

ORDINANCE 8430

AN ORDINANCE AMENDING TITLE 2, CHAPTER 11, "POLICE OVERSIGHT," B.R.C. 1981, PERTAINING TO THE COMPOSITION, DUTIES AND POWERS OF THE CITY ORGANIZATION RELATED TO CIVILIAN OVERSIGHT OF THE POLICE, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Chapter 2-11, "Police Oversight," B.R.C. 1981 is amended as follows:

2-11-1. – Legislative Intent.

- (a) The council finds that the current system of reviewing complaints against the police does not meet the needs of the community.
- (b) The council finds that the community would benefit from the hiring of a civilian police monitor to review the handling of complaints, to review trends in policing and recommend improvements to police practices, to engage with the public so that the needs of all members of the community are taken into account in connection with police oversight, and to report to the public regularly regarding oversight of the police department.
- (c) In order to improve community trust in the police department, the council intends to increase community involvement in police oversight and ensure that historically excluded communities have a voice in that oversight.
- (d) It is intended that this section will provide a system of oversight of the police complaint process that is responsive to the needs of the entire community and a means for continuous improvement of police practices in the City.

2-11-2. - Definitions.

Chief of police means the person designated by the city manager as the chief of police.

Complaint means an oral or written communication to the Office of the Police Monitor or the Boulder Police Department alleging misconduct on the part of a police employee.

Conclusion of any criminal investigation means a criminal investigation is deemed concluded when the appropriate criminal prosecutor decides either to press charges or to not press charges.

Immediate family member means a person's spouse or domestic partner, a parent, step-parent, grandparent, child, stepchild, grandchild, sibling, half-sibling or step-sibling of the person or of the person's spouse or domestic partner.

Police employee means a city employee who reports directly or through others to the chief of police.

Preliminary investigation means an initial inquiry by the police monitor or the monitor's designee into the facts and circumstances of a complaint for purposes of deciding how to classify and route the complaint and to identify any potential witnesses or evidence for timely preservation.

Professional standards unit means the police employees designated by the chief of police to investigate allegations of misconduct against police employees.

Sworn police officer means a police employee who is also certified and employed as a peace officer under the laws of this state.

2-11-3. – Office of Police Monitor.

- (a) The Office of the Police Monitor, hereafter "Monitor's Office," shall be established to provide an independent location to lodge complaints involving police employees, monitor internal investigations to ensure objective, thorough and high-quality investigations, and develop recommendations to improve police services and policies.
- (b) The Monitor's Office shall be headed by a professional police monitor who is hired by and accountable to the city manager. The Monitor's Office shall not be physically located in the same building as the police department.
- (c) Any findings, recommendations and actions taken shall reflect the police monitor's independent judgment. No person shall use their political or administrative position to attempt to unduly influence or undermine the independence of the police monitor, or their staff or agent, in the performance of their duties and responsibilities.
- (d) The city manager shall include in their recommended budget an allocation sufficient for the police monitor and the Monitor's Office to carry out their duties and responsibilities.

2-11-4. – Office of Police Monitor – Powers and Duties.

- (a) The police monitor is the administrative head of the Monitor's Office and shall:
 - (1) Oversee the operations of the Monitor's Office, establish program priorities and objectives, and manage the implementation and evaluation of work programs.
 - (2) Develop and maintain operating procedures for the Monitor's Office, including protocols for handling complaints and monitoring investigations.
 - (3) Act as liaison and provide staff support to the police oversight panel.
 - (4) Receive and process complaints concerning police employees; monitor the complaint investigation; and ensure best practices are followed by the professional standards unit.
 - (5) Perform a quality assurance function with the goal of identifying systemic changes that will improve police services to the community. These activities include:

- (A) Analyzing complaint trends and recommending changes to police policy, practices and training; and
 - (B) Review and report trends in completed police employee disciplinary decisions.
- (6) Provide status reports to the police oversight panel and community and provide recommendations relevant to police policies and practices to the chief of police and city manager.
 - (7) Develop and present to the police oversight panel and city council periodic public reports describing the activities of the Monitor's Office, its findings and recommendations, the police department's response to its recommendations, and any other information pertinent to assessing the performance of the Monitor's Office.
 - (8) Provide the community with any other reports deemed necessary.
- (b) The monitor shall receive timely notification of critical incidents to enable them to report to the scene of critical incidents. The monitor, oversight panel and chief of police shall sign a memorandum of understanding outlining the protocols for summoning the police monitor to the incident for purposes of first-hand observation. The protocols developed by the monitor, the oversight panel, and the chief of police shall identify the specific types of critical incidents for which the monitor will be notified and to which the monitor will respond.
 - (c) All final case adjudication and employee discipline decisions shall be made by the chief of police. The police monitor may develop adjudication recommendations and may recommend the level of discipline for police employees.

2-11-5. - Complaint Processing by the Police Monitor's Office.

- (a) Complaint intake.
 - (1) Any person may lodge a complaint with the Monitor's Office about the conduct of, or services provided by, a police employee.
 - (2) The Monitor's Office is the intake center for community complaints about police employees. The police monitor shall make available to the public several alternative means of filing a complaint, including but not limited to in person, on-line, or by telephone. Complainants may choose to lodge complaints either directly to the police department or through the Monitor's Office. Complaints filed with the police department shall be forwarded to the Monitor's Office within 24 hours of receipt. The Monitor's Office shall document all contacts and complaints received from any source.
 - (3) If the Monitor's office receives a complaint that alleges that a person incurred damages as the result of alleged police conduct, a copy of the complaint shall be forwarded to the city attorney.
 - (4) If a complaint is received that alleges criminal conduct on the part of the police employee, the police monitor shall forward the complaint and any associated information to the chief of police and the District Attorney's Office.

(b) Complaint Investigations.

- (1) Except as provided in paragraph (2) of this subsection, administrative investigations of complaints filed with or forwarded to the Monitor's Office shall not commence until after the monitor has received, classified and routed the complaint. The investigation shall commence as soon as possible after classification, but in any event no later than 14 calendar days after the Monitor's Office receives the complaint.
- (2) Paragraph (1) of this subsection shall not preclude preliminary investigations by the Monitor's Office, or a police supervisor's attempt to address possible misconduct by a police employee with or without the filing of a complaint.
- (3) If the chief of police determines that all or a part of an administrative investigation should be postponed in order to avoid jeopardizing a criminal investigation or prosecution, the chief of police shall request the monitor's agreement on postponement. If the monitor and chief of police are unable to agree on the postponement, then they shall present in writing their respective positions to the city manager, who shall then decide whether all or part of an administrative investigation will be postponed.
- (4) The police monitor shall actively observe internal investigations to ensure a thorough, objective, and timely investigation, and is authorized to:
 - (A) Be present and observe complainant, employee and witness interviews.
 - (B) Recommend additional investigation and best practices to the professional standards unit. In the event the professional standards unit rejects a recommendation from the monitor pursuant to this subsection, the monitor may request in writing the chief of police to accept the recommendation. The chief of police shall respond in writing. If the chief of police declines, the monitor may ask the city manager in writing to require the chief of police to accept the recommendation. The written decision of the city manager shall be final and shall be made available to the police oversight panel. In no event may a police employee be subject to discipline for acting pursuant to the city manager's final decision.
- (5) The police monitor shall have access to all police data including demographics of complainants and officers.
- (6) The police monitor will not be involved in any criminal investigations but shall be kept apprised of the status of such investigations involving police employees. The police monitor shall have access to the case file relevant to the administrative portion of such investigations.
- (7) All case files shall be provided to the police monitor upon conclusion of the investigation for review and a determination that the investigation was thorough and complete. Once the investigation is deemed complete by the monitor, the involved employee's immediate supervisor will develop a case adjudication recommendation that will be forwarded through the chain of command to the chief of police for final adjudication and to the monitor for review. If the police monitor disagrees with any recommendation, their disagreements and comments will be

documented and forwarded to the chief of police prior to final adjudication by the chief of police. The chain of command and police monitor will use their best efforts to complete this process in a timely manner and without unreasonably delaying the final adjudication of the case.

