

# **CITY'S OVERSIGHT SYSTEM**

## **SEPTEMBER 28, 2004**

### **PREFACE**

A primary purpose of these recommendations is to create an Office of the Independent Monitor, which shall be responsible for: (1) actively monitoring and participating in certain investigations of uniformed personnel in the City and County of Denver's Police, Sheriff, and Fire Departments; (2) making recommendations to the Manager of Safety (who is responsible for discipline within the three departments) regarding administrative action, including possible discipline, for such uniformed personnel; and (3) making recommendations regarding broader policy. The jurisdiction of the Office of the Independent Monitor shall be focused on uniformed personnel: (1) who are involved in duty-related incidents which result in serious bodily injury or death; (2) who are charged with felonies or certain other crimes; (3) against whom various citizen complaints are brought; and (4) about whom the Citizen Oversight Board or Manager of Safety has requested the Monitor's involvement. The Office of the Independent Monitor is being created to provide for fair and objective oversight of the uniformed personnel, who hold among the highest positions of public trust within the City and County of Denver, and to ensure public confidence in such uniformed personnel.

Another purpose of these recommendations is to create a Citizen Oversight Board, which shall replace the currently existing Public Safety Review Commission. The Citizen Oversight Board shall be responsible for: (1) assessing whether the Office of the Independent Monitor is effectively performing its duties; (2) making recommendations regarding policy and training issues; (3) making recommendations as to whether rule violations have occurred in certain types of cases; (4) directing the Monitor to monitor or review certain cases; and (5) addressing other issues of concern to the community and other interested stakeholders.

The creation of the Office of Independent Monitor and Citizen Oversight Board shall be accomplished by proposed Charter changes, ordinance changes, and written policies and procedures.

Various entities are currently involved in investigations, administrative actions, and policy and training development, including the Police, Sheriff, and Fire Departments and their respective internal affairs bureaus; the Department of Safety; the Police Department's Use of Force Review Board; the Police Department's Disciplinary Review Board; and the Denver District Attorney's Office. Those entities' roles are modified in certain respects as explained herein with respect to matters in which the Office of Independent Monitor shall also have jurisdiction, but it is also important to note that their roles will remain essentially the same with respect to matters that are not within the jurisdiction of the Office of Independent Monitor.

## I. OFFICE OF THE INDEPENDENT MONITOR

1. There shall be an Office of the Independent Monitor ("Monitor", which term is used in this document to refer to both the Office of the Independent Monitor and the head of that office) whose duties, powers and responsibilities shall include: actively monitoring and participating in certain investigations of uniformed personnel in the City and County of Denver's Police, Sheriff, and Fire Departments; making recommendations to the Manager of Safety regarding administrative action, including possible discipline, for such uniformed personnel; and making recommendations regarding policy issues. The specific duties, powers and responsibilities shall be as defined herein or otherwise designated by ordinance or delegated by the Mayor. For purposes of this document, "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. *Ordinance.*
2. The Office of the Independent Monitor shall consist of a Monitor and such staff as the Monitor hires to execute the duties of that office. *Ordinance.*
3. **HIRING OF THE MONITOR.** The Mayor shall appoint a screening committee to interview and evaluate candidates for the Monitor's position. The Mayor shall direct the recruitment for the Monitor's position with the assistance of the Career Service Authority or other designated entity. *Ordinance.*
4. The screening committee shall consist of the following five persons: the chairperson of the Citizen Oversight Board (who shall be the chairperson of the screening committee); a member of City Council (selected by the City Council President), a current or retired judge (selected by the Mayor), the Director of the Career Service Authority, and 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 (selected by the Mayor). *Ordinance.*
5. The screening committee shall forward to the Mayor the names of up to three candidates, which names shall be available to the public. *Ordinance.*
6. The Mayor, with confirmation by City Council, shall appoint the Monitor from the list of names submitted by the screening committee, unless the Mayor decides not to hire any of those candidates, in which case the Mayor shall request the screening committee to provide additional names. *Ordinance.*

7. The Monitor can be removed only by the Mayor, after consultation with City Council and the Citizen Oversight Board, and shall serve at the pleasure of the Mayor. *Ordinance.*
8. All employees of the Monitor shall be at-will employees of the City and County of Denver. *Charter.*
9. The Monitor and other employees hired by the Monitor to monitor and participate in investigations shall have experience investigating allegations of misconduct by law enforcement officers, major criminal cases (e.g., homicide, kidnapping, sexual assault, arson, and explosives), or crime scenes or shall possess comparable experience, and shall preferably have experience investigating personnel-related matters. The Monitor and other staff shall be subject to a background investigation. *Policy.*
10. Neither the Monitor nor any employees of the Monitor shall have formerly been employees of the Denver Police, Sheriff, or Fire Departments. *Ordinance.*
11. In order to execute its duties and responsibilities, the Monitor may hire consultants or experts as needed. All confidentiality provisions in this document shall apply to those consultants or experts. *Policy.*
12. The Monitor shall develop a thorough knowledge of the Police, Sheriff, and Fire Department policies, procedures, and practices and of best practices for addressing allegations of misconduct by uniformed personnel. *Policy.*
13. 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. *Policy.*
14. **MANDATORY OVERSIGHT BY THE MONITOR.** The Monitor shall be required to actively monitor and participate in any criminal investigation of the incidents set forth below (recognizing that, if a criminal investigation is conducted by a law enforcement agency other than the Denver District Attorney's Office or the Denver City Attorney's Office, the Monitor's ability to monitor and participate in the investigation may be limited). In addition, the Police, Sheriff, and Fire internal affairs bureaus ("IAB") shall be required to investigate any incident set forth below, and the Monitor shall be required to actively monitor and participate in such IAB investigations. *Ordinance.*
  - (a) Any shooting involving uniformed personnel, whether duty related or not;

