10 days to appeal to Circuit Court, which can affirm, overturn or remand the case.

When there are pending criminal charges against the officer, the FPC defers the appeal hearing until the completion of the criminal case. While this is not required as a legal matter,³³ the City, as a policy matter, does not want to risk having the administrative appeal jeopardize the criminal proceeding.

Under the Wisconsin Fair Employment Act,³⁴ governmental employees—other than police officers, but including fire fighters—charged with a crime substantially related to the nature of their job can be suspended without pay. And, once discharged, no Wisconsin public

³² Ernest Lacy was a young African American who died while in police custody as a suspect in a crime he did not commit.

³³ See Franklin v. Evanston, 384 F.3d 838 (7th Circuit 2004).

³⁴ Wisconsin Statutes 111.335(b).

employees other than Milwaukee police officers are paid. Milwaukee is the only jurisdiction in Wisconsin (and apparently the only one in the country³⁵) where officers continue to get paid after they are discharged. This unique provision gives terminated officers a powerful incentive to extend the FPC appeal process for as long as possible.

B. Results of the Appeals Process

To assess the effectiveness of the FPC's disciplinary appeals process, we examined the data for the last five years of appeals. For the 132 cases of Police Department discipline subject to an appeal from April 2001 to February 2006, an appeal was filed in 120 cases.³⁶ The 12 cases in which an appeal was not taken all involved a suspension, not a discharge. In 29 cases, the appeal was withdrawn by the officer before an appeal hearing was conducted. Most of the withdrawn appeals occurred after the Police Chief reduced the length of a suspension, or as a result of a settlement agreement. Of the 120 cases in which an appeal was taken, the results were as follows:

³⁵ Representatives of the Milwaukee Police Association were similarly unaware of any other jurisdiction in the United States with such a provision.

³⁶ The number of cases is the number of discipline charges that resulted in a penalty of at least a suspension of more than five days. It is larger than the number of officers disciplined, as some officers were disciplined for multiple violations. For example, in 2001, there was one officer who was discharged for nine violations (Discipline Orders 2001-368 to 2001-376)

Type of Discipline	Discharge	Suspension	Demotion	Total Officers
Confirmed Penalty	13	5	1	19
Reduced Penalty	4	2	1 ³⁷	7
Resigned or Retired Before Trial	13	3	0	16
Not Guilty	2	1	1	4
Increased Penalty	NA	0	0	0
Withdrew Appeal	4 ³⁸	25	0	29
Still Pending	12	4	1	17
Charge Dismissed by MPD	0	4	0	4
Total	48 (66 violations)	44 (50 violations)	4	96 officers (120 violations)

As noted in the chart above, the FPC has reversed the Chief's discipline in only four of 96 cases, and upheld the Chief's decision to charge the officer, but reduced the discipline imposed, in only seven of 96 cases.

There were 12 FPC decisions appealed to the Circuit Court by officers. In each one, the Circuit Court affirmed the decision of the FPC, although in one case the FPC decision and the Circuit Court decision were reversed by the Court of Appeals, and the case is now before the FPC for a new trial.

³⁷ One officer was demoted from sergeant to police officer by the Chief. The FPC reinstated the member as a sergeant, but imposed a 60-day suspension.

³⁸ One of the officers withdrew her appeal after the discharge was changed by the Chief to a 120-day suspension.

We examined the time it takes for the FPC to rule on disciplinary appeals, from the time of the MPD's initial discipline order to the FPC's disposition of the appeal hearing. The shortest time period was 12 weeks, while the longest took three years and three months. More than one third of the cases took more than one year, including cases that were withdrawn before trial.

Our review indicates that the FPC's approach to appeal decisions is appropriate and consistent with legal requirements. Section 62.50 sets out the substantive standards for the Commission to apply in appeals and in complaint decisions. The Commission must determine that there is "just cause" to sustain the charge filed by the Chief. In making that determination, the Board is to apply the following standards (62.50 [17][b]):

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subdivision 3 was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.

7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

The "just cause" standards appropriately protect officers' due process rights. It is important to note, however, that the standard of proof in disciplinary appeals (as well as complaint hearings) is a "preponderance of evidence." Therefore, if the evidence indicates it is "more likely than not" that the violation occurred, the Board should sustain the charge. 62.50 (17)(a).³⁹

The FPC disciplinary appeals process upholds a greater percentage of disciplinary determinations than the arbitration and civil service systems in some other jurisdictions. For example, a recent study of the Chicago Police Board's actions in termination hearings in 2004 and 2005 found that of 29 officers discharged by the Police Chief, only ten of the firings were upheld by the Board. The Board sustained violations against 12 officers, but reduced the penalty to suspensions, and in seven cases found the officer not guilty of the charges.⁴⁰ For officers who were disciplined with a suspension of less than 30 days, 56 officers appealed the Chicago Police Chief's decision to the Board in 2004 and 2005. Of those appeals, the Chicago Police Board reversed or reduced the suspensions for 22 officers, almost 40 percent.

We recommend that disciplinary appeals hearings remain with the FPC.

³⁹ Matter of Owens, 362 N.W. 2d 171, 122 Wis. 2d 449 (App. 1984).

⁴⁰ See also Mark Iris, *Police Discipline in Chicago: Arbitration or Arbitrary*, 89 Journal of Criminal Law and Criminology, 1998.

C. Recommendations

While the FPC should retain its currently provided authority to conduct disciplinary appeals, several steps would help reduce the delays in the appeals process and make the process more efficient:

Recommendation 5.1: The FPC staff should hire a paralegal to process scheduling orders and to assist the hearing examiner in pre-appeals hearing procedures.

Recommendation 5.2: Change the statutory five-to-15 day deadline for disciplinary appeal trials. Everyone to whom we spoke about the appeals process acknowledged that the five-to-15 day deadline for trial is unworkable. The FPC Rules state that in cases where the statutory trial period is waived, a scheduling order shall be served setting a pre-trial hearing within 30 days, and a trial within 60 days of the scheduling order. Scheduling deadlines along these lines would be appropriate, or even a trial deadline within 60 days of the pre-trial hearing, providing the deadline is enforced. This change will require an amendment to Section 62.50.

Recommendation 5.3: The statutory automatic adjournment should be changed to a right to an adjournment for cause. Adjournments for cause should continue to be allowed to both the City and the officers appealing the charges. Currently, the automatic adjournment is used by the officer in almost every discipline appeal, creating unnecessary uncertainty and inefficiency in the scheduling of FPC proceedings. If the statutory deadline for trials is amended so that a more reasonable schedule is established for pre-trial proceedings and for trial, then the automatic adjournment will no longer be necessary or justified. This change would require an amendment to Section 62.50.

Recommendation 5.4: Sections 10 and 12 of FPC Rule XV should be changed to eliminate the language limiting opening statements to two minutes and the parties' case in chief to 60 minutes. These time limits are also unworkable. The language of the FPC Rule should provide that the Board may set time limits for each party as appropriate.

Recommendation 5.5: The FPC should continue its efforts to reduce its backlog of pending appeals and schedule appeals hearings more frequently. There are several ways that the FPC may be able to schedule disciplinary appeals hearings more quickly. The FPC is considering scheduling two hearings per week, as opposed to one hearing per week. One way this may be accomplished more easily would be to use special hearing examiners in addition to the current hearing examiner on the FPC staff. The FPC has made attempts to bring on special hearing examiners, with limited success so far. One successful effort to use a special hearing examiner occurred when retired Wisconsin Supreme Court Justice Jenine Gesky was assigned as the hearing officer for the appeals of the officers involved in the Jude assault. The City also might be able to recruit other retired judges, or county employees who currently conduct administrative employment actions for use as special hearing examiners. When the FPC begins scheduling appeals hearings twice per week, the City also will likely need to assign a second Assistant City Attorney to handle FPC appeals hearings.⁴¹ These changes would not require a statutory amendment.

⁴¹ Alternatives to the current single hearing examiner and single assigned Assistant City Attorney are needed to prevent the absence of one of these necessary actors—for vacation, illness, etc.—from halting the hearing of appeals until that person returns to work.

Recommendation 5.6: Section 62.50 should be amended so that police officers who are discharged by the Chief of Police will be terminated without pay during the pendency of their FPC appeal.

As noted above, there apparently is no other jurisdiction in the United States where officers who have been discharged continue to receive their pay until an appeal has been completed. Most police agencies have procedures for allowing the police chief to make determinations regarding whether officers should be suspended without pay during investigations of serious matters, even before a decision is made about whether the officer should be discharged. Certainly once the police chief decides to fire an officer, all law enforcement agencies, other than Milwaukee, terminate the officer's pay.⁴² It is particularly inappropriate for police officers who have been discharged based on facts that are also the subject of pending criminal charges to remain on the City payroll. Ending pay after termination would require an amendment to Section 62.50.⁴³

⁴² Making payment after termination even more anomalous, Section 62.50 does not provide the same benefit to members of the Milwaukee Fire Department who have been terminated.

⁴³ While a bill (Assembly Bill 599 [Rep. Toles]) was introduced in the 2006 legislative session to accomplish this goal, it did not pass.

Chapter Six. Policy Review

A. Function of Policy Review

As we noted in Chapters 1 and 3, one of the goals of police oversight is to go beyond the review of individual citizen complaints to assess trends or patterns of police misconduct, as well as to address community concerns about police policies and practices. Making recommendations on policy issues and identifying patterns of complaints or uses of force is a central role of citizen oversight.⁴⁴ A city's and a police department's responses to those recommendations then should be tracked and reported. The San Jose police auditor and the Los Angeles County Sheriff's Department (LASD) monitor are often cited as examples to emulate.⁴⁵ Subjects that have been addressed by LASD Special Counsel include: use of force training, early warning/identification systems, use of canines, risk management, officer-involved shootings, foot pursuits, and jail conditions.⁴⁶ Other oversight agencies to issue specific reports on police practices include: Philadelphia's Integrity and Accountability Officer (police discipline system, officer-involved shootings); New York City's Civilian Complaint Review Board (failure of

⁴⁴ See PolicyLink, *Community Centered Policing: A Force for Change* 78 (2001), note 2, at 80-81, <http://www.policylink.org/pdfs/ForceForChange.pdf>.

⁴⁵ The LASD Special Counsel uses various consulting experts for his reports, including a psychologist and sociologist, and active and retired police executives, among others, for his reviews. Recent San Jose Independent Police Auditor recommendations and police department responses can be found in <http://www.sanjoseca.gov/ipa/reports/04ye.pdf> and <http://www.sanjoseca.gov/ipa/reports/05MY.pdf>.

⁴⁶ Los Angeles Sheriff's Department, Special Counsel Merrick J. Bobb et al., *Eleventh Semiannual Report* (October 1999) (use of force training; canines), at <http://lacounty.info/11threport.htm>; *Thirteenth Semiannual Report* (December 2000) (medical care to inmates in the Los Angeles County Jails), at <http://www.parc.info/pubs/pdf/sheriffreport13.pdf>; *Fourteenth Semiannual Report* (October 2001) (officer-involved shootings), at <http://www.parc.info/projects/pdf/mbobb14.pdf>; and *Fifteenth Semiannual Report* (July 2002) (early identification system; canines), at <http://www.parc.info/projects/pdf/July02reporttext.pdf>.

officers to identify themselves when requested, execution of no knock warrants, and strip searches);⁴⁷ the Office of Police Complaints in Washington, D.C. (report on disorderly conduct arrests);⁴⁸ Seattle’s Office of Professional Accountability (racially biased policing);⁴⁹ and Boise’s Community Ombudsman (officer-involved shootings, tasers).⁵⁰

Our review of the FPC’s work in this area has found that, while the FPC has broad power and responsibility for conducting policy review of the Police Department, it has not used these powers to their potential.

B. The FPC’s Authority for Policy Review

The Milwaukee Fire and Police Commission has significant authority and responsibilities for policy reviews built into its enabling legislation, Section 62.50. These include:

62.50 (1m) Policy Review. The board shall conduct at least once each year a policy review of all aspects of the operations of the police and fire departments of the city. The board may prescribe general policies and standards for the departments. The board may inspect any property of the departments, including but not limited to books and records, required for a review under this section.

⁴⁷ See <http://www.nyc.gov/html/ccrb/pdf/nmshldanalysis.pdf>; <http://www.nyc.gov/html/ccrb/pdf/200104812pg.pdf>; and <http://www.nyc.gov/html/ccrb/pdf/stripsearchletter.pdf>.

⁴⁸ See http://occr.dc.gov/occr/frames.asp?doc=/occr/lib/occr/pdf/disorderly_conduct_policy_recommendation.pdf.

⁴⁹ See <http://www.cityofseattle.net/police/OPA/Docs/BiasedPolicing.pdf>.

⁵⁰ http://www.boiseombudsman.org/2006%20Inv%20Reports/05_0039%20Public%20Report.pdf; and <http://www.boiseombudsman.org/Ombudsman%20Special%20Report%20-%20Taser%20Study.pdf>.

62.50 (3) Rules. (a) The board may prescribe rules for the government of the members of each department and may delegate its rule-making authority to the chief of each department. The board shall prescribe a procedure for review, modification and suspension of any rule which is prescribed by the chief, including, but not limited to, any rule which is in effect on March 28, 1984.

62.50 (23) Duties of chief. The chief engineer of the fire department and the chief of police shall be the head of their respective departments. The chief of police shall preserve the public peace and enforce all laws and ordinances of the city. The chiefs shall be responsible for the efficiency and general good conduct of the department under their control. The board may review the efficiency and general good conduct of the departments. A chief shall act as an advisor to the board when the board reviews his or her department. The board may issue written directives to a chief based upon a review of the chief's department. The chief receiving a directive shall implement the directive unless the directive is overruled in writing by the mayor.

The Milwaukee City Attorney has issued recent opinions detailing the parameters of the Board's power to issue "directives" under 62.50 (23).⁵¹ These opinions state that the FPC's directives to the Police Chief are mandatory; they must be written; the only predicate for a directive is a "review;" the directive can relate to any matter relevant to the "general good conduct" of the department and is not limited to the deployment of Department personnel and resources; and that the directive process should be collaborative, given the statute's language that the chief shall act as an advisor to the Board when the Board reviews his or her department.

In addition to the FPC's annual policy review under 62.50 (1m), the Commission also conducts a performance evaluation of the Police Chief.

⁵¹Letter from City Attorney Grant Langley to FPC Executive Director Joseph Czarnezki, February 12, 2001; letter from City Attorney Grant Langley to Police Chief Arthur Jones, December 2, 2002.

This job performance review has been conducted for the last several years on a quarterly basis.

C. Recent Policy Reviews

1. Policy Reviews Listed in Annual Reports and FPC Minutes

We have reviewed the FPC's annual reports and minutes from 2000 to 2005. In its 2000 Annual Report, the FPC states that one of its strategic issues is to:

Ensure the quality of effectiveness of the Fire and Police Departments' policies, practices, and performances through appropriate utilization of the Board's oversight authority.

While each year the Annual Reports list a small number of policy reviews, these reviews do not suggest an "appropriate utilization" of the Board's oversight authority. They included:

- A review by Commission staff of quarterly "quality of life" citations (curfew, disorderly conduct, loitering, graffiti, littering, loud music, pedestrian violations, public drinking, and traffic violations), to examine the possibility of racial profiling (2000, 2001). The staff concluded in both years that the "results are thus far inconclusive."
- The Board formed a working group to address problems of noise and vandalism related to alcohol consumption by University of Milwaukee-Wisconsin students (2001).
- The Board created an Ad Hoc Committee on Cultural Diversity in 2001.

- The Policy Committee reviewed Police Department transfer policies after Chief Jones transferred a large number of officers in November 2001.
- In April 2003, the FPC appointed an Ad Hoc Committee to propose remedies to negative attitudes and behavior in the Police and Fire Departments towards their lesbian, gay, bisexual and transgender (LGBT) members.⁵²

There is one item that is particularly noteworthy. On December 3, 2002, the FPC issued a written directive to Chief Jones to “prepare a comprehensive written plan to reduce homicide and other firearms-related crime.” Chief Jones presented his plan to the FPC on January 9, 2003, which, according to the FPC annual report, included a Violent Crime Task Force and a Citizen Police Academy. This was the first and only directive that the FPC has issued to the Milwaukee Police Chief.

2. Quarterly Reviews

From at least 2000 to the present, the FPC has conducted quarterly reviews of the performance of the police and fire chiefs. We have reviewed the FPC’s request for data from the Police Chief prior to these reviews, and some of the responses sent by the Chief to the FPC. For the most part, these inquiries request crime statistics, budget information, and the number of uses of force and citizen complaints

⁵² The Ad Hoc Committee consisted of 16 members of the Departments, unions, and community at large, nine of whom were openly lesbian or gay. As noted in the Committee report, in addition to the Committee members, there was an anonymous advisory group of LGBT members of the Fire and Police Departments and their LGBT allies. The October 2003 Committee report identified problems of workplace harassment and the perception that the command staff tolerated a level of harassment. To address these problems, the Committee developed a “climate survey” to gauge Department members’ attitude toward LGBT members; proposed improved LGBT diversity training (both in-service and recruit training) in both Departments, and directed the chiefs to take a leadership role in implementing and enforcing Department equal opportunity policies.

against Department members.⁵³ In addition to these statistical requests, which are included in every quarterly letter from the FPC, several of the letters ask for additional information about specific programs or policy issues.

For example, the May 2004 letter stated that the Board may “wish to have an update on the new Gang Crimes Unit and how it will address gun seizures,” and that it “may wish to know if internal disciplines have now been decentralized and whether the proposed discipline matrix is now in place.” The August 2004 letter states that the Board “may wish to know if you plan to continue the focus on quality of life,” as well as the Chief’s “analysis of the latest murders and beatings that have been occurring in the City.” Other issues for discussion included the Chief’s proposed change to the burglar alarm policy.

Quarterly letters in 2005 requested information about an early intervention program; the Milwaukee Homicide Project; the status of MPD’s computer system; the verified burglar alarm response policy; the cultural competency program; and an update on MPD’s Directed Patrol Mission.

While the FPC’s Annual Reports state that the Board has developed “performance objectives” for the Chief and for the Department, these performance objectives are not listed. Nor does the Board report on whether the Chief and the Department have met any of those objectives.

⁵³ In the January 2003 letter to the Chief, the information requested from the Chief included: data on index crime rates and index crime clearance rates (index crimes are Part 1 crimes, listed in the FBI’s Unified Crime Reports); the number of guns confiscated, gun-related crimes and shootings; traffic citations, traffic crashes, and traffic and pedestrian deaths; “quality of life” citations; budgeted amounts and department spending for salaries and overtime; number of internal investigations; and “any other information which you believe would be of value to the Board during its policy review and review of the efficiency and general good conduct of the Police Department.”