- (8) The Monitor's Office will make every reasonable effort to notify the complainant that an investigation has been conducted, summarize the monitor's assessment of the investigation, and provide an opportunity for the complainant to comment or ask questions about the process.
 - (9) The police monitor shall maintain an on-going status report on the work of the Monitor's Office and case investigations and shall share it with the police oversight panel.
- (c) Access to Records and Materials.
- (1) Except to the extent that state or federal law provides to the contrary, or where information resides on a restricted database governed by a contract that does not allow access beyond certain law enforcement employees:
 - (A) The monitor shall have complete and unrestricted access to all complaints, investigative records and information obtained or developed by professional standards unit related to an administrative investigation of a complaint, whether the information exists in electronic format or hard copy, including information stored on the professional standards unit database;
 - (B) The monitor shall be provided any other information identified by the monitor that is relevant to a complaint; and
 - (C) The identity of any individual involved in an event giving rise to a complaint shall not be withheld from the monitor. Notwithstanding the foregoing, complainants may file anonymously.
 - (2) The chief of police and police monitor shall develop cooperative interdepartmental procedures and any necessary infrastructure to coordinate the flow of information and communication between the Monitor's Office and the police department.
- (d) Nothing in this chapter shall preclude the City from engaging an independent investigator for a particular complaint.

2-11-6. Police Oversight Panel - Qualifications and Appointments.

- (a) Qualifications.
 - (1) Members of the police oversight panel shall be nominated by a selection committee. The initial selection committee shall be composed of members of the implementation team not interested in being on the police oversight panel and representatives from two local non-profit organizations selected by the implementation team. Later selection committees shall be composed of two members of the police oversight panel and representatives from two local non-profits selected by the police oversight panel. In no event shall the monitor be involved in the process of selecting the selection committee or the police oversight panel.

- (2) The non-profit organizations participating in the selection process must be organizations that serve the Boulder community, serve a population that has significant contact or a difficult relationship with law enforcement, and serve a historically excluded community.
- (3) Prior to the selection of nominees, the monitor shall inform the public of the commencement of the selection process and the selection committee shall actively promote public awareness of the selection process and may solicit interest through social media and personal networks to attract qualified applicants.
- (4) The monitor shall provide the public with both a physical address and an email address where interested applicants can submit their indication of interest.
- (5) Interviews conducted by the selection panel shall be open to the public for observation. Selection panel deliberations shall be confidential.
- (6) The selection committee shall select nine panel members by majority vote. Two panel positions shall be reserved for persons currently enrolled as students in an institute of higher education, with different terms of office as set forth in Subsection (b) of this section.
- (7) In addition to the nine members selected, the selection committee shall select three alternates who will represent a pool from which new panel members can be appointed when there is an unexpected vacancy on the panel. Alternates will draw numbers to determine the order that they will join the panel if needed.
- (8) When a panel vacancy occurs, if no alternates are available, the selection committee will reconvene to fill the vacancy. Each time the selection committee reconvenes to select new or alternate panel members, a public announcement shall be made inviting applicants to submit their notice of interest.
- (9) Members of the police oversight panel shall be volunteers who, immediately prior to appointment, shall demonstrate:
 - (A) Strong ties to the city of Boulder. This may include, but is not limited to, residency, employment in the City, or having children enrolled in schools located in the City;
 - (B) An absence of any real or perceived bias, prejudice or conflict of interest;
 - (C) An ability to build working relationships and communicate effectively with diverse groups; and
 - (D) A commitment to the purposes of this chapter.
- (10) The nomination committee will strive to include people identifying as a person of color, notably African American, Latinx, Asian and/or Indigenous, as at least half of the members of the police oversight panel. Preference will be given to individuals who are multilingual. In addition, the selection committee will strive to include a person with a disability, a person experiencing homelessness or

having such lived experience, a person identifying as LGBTQ+, and a person who has experienced incarceration.