- (b) Any in-custody death;
  - (c) 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;
  - (d) 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;
  - (e) 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 Article 3 of Title 18 of the Colorado Revised Statutes (offenses against the person, which includes homicide, assault, kidnapping, and unlawful sexual behavior), as they may be amended from time to time; or
  - (f) 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.
15. With respect to subsections (d), (e), and (f) in the preceding paragraph: If no criminal charges are filed (subsequent to an investigation) or such charges are dismissed, the Monitor shall nevertheless have the discretion to monitor any internal investigation arising from the subject incident. *Ordinance.*
16. Any uniformed personnel involved in any of the incidents described in subsections (d), (e), and (f) of paragraph 14 above shall self-report such involvement to the Monitor and the Manager of Safety within three business days of becoming aware that he or she is under investigation for, or charged with, any of the designated offenses. If the Manager of Safety, Chief of Police, Undersheriff, or any other manager within the Department of Safety becomes aware of any such incident, that person shall report such incident to the Monitor within three business days of becoming aware of the incident. *Ordinance.*
17. In addition, the Monitor shall be required to monitor any other internal investigation of possible misconduct by Police or Sheriff Department uniformed personnel when requested to do so by the Citizen Oversight Board or Manager of Safety. The Citizen Oversight Board or Manager of Safety shall advise the Monitor of the reasons why the Citizen Oversight Board or Manager believes the Monitor should monitor the investigation. Within three business days of receiving the request from the Manager of Safety, the

Monitor shall advise the Police or Sheriff's IAB only that the Monitor will monitor the investigation pursuant to this paragraph. *Ordinance.*

18. The Police and Sheriff's IAB shall provide the Citizen Oversight Board, Monitor, and Manager of Safety with lists of all pending internal investigations as of the date the Office of the Independent Monitor is created. The lists shall provide adequate information regarding the investigations for the Citizen Oversight Board, Monitor, and Manager of Safety to be able to determine whether to require the Monitor to monitor the investigations. After the Office of the Independent Monitor is created, the Police or Sheriff's IAB shall forward to the Citizen Oversight Board, Monitor, and Manager of Safety: (a) within three business days of opening a new internal investigation, information regarding that investigation; and (b) within three business days of closing an IAB case where no disciplinary action was taken, information regarding that investigation. *Policy.*

19. **REVIEW OF CLOSED IAB CASES** (Ordinance):

(a) Upon a request by the Citizen Oversight Board or 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.

(b) The Citizen Oversight 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 Citizen Oversight Board may be referred back to the appropriate department with recommendations from the Citizen Oversight 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 document, "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.

20. **DISCRETIONARY OVERSIGHT BY THE MONITOR:** The Monitor shall have the discretion to monitor the internal Police or Sheriff Department investigation of any citizen complaint alleging: (*Ordinance*)
  - (a) Improper use of force;
  - (b) Discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender variance, disability, religion, or political affiliation;
  - (c) Retaliation for making a complaint against the Police or Sheriff Department or any Police or Sheriff Department uniformed personnel; or
  - (d) Discourtesy.
21. The Monitor shall also have the discretion to monitor any internal investigation by the Police or Sheriff as to which the Monitor believes it is in the City’s best interest for the Monitor to be involved. *Ordinance*.
22. Upon exercising discretion to monitor an investigation identified in the preceding two paragraphs, the Monitor shall immediately advise: (1) the Citizen Oversight Board and Manager of Safety that the Monitor has decided to monitor such investigation and of the Monitor’s reasons for monitoring the investigation; and (2) the Police or Sheriff’s IAB only that the Monitor shall monitor the investigation pursuant to the provisions of paragraphs 20 or 21. *Policy*.
23. **CITIZEN COMPLAINTS:** In addition to availing themselves of any citizen complaint mechanisms that are provided by the Department of Safety, the Police Department, or the Sheriff Department, citizens may file complaints with the Citizen Oversight Board or Monitor. *Policy*.
24. Whenever a citizen files a complaint with the Monitor, the Citizen Oversight Board, or the Police or Sheriff Departments, the agency receiving the complaint shall, within three business days, advise all of the other agencies including the Manager of Safety that it has received the complaint and provide a copy of the complaint to each of them (e.g., if the Monitor received a complaint against a police officer, the Monitor would provide a copy to the Citizen Oversight Board, the Police Department, and the Manager of Safety). *Policy*.

25. **CONFIDENTIALITY:** The Monitor shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out its duties. *Ordinance.*
26. The Monitor, the Citizen Oversight Board, and the officers and civilians who serve on the Police Department's Use of Force Review Board and the Police Department's Disciplinary Review Board are all 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. *Ordinance.*
27. The Monitor's office shall be physically separated from Police, Sheriff, and Fire Department facilities. *Policy.*
28. **REPORTING BY THE MONITOR** (Ordinance):
  - (a) No later than February 1<sup>st</sup> of each year, the Monitor shall submit a report to the Mayor and City Council, setting forth the work of the Monitor during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of Police and Sheriff Department uniformed personnel, but without identifying specific persons, including 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. 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 or other entities such as the District Attorney's Office.
  - (b) In addition to the annual report, the Monitor 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 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.