Because the FPC's quarterly reviews are not held in open FPC meetings and their results are not reported, there is no way for the public to assess whether any policy issues have been addressed, or whether the FPC has held the Chief and the Department to account in terms of performance objectives.⁵⁴

D. Conclusions Regarding Policy Review

The FPC has made limited use of its policy review function. The bulk of its time has been spent on personnel issues, disciplinary appeals, and the complaint process. While the Commission has responsibility for policy review, it has not established a program of systematic monitoring or auditing of the MPD, analysis and study of MPD policies and procedures, or of trends in complaints or the MPD use of force. There have been very few in-depth studies of particular aspects of MPD operations, other than the work of the Ad Hoc Committee on Cultural Diversity and the Ad Hoc Committee on LGBT issues. While there have been quarterly reviews of the Police Chief's and the Police Department's performance, it is difficult to assess whether the reviews have led to any recommended changes. Instead, we find:

- No audits of FPC citizen complaints, nor any audit or evaluation of complaints received and investigated by MPD;
- While there has been a review of MPD diversity training (which we agree is critical), there appears to be no review and evaluation of any other training, including such issues as use of force, search and seizure, citizen interaction and communications skills, etc.;

⁵⁴ In addition, Section 62.50 grants the FPC the authority to make new rules for the Milwaukee Police and Fire Departments. The FPC has delegated this authority to the chiefs, but any new rules must be approved by the FPC.

- Limited collection and analysis of MPD use of force information, or evaluation of MPD's efforts to analyze its own use of force statistics;⁵⁵
- No evaluation of MPD risk management, although there have been inquiries regarding MPD's efforts to purchase and implement an early intervention system;
- No review of civil actions and tort claims relating to MPD actions;
- No surveys or focus groups of complainants after disposition of FPC complaints, to assess their satisfaction with the process; nor any surveys of or input from complainants who went through the MPD complaint process;
- No surveys of the public regarding attitudes and views of the Police Department and the FPC;
- There has been only one "directive" and only a few recommendations, with little tracking and documentation of responses;
- The only analysis included in the FPC's annual reports is that for the years 2000-2003, the FPC cites the "overall disciplinary action, termination, resignation, and citizen complaint rate for police and fire academy graduates in their first four years of service." For several reasons, these statistics are of little value. First, the Police and Fire Department statistics should not be combined; second, a more useful analysis would examine what kinds of behaviors generated these actions, and what could be done to improve those behaviors or better monitor them.

⁵⁵ In 1998 and 1999, FPC staff did a preliminary review of MPD officers' use of force incidents (from 1994-1998), with correspondence from the FPC to the Chief of Police seeking a response. MPD use of force statistics do not seem to have been reviewed since that time. The FPC staff indicates that one reason is that the data from MPD is in a different format and more difficult to analyze.

- The FPC Commissioners are volunteers, and they are not appointed as experts on particular aspects of law enforcement operations. The Commission's staff and resources have not been organized effectively to accomplish the FPC's policy review function. This problem has been exacerbated by the decrease in staffing and resources of the FPC since 2003, but even before then, the FPC staff was not structured in such a way to effectively support documented and thorough policy review by the Commissioners.

E. Recommendations

Recommendation 6.1: The Monitor should work with the Commission to compile a list of areas to evaluate, and assist the Commission in developing its agenda on policy matters. Issues that should be addressed by an oversight agency would include: (1) Use of force reporting and investigations; (2) Use of force policies, including weapons issues such as Tasers; (3) officer-involved shootings, including shooting at moving vehicles and off-duty shootings; (4) risk management, accountability, and an early identification system; (5) review of police training, including Academy recruit, in-service and Field Training Officer (FTO) programs; (6) although under our recommendations, the FPC will not be doing individual officer hiring and promotions, the FPC still should be involved in policy issues regarding standards for officer hiring, promotions and retention; it also should have continued oversight over non-discrimination issues within the Department; (7) policing strategies and crime prevention (e.g., COMPSTAT systems, Community Oriented Policing and Problem Oriented Policing); (8) police-community relations, including continued work with the Milwaukee Commission on Police

Community Relations (MCPCR);⁵⁶ relations with the Milwaukee Latino community, specifically issues relating to bilingual officers, translation assistance, and concerns about harassment of non-English speakers; (9) concerns about racial profiling; (10) police policy, practices and training regarding routine daily encounters, including police stops and questioning.

Recommendation 6.2: The Independent Monitor and staff should engage in research and review of police policies and patterns. The FPC staff should include a research and policy manager, a research and policy specialist, and a part-time research analyst. The Monitor and staff should present their analyses and findings to the Commission, and the Commission should incorporate these efforts in their reports.

Recommendation 6.3: The findings and recommendations from policy reviews and performance reviews should be documented, and should be provided to the Milwaukee Police Department in written correspondence. The FPC should then track the Police Department’s responses to the recommendations and any Police Department actions taken.

⁵⁶ The mediation agreement creating the MCPCR identified the following issues and concerns “that may significantly affect public perception of the police department, including those Department policies and procedures that generate the greatest amount of controversy and/or citizen complaints:” police procedure; police training; police recruitment; community oriented policing and police/community interactions; youth relations; budget and programs. The agreement also created subcommittees on video camera equipment and use; cultural awareness/diversity and training; customer service; use of force – policy, procedures and equipment; and youth relations. <http://www.ci.mil.wi.us/display/displayFile.asp?docid=11923&filename=/User/jdimow/Agreement052505.pdf>. The specific issues identified in the MCPCR agreement should form the start of the FPC’s policy review agenda.

Chapter Seven. Community Outreach

A. Importance of Outreach

One of the responsibilities of a police oversight entity is to publicize the citizen complaint process to the public and conduct outreach so that residents in the community are aware of how the oversight system works. Outreach also plays an important role in educating the public about police practices and procedures. The FPC should publicize its efforts and familiarize the public with its responsibilities. On this front, the FPC efforts are limited.

It is difficult to measure the public's awareness and understanding of the FPC role, other than through surveys and focus groups, which have not been conducted. Our sense from our site visits and public media is that many members of the general public know little about the FPC and what its responsibilities are. The fact that 90 percent of citizen complaints about police behavior go directly to the MPD, rather than to the FPC may reflect limited public knowledge of the FPC complaint process. Alternatively, it could reflect the opposite—knowledge of the FPC, but a lack of confidence in the FPC complaint process, given the extremely limited success of FPC complainants in obtaining sustained findings. Certainly, our meetings with community members suggest a public view of the FPC as ineffective, and some perceive the Commission as “captured” by the Milwaukee Police Department.

Public reports, at a minimum annually, are a significant tool in building an oversight agency's credibility. These reports should describe not only the activities of the oversight entity, they should also provide the public with a source of information on complaints trends or patterns, police use of force, and other police practices. Annual reports should be disseminated widely, certainly to the media outlets in the jurisdiction,

and should be posted on the websites of both the oversight agency and the police department. Examples of good periodic reports include those from the San Jose Independent Police Monitor, the Los Angeles Office of Independent Review, the Special Counsel to the Los Angeles County Sheriff Department, the Sacramento Office of Public Safety Accountability, and the District of Columbia Office of Police Complaints.⁵⁷

B. Current FPC Outreach Efforts

Prior to 2003, the FPC had two staff members whose role included public relations and community outreach. These positions were terminated for budget reasons after the FPC staff merged with DER, thereby eliminating most of the Commission's capacity for outreach. Except for publicity and outreach regarding Police Department recruitment and examinations, the FPC's outreach is mostly limited to the work of the Executive Director, who participates in meetings of the Milwaukee Commission on Police Community Relations, and engages in a limited number of visits to community groups, schools, and other events.

The FPC does have a website, www.ci.mil.wi.us/display/router.asp?docid=312, which includes web pages on the background of the FPC; FPC Board members; FPC Rules; Fire and Police Department job opportunities; FPC calendar and the

⁵⁷ See, e.g., reports from the San Jose Independent Police Monitor (www.sanjoseca.gov/ipa/reports/05ye.pdf); LASD Office of Independent Review (<http://laoir.com/reports/OIRFall05.pdf>, <http://laoir.com/reports/2005.pdf>); LASD Special Counsel (<http://www.parc.info/pubs/pdf/20th%20semiannual%20report.pdf>); Sacramento Office of Public Safety Accountability (http://www.cityofsacramento.org/cityman/pdfs/2005_OPSA_Annual_Report.pdf); DC Office of Police Complaints (www.policecomplaints.dc.gov/occr/frames.asp?doc=/occr/lib/occr/info/docs/Annual_Report_FY05_Final.pdf)

agenda for the most recent or upcoming FPC meeting; Annual FPC Reports and Annual Public Safety Reports; a guide to citizen complaints; the CRS Mediation Agreement creating the MCPCR; and the Report on Attitudes toward LGBT members of the Police and Fire Departments. Regarding citizen complaints, the website has a link to a “complaint inquiry,” which can be completed and submitted online, but this complaint inquiry is not a formal complaint. The FPC also prints hard copies of the guide to citizen complaints, and a brochure with background on the FPC, but it appears that since the staff retrenchment, dissemination of these publications is minimal.

Each year, the FPC publishes an Annual Report and a Public Safety Report. The FPC Annual Reports are slow to be prepared and are not particularly informative to the general public. The last one completed was the 2004 Annual Report, which was published on the website, but not printed in hard copy and disseminated. As noted in the previous chapter, the annual reports have limited information: the reports do not include any FPC policy recommendations and whether there were any MPD responses, and include only limited information regarding MPD actions related to accountability. The reports list aggregate statistics regarding complaints and their results, but do not provide information about any individual complaints. Nor do the reports include an analysis of any patterns or concerns regarding complaints, the reasons why complaints were dismissed, or the number and outcome of trials on complaints.

With respect to public meetings and input, FPC Board meetings are open to the public and public meeting notices are required, but as a general matter, there is no public comment period during FPC meetings. There appears to be very limited public attendance and public input at Board meetings. The FPC has held some meetings in the Milwaukee

neighborhoods in addition to City Hall, including a June 1, 2006 meeting at the Holy Redeemer Institutional Church of God in Christ, with presentations on Project Safe and Sound, and the Milwaukee Commission on Police Community Relations, as well as an overview of the FPC's functions. There was a public comment session following remarks from Fire Chief Wentland and Police Chief Hegerty.

C. Recommendations

Recommendation 7.1: The Board should include a public comment period on agendas for meetings. Another avenue for community concerns regarding police practices would be for the FPC to work with the Police Department to hold forums and meetings in the community on police-community relations. One of the functions of an oversight body is to allow the public to comment on the operations of the police department and broach concerns. While opening up meetings to public comment may result in some meetings becoming "gripe sessions," it can be a valuable opportunity for airing concerns and grievances. The FPC should allow public comment, but it can limit individuals' comments to a reasonable time period (some jurisdictions limit individuals to two minutes for comments) and restrict comments to those directly relevant to MPD and FPC activities.

Recommendation 7.2: The FPC should hold meetings in various community locations at least once every calendar quarter.

Recommendation 7.3: The FPC should hire a community relations manager, responsible for community outreach and public relations. The new features and functions of the Monitor would be just one area that should be disseminated to the public. The FPC should also review whether their outreach and publications are sufficiently accessible

to persons with limited English abilities, or whether Spanish-language versions should be available.

Recommendation 7.4: The FPC should improve its public reports to make them more user-friendly, substantive, and timely. Starting in 2007, the FPC should issue a mid-year report, as well as an annual report. The FPC should also issue policy reports when the Commission and the Monitor engage in policy review. The FPC’s annual reports are an opportunity for the public to measure the performance and effectiveness of the FPC. To a great extent, the measure of an oversight agency’s success will not be based on numbers (complaints reviewed, recommendations on policy made, etc.), but instead will be based on the impact of its efforts: has it been able to effect change in the police department; has it helped increase trust between the police department and the community? However, there are specific items on which the FPC should report, to provide some basis for assessing its impact. A list of these items is included in Appendix 3.

Recommendation 7.5: The FPC should coordinate with the MPD and undertake survey efforts to measure public awareness and recognition of the FPC’s work, and to measure the public perceptions of the effectiveness and accountability of the Milwaukee Police Department. Such surveys have been conducted in Cincinnati, Seattle, New York City, Denver and elsewhere.⁵⁸

⁵⁸ “Police-Community Relations in Cincinnati,” RAND Corporation 2005, www.rand.org/pubs/technical_reports/TR333/; “Assessing Police-Public Contacts in Seattle, Washington,” Vera Institute of Justice 2004, www.cityofseattle.net/police/Publications/Special/VeraInstituteStudy.pdf; “The Processing of Complaints Against Police in New York City,” Vera Institute of Justice, 1989; “Measuring Complainant and Officer Satisfaction with the Denver Police Complaint Process,” Office of the Independent Monitor, 2006, www.denvergov.org/OIM/template325775.asp.

Chapter Eight. Full List of Recommendations

A. Recommendations⁵⁹

Recommendation 3.1: The Fire and Police Commission should reorganize its staffing and structure to institute a monitor model of oversight that will review citizen complaint and internal Police Department investigations and issue public reports on the quality and fairness of those investigations. The chief FPC staff person will be designated the Independent Monitor. The Common Council should enact enabling legislation that establishes the Independent Monitor’s authority and functions.

Recommendation 3.2: The Independent Monitor should report to the Fire and Police Commission. The Monitor should be appointed by the Mayor for a term of four years from a list of three candidates deemed by the Commission to be well-qualified for the post. The appointment should be subject to the confirmation of the Common Council. Removal of the Monitor during the four-year term should be only for cause as determined by the Commission.

Recommendation 3.3: The Fire and Police Commission should conduct a nationwide search for a well-qualified Independent Monitor.

Recommendation 3.4: The FPC should be restored to full autonomy, with a budget and staff fully independent of DER.

Recommendation 3.5: The personnel-related functions of the FPC should be spun off to another agency. The function of selecting the Chief of Police, however, should remain with the FPC.

⁵⁹ The City will have to consider which of the changes it is instituting for the Police Department should also be applied to the Fire Department and how the recommendations of this report—that apply only to the Police Department—might be adapted to the Fire Department.

Recommendation 3.6: The FPC staff should include three monitoring staff, three research/policy/hearing staff, a community relations manager, and two support staff.

Recommendation 3.7: Provided that the Commission is authorized to hear and decide disciplinary appeals in panels of three members, the Commission should be expanded to seven members. The Commissioners should continue to serve staggered five-year terms, which foster the right balance of experience and fresh perspectives.

Recommendation 3.8: Steps should be undertaken to encourage talented citizens to serve on the FPC. Commissioners and their immediate family members should not be, or have been, members of the Milwaukee Police Department. Also, it is desirable that at least one Commissioner be a lawyer.

Recommendation 3.9: Commissioners should attend the Police Citizen Academy shortly after appointment. They should also participate in police ride-alongs.

Recommendation 3.10: FPC staff, in conjunction with the Commissioners, should develop an internal training program for new Commissioners that includes instruction on the policies and practices of the FPC and MPD.

Recommendation 3.11: As part of their initial training, Commissioners should also meet with representatives of the African American, Latino, Asian, and Gay/Lesbian/Bisexual/Transgender communities to hear their perspectives on the Police Department and police misconduct.

Recommendation 4.1: The FPC complaint process should be discontinued. Civilian complaints made to the FPC should be referred to the Police Department for a thorough investigation and the results reviewed by the FPC's new monitoring staff.

Recommendation 4.2: The FPC will continue to accept complaints of police misconduct from the public and may arrange, as it does now, for community organizations also to accept complaints.

Recommendation 4.3: The FPC should collaborate with PPD in establishing protocols for a conciliation process which will be administered by the FPC.

Recommendation 4.4: The FPC and PPD will establish a protocol on proactive communication with complainants while their complaints are being investigated and will develop procedures for answering complainants' inquiries. The FPC will develop a procedure for an extra review of a file when the complainant is dissatisfied with the result, for requesting a reopened investigation when appropriate, and for communicating with the complainant about the results of the extra review.

Recommendation 5.1: The FPC staff should hire a paralegal to process scheduling orders and to assist the hearing examiner in pre-appeals hearing procedures.

Recommendation 5.2: Change the statutory five-to-15 day deadline for disciplinary appeal trials.

Recommendation 5.3: The statutory automatic adjournment should be changed to a right to an adjournment for cause.

Recommendation 5.4: Sections 10 and 12 of FPC Rule XV should be changed to eliminate the language limiting opening statements to two minutes and the parties' case in chief to 60 minutes.

Recommendation 5.5: The FPC should continue its efforts to reduce its backlog of pending appeals and schedule appeals hearings more frequently.

Recommendation 5.6: Section 62.50 should be amended so that police officers who are discharged by the Chief of Police will be terminated without pay during the pendency of their FPC appeal.

Recommendation 6.1: The Monitor should work with the Commission to compile a list of areas to evaluate, and assist the Commission in developing its agenda on policy matters.

Recommendation 6.2: The Independent Monitor and staff should engage in research and review of police policy and patterns. The FPC staff should include a research and policy manager, a research and policy specialist, and a part-time research analyst.

Recommendation 6.3: The findings and recommendations from policy reviews and performance reviews should be documented, and should be provided to the Milwaukee Police Department in written correspondence. The FPC should then track the Police Department's responses to the recommendations and any Police Department actions taken.

Recommendation 7.1: The Board should include a public comment period on agendas for meetings. Another avenue for community concerns regarding police practices would be for the FPC to work with the Police Department to hold forums and meetings in the community on police-community relations.

Recommendation 7.2: The FPC should hold meetings in various community locations at least once every calendar quarter.

Recommendation 7.3: The FPC should hire a community relations manager, responsible for community outreach and public relations.

Recommendation 7.4: The FPC should improve its public reports to make them more user-friendly, substantive, and timely. Starting in 2007, the FPC should issue a mid-year report, as well as an annual report. The FPC should also issue policy reports when the Commission and the Monitor engage in policy review.

Recommendation 7.5: The FPC should undertake survey efforts to measure public awareness and recognition of the FPC's work, and to measure the public perceptions of the effectiveness and accountability of the Milwaukee Police Department.

Recommendation 8.1: The Mayor and the Common Council should make the budgetary decisions and approvals necessary to fund an effective monitor-model FPC.

Recommendation 8.2: In its ordinance defining the Independent Monitor's powers and responsibilities, the Common Council should provide for an evaluation of the Fire and Police Commission, the reforms adopted as a result of this report, and the effectiveness of the implementation of those reforms.

B. Potential Schedule and Action Plan

We propose the following action plan and schedule to implement the recommendations we have made. We divide the actions to be taken

into three principal time periods: July to September, 2006; October to December, 2006; and January to June, 2007. For recommendations that require continuing action, we note when that action should start.