- (11) Members of the police oversight panel shall neither be a current City employee nor an immediate family member of a current City employee.
 - (12) Police oversight panel members shall participate in a training program to be developed by the police monitor.
 - (13) It is the intent that police oversight panel members be free from personal liability for acts taken within the course and scope of carrying out their official duties and functions. The City will therefore defend and indemnify members to the maximum extent permitted under the Colorado Governmental Immunity Act and other applicable law.
 - (14) Current members of the professional standards review panel and the police oversight task force are eligible to serve on the police oversight panel.
 - (15) The selection committee will provide Council with a written summary explaining why each applicant was selected. A motion to approve the proposed candidates shall be placed on the Council's consent agenda. Council members may choose to exercise the call-up option to discuss a proposed candidate's appointment. Council will approve or reject the appointments by majority vote.
 - (16) All police oversight panel members shall sign a confidentiality agreement which prohibits them from publicly discussing or releasing any information or materials reviewed in closed session.
- (b) Terms and Vacancies.
- (1) When first instituted, four appointees will serve three-year terms and three appointees will serve two-year terms. The two student members will serve one-year terms. After all initial panel members are selected, panel members other than the two student members will draw numbers to determine which will be a two-year appointment and which will be a three-year appointment. In the event that an initial appointee prefers a two-year appointment, the appointee will be assigned a two-year term and will not participate in the drawing of numbers. Thereafter, all terms shall be three years, except for the two student members who shall serve one-year terms. Panel members may serve for a maximum of two consecutive terms.
 - (2) In the event of a panel vacancy, when an alternate is not available and a successor has not been named, that panel member may remain in office until their successor is named.
- (d) Removal from the oversight panel.
- (1) Members can be removed by a majority vote of the oversight panel for failure to perform duties or violation of any signed confidentiality agreement.
 - (2) The member's removal shall then be approved or rejected by a majority vote of the council.

2-11-7. – Police Oversight Panel - Powers and Duties.

- (a) In collaboration with the police monitor, the police oversight panel shall establish policies, procedures and operating principles for the police oversight panel.
- (b) The police oversight panel may review the completed professional standards unit investigations prior to the chief's final determination and provide disciplinary and disposition recommendations to the chief.
 - (1) The police oversight panel shall develop criteria to decide whether to accept a case for review.
 - (2) All materials concerning the completed investigations of cases the police oversight panel has selected to review shall be made available to members for their confidential review.
 - (3) The police oversight panel shall, at one of its regularly scheduled meetings, report on such completed case(s), which may include comments on the handling of the complaint, the fairness and thoroughness of the investigation and the reasonableness of the adjudication.
 - (4) The comments and any related policy or procedural issues identified by the police oversight panel in the course of its case review shall be provided to the police monitor for further consideration.
 - (5) If the panel concludes that an investigation is incomplete, the panel shall direct the monitor to recommend additional investigation by the professional standards unit.
- (c) The police oversight panel shall notify the complainant and involved police employee(s) of its decisions on whether to accept a case for review and shall inform the complainant of its conclusions and recommendations on the case.
- (d) The police oversight panel shall review trends and statistics of complaints against sworn police officers and civilian police employees and may develop recommendations to improve the complaint intake and handling process.
- (e) The police oversight panel shall have access to the Boulder Police Department's policies and any data captured or maintained by the department to facilitate the panel's analysis and understanding of department operations. The panel may direct the monitor to conduct specific analyses of department data, policies, or practices.
- (f) The police oversight panel shall evaluate the work of the Monitor's Office. In that regard the police oversight panel:
 - (1) Shall establish criteria by which to evaluate the work of the police monitor; the panel's review of the monitor will be ongoing and will include quarterly meetings between the panel co-chairs and the monitor to convey priorities and feedback on the monitor's work;
 - (2) Shall review, comment on, and assist in maintaining policies, procedures and operating principles for the Monitor's Office and the police oversight panel;
 - (3) Shall monitor status reports from the police monitor; and