## II. THE CITIZEN OVERSIGHT BOARD

29. A Citizen Oversight Board will be created, the functions of which shall be: *(Ordinance)*
- (a) To assess the effectiveness of the Monitor;
  - (b) To make policy-level recommendations regarding discipline, use of force, and other policies, rules, hiring, training, community relations, and the complaint process;
  - (c) To address any other issues of concern to the community, the members of the Citizen Oversight Board, the Monitor, the Manager of Safety, the Chief of Police, the Undersheriff, or the Fire Chief;
  - (d) Make recommendations as to specific cases as provided in paragraph 19 above; and
  - (e) Exercise such other powers and duties as are set forth in this document.
30. (a) The Citizen Oversight Board shall consist of seven persons to be appointed by the Mayor with the approval of City Council.
- (b) The term of each member of the Board shall be four years.
  - (c) Any vacancy occurring during the term of any member shall be filled by appointment by the Mayor and confirmed by City Council.
  - (d) The members first appointed after the effective date of this section shall be appointed as follows so as to create staggered terms: Three members shall be appointed to serve for two years and four members shall be appointed to serve for four years. After these initial appointment terms have been served, each member of the Board shall be appointed thereafter for a four-year term.
  - (e) 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 90 days past the expiration of the member's term.
31. The members of the Citizen Oversight Board shall receive compensation in an amount not to exceed \$1,200 per year and be paid expenses incurred in connection with the work of the Citizen Oversight Board.

32. The Citizen Oversight Board shall:
- (a) Fix the time and place of its meetings;
  - (b) Maintain records of its meetings, which records shall be available to the public;
  - (c) Hold meetings subject to the provisions of Article III of Chapter 2 of the Revised Municipal Code dealing with Open Meetings; and
  - (d) Publish and make available to the public such procedural rules as it may adopt for the conduct of its business.
33. The members of the Citizen Oversight Board shall participate in an appropriate training program to be established by the Citizen Oversight Board and/or the Monitor's Office so that they shall possess the knowledge to perform their duties.
34. Prior to the expiration of his or her appointed term, a member of the Citizen Oversight Board may be removed from the Citizen Oversight Board by the Mayor for cause including a persistent failure to perform his or her duties on the Citizen Oversight Board or if, subsequent to being selected as a member of the Citizen Oversight Board, information becomes known to the Mayor that, had it been known when the member was selected, the information would have disqualified the member from being selected.
- (Ordinance)
35. Qualifications to be a member of the Citizen Oversight Board shall include:  
*(Ordinance)*
- (a) That the members reflect the diversity of Denver, including the ethnic, racial, and geographic composition of the population as well as the diverse professional backgrounds, experience, and expertise of the citizens of Denver;
  - (b) That each member is a resident of the City and County of Denver;
  - (c) That each member cannot be a current employee of the City and County of Denver;
  - (d) That each member cannot have ever been employed by the Denver Police, Sheriff, or Fire Departments; and

- (e) That each member cannot have any 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) who have ever been employed by the Denver Police, Sheriff, or Fire Departments.
36. The Citizen Oversight Board shall meet at least bi-monthly with the Monitor. *Ordinance.*
37. The Citizen Oversight Board shall establish both qualitative and quantitative criteria for evaluating the effectiveness of the Monitor.
38. With respect to discussions regarding the status of investigations that the Monitor is monitoring: *(Charter/Policy)*
- (a) The Monitor shall inform the Citizen Oversight Board of the status of Police, Sheriff, and Fire Department investigations and disciplinary proceedings and the Monitor's actions in monitoring those investigations and disciplinary proceedings.
  - (b) In order to perform its duties, including making determinations as to whether the Monitor is effectively monitoring internal Police, Sheriff, and Fire Department investigations, the Citizen Oversight Board shall receive regular reports from the Monitor and shall be allowed to review pertinent portions of the personnel files of uniformed personnel and IAB files including statements of uniformed personnel. However, the Citizen Oversight Board shall not become the custodian of any such records and shall not be allowed access to documents protected by the attorney-client privilege or the attorney work product privilege.
  - (c) The Monitor shall not discuss with any person or group, including the members of the Citizen Oversight 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.
  - (d) Except as set forth in this document, neither the Monitor nor the Citizen Oversight Board shall discuss with any person or group the status of specific investigations or release to any person or group any information regarding those investigations.
  - (e) The members of the Citizen Oversight Board shall sign appropriate confidentiality agreements.
39. The Citizen Oversight Board shall meet at least quarterly in public with the Manager of Safety, the Chief of Police, and the Undersheriff and shall meet

with other City personnel on an as-needed basis to discuss any issues of concern and to make policy-level 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. *Ordinance.*