1. July to September, 2006

Obtain all necessary approvals from the Fire and Police Commission, the Mayor, and the Common Council to reorganize the FPC's structure and staffing, including making the FPC independent of the Department of Employee Relations.

The Common Council should pass an ordinance defining the powers and responsibilities of the Independent Monitor.

Consider which of the changes the City is instituting for the Police Department should also be applied to the Fire Department and how the recommendations of this report might be adapted to the Fire Department.

Determine how and by which department or departments the personnel-related functions of the FPC would best be fulfilled.

Formulate job descriptions for all staff members of the revamped FPC, including the Independent Monitor.

The Mayor and the Commission should agree that the Independent Monitor will report only to the FPC.

Plan a national search for the Independent Monitor.

The Mayor should follow this report's recommendations in filling the Commissioner position that becomes open in July.

Make the necessary plans to fulfill the recommendations for training of the Commissioners, including formulating the training for the new Commissioner scheduled to be appointed in or about July, unless the current Commissioner whose term expires is reappointed.

Implement the continuing ride-along requirements for all Commissioners.

The Commission should amend Sections 10 and 12 of FPC Rule XV that restricts the length of opening statements to two minutes and the parties' case in chief to 60 minutes.

The Commission and its staff should schedule disciplinary appeals more frequently and take the other steps we recommend to reduce the backlog of appeals that do not require amending Section 62.50.

The Commission should begin scheduling meetings in the community on a quarterly basis.

The Commission should institute a public comment period as a regular part of its meeting agendas.

The Common Council should provide by ordinance for an evaluation in 2009 of the FPC, the reforms adopted as a result of this report, and the effectiveness of the implementation of those reforms.

2. October to December, 2006

The Commission should conduct a national search for an Independent Monitor and send the Mayor the names of three well-qualified candidates.

The Mayor should appoint the successful applicant for the Independent Monitor position, and seek confirmation from the Common Council. The other staff positions to be filled should be posted and the initial screening of candidates begun so that the Independent Monitor may select the needed staff without unnecessary delay.

Implement the recommendations relating to training for Commissioners not put in place in the prior calendar quarter, including attendance in a Police Citizen Academy by all Commissioners who have not previously attended the Academy.

The Independent Monitor should start making selections to fill staff positions.

The City should take the necessary steps to identify and work with sponsors of the legislation needed to implement this report's recommendations for amendments to Sections 62.50 and 62.51, specifically:

- Placing the FPC's personnel-related functions in one or more of the City's executive departments;
- Expanding the Commission to seven members;
- Providing that complaints may be made to the FPC or the Police Department, and that all complaints will be investigated and determined by the Police Department;
- Modifying the 5-15 day deadlines for disciplinary appeals to practical time periods;
- Eliminating the automatic adjournments in disciplinary appeal cases;

- Eliminating pay for officers after they have been terminated by the Chief of Police, unless those officers are reinstated and back pay is awarded; and
- Removing the Independent Monitor from the Mayor's Cabinet.

3. January to June, 2007

Seeking passage of the legislation needed to implement the recommendations of this report (the specifics of the needed legislation are noted above).

The Independent Monitor should finish making selections to fill staff positions.

FPC staff should draft appropriate outreach materials and should proactively reach out to all who have a stake in the work of the FPC, to educate as many as possible on the oversight functions and procedures of the FPC.

The Independent Monitor should work out protocols (for adoption by the FPC) with the Police Department for monitoring citizens' complaint investigations and internal investigations, for communication with citizen complainants, and for conciliation of citizens' complaints.

The Independent Monitor should implement the monitoring and conciliation processes for citizens' complaints being processed by the Police Department.

The Independent Monitor should identify issues that the FPC and its staff should evaluate, and should assist the FPC in setting its policy agenda.

The FPC's and its staff's findings from policy reviews and performance reviews should be provided to the Police Department in writing, and the Police Department's response to those findings should be tracked.

Issue 2006 Annual Report and any appropriate policy reports.

Implement the legislative changes that are enacted.

4. August-September, 2007

Issue a mid-year report on the activities of the FPC and its staff, in particular relevant oversight activities.

5. March, 2008

Issue a comprehensive, user-friendly, informative 2007 annual report.

6. March-June, 2009

Evaluate the new structure of the FPC and its staff, the need for structural improvements, and the effectiveness of the reforms implemented as a result of this report.

Most of our recommendations can be implemented by the City of Milwaukee and its agencies without approval from any other body. The only exceptions are the changes to Sections 62.50 and 62.51 which require action by the Legislature and the Governor. While these legislative changes are important and would significantly help the FPC become an effective oversight body, the rest of our recommendations can be implemented without any statutory changes. We therefore strongly

recommend that the City and the FPC proceed to implement all of the recommendations that do not require legislative changes as soon as is practicable. If and when the statutory amendments are enacted, the City and the FPC can implement the additional changes authorized by the Legislature.

If the Legislature declines to pass any of the recommended statutory changes, most of the reforms we propose can still be implemented. While the failure to enact the recommended statutory changes will require adjustments to some specific aspects of our proposals, most of our central and essential recommendations can and should be implemented by the City, even without legislative approval.

C. Budget Implications of Recommendations

We roughly estimate that the salaries and fringe benefits for the increased staffing of the FPC will cost an additional \$400,000 a year. We do not estimate the other costs involved, but note that the FPC will need its own office with the costs attendant to its restored independent status and sufficient funds to support all the additional functions it is assuming. We recognize that the City of Milwaukee faces very difficult budgetary challenges, but the need for police oversight is too compelling not to fund an effective process.

In the long-run, effective oversight saves money. In 1992, Los Angeles County hired a Special Counsel, Merrick Bobb, to monitor the Los Angeles County Sheriff's Department—which has 4,000 deputies on patrol, and runs the county's jails—in large measure to reduce the huge sums the county was paying for judgments and settlements for misconduct by deputies. While the County of Los Angeles paid out \$17 million in force-related judgments and settlements in 1995-96, it paid

out only \$6 million for such judgments and settlements in 2001-02.⁶⁰ While it cannot be claimed that the savings were exclusively the result of Special Counsel's monitoring, oversight played an important role in the savings.

In addition, perceptions of continued serious police misconduct negatively impact business, reducing the City's tax base and thereby costing many times what is needed to fund an effective FPC. In April 2006, following the acquittal of three off-duty police officers for the savage beating of Frank Jude, the Business Council, an affiliate of the Metropolitan Milwaukee Association of Commerce, wrote Mayor Barrett and Chief Nannette Hegerty stating that police misconduct particularly toward people of color damages the City and its image to the extent that talented young professionals decline to live in or move to Milwaukee.

Recommendation 8.1: The Mayor and the Common Council should make the budgetary decisions and approvals necessary to fund an effective monitor-model FPC. The needed funds should be included in the 2007 budget so that all the staffing changes can be implemented by January 2007. It would be highly desirable to appropriate some supplemental money for 2006 to allow the transition to the revamped Commission to begin this calendar year. At the least, funds should be found to establish the FPC's new office this fall so that the substantive work of the new monitoring staff is not impeded by logistical delays.

⁶⁰ Special Counsel Merrick J. Bobb and PARC, *16th Semiannual Report on the Los Angeles County Sheriff's Department*, at 109 (2003), <http://www.parc.info/pubs/index.html>.

Evaluation of the Revamped Fire and Police Commission

The recommendations in this report call for a significant revamping and strengthening of the Fire and Police Commission. Central to the recommendations is building a monitor model into the staff of the FPC. Based on our knowledge of the effectiveness of the monitor model in the jurisdictions which use it, we have confidence that the model, if appropriately implemented, will increase police accountability in Milwaukee.

Because of the importance of police oversight to the social fabric of this city, it is critical that the community be informed whether the reforms were effectively implemented. We recommend that an evaluation of the reforms and their implementation be conducted by an independent expert not later than June 2009, three years after the issuance of this report. Previous recommendations relating to the Fire and Police Commission were put on a shelf; Milwaukee cannot afford to repeat that mistake again.

Including a requirement for a future evaluation as part of the ordinance that defines the authority of the Independent Monitor would be the best way to ensure that the evaluation takes place, and ensure that the public learns how effective the reforms have been and whether further improvements are needed. When Albuquerque enacted an ordinance creating its police oversight system, the City Council wrote into the ordinance a requirement that, after the ordinance had been in effect for 18 months, the city should hire an independent consultant “to undertake a complete evaluation and analysis of the entire Police

Oversight Process, and recommend any necessary changes or amendments that would appropriately improve the process.”⁶¹

Recommendation 8.2: In its ordinance defining the Independent Monitor’s powers and responsibilities, the Common Council should provide for an evaluation of the Fire and Police Commission, the reforms adopted as a result of this report, and the effectiveness of the implementation of those reforms. We recommend that the evaluation be conducted by an independent expert and be completed not later than June 2009.

⁶¹ Albuquerque City Ordinance 31-1998. Albuquerque Code of Ordinances 9-4-1-11 (2004) currently requires that its police oversight system be evaluated by an independent consultant every four years.

APPENDIX 1

Qualifications of PARC and Richard Jerome, PC

The Police Assessment Resource Center and Richard Jerome are experts in police practices, auditing and evaluation, and police oversight. We have experience working with jurisdictions in formulating law enforcement policies, objectively assessing the internal affairs, citizen complaint and disciplinary systems of public safety agencies, and evaluating law enforcement risk management.

PARC is a non-profit organization that, in cooperation with police monitors, law enforcement executives, civic and government officials, and other interested constituencies, aims to strengthen police oversight so as to advance effective, respectful, and publicly accountable policing. PARC is the only organization working with local jurisdictions that is exclusively dedicated to police oversight issues. Based in Los Angeles and New York, PARC serves as an honest broker of information accessible to all who may be interested in police oversight and reform throughout the United States. PARC publishes the *Police Practices Review* newsletter that is widely read across the nation by police executives and those involved in police oversight and accountability.

PARC's President, Merrick Bobb, has served since 1993 as Special Counsel to the Los Angeles County Board of Supervisors, in which capacity he and PARC monitor the Los Angeles County Sheriff's Department (LASD), the fourth largest police agency in the United States. Deputy Director Oren Root, who heads PARC's New York office, supervises PARC's work with specific jurisdictions, such as accountability audits, the officer-involved shooting reports in Denver and Portland, Oregon, and the monitoring of the police department in Wallkill, New York.

Richard Jerome is the President of Richard Jerome, PC, a firm providing legal and consulting services specializing in police reform. Jerome is the Deputy Monitor and court-appointed Special Master for two police reform settlements in Cincinnati, which are designed to implement police reforms, over a period of five years, in the areas of police use of force, citizen complaints, risk management, training, and bias-free policing. From 1997 to 2001, Jerome served as Deputy Associate Attorney General, overseeing the work of the U.S. Department of Justice's Civil Rights Division and Community Relations Service. He coordinated the Department of Justice's efforts to promote police integrity and its responses to racial profiling, an issue on which he continues to work.

PARC and Richard Jerome have worked together on several oversight projects, including a review of the City of Albuquerque's police oversight mechanisms, and a review of the Portland Police Bureau's officer-involved shootings.

In its work across the country, PARC has acquired broad knowledge of the varied mechanisms for resolving complaints against the police and appeals by the police from discipline. In 2005, PARC completed a survey of U.S. oversight mechanisms, detailing the characteristics and procedures of 30 such entities from around the country. In the report, which categorized oversight bodies by the functional role they play, PARC traced the history of police oversight from the 19th century to the present. PARC's work requires that it keep current with legal and policy developments relating to oversight across the country. Richard Jerome's experience has similarly provided him with a broad perspective and detailed knowledge of police oversight in the United States. We have drawn on our expertise in this area, supplemented with research by PARC staff, to evaluate Milwaukee's

police oversight process and to make recommendations for improvements based upon our knowledge of what works in the oversight field.

APPENDIX 2

ACKNOWLEDGMENTS

PARC and Richard Jerome would like to thank the Commissioners and staff of the Fire and Police Commission, led by Chair Leonard Sobczak and Executive Director David Heard, for their cooperation and assistance throughout this project. The information they provided with a commendable lack of defensiveness and the documents they located for us were indispensable. Particular thanks go to Maria Monteagudo, Director of the Department of Employee Relations, who served as our principal liaison to City government and who was helpful in countless ways large and small throughout this review.

We are grateful to the many citizens, community leaders, and government and union officials of the City and County of Milwaukee who generously shared their knowledge and opinions with us. Without their insights this report would be seriously incomplete. Special thanks to Ramon Candelaria, Tyrone Dumas, and State Senator Lena Taylor for chairing the three public meetings we conducted.

We are appreciative of the assistance and invaluable information we received from Police Chief Nannette Hegerty, PPD commanding officer Capt. Mary Hoerig, and other members of the Milwaukee Police Department. City Attorney Grant Langley and his staff deepened our understanding of the legal provisions relevant to the Fire and Police Commission and provided helpful interpretations of the pertinent law.

The City of Milwaukee funded this project through generous grants from the Helen Bader Foundation and the Greater Milwaukee Foundation. We appreciate the funders' concern for effective police oversight.

Finally, we thank the City of Milwaukee and Mayor Thomas Barrett for the opportunity to conduct this review and to use our knowledge of police oversight to assist the Fire and Police Commission to more effectively serve all the people of Milwaukee in the years to come.

APPENDIX 3

ITEMS FOR FPC ANNUAL REPORTS

Citizen Complaints

- MPD complaints reviewed and audited by the Independent Monitor
- MPD complaint investigations reopened, or additional investigative efforts undertaken as a result of the Monitor's recommendations or direction
- Changes in MPD citizen complaint procedures or investigative procedures as the result of the Monitor's recommendations or reports
- Citizen complaints where the Monitor met with complainant to address complainant's concerns after an MPD investigation; concerns addressed by explanation and information provided by the Monitor, or by the Monitor seeking additional actions by MPD
- Cases conciliated by FPC staff or other trained conciliators; number of conciliations successfully resolved
- FPC's analysis of complaint patterns and trends
- Surveys of complainants to assess complainant's perceptions of fairness of the complaint process; surveys of MPD officers for their perceptions of the complaint process

Internal investigations and officer-involved shootings

- Internal investigations and serious force incidents reviewed and audited by the Monitor
- MPD investigations reopened or additional investigation conducted as the result of the Monitor's recommendation or direction

- Changes in MPD internal investigation procedures resulting from the Monitor recommendations

Disciplinary Appeals

- Results of disciplinary appeals
- Reduction in backlog of appeals
- Reduction in length of time between appeal filed and appeals hearing held
- FPC determinations upheld by Circuit Court

Policy Review

- Analysis of MPD policies, procedures and practices; particularly use of force, training, risk management issues
- Analysis of force statistics, including officer-involved shootings
- Tracking FPC recommendations on policy, tactics and training, and MPD's responses
- Policy recommendations accepted by MPD, or other actions taken by MPD in response to FPC recommendation

Outreach and Publicity

- Documentation of public forums and meetings with community groups
- Surveys of the public regarding knowledge of the FPC, public perception of FPC (surveys would not need to be conducted annually)
- Surveys of MPD officers regarding perceptions of the FPC
- Surveys of the public regarding perception of the MPD

APPENDIX 4

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Police Oversight Commission Ordinance

PART 1: POLICE OVERSIGHT COMMISSION

CITY of ALBUQUERQUE SIXTEENTH COUNCIL

COUNCIL BILL NO. O-04-14 ENACTMENT NO. _____

SPONSORED BY : Brad Winter

ORDINANCE

..t

Amending Chapter 9, Article 4, Part 1 Roa 1994, The Police Oversight Ordinance; Increasing The Number Of Commissioners To Nine; Increasing The Representation Of Commissioners To Include A Representative From Each City Council District; Changing The Minimum Qualifications Of Commissioners; Clarifying Procedures For Findings On Investigations; Changing The Term Of The Independent Review Officer; Creating A Hearing Process For Non-Concurrence Issues; And Amending The Appeal Process.

..b

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. Section 9-4-1-4 ROA 1994 is amended as follows:

" There is hereby created a Police Oversight Commission (POC) to provide oversight of the Albuquerque Police Department and oversee all citizen complaints as follows:

(A) The POC shall be composed of nine members who broadly represent the diversity of this community, and who reside within the City of Albuquerque. There shall be one member of the Police Oversight Commission representing each City Council District. This policy shall be implemented as vacancies occur subsequent to the adoption of this ordinance with the exception of Commissioners currently serving on the POC who may be reappointed for a second term by the Mayor regardless of the Council District they represent.

(B) The following are the minimum qualifications for members of the Police Oversight Commission:

- (1) Have not been employed by law enforcement for one year prior to appointment; and
- (2) Problem solving and conflict resolution skills; and

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(3) Attend a yearly four-hour civil rights training session to be conducted by a civil rights attorney or advocacy group; and

(4) A willingness to commit the necessary time each month for POC hearings and a commitment to prepare and read all materials distributed prior to the monthly POC meetings; and

(5) Participate in a minimum of two ride-a-longs every year with APD officers; and

(6) Attend a yearly Firearms Training Simulator (FATS) training at the APD Police Academy.

(C) When a vacancy on the POC occurs, the Councillor representing the District in which the vacating member of the POC resides, or another Councillor representing another District which is unrepresented on the POC, shall nominate two members to the POC who reside in his or her respective Council District. The Mayor shall then appoint one of these recommended members to the POC with the advice and consent of the Council.

(D) The terms of the members of the POC shall be staggered so that no more than five of the members are eligible for reappointment or replacement each year.

(E) The appointment of any member of the POC who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term.

(F) That the POC shall elect one of its members as the Chairperson and one as Vice-Chairperson, who shall each hold office for one year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected in the month of March of each calendar year.

(G) The POC may appoint such subcommittees as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through 9-4-1-14, provided that, membership on such subcommittees shall be limited to the Commission members.

(H) That the POC and its investigative arm, the IRO, shall be housed in a facility that is separate from any police presence and is located outside of the Albuquerque/Bernalillo Government Center, the Police Department and/or all of the police substations.

(I) That the City Council and the Mayor's Office shall jointly provide staff assistance at all regularly scheduled meetings and at special meetings held pursuant to signed petitions. All other staff support shall be provided by the IRO and/or the Independent Review Office staff.

§ 9-4-1-5 POWERS AND DUTIES OF THE COMMISSION.

The Police Oversight Commission shall have the following powers and duties:

(A) To promote a spirit of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence.

(B) To oversee the full investigation and/or mediation of all citizen complaints; audit and monitor all investigations and/or police shootings under investigation by APD's Internal Affairs; however, the POC will not investigate any complaints other than those filed by citizens. All complaints filed by police officers will be investigated by Internal Affairs.

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(C) To gain the cooperation of APD and solicit public input by holding regularly scheduled meetings.

(D) To review all work of the IRO with respect to quality, thoroughness, and impartiality of investigations.