- (4) May conduct periodic evaluations of the complaint intake and handling system to identify process improvements and/or ensure complaints are being treated fairly and with due diligence.
- (g) The police oversight panel may provide a forum to gather community concerns about incident-specific police actions and may receive and forward complaint information to the Monitor's Office for processing.

2-11-8. – Police Oversight Panel - Officers, Meetings, and Procedures.

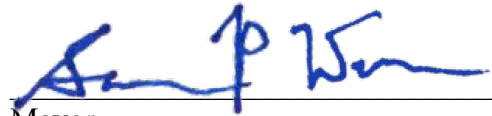
- (a) The police oversight panel shall annually elect from among its membership two co-chairs. The co-chairs shall be responsible for:
 - (1) Facilitating and leading each panel meeting;
 - (2) Communicating the needs of the oversight panel to the monitor;
 - (3) Engaging with the community and assisting with outreach efforts;
 - (4) Ensuring the oversight panel's annual report is completed and published in a timely manner;
 - (5) Helping to maintain panel members' participation and morale; and
 - (6) Establish subcommittees to carry out the work of the panel.
- (b) The police chief shall name a police employee to serve as a non-voting member of the police oversight panel. The police monitor shall also be a non-voting member of the police oversight panel.
- (c) Meetings of the police oversight panel shall be open to the public. To facilitate the transparency of the police department, the monitor and the police oversight panel's activities, the police monitor will develop and present aggregate data on the number and types of cases under investigation by the police department each month, the number and types of cases closed each month by the police department, the number of closed cases reviewed by the police oversight panel, and any direction given by the panel to the monitor regarding additional analysis and reporting. The monitor will also report any final disciplinary dispositions determined by the chief each month and any recommendations made by the monitor.
- (d) The police oversight panel will meet in closed session when discussing or reviewing the details or case files of open or closed complaint investigations.
- (e) A member of the police oversight panel shall remove themselves from any participation in a matter if their impartiality might reasonably be questioned, or if they have personal knowledge of any facts regarding the incident under review. Members of the police oversight panel shall be deemed public officials subject to the Code of Conduct set forth in Title 2, Chapter 7 of this Code.
- (f) The police oversight panel shall prepare and present annual public reports to the city manager and chief of police that:
 - (1) Summarizes the police oversight panel's activities, findings and recommendations;
 - (2) Assesses the performance of the police monitor; and

- (3) Evaluates the work of the Monitor's Office, including whether the Monitor's Office is functioning as intended.
- (g) In collaboration with the Monitor's Office, the police oversight panel may conduct education and outreach activities to inform the community about the process for filing complaints and commendations about police employees. The police oversight panel and police monitor shall work together to develop and disseminate information and forms regarding the police complaint handling and review system.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the City, and covers matters of local concern.

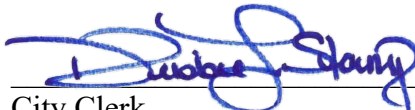
Section 3. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 20th day of October 2020.



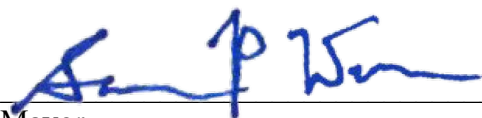
Mayor

Attest:



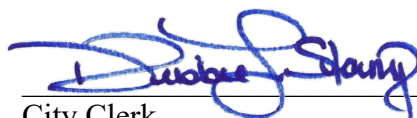
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 10th day of November
2020.



Mayor

Attest:



City Clerk