40. The Citizen Oversight Board shall have the discretion to decide whether to meet jointly or individually with the Monitor, Manager of Safety, Chief of Police, and Undersheriff. *Policy.*
41. The Citizen Oversight Board shall conduct at least three meetings annually for public comment, including an annual meeting to be held not later than 30 calendar days after the issuance of the Citizen Oversight 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 Police, Sheriff, and Fire Departments, the Monitor, and the Citizen Oversight Board. *Ordinance.*
42. The Citizen Oversight Board shall make reports to the public, Mayor, and City Council. (*Ordinance*)
  - (a) The Citizen Oversight Board shall furnish an annual report to the Mayor and City Council regarding the Citizen Oversight Board's assessment of the work of the Monitor; the Citizen Oversight Board's activities during the preceding year; concerns expressed by citizens; the Citizen Oversight Board's assessment of the Police, Sheriff, and Fire Department investigative and disciplinary processes; recommendations for ways that those three 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. That report shall be published concurrently with the Monitor's annual report to the Mayor and City Council.
  - (b) 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.
  - (c) The Citizen Oversight Board shall have the ability to hire consultants to assist in assessing the effectiveness of the Monitor and in preparing the Citizen Oversight Board's annual report and any other reports.
43. **PUBLIC SAFETY REVIEW COMMISSION SUNSET:** Effective May 2, 2005, one hundred and eighty calendar days after the later of the adoption of this

policy by City Council or, if necessary, approval by the citizens of Denver of any changes to the City Charter, Division 6 of Article VIII of Chapter 2 of the Denver Revised Municipal Code (“DRMC”) shall be repealed and the Public Safety Review Commission (“PSRC”) shall cease operations. *Ordinance.*

44. Prior to the PSRC’s ceasing operations, the City, in cooperation with the PSRC, shall review the status of all matters that are still pending before the PSRC to determine appropriate ways to resolve or refer those matters. *Policy.*

### **III. THE INVESTIGATIVE PROCESS**

#### **A. INVESTIGATIONS BY THE DISTRICT ATTORNEY'S OFFICE**

45. The Denver District Attorney's Office (“DA”), together with the Police Department’s crimes against persons bureau and crime lab, have the primary responsibility for initially investigating shootings by uniformed personnel to determine whether criminal charges will be filed against any of the persons involved in the shooting. *Policy/IGA.*
46. The Monitor shall monitor the DA’s investigation. The Monitor shall be part of the critical incident call-out team for shootings and shall be granted access to the crime scene at the earliest feasible point prior to the crime scene’s being released, the timing of which shall be determined by the ranking members of the Police Department’s crimes against persons bureau and the District Attorney’s Office. *Policy/IGA.*
47. **INTERVIEWS:** All interviews of uniformed personnel and civilian witnesses shall be conducted by the DA's office and the Police Department’s crimes against persons bureau. *Policy/IGA.*
48. IAB shall not interview any uniformed personnel or civilian witness until after the DA investigation is complete; provided however that, unless the Manager of Safety, in consultation with the DA’s Office, determines the administrative investigation would jeopardize the DA’s investigation, IAB may interview such individuals even if the DA investigation is not complete so long as at least 60 calendar days from the date of the incident have passed. *Policy/IGA.*
49. During interviews of uniformed personnel or civilian witnesses, the Monitor shall be allowed to observe those interviews from a room other than that in which the interviews are conducted. *Charter as to Statements/Policy/IGA.*
50. Both prior to and during those interviews, the Monitor may suggest to the interviewers that certain questions be asked of the interviewees. However,

the DA's office retains sole discretion as to the subject matter and form of all questions to be addressed to the interviewees. *Policy/IGA*.

51. During the pendency of the DA's investigation, the DA's office shall allow the Monitor reasonable access to evidentiary items, including videotapes, audiotapes, and transcripts of interviews; documentary evidence; investigative reports; any other written materials related to the investigation; and other items of evidence including, but not limited to, observing any stage of the investigative process including autopsies, physical examinations and chemical tests performed by the Denver Police Department crime lab, and reenactments of the incident except where the DA's Office believes that such access would jeopardize the integrity of the criminal investigation or adversely impact any potential criminal prosecution. The timing and conditions of such access are within the sole discretion of the DA's Office. *Policy/IGA*.
52. During the pendency of the DA's investigation, the Monitor may recommend to the District Attorney's office other investigative steps that might be taken. However, conduct of the investigation is within the sole discretion of the DA's office. *Policy/IGA*.
53. Upon completion of the DA's investigation, but not later than 60 calendar days from the date of the incident, the appropriate IAB shall open a file and initiate an administrative investigation of the incident unless the Manager of Safety, in consultation with the DA's Office, determines that the administrative investigation would jeopardize the DA's investigation. *Ordinance*.
54. The DA's investigation will be considered to be complete: (*Ordinance/IGA*)
  - (a) When the DA files criminal charges against any uniformed personnel involved in the shooting; or
  - (b) 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.
55. For shootings that occur outside Denver city limits involving uniformed personnel under the jurisdiction of the Monitor and for all other alleged criminal activity involving uniformed personnel under the jurisdiction of the Monitor as referenced in paragraph 14 (mandatory monitoring), the Monitor and the appropriate IAB will attempt to work cooperatively with the investigating jurisdiction and will determine on a case-by-case basis when to initiate an internal investigation of the incident, but in no event shall such investigation commence more than 60 calendar days after the date of the incident. *Policy*.