(E) Submit a quarterly report to the Mayor and City Council according to § 9-4-1-10 herein.

(F) To submit all findings to the Chief of Police. The Chief will have final disciplinary authority.

(G) To engage in a long-term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.

(H) To conduct regularly scheduled public meetings with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney, and that complies with the New Mexico Open Meetings Law. Each POC meeting will begin with public comments and only the regularly scheduled monthly meetings and special meetings held pursuant to submission of petitions will be televised live on the appropriate government access channel. All other meetings of the POC will comply with the Open Meetings Law and shall be videotaped and aired on the appropriate government access channel; however, there is no requirement for providing live television coverage.

(I) To recommend to the Mayor and City Council during the city's budget process, their proposed budget for provision of such staff as is necessary to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including the funding for the Independent Review Office, staff, and all necessary operating expenses. The Mayor shall propose the annual budget to the City Council in the annual budget message.

(J) To recommend three candidates to the Mayor for consideration as the Independent Review Officer (IRO), and oversee the continuing performance of this individual once selected by the City Council.

§ 9-4-1-6 INDEPENDENT REVIEW OFFICE.

(A) The Independent Review Office is hereby established and shall be directed by an Independent Review Officer (IRO).

(B) The IRO shall be given autonomy and shall perform all duties under the direction of the POC. There will be no attorney-client privilege between the IRO and the city.

(C) The Independent Review Office will receive all citizen complaints and claims directed against the Albuquerque Police Department and any of its officers. The IRO will review such citizen complaints and assign them for investigation to either the Albuquerque Police Department for an internal administrative investigation or to an independent investigator. The IRO will oversee, monitor and review all such investigations and make findings for each. All findings relating to citizen complaints and police shootings will be forwarded to the POC. The IRO may review completed IA cases and discuss those cases with the Chief or his designee. In any instance, the Chief of Police will have the sole authority for discipline. For all investigations, the IRO will make recommendations and give advice regarding Departmental policies and procedures to the POC, City Council, and the Mayor as the IRO deems advisable, provided as follows:

(1) That investigation of all citizen complaints filed with the Independent Review Office shall begin immediately after complaints are filed and proceed as expeditiously as possible; and

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(2) That all citizen complaints filed with other offices within the city authorized to accept citizen complaints, including the Police Department, shall be referred to the IRO for investigation; and

(3) That at the discretion of the IRO an impartial system of

mediation may be considered appropriate for certain complaints. If all parties involved reach an agreement, the mediation is considered successful and no investigation will occur; and

(4) To monitor all claims of excessive force and police shootings. No APD related settlements in excess of \$25,000 shall be made for claims without the knowledge of the IRO. The IRO shall be an ex-officio member of the Claims Review Board; and

(5) That all investigations shall be thorough, objective, fair, impartial, and free from political influence; and

(6) That all information necessary to satisfy the POC's quarterly reporting requirements in § 9-4-1-10 be maintained and compiled; and

(7) The process for finalizing findings on police shooting cases shall be the same as the process for finalizing findings on citizen police complaints.

(D) The IRO shall have access to any Police Department information or documents that are relevant to a citizen's complaint, or to an issue which is ongoing at the Independent Review Office or the POC; and

(E) The IRO may make recommendations to the POC and APD on specific training, changes in policy or duty manuals. APD will respond, in writing, to all recommendations from the IRO or POC within 60 days. Follow up and monitor all recommendations to verify their adoption and implementation; and

(F) The Independent Review Office shall provide staff assistance for the POC and coordinate and provide technical support for all scheduled Police Oversight Commission meetings, publicize all findings and reports, recommendations, and/or suggested policy changes; and

(G) Play an active public role in the community, and whenever possible, provide appropriate outreach to the community. Publicize the citizen complaint process, and identify locations within the community that are suitable for citizens to file complaints in a non-police environment; and

(H) Neither the City Council nor any of its members, nor the Mayor shall in any manner dictate the appointment or removal of any such employee of the Independent Review Office.

§ 9-4-1-7 INDEPENDENT REVIEW OFFICER.

(A) Qualifications for the position of Independent Review Officer shall be determined by the Police Oversight Commission. The qualifications minimally include the requirement of a law degree and experience in criminal investigations.

(B) The position of IRO will be a full-time contractual city employee to be selected as follows:

(1) A candidate search will be undertaken by the POC, who will screen, interview, and select three candidates to be considered by the Mayor; and

(2) The Mayor will select one of the three candidates and forward his recommendations to the City Council; and

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(3) The City Council may accept or reject the Mayor's nominee.

(4) In the event the City Council rejects the nominee, the Mayor shall submit his second recommendation from the names submitted by the POC, the City Council may accept or reject the Mayor's nominee.

(5) In the event that the City Council rejects the second nominee, the process shall begin with a second candidate search by the POC.

(C) The IRO will be provided the necessary professional and/or clerical employees for the Office, and shall prescribe the duties of these staff members after consultation with the members of the POC. Such professional and clerical employees will be classified city employees.

(D) The IRO will report directly to the POC and act as Lead Investigator and Manager of the Office; will supervise all investigations of citizen complaints against police officers, will audit all investigations of complaints and/or police shootings, will recommend and participate in mediation of certain complaints, and will supervise all Independent Review Office staff.

(E) The term of the IRO shall be for two years, commencing immediately upon approval by the City Council. The Mayor, with the approval of the City Council, shall have the option to renew or extend the contract with the IRO for additional two-year periods. Negotiations to renew or extend the contract shall be completed three months prior to the contract expiring. Should the contract not be renewed or extended, the IRO may continue to serve in the same capacity until a new IRO is selected and approved by the City Council. If the IRO or the Mayor chooses not to renew or extend the contract, the POC shall be immediately notified. The POC will then immediately begin a candidate search, as described in § 9-4-1-7 (B)(1). If for some unforeseen reason there is a period of time during which there is no IRO, the Mayor may appoint a temporary IRO, with the consent and approval of the City Council. A temporary IRO shall only serve in that capacity for a period not to exceed 6 months.

§ 9-4-1-8 CITIZEN COMPLAINT PROCEDURES.

(A) Any person claiming to be aggrieved by actions of the Police may file a written complaint against the department or any of its officers. The POC shall submit rules and regulations governing citizen complaint procedures to the Mayor and City Council for approval, including rules and regulations relative to time limits, notice and other measures to insure impartial review of citizens' complaints against members of the police department.

(B) The Mayor shall designate civilian city staff to receive written citizen complaints at various locations throughout the city. The Police Department may also receive written complaints. Such complaints shall be filed with the civilian city staff no later than 90 days after the action complained of. The party who receives the complaint shall transmit all citizen complaints for further investigation to the IRO. If a citizen complaint is determined to not merit further investigation, the complainant shall be notified of that determination by certified mail.

(C) After the investigation is completed, the IRO and the Chief, or his designee, shall consider the investigation and all other relevant and material evidence offered by the person investigated. The IRO and Chief may confer and discuss the investigation and findings. The IRO shall then submit his findings and public record letter to the POC for review and approval. The public record letter to the citizen will only be sent after approval by the POC.

(D) If the Chief, or his designee, and the IRO disagree on the IRO's

findings, the POC will receive the complaint to review at the next regularly scheduled meeting. The POC will treat the complaint as a Non-Concurrence Issue and after conducting a hearing can keep, modify, or change the original findings and/or recommendations of the IRO. If the POC/IRO and Chief do not agree on the findings of any citizen complaint, the Chief

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Administrative Officer will review the investigation and render a final decision, acting with the same authority and power as described in §9-4-1-9(B).

(E) When the Chief, or his designee, and the IRO agree on the

findings of the POC, these findings will be considered final and cannot be changed by the Chief, or his designee, or the IRO at any time without first notifying the POC, the IRO, the complainant, and the individual(s) against whom the complaint was filed, by certified mail. Upon such notification the POC will place the matter on its agenda for a regularly scheduled meeting and decide whether the findings should be changed because (1) of newly discovered evidence which by due diligence could not have been known at the time of the original finding, or (2) the original finding was based on fraud, misrepresentation, or other misconduct.

(F) The findings of the POC/IRO shall be placed with the Chief's findings on the Internal Affairs Unit Disciplinary Status Sheet. The form will be filed in the CPC complaint file and the officer's Retention File.

(G) The Chief shall take whatever action is necessary,

including disciplinary action, to complete the disposition of the complaint. Written notice, by certified mail, of such disposition shall be given to the complainant and to the individual against whom the complaint was filed.

§ 9-4-1-9 APPEALS.

(A) A summary and findings of the investigation conducted pursuant to the direction of the IRO shall be forwarded to the complainant and to the POC. A copy of the IRO's public record letter shall also be forwarded to the complainant and to the POC. Any person who has filed a citizen complaint and who is dissatisfied with the findings of the IRO may appeal that decision to the POC within ten business days of receipt of the public record letter. The POC may upon appeal modify or change the findings and/or recommendations of the IRO and may make further recommendations to the Chief regarding the findings and/or recommendations and any discipline imposed by the Chief or proposed by the Chief. Within 20 days of receipt of the appellate decision of the POC, the Chief shall notify the POC and the original citizen complainant of his decision in this matter in writing, by certified mail.

(B) If any person who has filed a citizen complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with the final decision of the Chief of Police on any matter relating to his complaint, he may request that the Chief Administrative Officer review the complaint, the findings of the IRO and POC and the action of the Chief of Police by requesting such review in writing within ten business days of receipt of the Chief's letter pursuant to § 9-4-1-9 (A). Upon completion of his review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief of Police regarding disciplinary action, to complete the disposition of the complaint. The Chief Administrative Officer shall notify in writing, by certified mail, the complainant, the individual against whom the complaint was filed, the Chief of Police and the IRO of the results of his review and any action he has taken.

§ 9-4-1-10 REPORTS.

The POC shall be responsible for regularly informing the Mayor, the City Council, and the public by submitting quarterly reports that contain the following types of information:

(A) Data relating to the number, kind and status of all complaints received including those complaints sent to mediation;

(B) Discussion of issues of interest undertaken by the POC which may include suggested policy and/or procedural changes, a listing of complaints and allegations by Council District,

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statistical ethnicity of subject officers, statistical ethnicity of complainants, and updates on prior issues and/or recommendations;

(C) The POC's findings and the Police Chief's issuance of discipline on those findings and the ongoing disciplinary trends of the Police Department;

(D) Information on all public outreach initiatives undertaken by either the POC or the IRO such as speaking engagements, public safety announcements, and/or public information brochures on the oversight process.

(E) The status of the long-term planning process identifying major problems, policy suggestions, and studies as required by Section 9-4-1-5 of this ordinance.

§ 9-4-1-11 EVALUATION.

Contingent upon funding, in the first six months of 2005 and at least every four years thereafter, from adoption of §§ 9-4-1-1 through 9-4-1-14, the City Council shall issue a Request for Proposal for an independent consultant to undertake a complete evaluation and analysis of the entire Police Oversight Process, and recommend any necessary changes or amendments that would appropriately improve the process.

§ 9-4-1-12 SPECIAL MEETINGS.

On the petition of 1,000 or more citizens in the City of Albuquerque filed in the Office of the City Clerk, the Commission shall hold a special meeting for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission and shall comply with the State Open Meetings Law.

§ 9-4-1-13 CONFIDENTIALITY.

The hearing process shall be open to the public to the extent legally possible so that it does not conflict with state or federal law. However, upon the opinion of the City Attorney and IRO, some of the details of the investigations of the IRO, or the designated independent investigator, shall become privileged and confidential. The details of investigations should not be open to the public subject to the opinion of the City Attorney and the IRO. Compelled statements given to the IRO, or the designated independent investigator, will not be made public. The IRO may summarize conclusions reached from a compelled statement for the report to the POC and the Chief, and in the public record letter sent to the complainant. Nothing in §§ 9-4-1-1 through 9-4-1-14 shall affect the ability of APD to use a compelled statement in a disciplinary proceeding.

§ 9-4-1-14 MANDATORY COOPERATION AGREEMENT.

The City Council believes that full participation and cooperation of all parties involved is essential to the success of the new police oversight process and its IRO, and that APD hereby agrees and understands that their full cooperation is necessary, hereby agrees to mandate that its officers provide honest and truthful responses to all questions by the IRO or the designated independent investigator. If any officer refuses to answer the questions proposed to him or her by the IRO, or the independent investigator, he or she may be subjected to termination or disciplinary action at the discretion of the Police Chief. Compelled statements given to the IRO or the designated independent investigator, by a police officer will be used only for the IRO's investigation. The actual statement will remain confidential and will not be included in a final report or be forwarded to the POC. The IRO may summarize conclusions reached from a compelled statement for the report to the POC and the Chief, and in the public record letter to the complainant."

Albuquerque, New Mexico Police Oversight Commission Ordinance

Section 2. Severability Clause. If any Section, paragraph, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each Section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 3. Compilation. Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico.

Section 4. Effective Date. This ordinance shall take effect five days after publication by title and general summary.

Boise, Idaho Community Ombudsman Ordinance

Boise Municipal Code

Chapter 2-22

COMMUNITY OMBUDSMAN

Sections:

- 2-22-01 COMMUNITY OMBUDSMAN
- 2-22-02 APPOINTMENT AND REMOVAL OF OMBUDSMAN
- 2-22-03 SCOPE
- 2-22-04 DUTIES AND RESPONSIBILITIES
- 2-22-05 CONFIDENTIALITY OF RECORDS AND INFORMATION
- 2-22-06 RELATIONSHIP BETWEEN THE OFFICE OF COMMUNITY OMBUDSMAN AND BOISE CITY POLICE AND OTHER DEPARTMENTS
- 2-22-07 COOPERATION WITH THE OFFICE OF COMMUNITY OMBUDSMAN
- 2-22-08 INDEPENDENCE OF THE COMMUNITY OMBUDSMAN
- 2-22-09 FALSE REPORTS

Section 2-22-01 COMMUNITY OMBUDSMAN

There is hereby created an administrative unit of the City to be known as the Office of Community Ombudsman.

(5930, Added, 07/20/1999)

Section 2-22-02 APPOINTMENT AND REMOVAL OF OMBUDSMAN

- A) The Community Ombudsman shall be appointed by the Mayor and confirmed by the City Council.

- B) The Community Ombudsman may not be removed from office except for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties. In such cases that warrant removal from office, said removal shall be accomplished only by a resolution adopted in public hearing by either the majority of the full City Council upon recommendation of the Mayor or by a vote of no less than five (5) members of the full City Council; nothing contained herein shall prevent the Council from eliminating the Office of Community Ombudsman by the normal ordinance process which action shall not be considered a removal for cause but simply a change in policy by the City.

(5930, Added, 07/20/1999)

Section 2-22-03 SCOPE

The Office of Community Ombudsman shall have the authority to exercise its duties and responsibilities, as outlined below, with regard to any and all law enforcement and police activities or personnel operating under authority of the City of Boise City.

(5930, Added, 07/20/1999)

Section 2-22-04 DUTIES AND RESPONSIBILITIES

- A) Citizen Complaints

Any person may file with the Office of Community Ombudsman a complaint or allegation of wrongdoing against a Boise City law enforcement or police employee. Upon receipt of such complaint or allegation, the Office of Community Ombudsman

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shall:

- i) Ensure that a timely, thorough, complete, objective and fair investigation into the complaint or allegation is conducted. This investigation may, at the discretion of the Community Ombudsman, be conducted by either the Office of Community Ombudsman, the Boise City Police Department or any other competent investigative agency.
- ii) Provide timely updates on the progress of the investigation to the complainant and the employee who is the subject of the investigation, unless the specific facts of the investigation would prohibit such notification.
- iii) Based on the results of the investigation, reach an independent finding as to the facts. The Community Ombudsman shall assess the conduct of the Boise City law enforcement officer or police employee in light of the facts discovered through the investigation, the law, and the policies and training of the relevant department, and shall further make recommendations for personnel action to be taken. The report of investigation and recommendations shall be given to the relevant Department Head for purpose of discipline and/or commendation when warranted, and for use in the development of the affected law enforcement officer or police employee's formal personnel evaluation. A law enforcement officer, police employee, or citizen may waive their personal privacy right.
- iv) Communicate these findings on a timely basis to the complainant, the employee who is the subject of the investigation, and the Chief of Police or the head of the other Department.

B) Review of Internal Investigations conducted by Police Department.

The Office of Community Ombudsman shall review internal investigations conducted by Boise City Police or other Departments to determine if the investigations are complete, thorough, objective and fair.

C) Appeals of Internal Investigation Findings

Any person may file with the Office of Community Ombudsman an appeal of the findings of an internal investigation conducted by the Boise City Police, or other Departments. Upon receipt of such an appeal, the Office of Community Ombudsman shall:

- i) Review the completed investigation.
- ii) Determine whether or not further investigation is warranted and, if necessary, ensure that a timely, thorough, complete, objective and fair follow-up investigation into the complaint or allegation is conducted. This follow-up investigation may, at the discretion of the Community

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Ombudsman, be conducted by the Office of Community Ombudsman, the Department involved or any other competent investigative agency.

- iii) Provide timely updates on the progress of the review and any follow-up investigation to the complainant and the employee who was the subject of the original investigation, unless the specific facts of the investigation would prohibit such notification.
- iv) Based on the review of the original investigation and the results of any follow-up investigation (if conducted), reach an independent finding as to the facts. The Community Ombudsman shall assess the conduct of the Boise City law enforcement officer or police employee in light of the facts discovered through the investigation, the law, and the policies and training of the relevant department, and shall further make recommendations for personnel action to be taken. The report of investigation and recommendations shall be given to the relevant Department Head for purpose of discipline and/or commendation when warranted, and for use in the development of the affected law enforcement officer or police employee's formal personnel evaluation. A law enforcement officer, police employee, or citizen may waive their personal privacy right.
- v) Communicate these findings on a timely basis to the person filing the appeal, the employee who was the subject of the original investigation, and the Chief of Police or relevant department head.

D) Mediation

The Office of Community Ombudsman shall develop an alternative dispute resolution process for resolving those citizen complaints which involves conduct which may most appropriately be corrected or modified through less formal means.

E) Policy Recommendations

The Office of Community Ombudsman shall develop specific recommendations as to the policies, procedures, practices and training of Boise City police and law enforcement employees. Such recommendations should have as their goal improved

professionalism,
safety,
effectiveness and
accountability

of Boise City Police and law enforcement employees. The Office of Community Ombudsman may make recommendations to the Chief of Police, Department Heads, the Mayor and/or the City Council as appropriate.

F) Community Outreach

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The Office of Community Ombudsman shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with the citizens of Boise City.

G) Reporting

The Community Ombudsman shall file semi-annual public reports with the City Clerk for transmittal to the City Council and Mayor which shall:

- i) Include a statistical analysis documenting the number of complaints by category, their disposition and any actions taken;
- ii) analyze trends and patterns;
- iii) make recommendations, as appropriate.