## **B. INTERNAL INVESTIGATIONS**

56. All administrative investigations shall be conducted by the IAB of each affected department unless the head of IAB, Chief of Police, Undersheriff, Fire Chief, or Manager of Safety designates otherwise. Where such a designation is made, all references to the IAB below shall apply to the designated investigative entity. *Policy.*
57. Where the incident involves potential criminal charges and the DA has not yet made a final determination as to whether to accept or decline prosecution, the IAB shall consult with the DA as necessary to consider whether any steps in the investigation could impact a potential criminal case. *Policy.*
58. The IAB shall conduct the interviews of all uniformed personnel and civilian witnesses. The Monitor may attend all of those interviews and may suggest questions for the IAB interviewers to ask of the witnesses but the IAB interviewer retains the discretion to determine the subject matter and form of the questions to be asked. *Charter as to information sharing/Policy.*
59. The Monitor shall have access to all evidentiary items and stages of the administrative investigation similar to those set forth in paragraphs 46 and 51 above. Where the investigation involves potential criminal charges, the DA may restrict or place conditions on access that he or she believes would jeopardize the integrity of the investigation or adversely impact any potential criminal prosecution. The Monitor shall also have complete access to all Police, Sheriff, and Fire Department documents and electronic files relating to any complaints against, or investigations of, uniformed personnel within the Monitor's jurisdiction and personnel files, including work history and officer statements but not including documents protected by the attorney-client privilege or the attorney work product privilege. 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. *Charter/Policy.*
60. During the course of the investigation, the Monitor may discuss the investigation with IAB, including recommending additional investigation. *Policy.*
61. For any investigation that it monitors, the Monitor shall review the investigation to ensure that it is thorough and complete. If the Monitor cannot certify that the investigation is thorough and complete, the Monitor may request that IAB conduct additional investigation. If IAB does not complete the additional investigation to the Monitor's satisfaction, the Monitor may conduct additional investigation, including issuing subpoenas. The Monitor shall advise the Citizen Oversight Board, Manager of Safety, and Chief of Police or Undersheriff of the reasons that the Monitor was not satisfied with

IAB's investigation and of the additional investigation conducted by, or to be conducted by, the Monitor. The IAB shall not forward the investigation until the Monitor has completed its supplemental investigation, if any, and then the IAB shall forward its investigation together with the Monitor's supplemental investigation to the appropriate person(s). *Charter / Ordinance*

62. The administrative investigation of any incident referenced in paragraphs 14 and 17 above (mandatory monitoring) shall be completed within 30 calendar days of its initiation. For all other investigations under the jurisdiction of the Monitor, the 30-day time limit shall not apply unless the Manager of Safety directs that the investigation and/or any related disciplinary actions be subject to the time limits set forth in this document or to other time limits set by the Manager of Safety. Failure to comply with any time limits set forth herein shall not serve as a basis for uniformed personnel to challenge the jurisdiction of any entity referenced herein, nor shall such failure serve as a basis to challenge any administrative action, including discipline, which may be taken against such uniformed personnel. *Policy.*
63. If IAB is not able to complete within 30 calendar days an investigation of any incident referenced in paragraphs 14 or 17 or the time limits set by the Manager of Safety, the head of IAB may request in writing that the Chief of Police, Undersheriff, or Fire Chief grant a specified, reasonable amount of time in which to complete the investigation. IAB's request must identify the specific reasons that it has not been able to complete the investigation within 30 calendar days and must explain why it believes the investigation can be completed within the requested extension of time. Requests for extensions and responses thereto shall be copied to the Monitor, Citizen Oversight Board, and the Manager of Safety. *Ordinance/Policy.*
64. The Monitor shall treat all documents and information regarding specific investigations or officers as confidential and shall divulge such information only on a need-to-know basis or unless otherwise disclosed by the City and County of Denver. *Charter/Policy.*

#### **IV. THE DISCIPLINARY PROCESS**

##### **A. SUMMARY OF THE POLICE DEPARTMENT'S DISCIPLINARY PROCESS**

65. The Police Department's disciplinary process occurs subsequent to the investigative process (administrative investigations conducted primarily by the Department's internal affairs bureau; with criminal investigations conducted by the Department's crimes against persons bureau and the Denver District Attorney's Office) and involves multiple individuals and groups who provide input into the disciplinary process.

66. The first step in the disciplinary process will either be a review of the case by the Use of Force Review Board or a review of the case by the subject officer's chain of command, depending upon the type of conduct at issue. The Use of Force Review Board will review all incidents: (a) where serious injury or death results from an officer-involved use of force; (b) involving firearm discharges; (c) involving in-custody deaths; and (d) in which the Chief of Police directs the Use of Force Review Board to review the incident. The Use of Force Review Board will review the investigative file and may call witnesses to testify or may direct additional investigation of the matter. Based upon that information, the Use of Force Review Board will make a recommendation to the Chief of Police as to whether the subject officer's conduct has violated any Police Department policies or rules, possible disciplinary sanctions, and appropriate recommendations regarding possible changes to Department policies and training. With respect to matters beyond the jurisdiction of the Use of Force Review Board, two members of the subject officer's chain of command included in the ranks from lieutenant through division chief will review the case and make recommendations as to whether rules have been violated and possible disciplinary sanctions.
67. The second step in the disciplinary process involves review of the case by the Police Department's Disciplinary Review Board, a six-person board consisting of police officers and citizens. The Board reviews the investigative file and hears presentations from both the subject officer and the Department management as to the allegations in the case. The Board then makes a recommendation to the Chief of Police as to possible disciplinary sanctions.
68. The third step in the disciplinary process involves review of the case by the Chief of Police, including recommendations from the Use of Force Review Board or the subject officer's chain of command, the Disciplinary Review Board, and the Monitor. The Chief of Police prepares and provides to the subject officer a "pre-disciplinary letter" outlining the charges against the officer and the factual allegations supporting those charges. The Chief then holds a "pre-disciplinary meeting" (a/k/a "Chief's hearing") at which the officer can present his or her side of the story. The Chief then makes a disciplinary recommendation to the Manager of the Safety.
69. The fourth step in the disciplinary process requires the Manager of Safety to decide, based upon his or her review of the investigative file including recommendations from every person and group identified in the previous paragraph, whether the officer has violated any rules and, if so, the proper level of discipline. If the Manager of Safety determines that the officer has violated Department rules, the Manager issues a Departmental Order of Discipline. If the officer disagrees with the Manager's decision, the officer can appeal the matter to the Civil Service Commission and ultimately to the courts.

## **B. THE MONITOR'S ROLE IN THE DISCIPLINARY PROCESS**

70. **THE USE OF FORCE REVIEW BOARD:** The Monitor shall be permitted to attend any hearings, meetings, and deliberations of the Use of Force Review Board but the Monitor may not participate in deliberations. The Police Department shall promulgate departmental policies providing for the Monitor to have complete access to all Use of Force Review Board proceedings. *Policy.*
71. The Monitor shall be permitted to attend interviews of uniformed personnel and witnesses conducted by the Use of Force Review Board and may suggest questions to be asked of the interviewees. *Charter as to information sharing/Policy.*
72. The Monitor shall have access to all materials to which the Use of Force Review Board members have access. *Policy.*
73. Regardless of the findings of the Use of Force Review Board, the Monitor may request IAB to conduct further investigation of the firearms discharge, which investigation must be completed within 10 calendar days. *Policy.*
74. **DISCIPLINARY REVIEW BOARD:** The Monitor shall be permitted to attend Disciplinary Review Board hearings but may not participate in the presentations or the questioning of the presenters. The Police Department shall promulgate departmental policies providing the Monitor complete access to all Disciplinary Review Board proceedings. *Policy.*
75. The Monitor shall have access to all materials to which the Disciplinary Review Board members have access. *Policy.*
76. The Monitor shall be permitted to attend Disciplinary Review Board deliberations but may not participate in those deliberations; and shall be permitted to be present when the Disciplinary Review Board announces its recommendation, including any statement made by the Disciplinary Review Board chairperson in connection with the announcement of that recommendation. *Policy.*
77. **CHIEF OF POLICE'S RECOMMENDATION AND MANAGER OF SAFETY'S DISCIPLINARY ORDER:** For each investigation that it monitors, the Monitor may review the pre-disciplinary letter and may discuss it with the Chief of Police and/or the Manager of Safety prior to the letter's being sent to the subject officer. The Police, Sheriff, and Fire Departments shall promulgate

departmental policies providing the Monitor complete access to disciplinary proceedings. *Policy.*

78. The Monitor may attend the pre-disciplinary meeting (a/k/a “Chief’s hearing”). *Ordinance.*
79. Prior to the Police Chief’s making a recommendation as to whether any rule violations should be sustained and as to the level of discipline, if any, to be imposed upon the officer, the Police Chief shall confer with the Monitor regarding such recommendation. *Ordinance.*
80. Within five business days of the Police Chief’s recommendation of discipline, the Monitor shall advise the Manager of Safety whether he or she agrees with the Police Chief’s recommendation as to whether any rule violation should be sustained and the level of discipline, if any. If the Monitor disagrees with the Police Chief’s recommendation, the Monitor shall state specific reasons for disagreeing with the recommendation. *Ordinance.*
81. Prior to imposing discipline, if any, the Manager of Safety shall confer with the Monitor regarding the Monitor’s disciplinary recommendation and the Monitor’s evaluation of the investigation. *Policy.*
82. The Monitor shall be allowed to review, but shall not become the custodian of, the Manager of Safety’s disciplinary order. *Policy.*
83. The Monitor’s involvement in the investigative and disciplinary processes for the Sheriff and Fire Departments will be similar to its involvement in the Police Department processes. *Ordinance/Policy.*

### **C. TIME FRAMES FOR COMPLETING THE DISCIPLINARY PROCESS**

84. **REVIEW OF THE INVESTIGATION BY THE SUBJECT OFFICER’S CHAIN OF COMMAND:** For matters in which a Use of Force Review Board is not impaneled, the review and accompanying recommendations by the subject officer’s chain of command shall be completed within 15 calendar days of the later of IAB’s completing its investigation or the Monitor’s completing its supplemental investigation, if any. *Ordinance/Policy.*
85. If the chain of command is not able to complete its review and recommendations within 15 calendar days, the subject officer’s captain, commander, or division chief may request in writing that the Chief of Police grant a specified, reasonable amount of time in which to complete the review and recommendations. That request must identify the specific reasons that the chain of command has not been able to complete the review and

recommendations within 15 calendar days and must explain why it believes the review and recommendations can be completed within the requested extension of time. Requests for extensions and responses thereto shall be copied to the Monitor and the Manager of Safety. *Ordinance/Policy.*

86. **REVIEW BY THE USE OF FORCE REVIEW BOARD:** For those matters in which a Use of Force Review Board is impaneled, it shall be impaneled within five business days of IAB's opening a case file. *Policy.*
87. Within 10 calendar days of the later of IAB's completing its investigation or the Monitor's completing its supplemental investigation, if any, the Use of Force Review Board shall complete its investigation, issue its recommendations, and advise the Chief of Police and Manager of Safety of those recommendations. *Policy.*
88. If the Use of Force Review Board is not able to complete its investigation and issue its recommendations within 10 calendar days, the chairperson of the Use of Force Review Board may request in writing that the Chief of Police grant a specified, reasonable amount of time in which to complete the investigation. The Use of Force Review Board's request must identify the specific reasons that it has not been able to complete the investigation within the time limits and must explain why it believes the investigation can be completed within the requested extension of time. Requests for extensions and responses thereto shall be copied to the Monitor and the Manager of Safety. *Policy.*
89. **DISCIPLINARY REVIEW BOARD HEARING AND RECOMMENDATION:** For matters in which a Disciplinary Review Board is impaneled, the Disciplinary Review Board hearing and recommendations must be completed within 25 calendar days of the completion of the review and recommendations by the subject officer's chain of command or, when the Use of Force Review Board rather than the chain of command has reviewed the matter, within 25 calendar days of the completion of the Use of Force Review Board investigation and issuance of its recommendations. *Policy.*
90. If the Disciplinary Review Board is not able to complete its hearing within 25 calendar days, the chairperson of the Disciplinary Review Board may request in writing that the Chief of Police grant a specified, reasonable amount of time in which to complete the hearing. That request must identify the specific reasons that the Disciplinary Review Board has not been able to complete its process within 25 calendar days and must explain why it believes the Disciplinary Review Board process can be completed within the requested extension of time. Requests for extensions and responses thereto shall be copied to the Monitor and the Manager of Safety. *Policy.*