The reports shall include all complaints received by the Office of Community Ombudsman and Police and other law enforcement activities of the City.

H) Critical Incidents

In the event that an employee of the Boise Police or the Airport Peace Officers Division of the Aviation and Transportation Departments is involved as a principal, victim, witness or custodial officer, where death or bodily injury results, the Community Ombudsman shall be notified immediately and shall act as an observer to any criminal, administrative or civil investigation conducted by or on behalf of the such Departments. The Office of Community Ombudsman may also conduct an independent administrative investigation into such a critical incident. The Community Ombudsman shall assess the conduct of the Boise City law enforcement officer or police employee in light of the facts discovered through the investigation, the law, and the policies and training of the relevant department, and shall further make recommendations for personnel action to be taken. The report of investigation and recommendations shall be given to the relevant Department Head for purpose of discipline and/or commendation when warranted, and for use in the development of the affected law enforcement officer or police employee's formal personnel evaluation. A law enforcement officer, police employee, or citizen may waive their personal privacy right. Critical incidents include but are not limited to situations involving the following:

- i) Use of force or any other Department action that results in death or serious bodily injury. (Serious bodily injury is an injury that results in the subject being admitted to a hospital.)
- ii) Use of Deadly Force where only minor bodily injuries occur.
- iii) Intentional use of Deadly Force but no injury occurs (excluding animals).

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- iv) Vehicle pursuits, roadblocks or intercepts resulting in death or serious bodily injury.
- v) Police employee involved in a traffic accident resulting in death or serious bodily injury, while operating a city vehicle or a private vehicle while on City business.

(6093, Amended, 10/09/2001; 5930, Added, 07/20/1999)

Section 2-22-05 CONFIDENTIALITY OF RECORDS AND INFORMATION

The Office of Community Ombudsman shall comply with all state and federal laws requiring the confidentiality of law enforcement records, information, and confidential personnel records; and respect the privacy of all individuals involved.

(5930, Added, 07/20/1999)

Section 2-22-06 RELATIONSHIP BETWEEN THE OFFICE OF COMMUNITY OMBUDSMAN AND BOISE CITY POLICE AND OTHER DEPARTMENTS

- A) The Chief of Police and all Department Heads with employees who perform law enforcement duties shall each, jointly with the Community Ombudsman, develop standard operating procedures to govern the relationship and flow of communication and work products between the Office of Community Ombudsman and each of their respective departments.
- B) The Office of Community Ombudsman is to be given full, unrestricted and complete access to any and all information, files, evidence or other material which the Community Ombudsman shall deem necessary in the performance of the duties specified and responsibilities set forth in this chapter.
- C) The Office of Community Ombudsman is to provide the appropriate Chief or Department Head with timely notification of complaints, investigations, appeals and findings and with such information and cooperation as is appropriate and necessary.

(5930, Added, 07/20/1999)

Section 2-22-07 COOPERATION WITH THE OFFICE OF COMMUNITY OMBUDSMAN

- A) All City employees shall be required as a condition of their employment to cooperate fully and truthfully with the Office of Community Ombudsman operating within the course and scope of this chapter, by providing the Office of Community Ombudsman with any and all information, evidence, interviews, or other material as requested.
- B) No person shall directly or indirectly force, or by any threats to person or property, or in any manner willfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent, another person, including a child, from freely, fully and truthfully cooperating with the Office of Community Ombudsman.

(5930, Added, 07/20/1999)

Section 2-22-08 INDEPENDENCE OF THE COMMUNITY OMBUDSMAN

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- A) The Community Ombudsman and any employee of the Office of Community Ombudsman shall, at all times, be totally independent. Any investigations, findings, recommendations and requests made by the Office of Community Ombudsman shall reflect the views of the Office of Community Ombudsman alone.
- B) No person shall attempt to unduly influence or undermine the independence of the Community Ombudsman or any employee of the Office of Community Ombudsman in the performance of the duties and responsibilities set forth in this Chapter.

(5930, Added, 07/20/1999)

Section 2-22-09 FALSE REPORTS

The Office of Community Ombudsman shall have the discretion to decline further action on a complaint filed with the Office of Community Ombudsman if it is found that there is a reasonable belief that the alleged acts of misconduct in the complaint are false and that the person(s) filing the complaint knew them to be false at the time the complaint was filed.

(5930, Added, 07/20/1999)

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ARTICLE XVIII. OFFICE OF THE INDEPENDENT MONITOR

Sec. 2-371. Office created.

(a) There is hereby created the office of the independent monitor ("monitor's office") for the City and County of Denver. This office shall consist of a full-time monitor with appropriate professional and support staff. For purposes of this article, "monitor" means the head of the office of the independent monitor.

(b) The monitor's office shall actively monitor and participate in certain investigations of uniformed personnel; make recommendations to the manager of safety regarding administrative action, including possible discipline, for such uniformed personnel; make recommendations regarding policy issues; and address any other issues of concern to the community, the members of the citizen oversight board ("board") created pursuant to section 2-377, the manager of safety, the chief of police, or the undersheriff. For purposes of this article, "uniformed personnel" means all members of the classified service of the Denver police department, all sworn members of the Denver sheriff department, and members of the Denver fire department who are authorized to carry and use firearms on duty.

(c) The monitor shall establish standards of professional conduct and a comprehensive training program for its own staff in order to evaluate whether internal investigations have been properly conducted and to make recommendations as to the sustaining of rule violations, the imposition of disciplinary sanctions, and changes in policy and training.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-372. Appointment, qualification, and removal of monitor and staff.

(a) The mayor shall direct the recruitment for the monitor's position with the assistance of the career service authority or other entity designated by the mayor.

(b) Prior to the appointment of any person to the position of monitor, the mayor shall appoint a screening committee to interview and evaluate candidates for the position. The screening committee shall consist of the following five (5) persons:

(1) The chairperson of the board, who shall be the chairperson of the screening committee;

(2) A member of city council as selected by the city council president;

(3) A current or retired judge as selected by the mayor;

(4) The director of the career service authority; and

(5) A person with extensive knowledge of internal police investigations or the monitoring of internal police investigations but who has never been employed by the Denver police, sheriff, or fire departments as selected by the mayor.

(c) The screening committee shall forward to the mayor the names of up to three (3) candidates, whose names shall be available to the public.

(d) The mayor shall appoint the monitor from the list of names submitted by the screening committee, unless the mayor decides not to appoint any of those candidates, in which case the mayor shall request the screening committee to provide additional names.

(e) The appointment of the monitor by the mayor shall not be effective unless and until confirmed by the city council acting by ordinance.

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- (f) The monitor shall serve at the pleasure of the mayor. Prior to any removal of the monitor by the mayor, the mayor shall consult with the city council and the board regarding his or her intention to remove the monitor.
- (g) The staff of the monitor's office shall be hired by the monitor and shall serve at the pleasure of the monitor.
- (h) Neither the monitor nor any employees of the monitor's office shall have formerly been employees of the Denver police, sheriff, or fire departments.
(Ord. No. 730-04, § 1, 10-4-04)

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

- (a) The monitor's office shall actively monitor and participate in any criminal investigation of the incidents set forth below when the investigation is conducted by any law enforcement agency of the City and County of Denver. For criminal investigations conducted by the Denver district attorney or law enforcement agencies of any other jurisdiction, the monitor's office shall actively monitor and participate in such investigations to the extent permitted by the agency. In addition, the police, sheriff, or fire internal affairs bureaus ("IAB") shall investigate any incident set forth below and the monitor's office shall actively monitor and participate in such IAB investigations:
 - (1) Any shooting involving uniformed personnel, whether duty related or not;
 - (2) Any in-custody death;
 - (3) Any duty-related incident during which, or as a result of which, anyone dies or suffers serious bodily injury as that term is defined in C.R.S. § 18-1-901(3)(p), as it may be amended from time to time;
 - (4) Any incident whether or not duty related, in which police or sheriff department uniformed personnel is under investigation for, or charged by, any jurisdiction with a felony;
 - (5) Any incident, whether or not duty-related, in which police or sheriff department uniformed personnel is under investigation for, or charged with, any crime set forth in C.R.S. tit. 18, art. 3 (offenses against the person, which includes homicide, assault, kidnapping, and unlawful sexual behavior) as they may be amended from time to time; or
 - (6) Any incident, whether or not duty-related, in which police or sheriff department uniformed personnel is under investigation for, or charged by, any jurisdiction with a misdemeanor or local law violation in which a use of force (defined as assaulting, beating, striking, fighting, or inflicting violence on a person) or threatened use of force is an element of the offense.
- (b) With respect to paragraphs (4), (5), and (6) of subsection (a), if no criminal charges are filed subsequent to an investigation or such criminal charges are dismissed, the monitor's office shall nevertheless have the discretion to monitor any internal investigation arising from the subject incident.
- (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

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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 police, sheriff's, or fire's IAB only that the monitor's office will monitor the investigation pursuant to this paragraph.

(e) The 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

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

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

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

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

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

(Ord. No. 730-04, § 1, 10-4-04)

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

(a) The monitor's office shall have the discretion to monitor any internal police or sheriff department investigation of any citizen complaint alleging:

(1) Improper use of force;

(2) Discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender variance, disability, religion, or political affiliation;

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- (3) Retaliation for making a complaint against the police or sheriff department or any police or sheriff department uniformed personnel; or
 - (4) Discourtesy.
 - (b) The monitor's office shall also have the discretion to monitor any internal investigation by the police or sheriff department as to which the monitor's office believes it is in the city's best interest for the monitor's office to be involved.
 - (c) Upon exercising discretion to monitor an investigation identified in subsection (a) or (b), the monitor's office shall immediately advise:
 - (1) The board and the manager of safety that the monitor's office has decided to monitor such investigation and of the monitor's office's reasons for monitoring the investigation; and
 - (2) The police or sheriff's IAB only that the monitor's office shall monitor the investigation pursuant to the provisions of paragraphs (a) and (b) above.
- (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-375. Reports of the monitor.

- (a) No later than February 1st of each year beginning in 2006, the monitor shall submit an annual public report to the mayor and city council, setting forth the work of the monitor's office during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of police and sheriff department uniformed personnel, including, but without identifying specific persons, information regarding uniformed personnel who were the subject of multiple complaints, complainants who filed multiple complaints, and issues that were raised by multiple complaints; and making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes to policies, rules, and training.
 - (b) The report shall present information in statistical and summary form, without identifying specific persons except to the extent that incidents involving specific persons have otherwise been made public by the City and County of Denver.
 - (c) In addition to the annual report, the monitor's office shall maintain an on-going status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any. Based upon an analysis of this information and other information available to the monitor, the monitor's office shall make timely recommendations to the chief of police, undersheriff, and the manager of safety regarding an early warning system and/or other policy issues.
- (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-376. Confidentiality.

- (a) The monitor, its staff, the board, and all consultants and experts hired by the monitor shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out their duties.
- (b) The monitor's office shall not discuss with any person or group, including the members of the board, the status of any criminal investigation, other than the fact that a criminal investigation has not been completed and any anticipated date by which a criminal investigation may be completed.

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(c) The monitor's office, the board, and all persons who participate in the police, sheriff, or fire department's investigative and disciplinary processes are part of the city's deliberative process regarding investigative and disciplinary procedures for uniformed personnel. Furthermore, all information learned by any of those persons or groups during the exercise of their duties shall be protected by the deliberative process privilege.
(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-377. The citizen oversight board.

- (a) There is hereby created the citizen oversight board.
 - (b) The functions of the board shall be to:
 - (1) Assess the effectiveness of the monitor's office;
 - (2) Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;
 - (3) Address any other issues of concern to the community, members of the board, the monitor, the manager of safety, the chief of police, the undersheriff, or the fire chief;
 - (4) Make recommendations as to specific cases as provided in subsection (f) of section 2-373; and
 - (5) Exercise such other powers and duties as are set forth in this article.
- (Ord. No. 730-04, § 1, 10-4-04)

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

- (a) The civilian oversight board shall consist of seven (7) members who shall be residents of the City and County of Denver.
 - (b) The mayor shall appoint, subject to confirmation by the city council, the members of the board.
 - (c) No officer or employee of the City and County of Denver shall be appointed to the board.
 - (d) Neither the members of the board nor any of their immediate family members (defined as husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, grandmother, grandfather, brother, sister, domestic partner, and in-laws) shall have ever been employed by the Denver police, sheriff, or fire departments.
 - (e) The members of the board should reflect the diversity of Denver, including the ethnic, racial, and geographic constitution of the population as well as the diverse professional backgrounds, experience, and expertise of the citizens of Denver.
 - (f) The members of the board shall receive compensation in an amount not to exceed one thousand two hundred dollars (\$1,200.00) per year and be paid necessary expenses incurred in connection with the work of the board.
 - (g) The members of the board shall participate in an appropriate training program to be established by the board and/or the monitor's office so that they shall possess the applicable knowledge to perform their duties.
- (Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-379. Terms and vacancies.

- (a) The term of each member of the board shall be four (4) years.
- (b) Any vacancy occurring during the term of any member shall be filled by appointment by the mayor and confirmed by city council.

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

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

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-380. Removal from office.

Prior to the expiration of his or her appointed term, a member of the board may be removed from the board by the mayor for cause including a persistent failure to perform his or her duties on the board or if, subsequent to being selected as a member of the board, information becomes known to the mayor that, had it been known when the member was selected, the information would have disqualified him or her from being selected.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-381. Officers.

The board shall annually elect from among its members a chairperson and a vice-chairperson, who shall serve in such capacities until their successors are duly elected. In case of a vacancy in either of these positions, the board shall elect a successor who shall serve the unexpired balance of the predecessor's term.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-382. Meetings of the citizen oversight board.

(a) The board shall conduct at least three (3) meetings annually for public comment, including a meeting to be held not later than thirty (30) calendar days after the issuance of the board's annual report and shall from time to time meet with citizens' groups to learn of citizens' concerns and to inform the citizens of relevant information regarding the activities of police, sheriff, and fire departments, the monitor's office, and the board.

(b) The board shall meet at least bi-monthly with the monitor.

(c) The board shall meet at least quarterly in public with the manager of safety, the chief of police, and the undersheriff and shall meet with any other city personnel on an as-needed basis to discuss any issues of concern and to make recommendations for ways that the police, sheriff, and fire departments can improve their relationships with the citizens and recommendations regarding policies, rules, hiring, training, and the complaint process.

(d) The board shall fix the time and place of its meetings.

(e) The board shall maintain records of its meetings, which records shall be available to the public.

(f) All public meetings of said board shall be subject to the provisions of article III of chapter 2 of the Revised Municipal Code dealing with open meetings.

(Ord. No. 730-04, § 1, 10-4-04)

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

- (a) The monitor's office shall inform the board of the status of police, sheriff, and fire department investigations and disciplinary proceedings and the actions of the monitor's office in monitoring those investigations and disciplinary proceedings.
- (b) The board shall establish both qualitative and quantitative criteria for evaluating the effectiveness of the monitor.
- (c) In order to determine whether the monitor's office is effectively monitoring police, sheriff, and fire investigations, the board shall receive regular reports from the monitor's office and shall be allowed to review pertinent portions of the personnel files of uniformed personnel and IAB files including statements of uniformed personnel and to make recommendations to the manager of safety, chief of police, undersheriff, fire chief, and monitor's office regarding investigations, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any. However, the board shall not become the custodian of any such records and the board shall not be allowed access to documents protected by the attorney-client privilege or the attorney work product privilege.

(Ord. No. 730-04, § 1, 10-4-04)

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

- (a) The board shall furnish an annual public report to the mayor and city council regarding the board's assessment of the work of the monitor's office; the board's activities during the preceding year; concerns expressed by citizens; the board's assessment of the police, sheriff, and fire department investigative and disciplinary processes; recommendations for ways that those three (3) departments can improve their relationships with the citizens; and recommendations for changes to police, sheriff, and fire department policies, rules, hiring, training, and the complaint process.
- (b) The board's annual report shall be furnished concurrently with the monitor's annual report to the mayor and city council.
- (c) In addition to the annual report, the board may furnish additional reports, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any.
- (d) The board shall have the ability to hire consultants to assist in assessing the effectiveness of the monitor's office and in preparing the board's annual report and any other reports.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-385. Rules.

The board shall publish and make available to the public such procedural rules as it may adopt for the conduct of its business.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-386. Citizen complaints.

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(a) In addition to availing themselves of any citizen complaint mechanisms that are provided by the department of safety, police department, or sheriff department, citizens may file complaints of alleged misconduct by uniformed personnel with the board or the monitor's office.

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

(Ord. No. 730-04, § 1, 10-4-04)

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

(a) The procedures relating to the monitor's office's actively monitoring and participating in criminal investigations conducted by the Denver district attorney's office ("DA") shall be established by an intergovernmental agreement between the City and County of Denver and the DA. That agreement shall address, among other things, reasonable access by the monitor's office to the crime scene at the earliest feasible time, witness interviews, and other evidentiary items and the monitor's role in making recommendations regarding those investigations.

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

(c) The DA's investigation will be considered to be complete:

(1) When the DA files criminal charges against any uniformed personnel involved in the shooting; or

(2) When the DA issues a public letter stating that it does not intend to file criminal charges against any of the uniformed personnel involved in the shooting.

(Ord. No. 730-04, § 1, 10-4-04)

Sec. 2-388. Internal investigations.

(a) The police, sheriff, and fire departments shall establish by departmental policies that they will cooperate with the monitor's office in actively monitoring and participating in internal investigations. Those policies shall provide for, among other things, complete access to interviews of witnesses including uniformed personnel, IAB files, personnel files, and other evidentiary items but not including documents protected by the attorney-client privilege and the attorney work product privilege. The policies shall also provide for the ability of the monitor to make recommendations regarding those investigations and for reasonable time frames to complete the steps in the internal investigatory process.

(b) For any investigation that it monitors, the monitor's office shall review the investigation to ensure that it is thorough and complete.

(c) If the monitor's office cannot certify that the investigation is thorough and complete, the monitor's office may request that IAB conduct additional investigation.

140. POLICE COMMISSION, OFFICE OF THE INSPECTOR GENERAL.

140.01 INSPECTOR GENERAL. According to the Los Angeles City Charter, Volume I, Article V, Section 573, the Inspector General shall report to the Board of Police Commissioners and shall have the power and duty to:

- Under rules established by the Board of Police Commissioners, audit, investigate, and oversee the Police Department's handling of complaints of misconduct by police officers and civilian employees and perform other duties as may be assigned by the board;
- Conduct any audit or investigation requested by majority vote of the board;
- Initiate any investigation or audit of the Police Department without prior authorization of the Board of Police Commissioners, subject to the authority of the board by majority vote to direct the Inspector General not to commence or continue an investigation or audit;
- Keep the board informed of the status of all pending investigations and audits; and,
- Appoint, discharge, discipline, transfer and issue instructions to employees under his or her direction.