91. **CHIEF OF POLICE'S RECOMMENDATION AND MANAGER OF SAFETY'S DISCIPLINARY ORDER:** For each matter for which a pre-disciplinary meeting will be held, a pre-disciplinary letter shall be prepared and provided to the subject officer within 10 business days of the Disciplinary Review Board hearing. *Policy.*
92. A pre-disciplinary meeting shall be held no less than seven and no more than 10 business days after the issuance of the pre-disciplinary letter. *Policy.*
93. The Police Chief shall make a disciplinary recommendation to the Manager of Safety within five business days of the pre-disciplinary meeting. *Policy.*
94. Within 15 calendar days of the Police Chief's recommendation, the Manager of Safety shall impose discipline, if any, by issuing a disciplinary order. *Policy.*

## **V. COMPOSITION OF THE POLICE DEPARTMENT'S USE OF FORCE REVIEW BOARD**

95. The Use of Force Review Board panel shall consist of seven persons: the four division chiefs, the commander of the subject officer's unit, and two members of the citizens' pool selected at random. Additionally, the IAB commander shall serve as the non-voting chairperson of the Use of Force Review Board. The Police Department shall promulgate departmental policies providing for modifications to the Use of Force Review Board in accordance with the provisions of this document. *Policy.*
96. The chairperson of the Use of Force Review Board shall randomly draw two names from the citizens' pool to serve on the Use of Force Review Board and shall immediately notify those two persons that they have been selected to serve on the Use of Force Review Board panel. *Policy.*
97. If either of those persons shall be unable to serve on the Use of Force Review Board panel, the process shall be repeated until the two citizen positions on the Use of Force Review Board panel are filled. *Policy.*

## **VI. COMPOSITION OF THE POLICE DEPARTMENT'S DISCIPLINARY REVIEW BOARD**

98. The Disciplinary Review Board shall consist of six persons: one command officer (captain or higher) who is not in the subject officer's chain of command, one supervisor (sergeant or lieutenant) who is not in the subject officer's chain of command, one peer officer (of the same rank as the subject officer), and three citizens selected at random from the citizens' pool. A

deputy chief who is not in the subject officer's chain of command shall serve as the non-voting chairperson of the Disciplinary Review Board. The Police Department shall promulgate departmental policies providing for modifications to the Disciplinary Review Board in accordance with the provisions of this document. *Policy.*

99. The chairperson of the Disciplinary Review Board shall randomly draw three names from the citizens' pool and one name each from the command officer pool, supervisor pool, and peer officer pool to serve on the Disciplinary Review Board panel. The chairperson shall immediately notify those persons that they have been selected to serve on the panel. *Policy.*
100. If any of those persons shall be unable to serve on the Disciplinary Review Board panel, the process shall be repeated until the positions on the Disciplinary Review Board panel are filled. *Policy.*
101. In order to perform their duties on Use of Force Review Board or Disciplinary Review Board panels, the members of the citizens' pool shall be allowed to review, but shall not become the custodian of, pertinent portions of the officers' personnel files. The members of the citizens' pool shall not be allowed access to documents protected by the attorney-client privilege or the attorney work product privilege. *Charter change as to statements/Policy remainder.*
102. Members of the citizens' pool and the police pool (commander pool, supervisor pool, and peer officer pool) shall keep all information learned while on a Use of Force Review Board or Disciplinary Review Board panel confidential, and such members shall sign a confidentiality agreement each time they are selected for a panel before they serve on the panel. *Policy.*
103. Other than during discussions with other members of Use of Force Review Board or Disciplinary Review Board panels while serving on those panels, the members of the citizens' pool and the police pool (commander pool, supervisor pool, and peer officer pool) shall not discuss with any person or group the status of specific investigations or release to any person or group any information regarding those investigations or any other confidential information. *Policy.*

## **VII. ELIGIBILITY FOR MEMBERSHIP ON THE USE OF FORCE REVIEW BOARD AND DISCIPLINARY REVIEW BOARD**

104. **CITIZENS' POOL:** There shall be a "citizens' pool" available to provide a sufficient number of panel members for the Use of Force Review Board and Disciplinary Review Board panels. The Police Department shall promulgate

departmental policies providing for the citizens' pool in accordance with the provisions of this document. *Ordinance/Policy.*

105. The members of the citizens' pool shall be selected by a panel comprised of three persons: the Manager of Safety, the Executive Director of the Denver Civil Service Commission, and a City Council member (to be selected by the City Council President). *Policy.*
106. Each citizen selected for the citizens' pool shall be a member of the pool for two years from the date of his or her selection, except that one-half of the persons selected for the initial citizens' pool shall be members of the pool for only one year. *Policy.*
107. After the initial selection process, the selection panel shall select one-half of the members of the citizens' pool on an annual basis. *Policy.*
108. The selection panel shall establish criteria for selecting members of the citizens' pool, who shall reflect the diversity of Denver, including the diverse professional backgrounds, experience, and expertise of the citizens of Denver. In doing so, the selection panel may consider relevant factors including the following: (*Ordinance*)
  - (a) That the member is a resident of the City and County of Denver;
  - (b) Ability of the individual to provide unbiased input into the decisions made by the Use of Force Review Board or Disciplinary Review Board panels;
  - (c) Not have any felony convictions;
  - (d) Not be a current employee of the City and County of Denver;
  - (e) Never have been employed by the Denver Police, Sheriff, or Fire Departments;
  - (f) Not have any immediate family members (defined as grandparents, parents, siblings, spouse, domestic partner, children, grandchildren, or in-laws) who have ever been employed by the Denver Police, Sheriff, or Fire Departments;
  - (g) For five years prior to applying for membership in the citizens' pool, not have been a party to any lawsuit against the City and County of Denver, alleging misconduct by the Denver Police, Sheriff, or Fire Departments or any employees of those departments; and

- (h) For five years prior to applying for membership in the citizens' pool, not have filed a complaint with the Denver Police, Sheriff, or Fire Departments, the Public Safety Review Commission, or the Monitor alleging misconduct by the Denver Police, Sheriff, or Fire Departments or any employees of those departments.
109. The Denver Police Protective Association and the Citizen Oversight Board may each strike four names from the names provided by the selection panel. The citizens' pool shall consist of the remaining persons. *Policy.*
110. A person shall be removed from the citizens' pool by the Manager of Safety based upon criteria established by the Citizen Oversight Board including: *(Policy)*
- (a) Failure to complete the training required to serve on a Use of Force Review Board or Disciplinary Review Board panel;
  - (b) Subsequent to a member's selection to the citizens' pool, unauthorized disclosure of any confidential information;
  - (c) Subsequent to a member's selection to the citizens' pool, engaging in any conduct that would disqualify him or her from membership in the citizens' pool;
  - (d) Subsequent to a member's selection to the citizens' pool, information becomes known to the Manager of Safety or Citizen Oversight Board that, had it been known when the person was selected, would have disqualified him or her from being selected; and
  - (e) Failure to serve on any other Use of Force Review Board or Disciplinary Review Board panels for which his or her name was drawn unless the person had a valid reason for not serving on the panel.
111. The Manager of Safety shall require any member selected for a Use of Force Review Board or Disciplinary Review Board panel, prior to serving on that panel, to provide information to establish that the member is currently qualified to be a member of the citizens' pool and does not have any conflict of interest that would prevent him or her from serving on the upcoming Use of Force Review Board or Disciplinary Review Board panel. *Policy.*
112. No member of the citizens' pool shall serve on more than three Use of Force Review Board or Disciplinary Review Board panels during any twelve month period unless all other members of the pool have served on three such panels during that twelve month period or the Citizen Oversight Board determines that it is in the best interest of the City for members of the citizens' pool to serve on more than three panels during a twelve month period. *Policy.*

113. The Manager of Safety, with input from the Citizen Oversight Board and the departments, shall establish an appropriate training program for members of the citizens' pool so that those persons shall possess the applicable knowledge to effectively perform their duties as Use of Force Review Board and Disciplinary Review Board panel members. *Policy.*
114. **POLICE POOL:** Selection of officers to participate in the Disciplinary Review Board process will be based upon, but not limited to, the following criteria: *(Policy)*
- (a) A history of exemplary conduct throughout the officer's law enforcement career;
  - (b) A history of behavior by the officer, both on and off duty, that is ethical and conduct that has not brought discredit to the Department or the police profession;
  - (c) A proven ability to make sound decisions based on good judgment; and
  - (d) The officer's IAB records and personnel file must not display a pattern of possible misconduct or any sustained formal investigations during the past five years or any sustained violations of the law (other than traffic violations) or sustained violations for departing from the truth for the entire career of the officer.
115. The selection of officers to be included in the pools for the Disciplinary Review process is within the discretion of the Chief of Police. *Policy.*

## **VIII. MISCELLANEOUS MATTERS**

116. Subsection (d) of sections 22-30 and 42-30 of chapter 42 of the DRMC shall be amended to allow the Monitor, the Citizen Oversight Board, and the citizens on the Use of Force Review Board and the Disciplinary Review Board access to statements by police officers and firefighters and to clarify that the Manager of Safety also has access to those statements.
- (a) Paragraph bbb of subsection (2) of section 2-32 of article 3 of chapter 2 of the DRMC, concerning open meetings, shall be amended to read: "Citizen Oversight Board."
  - (b) Paragraph tt of subsection (2) of section 2-32 of article 3 of chapter 2 shall be repealed effective May 2, 2005.

117. Paragraph (8) of subsection (a) of section 2-34 of article 3 of chapter 2 of the DRMC, concerning open meetings, shall be amended to allow the Citizen Oversight Board to conduct meetings in executive session to discuss internal investigations and disciplinary proceedings.
118. All of the above matters (except changes to the composition of the Use of Force Review Board and Disciplinary Review Board) shall become effective on November 2, 2004, if and only if Amendment 1A to the Denver City Charter is adopted at the special municipal election scheduled for that date.