In order to carry out the duties of the office, the Inspector General shall have the power to subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of such books, papers, records and documents as may be deemed relevant to any audit, inquiry or investigation undertaken. The Inspector General shall notify the President of the Police Commission of the issuance of a subpoena prior to its service.

When inspecting or photocopying Departmental records or evidence maintained by the Department, the Inspector General shall follow the same protocols pertaining to chain-of-custody, preservation of integrity of physical evidence and confidentiality applicable to Department personnel.

When requesting materials from an in-progress crime investigation, the Inspector General shall coordinate all activities with the Officer In Charge in a manner which does not interfere with or compromise the investigation.

Reporting Procedures. The Inspector General shall report directly to the Board of Police Commissioners for all purposes. The Inspector General shall have prompt access to any member of the Board of Commissioners and the Board's staff.

On a monthly basis, or as otherwise directed by the Board, the Inspector General shall advise the Board of Police Commissioners in closed session of the status of pending audits, projects and investigations. The Inspector General shall submit a written or oral annual report to the Board of Police Commissioners during open session providing an overview of the Department's internal disciplinary process. Unless specified otherwise, the term "Inspector General" includes employees of the Office of the Inspector General.

140.02 OFFICE OF THE INSPECTOR GENERAL – FUNCTIONS. The office of the Inspector General is responsible for:

- Acting as an advisor to the Board of Police Commissioners on matters related to the Departmental disciplinary process and assisting the Board with oversight and monitoring of this process;
- Receiving, recording, and investigating complaints against Department personnel and/or referring them for appropriate investigation;
- Reviewing use of force incidents, including officer-involved shootings, in-custody deaths, in-custody injuries, upper body control holds, and related disciplinary actions connected with those incidents; and,
- Conducting special projects as directed by the board.

140.03 RULES PERTAINING TO INVESTIGATIONS CONDUCTED BY THE INSPECTOR GENERAL.

Investigation defined. As used in this section, “investigation” means inquiry and examination of documents, financial records, evidence, crime scenes or persons, and excludes the routine, passive review of Department-produced reports, files or investigations. The mere intake of a complaint is not an investigation as defined herein.

Power of Inspector General to Initiate Investigations of the Department. Only the Inspector General (he or she) is empowered to initiate and conduct investigations of the Department, without limitations as to the type of activity of the Department, including ongoing and in-progress matters, unless directed by the Board of Police Commissioners to cease an investigation. This authority cannot be delegated and does not apply to other members of the Inspector General’s Office.

Limitation on Access to Records. The Inspector General is not obligated to provide access by the Department to files of the Office of the Inspector General unless ordered to do so by the Board or required by law.

Activities of the Inspector General Pertaining to Department Employees. The Inspector General is empowered to conduct investigations of individuals employed by the Department. The Inspector General shall promptly forward any new complaint made known to the Inspector General (except a complaint of misconduct regarding the Chief of Police) to the Commanding Officer, Internal Affairs Group, or promptly request the Board to make a determination whether notice to Internal Affairs Group should be delayed. In forwarding matters to Internal Affairs Group, the Inspector General shall disclose the identity of any eye-witness (i.e., percipient witness) to misconduct, unless the Inspector General promptly requests the Board to make an individualized determination that disclosure is not necessary to investigate the allegation effectively.

The Inspector General shall notify the Board of Police Commissioners of the commencement of any new investigation during the Inspector General’s next monthly status report. When interviewing Department employees who are reporting misconduct, the Inspector General shall advise the Department employees that a report to the

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Inspector General does not satisfy their obligation to report misconduct to a supervisor pursuant to Manual Section 3/813.05.

Investigation of Individuals Not Employed by the Department. The powers of the Inspector General contained in the City Charter do not encompass the power to conduct investigations of individuals not employed by the Department. The Inspector General may, however, engage in oversight of the Department's Investigation of such individuals. In the event the Inspector General receives a report of criminal activity within the jurisdiction of the Department, the Inspector General shall promptly forward all material information made known to the Inspector General to the appropriate Department investigative unit.

Activities at Active Crime Scene. When conducting activities at an active crime scene, the Inspector General shall coordinate all activities with the Officer in Charge of the crime scene in a manner which does not interfere with or compromise the integrity of the crime scene or the Department's investigation.

140.04 CONFIDENTIALITY OF COMPLAINTS AND WITNESSES. The Inspector General shall not disclose the identity of a complainant or witness without the individual's consent, unless such disclosure is unavoidable in order to investigate an allegation effectively or is otherwise required by law or the City Attorney's Office, provided, however, that the Inspector General shall disclose the identity of such individual to the Board of Police Commissioners, upon request. The Office of the Inspector General is not afforded an absolute privilege protecting conversations with complaining persons or witnesses, as a matter of law. Accordingly, any individual who requests anonymity from the Inspector General shall be accurately informed of the inability to guarantee anonymity.

140.05 PROTECTION FROM RETALIATION FOR DISCLOSING INFORMATION TO THE INSPECTOR GENERAL. In the event the Inspector General concludes that there is reason to believe retaliation against an individual has occurred, the Inspector General shall:

- Conduct an investigation and forward the findings to the Police Commission upon completion; and,
- Promptly forward a complaint investigation (except a complaint of misconduct regarding the Chief of Police) to the Commanding Officer, Internal Affairs Group, or promptly request the Board to make a determination whether notice to the Internal Affairs Group should be delayed.

140.06 REFERRAL OF CRIMINAL MATTERS TO OTHER AGENCIES. The Inspector General's powers do not include the independent power to refer criminal matters to outside law enforcement or prosecutorial agencies. In the event the Inspector General determines it is appropriate to provide law enforcement officials in agencies outside of the Los Angeles Police Department with information or evidence relating to criminal acts, the Inspector General shall notify the Chief of Police of the Inspector General's recommendation. In the event the Chief of Police fails to respond or fails to

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make the referral, then the Inspector General shall notify the Board of Police Commissioners of the Inspector General's recommendation, to enable the Board to determine whether to instruct the Chief of Police to make such referral. In the event of a conflict of interest involving the Chief of Police or the Chief of Police fails to comply with the Commission's instruction to refer a particular matter to an outside agency, the Commission may, in its discretion, make such referral or instruct the Inspector General to do so on its behalf.

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(d) If IAB does not complete the additional investigation to the satisfaction of the monitor's office, the monitor's office may conduct additional investigation, including issuing subpoenas.

(e) The monitor's office shall advise the board, manager of safety, and chief of police or undersheriff of the reasons that the monitor's office was not satisfied with IAB's investigation and of the additional investigation conducted by, or to be conducted by, the monitor's office.

(Ord. No. 730-04, § 1, 10-4-04)

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

The police, sheriff, and fire departments shall establish by departmental policies that they will cooperate with the monitor's office in actively monitoring and participating in disciplinary proceedings. Those policies shall provide for, among other things, complete access to the proceedings of departmental boards involved in the disciplinary process and all materials to which those boards have access. In addition, those policies shall ensure the participation of citizens on those boards. The policies shall also provide for the ability of the monitor's office to attend disciplinary proceedings, to review disciplinary documents, and throughout the disciplinary process to make recommendations regarding determinations as to whether department rules or policies have been violated and the appropriateness of disciplinary sanctions, if any. Furthermore, the policies shall provide for reasonable time frames to complete the steps in the disciplinary process.

(Ord. No. 730-04, § 1, 10-4-04)

Chapter 3.21 City Auditor's Independent Police Review Division

-Note

(Chapter replaced by Ordinance No. 175652, effective July 1, 2001.)

3.21.010 Purpose.

The City hereby establishes an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to act on complaints against Police Bureau personnel for alleged misconduct, and recommend appropriate changes of Police Bureau policies and procedures toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of community policing services. This office shall be known as the Independent Police Review Division.

3.21.020 Definitions.

(Amended by Ordinance No. 176317, effective April 12, 2002.) In this chapter:

A. "Appellant" means either:

1. A person who has filed a complaint with IPR and subsequently requested review by the Committee of the investigation or
2. A member about whom a complaint has been filed with IPR and who has subsequently requested review by the Committee of the investigation.

B. "Bureau" means the Bureau of Police of the City of Portland, Oregon.

C. "Chief" means the Chief of the Bureau.

D. "Citizen" means any person who is not an employee of the Bureau.

E. "Commissioner In Charge" means the Commissioner In Charge of the Bureau.

F. "Committee" means the IPR Citizen Review Committee, which is appointed by City Council members to assist the IPR in the performance of its duties and responsibilities pursuant to this Chapter.

G. "Complaint" means a complaint by a citizen of alleged member misconduct.

H. "Complainant" means any person who files a complaint against an employee of the Portland Bureau.

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- I.** "Director" means the director of the Independent Police Review Division.
- J.** "Finding" a conclusion reached after investigation.
- K.** "Early Warning System" means the Bureau's method of identifying officers exhibiting a pattern of behavior that signals potential problems for both the Bureau and public, as explained in General Order 345.00.
- L.** "IAD" means the Internal Affairs Division of the Bureau, whose responsibilities and procedures are described in Section 330.00 of the Manual of Rules and Procedures of the Bureau, as amended from time to time.
- M.** "IPR Investigator" means the investigator of the Independent Police Review Division.
- N.** "IPR" means the Independent Police Review Division.
- O.** "Member" means a sworn employee of the Bureau about whom a complaint has been submitted to IPR.
- P.** "Misconduct" means conduct by a member during an encounter with a citizen, which conduct violates Bureau regulations or orders, or other standards of conduct required of City employees.
- Q.** "Request for Review" means a request by an appellant that the Committee review an IAD or IPR investigation of alleged member misconduct.
- R.** "Supported by the Evidence." A finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.
- S.** "Policy-related issue" means a topic pertaining to the Police Bureau's hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.

3.21.030 Independent Police Review Division.

There is established by the City Council the Independent Police Review Division within the Auditor's Office.

3.21.040 Director Selection.

The City Auditor shall select the Director of the IPR in accordance with any applicable [civil service regulations](#) and other laws. The Director shall be a person of recognized

judgment, objectivity and integrity who is well-equipped to analyze problems of administration, and public policy, and shall have a working knowledge in criminal justice commensurate to the powers and duties of the office.

3.21.050 Staff and Delegation.

A. The Director may appoint other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the IPR.

B. The Director may delegate to his or her staff members any of his or her duties, unless otherwise specified in this chapter. The IPR Investigator shall succeed to all duties and responsibilities of the Director, including those specified by ordinance, when he or she is serving as the acting Director.

3.21.060 Office Facilities and Administration.

A. The City shall provide suitable office facilities for the Director and staff in a location convenient for the public but separate from the Bureau.

B. The IPR office shall be located within the City Auditor's office, and be accountable to the City Auditor. The Director shall comply with City purchasing procedures but shall have sole discretion in choosing consultants to assist with investigations.

3.21.070 Powers and Duties of IPR.

(Amended by Ordinance No. 176317, effective April 12, 2002.) The Director's powers and duties are the following:

A. Intake. To receive complaints and select the appropriate manner to address the complaint.

B. Report on complaint activities. To track and report on the disposition of complaints to the public, IAD, the Chief, and the Council; to monitor and report measures of activity and performance of IAD and IPR.

C. Monitor and conduct investigations. To identify complaints which merit additional involvement of the Director; to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the initial investigation.

D. Communicate with Complainants. To be the primary contact with the complainant regarding the status and results of the complaint; to assist IAD in communicating with the Member.

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- E.** Arrange hearings of appeals. To explain the appeal options to complainants and schedule hearings before the Committee and Council.
- F.** Recommend policy changes. To evaluate complaint and other information and investigation practices to make recommendations to the Chief to prevent future problems.
- G.** Outreach. To widely distribute complaint forms in languages and formats accessible to citizens, educate them on the importance of reporting complaints, and hold public meetings to hear general concerns about police services.
- H.** Notwithstanding any other provision of City law, to have access to and to examine and copy, without payment of a fee, any bureau records, including records which are confidential by city law, subject to any applicable state or federal laws. The Director shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney clients. The Director shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.
- I.** To adopt, promulgate, amend and rescind rules and procedures required for the discharge of the Director's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Director may not levy any fees for the submission or investigation of complaints.
- J.** To hire a qualified person to review closed investigations pertaining to officer-involved shootings and deaths in custody on an ongoing basis. To issue reports on an annual basis identifying any policy-related issues or quality of investigation issues that could be improved. The Director and the Citizen Review Committee shall address any policy-related or quality of investigation issues that would warrant further review.

3.21.080 Citizen Review Committee.

(Amended by Ordinance No. 177688, effective July 9, 2003.)

- A.** The Committee shall consist of nine citizens. The Committee members shall be appointed as follows:
- 1.** The Director shall solicit applications from the Office of Neighborhood Involvement, the seven Neighborhood Coalition offices, Mayor and commissioners' offices, PPB advisory committees, and the general public.
 - 2.** The City Auditor shall appoint a committee that shall recommend to the Auditor the appropriate number of nominees to fill impending vacancies. The committee shall consist of three CRC representatives, either past or not applying for reappointment, two members

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of the community, and the Director. Three of the committee members, including one CRC representative and the Director, shall serve as the interview panel.

3. Selection criteria shall include a record of community involvement, passing a criminal background check performed by an agency other than the Bureau, and absence of any real or perceived conflict of interest. The Mayor and commissioners may each submit an applicant who may be given preference over others of equivalent background and qualifications.

4. The Auditor shall recommend nominees to Council for appointment.

5. In the event a majority of the Council fails to appoint a person nominated under the provisions of City Code Section 3.21.080 the Auditor shall initiate the process again within 30 days after the Council action.

6. In selecting Committee members, consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.

B. The Committee members shall:

1. Participate in orientation and training activities that may include review of Bureau and IPR procedures, attending the Bureau Citizens' Academy, ride-alongs with officers, and training on investigative practices.

2. Each serve a term of two years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced.

3. Attend committee meetings or provide an explanation in advance for an absence.

4. Serve staggered terms to better ensure continuity. Four members of the Committee shall be appointed to one year terms in July 2001.

5. Select a chair from among their members. Adopt such operating policies and procedures as necessary to carry out their duties.

3.21.090 Powers and Duties of the Committee.

(Amended by Ordinance No. 177688, effective July 9, 2003.)

A. The Committee's duties and powers are the following:

1. Conduct meetings. To schedule and conduct at least four meetings per year for the purpose of exercising the authority delegated to it in this chapter. Quarterly meetings and hearings conducted pursuant to the Chapter shall be subject to the Oregon Public

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Meetings Law, ORS 192.610 through 192.710. The number of Committee members required for a quorum shall be five.

2. Gather community concerns. To participate in various community meetings to hear concerns about police services.
3. Recommend policy changes. To help the Director identify specific patterns of problems and to participate in the development of policy recommendations
4. Advise on operations. To review methods for handling complaints and advise on criteria for dismissal, mediation, and investigation.
5. Hear appeals. To hold hearings of complainant or member appeals as defined in City Code Section 3.21.160; to recommend referral to a final hearing before Council; to publicly report its findings, conclusions and recommendations.
6. Outreach to public. To advise and assist the Director to disseminate information about IPR and Committee activities to organizations in the community; to present reports to Council.
7. Create other committees. To create special purpose subcommittees or committees including other citizens to address particular short-term issues and needs.

3.21.100 Council Role.

- A. Council shall review applications of nominees to the Committee and vote whether to approve each appointment.
- B. Council shall hear final appeals as specified in 3.21.160.

3.21.110 Intake.

(Amended by Ordinance No. 179162, effective March 30, 2005.)

- A. The Director shall receive complaints from any source concerning alleged member misconduct. The Director shall make reasonable accommodation when complainants cannot file their complaint at the IPR office.
- B. The Director shall develop procedures for handling complaints and appeals involving matters currently in litigation or where a notice of tort claim has been filed. The Director shall not initiate a case where a grievance or other appeal has been filed under a collective bargaining agreement or City personnel rules; or with respect to employee or applicant discrimination complaints.

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C. The Director, when requested, shall protect the confidentiality of complainants, members or witnesses consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Director to carry out his or her duties, or to comply with applicable collective bargaining agreements, or the disclosure of records is directed by the District Attorney. When considering a request for public records, the Director shall consult with appropriate Bureau personnel and obtain approval from the Bureau prior to disclosure of records under the Oregon Public Records Law.

3.21.120 Handling Complaints.

(Amended by Ordinance No. 179162, effective March 30, 2005.) To ensure appropriateness and consistency in handling complaints the Director shall work with the Committee to establish procedures for taking action based upon the characteristics of the complaint.

A. Mediation. The complainant, the Member, and Bureau administration must all agree before a mediation can be conducted. A complaint that undergoes mediation shall not be investigated. A mediation may be suspended if, in the opinion of the mediator, there is no reasonable likelihood of reaching resolution.

B. IAD Investigation. The IPR shall gather information from the complainant and forward it to the IAD. The IPR shall monitor timeliness and disposition of the investigation.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

C. IAD Investigation with IPR Involvement. The Director may determine that an IAD investigation should also involve IPR personnel. When forwarding the complaint to IAD the Director shall notify the IAD Commander of the extent that IPR personnel must be included in the investigation. IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

When Bureau personnel are being interviewed IPR personnel shall direct questions through the IAD investigator. The IAD investigator may either repeat the question to the employee or direct the employee to answer the question.

IPR personnel shall have an opportunity to review and comment on draft reports regarding an IAD investigation in which they participated to ensure accuracy, thoroughness, and fairness.

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D. IPR investigation with IAD involvement. The Director may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. Such investigations shall not be initiated by the IPR Director involving matters currently in litigation, or where a notice of tort claim has been filed.

The Director shall notify the IAD commander that IPR has undertaken an investigation and the reason. The IAD commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When Bureau personnel are being interviewed by IPR personnel the IAD investigator may either repeat the question or direct the employee to answer the question.

The Director shall provide the IAD commander and the Police Chief with a report on the investigation. The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR findings to the Chief or designee to assist the Chief in determining what, if any, action is appropriate. At the completion of the investigation and any appeal process the records of the investigation shall be transferred to the IAD offices for retention.

Complainants and members wishing to appeal an investigation by IPR or the findings shall appeal to the Committee as described in City Code Section 3.21.160 A.2.

E. Referral. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

F. Dismissal. The Director may dismiss the complaint for the following reasons:

1. the complainant could reasonably be expected to use, or is using, another remedy or channel or tort claim for the grievance stated in the complaint;
2. the complainant delayed too long in filing the complaint to justify present examination;
3. even if all aspects of the complaint were true, no act of misconduct would have occurred;
4. the complaint is trivial, frivolous or not made in good faith;
5. other complaints must take precedence due to limited public resources;

6. the complainant withdraws the complaint or fails to complete necessary complaint steps.

3.21.130 Communications

The IPR shall ensure that the complainant and member complained about are informed of the progress and status of the complaint or appeal. Communication may be accomplished orally or by first class mail.

3.21.140 Filing of requests for review

- A.** Any complainant or member who is dissatisfied with an investigation of alleged member misconduct may request a review.
- B.** The request for review must be filed within 30 days of the complainant or member receiving IPR's notification regarding disposition of the case. The Director may adopt rules for permitting late filings.
- C.** A request for review must be filed in writing personally, by mail or email with the IPR Office, or through other arrangements approved by the Director.
- D.** The request for review shall include:
1. The name, address, and telephone number of the appellant;
 2. The approximate date the complaint was filed (if known);
 3. The substance of the complaint;
 4. The reason or reasons the appellant is dissatisfied with the investigation.
- E.** The complainant or member may withdraw the request for review at any time.

3.21.150 Reviews and Supplementary Investigations

A complaint resulting in an investigation may be reviewed or supplemented with additional investigative work as a result of an appeal. The IPR will act in accordance with applicable provisions of the collective bargaining agreements covering Bureau personnel when it participates in an IAD investigation, or when it initiates an investigation. The Director shall conduct a preliminary review of IAD's investigation and may conduct an investigation to supplement IAD work. The Director shall decide:

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A. If no further investigation and consideration of evidence is warranted the Director shall inform the complainant or member of the basis for the decision and the opportunity for a hearing before the Committee or,

B. If additional investigation and consideration of evidence is warranted the Director shall request IAD reconsider its efforts and results. The Director shall review the additional work of IAD and may conduct supplemental investigation. The Director shall schedule the appeal for a hearing before the Committee.

3.21.160 Hearing Appeals

A. Appeal hearings may be conducted either at the following points:

1. When a complainant or member appeals the finding the Committee shall decide:

a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Committee's decision and close the complaint; or

b. If the finding is not supported by the evidence. The Committee shall inform the complainant, member, IAD and the Chief of what finding should have been made. The Director shall schedule a hearing before Council for final disposition. The Committee shall select one of its members to represent the Committee's viewpoint before Council.

2. In its hearing the Council shall decide:

a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint; or

b. If the finding is not supported by the evidence. The Council shall decide what the finding is. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint.

B. In reviewing the investigation, the Committee may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen. The complainant or member may appear with counsel.

C. In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Council may receive any oral or written statements volunteered by the complainant or the member about whether or not they

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believe the finding is or is not supported by the evidence in the record. No new evidence may be introduced in the hearing. The complainant or member may appear with counsel.

D. Witnesses.

1. The Committee and Council may require within its scope of review the investigators and Commander of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.
2. Other Witnesses. Other witnesses shall not be required to appear involuntarily before the Committee.
3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.21.160 C.3. shall not be delegated by the Council to the Committee.

3.21.170 Monitoring and Reporting

- A. The Director shall develop a data system to track all complaints received, develop monthly reports to inform IAD and the Chief regarding IAD workload and performance, and inform complainants and members regarding the status of complaints and appeals.
- B. The Director shall use complaint and Bureau of Risk Management data to support the Bureau's Early Warning System.
- C. The Director shall work with the Committee to develop recommendations to modify Bureau policies and procedures in order to prevent problems, improve the quality of investigations, and improve police-community relations.
- D. The Director shall work with the Committee to develop quarterly and annual summary reports for the Chief, Commissioner in Charge, Council and public on IPR and IAD activities, policy recommendations, and Bureau follow-through on recommendations. The report may include analysis of closed files which were not appealed, but it is not the intent that the files be reopened.

3.21.180 Increasing Public Access

- A. The Director shall work with the Committee to make complaint forms available in formats and locations to reach as many community members as possible.

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B. The Director shall work with the Committee to develop programs to educate the public about the IPR and the importance of reporting problems.

C. The Director shall work with the Committee to develop programs to educate Bureau personnel on the complaint process, mediation, and IPR activities. Bureau personnel shall be informed that the IPR is the primary means for citizens to file complaints.

D. The IPR, Committee and Bureau shall develop guidelines for situations when a commander or supervisor in a precinct is directly contacted by a complainant with a complaint. In general, they may intervene and attempt to resolve the complaint themselves, but they must also inform complainants that they can still file with IPR if they do not achieve satisfaction.

3.21.190 Response of Chief.

A. The Chief, after reviewing a report provided by the IPR under City Code Section 3.21.170, shall respond promptly to IPR in writing, but in no event more than 60 days after receipt of the report. The response shall indicate what, if any, policy or procedural changes are to be made within the IAD or the Bureau.

B. If the Chief fails to respond within 60 days after receipt of the Committee Report, the Auditor shall place the matter on the Council Calendar, for consideration by City Council, within 15 days thereafter.

3.21.200 Limitation on Power.

The Committee and Director are not authorized to set the level of discipline for any member pursuant to any request for review made under this Chapter. However, this Section shall not be construed to limit the authority granted to City Council by the City Charter, City Code, state statutes, and other applicable law.

Office of Public Safety Accountability (OPSA)

Purpose, Authority and Procedures Statement

I. PURPOSE

The purpose of this statement is to set forth the authority of the Director, Office of Public Safety Accountability and to establish the procedures to be utilized in performing the duties of the position. The position has been established for the purpose of monitoring the investigations of citizen complaints concerning misconduct by employees of the Sacramento Police Department and the Sacramento Fire Department. The Director has broad oversight powers that include the evaluation of the overall quality of performance by public safety employees and the authority to encourage systemic change. In addition, the Director will specifically track and monitor high profile or serious complaint cases to conclusion, review completed investigations, and advise the City Manager of any deficient investigations.

II. AUTHORITY AND RESPONSIBILITIES OF THE DIRECTOR

Under the direction, control and supervision of the City Manager, the Director shall have the following authority and responsibility as related to the Sacramento Police Department and Fire Department:

- A. Monitor all investigations conducted by the Sacramento Police Department concerning allegations of unnecessary or excessive force.
- B. Monitor all investigations of citizen complaints alleging other categories of misconduct, as the Director deems necessary.
- C. Request further investigation in those cases, which require additional investigation as determined by the Director.
- D. Receive all documents, reports or any other item necessary to monitor an investigation of citizen complaints and force investigations.
- E. Produce an annual report to the City Manager in which the Director will compile statistical information including number of complaints filed, number sustained and action taken. The Director will provide in the annual report an analysis of trends and patterns. The Director will make recommendations for improvements in the complaint process, training needs of public safety personnel or other measures the Director believes will improve the overall citizen complaint process, including recommendations for systemic changes.

- F. Accept and document complaints directly from citizens as an alternative procedure for receiving citizen complaints concerning public safety personnel. A separate complaint form from that utilized by the Sacramento Police Department or Fire Department shall be created and utilized by the Director. All such complaints shall be forwarded to the respective public safety department for investigation as soon as possible.
- G. Interview and/or reinterview complainants and citizen witnesses as needed.
- H. Provide complainants with timely updates on the status of investigations, excluding disclosure of any information, which is confidential or legally protected.
- I. Serve as a liaison to complainants who would otherwise be unfamiliar with or intimidate by the complaint/investigative process.
- J. Monitor and/or independently investigate any other matter as directed by the City Manager.
- K. Serve in public information capacity which will include providing public information on pending investigations as directed by the City Manager and making presentations in various community forums, excluding disclosure of any information, which is confidential or legally protected.
- L. If the Chief of Police or Fire Chief or their designated representative denies any request from the Director, the Director may direct his request to the City Manager for further consideration.

III. PROCEDURES - RECEIVING AND MONITORING COMPLAINTS, INTERVIEWS

- A. The Director or his representative shall be available to accept complaints by members of the community against Sacramento public safety personnel. The Director, or his representative, shall receive complaints from citizens in person, in writing, or over the telephone, and shall follow similar procedures for accepting complaints as followed by the Sacramento Police Department and Fire Department including:
 - 1. All complaints must be received by the Director within one (1) year of the incident-giving rise to the complaint. No complaint shall be accepted by the Director if it is not filed within one (1) year after the date of the incident giving rise to the complaint.
 - 2. The complaint form for Police employees shall substantially comply with the requirements of California Penal Code section 148.6, subdivision (a)(2).

3. The Director or representative shall, as soon as possible, notify the Sacramento Police Department or Fire Department upon receipt of a complaint against an employee of the Sacramento Police Department or Fire Department. The Police Chief or Fire Chief or their designated representative shall process the complaint pursuant to the procedures set forth in the Citizen Complaint Manual.

B. The Director shall monitor all Sacramento Police Department investigations concerning complaints alleging excessive or unnecessary force by police employees while the investigation is in progress.

The Director shall have authority to monitor investigations of all other citizen complaints while the investigation is in progress as the Director deems necessary. The procedures for facilitating the monitoring of investigations are as follows:

1. The Police Chief or Fire Chief or their designated representative shall notify the Director in writing of all complaints from whatever source received by personnel of the Sacramento Police Department or Fire Department. The notice shall include the identity of the individual designated to represent the Police Chief or Fire Chief throughout the complaint process, (hereafter "designated representative"). The Director shall give prior written notice to the Police Chief or Fire Chief, through the designated representative, of his intent to monitor an investigation. Upon such notice, the Director shall have authority to monitor all aspects of the investigation.
2. The Police Chief or Fire Chief or their designated representative shall as soon as possible provide all documents, reports, or other items requested by the Director, which relate to the matter under investigation.
3. The Director may be present when interviews of employees, citizen complainants and/or witnesses are conducted by the Sacramento Police or Fire Department. The Director may submit questions during the interview. Questions submitted by the Director shall be asked by the interviewer in accordance with state and federal law. Subsequent to an initial interview, if the Director believes that additional questions need to be asked to gather relevant information that was not elicited during the initial interview, the Director may request, through the Police Chief or Fire Chief or their designated representative, that employees, citizen complainants and/or witnesses be re-interviewed. The Director may be present during any subsequent interviews.

4. The Director shall be placed on the Critical Incident call-up list for the Police Department and the High Profile Incident Notification call-up list for the Fire Department, and will be notified when critical incidents occur. The Director will have the option of responding to any and all such incidents. The Director shall have the authority to monitor interviews of subject employees, employee witnesses and citizens immediately after such incidents.

In the case of the Sacramento Fire Department the following are examples of High Profile Incidents:

- 4.1 Serious misconduct
 - 4.2 Vehicle accidents with death/serious injury involving Fire Apparatus
 - 4.3 Fire related death/serious injury of Fire Department personnel
 - 4.4 OSHA response for Fire Department personnel (Industrial Accident)
 - 4.5 Law enforcement arrest of Fire Department personnel
 - 4.6 Harassment issues involving Fire Department personnel
 - 4.7 Work place violence claims against Fire personnel
 - 4.8 EMS patient care complaints that rise to a level of disciplinary action (behavior related issues as opposed to medical care issues)
5. If the Police Chief or Fire Chief or their designated representative denies any request from the Director, the Director may direct his request to the City Manager for further consideration.
- C. The Director may interview or re-interview complainants and citizen witnesses as the Director deems necessary.
 - D. In all other matters where the City Manager directs monitoring by the Director, the procedures set forth in Section III. shall apply.

IV. AUDITS

The Director shall review all completed investigations of excessive or unnecessary force by Police officers. The Director shall have authority to review all in progress and completed investigations into citizen complaints regarding the Sacramento Fire Department. The Director, as the designated representative of the City Manager, shall have authority to review the handling of complaints, inquiries or investigations of any other matter as directed by the City Manager. The procedures in matters under review by the Director are as follows:

- A. The Police Chief or his/her designated representative shall forward to the Director a copy of all records concerning investigations of excessive or unnecessary force against Sacramento Police officers no later than 10 working days after the investigation is completed. These records shall include the disposition of the complaints.
- B. The Police Chief or his/her designated representative shall make available upon request by the Director all records which reflect a complaint or inquiry, including, but not limited to, incident reports, supplemental attachments to a call history, incident logs, case summary reports or complaints classified as frivolous, unfounded or exonerated within the meaning of Penal Code section 832.5.
- C. The Director shall review the file and, thereafter may request that the Police Chief or Fire Chief or their designated representative conduct further investigations. The Director shall identify and substantiate the reasons for requesting additional investigation to the Police Chief or Fire Chief, through the designated representative.
 - 1. If the Director believes that relevant questions were not asked during an interview, and/or that relevant information was not gathered, the Director may request that the Police Chief or Fire Chief, through their designated representative, re-conduct such interview(s) with public safety employees, citizen complainants and/or witnesses who were previously interviewed.
 - 2. If the Director believes that interviews of public safety employees, citizen complainants and/or witnesses should have been conducted but were not, the Director may request that the Police Chief or Fire Chief, through their designated representative, conduct such interviews.
 - 3. When interviews are conducted, the Director is authorized to be present. The Director may submit questions during the interview and the interviewer shall ask questions submitted by the Director in accordance with state and federal law.
- D. If the Police Chief or Fire Chief or their designated representative denies any request from the Director, the Director may direct his request to the City Manager for further consideration.

V. ANNUAL REPORT

- A. The Director shall prepare an annual report. The Director's annual report shall include, but is not limited to, the following:
 - 1. A statistical analysis documenting the number of complaints by category, the number of complaints sustained and the actions taken.
 - 2. An analysis of trends and patterns.
 - 3. Specific recommendations for change.
- B. The Director's report shall not contain any information concerning the discipline of any particular employee, nor make reference to or identify any particular employee, nor shall the report comment upon or make any recommendation concerning potential civil or criminal liability of specific employees, or citizens. Whenever disclosure of information may possibly reveal the identity of a particular employee, the information shall be sanitized so that accurate statistical data may be conveyed while simultaneously protecting the employee's identity. However, if the circumstances are such that disclosure of any information will necessarily reveal the identity of a particular employee, the information shall be excluded from the annual report.
- C. The report shall be forwarded to the City Manager for dissemination to the Mayor, City Council, City Attorney, Police Chief, Fire Chief, Labor Relations Director, and the City Clerk for filing as a public record.

VI. CONFIDENTIALITY OF RECORDS

Any personnel records, citizen complaints against city personnel employed by the Police Department or Fire Department and information obtained from these records, including records in Internal Affairs files, which are in possession of the Director or staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law. All original files provided by the Police Chief or Fire Chief or their designated representative to the Director shall be returned to the respective department within ninety (90) days after case closure and submission for final review. The Director, and his representative, is responsible for the confidentiality, security and safekeeping of all Sacramento Police Department and Fire Department files in the Director's possession.

Investigative reports prepared by the OPSA may only be submitted only to the City Manager and City Attorney when litigation is pending or highly probably.

VII. COOPERATION AND COORDINATION

The Director shall report directly to the City Manager. However, the Director shall meet periodically with the Police Chief and Fire Chief and their respective Internal Affairs Commanders regarding recommendations to improve the Sacramento Police and Fire Departments investigative process within the framework of applicable law and labor agreements.

VIII. PUBLIC RELATIONS

- A. The Director and/or his representative shall publicly comment on pending complaints and investigations as directed by the City Manager. Public comments shall conform to State law regarding confidentiality of public safety personnel records and shall exclude disclosure of any information regarding protected aspects of investigations.
- B. An important aspect of the Director's responsibility shall be devoted to providing public information, including printed literature, radio and television, and public presentations at community meetings. Communications should be sensitive to our diverse community and written material presented in a multilingual format.
- C. The Director shall not disclose information that is confidential or legally protected.

San Jose, California Independent Police Auditor Ordinance

Section 8.04.010
Duties and Responsibilities

In addition to the functions, powers and duties set forth elsewhere in this code, the Independent Police Auditor shall have the duties and responsibilities set forth in this section. A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

1. The minimal number of complaints to be reviewed annually are:
 - a. All complaints against police officers which allege excessive or unnecessary force; and
 - b. No less than twenty percent of all other complaints.
2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.
3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.
4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.

B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of officer involved shootings.

C. Community function.

1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.

D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:

1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.
2. Analyze trends and patterns.
3. Make recommendations.

E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer. (Ords. 25213, 25274, 25922.)



Career Service Authority

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Monitor, OIM

DEFINITION

Under the direction of the Mayor, the Independent Monitor performs management, administrative, investigative, and reporting duties; supervises staff and oversees the activities and functions of the Office of the Independent Monitor (OIM); monitors and actively participates in investigations of possible misconduct by, and citizen complaints against, uniformed personnel of the Department of Safety; makes recommendations to the Manager of Safety and appropriate department heads regarding possible disciplinary actions against uniformed personnel; makes recommendations regarding policy and training issues; coordinates OIM activities and works in partnership with the Mayor's Office, City Council, Citizen Oversight Board, Manager of Safety, Police, Sheriff, and Fire Departments, District Attorney's Office, community leaders, the general public and media as appropriate to provide for fair and objective oversight of the uniformed personnel and to ensure public confidence in such uniformed personnel.

DISTINGUISHING CHARACTERISTICS

The Independent Monitor performs investigative and analytical work that is difficult, highly complex, and often involves issues that are highly sensitive and confidential. The position functions as a working manager with authority for both overseeing the day-to-day operations of the Office of the Independent Monitor and performing much of the OIM workload.

SUPERVISION RECEIVED AND EXERCISED

Work of the OIM is reviewed by the Mayor and/or the Citizen Oversight Board. The Independent Monitor exercises executive leadership over employees who have personal responsibilities and authorities over the oversight process and who exercise a high degree of initiative, judgment, discretion, and decision-making regarding investigations and disciplinary recommendations.

ESSENTIAL DUTIES

Actively monitors and participates in investigations of uniformed personnel including citizen complaints alleging the use of force, other serious misconduct, and other citizen concerns.

Participates in the monitoring of investigations including responding to crime scenes, attending witness interviews, reviewing other types of evidence, engaging in ongoing dialogue with the investigators, ensuring internal investigations are thorough, fair and complete, and recommending or conducting additional investigation including the issuing of subpoenas.

Makes recommendations to the Manager of Safety and department heads regarding administrative action, including possible discipline for uniformed personnel.

Identifies, researches and analyzes problems; evaluates alternative courses of action and makes recommendations regarding training, policies, procedures and best practices to prevent future complaints and allegations of misconduct and to improve performance.

Denver, Colorado Independent Monitor Job Description

Monitor, OIM
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Supervises the implementation and administration of a management information system to track and report information such as police activities, patterns of citizen complaints and issues relating to the implementation and administration of the early warning system.

Prepares and produces reports for the Citizen Oversight Board, Mayor, City Council and the public on the status and resolution of complaints, including timelines of complaint resolution, trends and patterns, nature and frequency of complaints, percentage of charges the police department sustains against its police officers; and develops information relating to the early warning system and other performance indicators.

Works in partnership with the Citizen Oversight Board to promote the mission of the OIM; informs the Board of the status of investigations being monitored and actions taken, providing additional information concerning the plans, programs, policy, training, and procedures; maintains effective working relationships with diverse groups including city staff, outside agencies, employee unions, and community based organizations, the general public and others.

Conducts public outreach to educate the community and the media on the role of the Independent Monitor and the processes for investigating complaints and administering disciplinary actions, policies, practices, and training.

Establishes and maintains liaison with the media; writes articles for various publications; meets with community leaders, public officials, and professional organizations.

Plans, organizes, and directs the operations of the Office of the Independent Monitor (OIM); monitors the efficiency and effectiveness of the OIM through performance management and related activities; establishes programmatic priorities and procedures; and prepares and administers the OIM budget.

Establishes standards of professional conduct including ensuring confidentiality and implementing a comprehensive training program for the Office of the Independent Monitor staff; develops training for members of the Citizen Oversight Board and other citizens involved in the oversight process.

QUALIFICATIONS

Competencies

Takes responsibility for creating a strategic vision for the OIM and communicates the vision to diverse audiences including the Mayor, City Council and Citizen Oversight Board; initiates development of a strategic plan; develops and implements a police oversight program that results in improvements for uniformed personnel and the general public; ensures that program, financial and performance measures are integrated to achieve desired strategic outcomes.

Explains and defends OIM policies and practices orally and in writing; drafts, edits or reviews complex or sensitive materials, legal or policy information; investigates and resolves complaints from the community; consults with stakeholders outside OIM on contentious issues before deciding on a course of action; remains calm under pressure; works with all concerned to address issues of common concern.

Makes timely decisions about program direction; takes corrective action when needed; determines the best way to implement OIM policies or programs by identifying potential roadblocks and involving key players; reaches solutions among opposing parties including influential individuals or outside groups; maintains productivity, quality and morale of the OIM; continuously seeks to improve the quality of OIM products, processes and services; establishes systematic processes for assessing variations in the quality of OIM products and services

Denver, Colorado Independent Monitor Job Description

Monitor, OIM
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Represents the OIM at meetings on controversial issues and maintains effective working relationships with the Mayor, City Council, Citizen Oversight Board, Manager of Safety, Police, Sheriff, and Fire Departments, District Attorney's Office, community leaders, the general public and the media; encourages and facilitates cooperation and open communication to further the goals of the OIM; participates as a team member at the executive management level.

Manages professional staff which includes investigating and resolving personnel related issues; sets performance objectives for OIM staff and evaluates their performance; develops basic policies concerning relationships to further cooperation between the OIM and stakeholders; promotes diversity and makes workforce diversity a performance criterion for supervisors; maintains up-to date knowledge in area of expertise through membership in a professional organization; stays informed about key issues affecting the OIM; exhibits personal integrity and promotes ethical conduct for employees.

Knowledge of:

The organization, responsibilities, functions, policies, and procedures of local law enforcement.

The theory, principles, practices and techniques in the conduct of internal law enforcement complaint investigation and review for a large municipal organization.

The techniques of law enforcement training, instruction, and evaluation of work performance.

The fundamentals of criminal and administrative investigations including interviewing and interrogating principles and techniques.

Federal, state and local laws and regulations and procedures applicable to internal law enforcement investigations and review responsibilities and jurisdiction.

Theory, principles, practices, methods and techniques of data and legal research and analysis applicable to areas of assigned responsibility.

Skill in:

Analyzing complex problems, evaluating alternatives and reaching sound conclusions within legal and procedural constraints.

Interpreting and explaining complex laws, ordinances, enforcement principles and practices, regulations, policies and procedures.

Public speaking and making presentations to large groups.

Working with members of varied ethnic and socio-economic groups.

Ability to:

Use ones knowledge of diverse residential populations, ethnic, cultural and social behaviors and customs when making judgments, collecting information and investigating concerns and complaints with respect to diverse communities.

Function independently, model high standards of honesty and integrity, use sound reasoning to arrive at conclusions, and distinguish between relevant and irrelevant information while directing and performing investigations involving sensitive and confidential matters.

Denver, Colorado Independent Monitor Job Description

Monitor, OIM
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Make sound and well-informed decisions; perceive the impact and implications of decisions; and commit to action when dealing with the pressure and ambiguity due to sensitive, complex, and/or controversial views of multiple stakeholders or situations.

EXPERIENCE AND EDUCATION

Education

Baccalaureate Degree in criminal justice, criminology, public administration, business administration or a closely related field; a law degree is desirable but not required.

Experience

Three years of management level work experience investigating allegations of misconduct by law enforcement officers, major criminal cases, or crime scenes or comparable experience and preferably personnel related matters.

Substitutions

An equivalent combination of education, training and/or experience that demonstrate possession of knowledge, skills and abilities listed above may substitute for the education and experience requirements.

OTHER REQUIREMENTS

Prior to appointment, candidates will be subject to a background investigation. Candidates must have a reputation for honesty and trustworthiness and shall not have formerly been an employee of the Denver Police, Sheriff or Fire Departments.

CLASS DETAIL

FLSA CODE: Exempt

ESTABLISHED DATE: 006/27/2005

REVISED DATE:

REVISED BY: Earline Hill

CLASS HISTORY: This is a newly created class mandated by ordinance and City Charter November 2, 2004.

Portland, Oregon Independent Police Review Division Director Job Description

City of Portland

Job Code: 7335

CLASS SPECIFICATION IPR Program Manager

FLSA Status: Exempt
Union Representation: Nonrepresented

GENERAL PURPOSE

Under general direction, manages and directs the Independent Police Review program within the City Auditor's Office; oversees the acceptance and resolution of citizen complaints, annual review of police officer involved shootings and in-custody deaths, and review of Police Bureau policies and procedures; develops and transmits recommendations to the Police Bureau; and performs related duties as assigned.

DISTINGUISHING CHARACTERISTICS

IPR Program Manager is responsible for accepting and determining appropriate action of citizen complaints regarding police behavior. The incumbent works with a Citizen Review Committee; requests further investigation as needed, conducts independent investigations, prepares reports on the status and resolution of complaints, and conducts press conferences and interviews with the media. Responsibilities of this high-visibility position are: broad in scope; allow for a high degree of independent judgment, initiative and political acumen within broad policy guidelines; and are evaluated in terms of overall program and cost effectiveness.

IPR Program Manager is distinguished from other program manager classes by the incumbent's specialization in criminal, employment, constitutional and administrative law; police policies and procedures; risk management; and supervising criminal and internal police investigations.

ESSENTIAL DUTIES AND RESPONSIBILITIES

Any one position in this class may not perform all the duties listed below, nor do the listed examples of duties include all similar and related duties that may be assigned to this class.

1. Plans, organizes, controls, integrates and evaluates the work of the assigned staff; develops, implements, assigns and monitors work plans and workload to achieve bureau mission, goals and performance measures; manages and directs the development, implementation and evaluation of work programs, plans, processes, systems and procedures to achieve City and bureau goals, objectives and performance measures consistent with the City's quality and citizen service expectations.
2. Plans and evaluates the performance of assigned staff; establishes performance requirements and personal development targets; regularly monitors performance and provides coaching for performance improvement and development; recommends merit increases and other rewards to recognize performance; recommends disciplinary action, up to and including termination, to address performance deficiencies, in accordance with the City Charter, Code, human resources policies and labor contract provisions.

Portland, Oregon Independent Police Review Division Director Job Description

3. Provides interpretations of City Code provisions in response to requests by citizens and public officials; drafts resolutions and ordinances ranging from routine to complex; prepares oral and written legal opinions; drafts, reviews and finalizes documents of legal significance; reviews and approves contracts; drafts explanatory memoranda on legal implications of complex issues; reviews bureau documents for legal sufficiency.
4. Supervises and publishes annual review of officer-involved shootings and in-custody deaths; publicly reports to City Council on findings and recommendations; provides technical assistance and follow-up to help ensure recommendations are implemented.
5. Accepts, reviews and investigates citizen complaints regarding police behavior and ensures that alleged criminal conduct is given distinct and additional attention; reviews internal affairs investigations for thoroughness and fairness; monitors Internal Affairs investigations workload and timeliness; advocates for improved performance from investigators; makes requests to the Chief of Police to further investigate cases as warranted.
6. Conducts independent investigations when complaints merit special involvement; directs staff or contract employees; participates in Internal Affairs investigations; attends interviews of police officers during complaint investigations; prepares and offers questions for interviewers to use in interviewing officers.
7. Prepares and produces reports for the Citizen Review Committee, Mayor and City Council on the status and resolution of complaints, which assess timeliness of resolution, trend rates, nature and frequency of complaints, sustained rates and other performance indicators; prepares early warning reports for the Internal Affairs Captain.
8. Meets with the Citizen Review Committee, police officers, union representatives and police management to discuss complaint trends, evaluate nature and cause of complaints and develop recommendations for improved practices to reduce major causes of complaints.
9. Responds in an objective, professional and credible manner to highly charged situations.
10. Conducts press conferences and interviews with the media; writes and prepares articles for various publications.
11. Develops training curricula and trains members of the Citizen Review Committee and Portland Police Bureau Officers in complaint processing procedures and ethics issues.
12. Supervises the citizen-police mediation program, creates criteria and procedures relating to the referral of citizen complaints for mediation and approves cases for mediation.

Portland, Oregon Independent Police Review Division Director Job Description

13. Supervises the implementation and administration of a management information system to track and report on patterns of citizen complaints and issues relating to the implementation and administration of a Police Bureau employee "Early Warning System".

OTHER DUTIES

None.

MINIMUM QUALIFICATIONS

Knowledge of:

1. Theory, principles, practices and techniques in the conduct of internal police complaint investigation and review for a large municipal organization.
2. Principles and practices of program planning, management and administration.
3. Principles and practices of civilian oversight and police bureau administration.
4. Federal, state and local laws and regulations and procedures applicable to; internal police investigations, whether administrative or criminal; and police review responsibilities and jurisdiction.
5. Principles and practices of criminal law and procedures; and constitutional, civil, administrative and employment law, especially as they relate to municipal governments.
6. State and federal court procedures and rules of evidence.
7. Interview techniques, methods and strategies for case preparation.
8. Organization, responsibilities, functions, policies and procedures of local law enforcement.
9. Techniques and methods of law enforcement training, instruction and performance evaluation.
10. Investigation techniques and methods, including interview and interrogation techniques.
11. Theory, principles, practices, methods and techniques of data and legal research and analysis applicable to areas of assigned responsibility.
12. Principles and practices of sound business communications.
13. Principles and practices of public administration for budgeting, accounting, auditing and maintenance of public records.

Portland, Oregon Independent Police Review Division Director Job Description

14. Office administrative and management practices and procedures.
15. Principles and practices of effective supervision.
16. City human resources policies and labor contract provisions.

Ability to:

1. Define issues, analyze problems, evaluate alternatives and develop sound, independent conclusions and recommendations in accordance with laws, regulations, rules and policies.
2. Organize, set priorities and exercise seasoned independent judgement and acumen within areas of responsibility.
3. Read, interpret and apply complex laws and regulations and evaluate and review complaints.
4. Plan, conduct and evaluate the results of independent investigations of sensitive police conduct matters.
5. Understand and interpret bureau and City rules, regulations, policies and procedures and local, state and federal legislation and regulations applicable to areas of assigned responsibility.
6. Plan, direct and supervise the work of others.
7. Communicate clearly and effectively, orally and in writing.
8. Operate a computer and standard business software.
9. Prepare clear, accurate and concise records and reports.
10. Maintain highly sensitive and confidential information.
11. Demonstrate sensitivity for individual citizens rights and differences in ethnic and cultural heritage, age, gender, sexual orientation, disabilities, beliefs, goals, attitudes and interests.
12. Use tact and diplomacy in dealing with sensitive situations and concerned people and customers.
13. Establish and maintain highly effective working relationships with diverse groups and individuals, including City elected officials and managers, representatives of other governmental, community and private sector groups, City staff, police bureau staff and management, the community and media and others encountered in the course of work.

Portland, Oregon Independent Police Review Division Director Job Description

Training and Experience:

A typical way of obtaining the knowledge, skills and abilities outlined above is a graduate degree in criminal justice, criminology, public administration, business administration or a closely related field; and at least ten years of progressively responsible experience in conducting investigations and review of complaints; or an equivalent combination of training and experience. Experience in a public agency is preferred.

Licenses; Certificates; Special Requirements:

Graduation from an accredited law school, admission to a State Bar, and completion of on-going continuing legal education in accordance with the requirements of a State Bar are highly desirable but not required.

A valid state driver's license may be required for certain assignments.

PHYSICAL AND MENTAL DEMANDS

Persons with disabilities may be able to perform the essential duties of this class with reasonable accommodation. Reasonable accommodation will be evaluated on an individual basis and depend, in part, on the specific requirements for the job, the limitations related to disability and the ability of the hiring bureau to accommodate the limitation.

Class History:

Adopted: 07-01-02; class created as a result of Nonrepresented Classification & Compensation Study, 2000-2002.

Revised: 11-24-04 Updated to reflect increase in complexity and scope of duties.

San Jose, California Independent Police Auditor Job Description

City of San José

INDEPENDENT POLICE AUDITOR (U) (8023)

CLASS PURPOSE

Under legislative and administrative direction, this position has the authority and responsibility for the review and assessment of police misconduct investigations. Recommends improvements to the process, training needs, and other preventive measures. Educates the public on the role of the position and assists the community with the process and procedures for investigation of complaints against police officers.

TYPICAL DUTIES AND RESULTS (The position may not include all the duties listed, nor do the examples cover all the duties which may be performed.)

- Plans, organizes, and supervises the work of the Office of the Independent Police Auditor in the review of Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective, and fair.
- Reviews all citizen complaint investigations alleging excessive or unnecessary force by officers and 20% of other complaints.
- Reviews all citizen complaint investigations whose results are unacceptable to the complainant.
- Requests the Chief of Police to further investigate cases, which, upon review, the auditor does not find thorough or objective.
- Uses management information generated through audits to prepare and submit to the City Council annual reports of activities and findings, and makes recommendations with regard to Police Department policies and procedures.
- Produces annual reports to the Mayor and the Council, analyzing trends and patterns and recommending improvements to the process, training needs, and other preventative measures.
- Prepares, as part of the annual report, a statistical breakdown, categorically documenting the number of complaints filed, the number sustained, and any action taken.
- Prepares oral presentations to the City Council.
- Conducts complex program performance audits.
- Determines the audit scope and adequacy of audit methods.
- Identifies areas of inquiry capable of being developed into audit findings and develops audit procedures.
- As an alternative to Professional Standards & Conduct Unit (PSCU), accepts complaints (intake procedure) and interviews witnesses.
- Insures that the PSCU provides timely updates on the progress of investigations to complainants.
- Attends interviews of police officers and offers questions for the interviewer to ask.
- Conducts public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers. Works with the City Council, Police Department, and community in partnership to ensure success of the position.

San Jose, California Independent Police Auditor Job Description

- Conducts press conferences and interviews with the English and Spanish media. Writes articles for various publications.
- Formally meets with the City Manager and Chief of Police at least twice a year to discuss any issues.
- Meets with community leaders, public officials, and professional organizations to inform and promote the mission of the IPA office.
- Tracks, analyzes, and takes action of legislative bills which may have an impact on the citizen complaint process.
- Develops and monitors department budget.
- Conducts legal research on issues raised in complaints.
- Conducts research on training, operations, and changes in police procedures.
- Meets with other police oversight agencies.
- Conducts and/or attends community meetings involving police issues. Periodically goes on police ride-alongs.
- Provides training and/or orientation to PSCU investigators, police officers, and recruits at the police academy.
- Supervises IPA support staff.

Typical End Results Include: Establishes and maintains a credible, fair, and equitable review process. Makes ongoing recommendations to improve the citizen complaint process.

DISTINGUISHING CHARACTERISTICS

This position is in the unclassified service, and was established on November 5, 1996, by the San Jose electorate, through City Charter revision (Chapter 27, Section 809). Supervision is exercised over a department of professional, technical, and clerical subordinates. The incumbent reports to the City Council.

QUALIFICATIONS

Minimum Knowledge, Skills, and Abilities

- Knowledge of the organization, responsibilities, functions, policies, and procedures of local law enforcement.
- Knowledge of the principles, practices, methods, and techniques of communication and public relations, management, and organizational budgeting.
- Knowledge of sound supervisory and managerial principles and practices, to include planning, delegating, and supervising the work of subordinates.
- Knowledge of the techniques of law enforcement training, instruction, and evaluation of work performance.
- Knowledge of the fundamentals of criminal and administrative investigations including interviewing and interrogating principles and techniques.
- Knowledge of current case law and statutes in the criminal law field and familiarity with penal and evidence codes and other related authorities such as Government Code section 3300.
- Knowledge of legal research principles.
- Knowledge of generally accepted accounting and auditing principles and standards.

San Jose, California Independent Police Auditor Job Description

- Ability to evaluate PSCU's performance in conducting investigations, preparing reports, and statistical analyses, and in carrying out independent research and fact finding assignments.
- Ability to work with and demonstrate sensitivity for both the rights of individuals and the differences in people's ethnic and cultural heritage, age, gender, sexual orientation, disabilities, attitudes, beliefs, goals, and interests.
- Ability to perform public speaking assignments, including formal presentations.
- Ability to maintain effective community relations.
- Ability to demonstrate a high standard of integrity and professionalism.
- Ability to demonstrate a commitment to protect the basic constitutional rights of all affected parties.
- Ability to work effectively with residents, business and community organizations, public and private agencies, Police Department personnel, the Chief of Police, City Attorney, City Council, and Mayor.
- Ability to act independently, creatively, and fairly.
- Ability to interpret and apply laws and regulations.
- Ability to express oneself clearly and concisely, both orally and in writing, and to edit written materials.
- Ability to work effectively under pressure.
- Ability to maintain media relations.
- Ability to understand and interpret rules, regulations, policies, procedures and program objectives.

Competency Knowledge, Skills, and Abilities

- Knowledge of Police Department procedures related to Internal Affairs investigations of complaints against police officers.
- Knowledge of the City's charter, budget process, administrative orders, policies, civil service rules, and administrative processes.
- Ability to carry out Mayor and City Council directives, within the limitations of time and staff.

Education

A law degree from an accredited college or university is desirable.

Experience

A minimum of five years of experience in criminal or labor law. Must be experienced in or knowledgeable of investigations, legal research, and analyzing criminal, constitutional, labor, and civil rights law. Proficient in a second language (preferably Spanish).

Licenses/Certificates

A member in good standing with the California State Bar is desirable.

(New 3/19/97)
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