

## OFFICE OF THE POLICE MONITOR

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Chapter 37, "Police," of the Dallas City Code, as amended, by repealing Article III and adding a new Article III, entitled "Office of the Police Monitor," to replace the "Dallas Citizens Police Review Board," and to be comprised of Sections 37-31 through 37-38; amending Section 2-122(a)(10)(B) of Chapter 2, "ADMINISTRATION," and Section 5-1.4(a)(4) of Chapter 8, "BOARDS AND COMMISSIONS," of the Dallas City Code, as amended creating the "Office of the Police Monitor", dissolving the technical advisory committee; establishing powers, functions, duties, and procedures of the board; providing for eligibility of board members; providing for an electoral process for all board members; creating an elected Director position; replacing Ordinance No. 19983; as amended, passed by the city council on June 8, 1988.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That CHAPTER 37, Sec. 37-31 through Sec. 37-38 "Police," of the Dallas City Code, is amended by repealing Article III "Dallas Citizens Police Review Board", and adding a new Article III, entitled "Office of the Police Monitor," to be comprised of Sections 37-31 through 37-38, to read as follows:

### ARTICLE III.

#### ~~DALLAS CITIZENS POLICE REVIEW BOARD~~

#### **OFFICE OF THE POLICE MONITOR**

SEC. 37-31. BOARD CREATED; APPOINTMENT; TERM; MEETINGS.

- (a) There is hereby created the Dallas citizens police review board (the "board") to be composed of 15 members. ~~Each city council member shall appoint one member to the board.~~ It is the intent of the city council that the membership of the board be representative of the ethnic diversity of the city.

- (b) The board is to be composed of 15 members, nominated and elected in the manner hereinafter provided. One member of the Office of the Police Monitor, Place 15, shall be elected by the qualified voters of the entire city and 14 members by the qualified voters residing in a particular district, Places 1 through 14 respectively, as provided in accordance with Chapter IV of this Charter. Members of the board, Places 1 through 14, shall each be elected for a term of two years and member of the board, Place 15, hereafter called "Director", shall be elected as Director of the Office of the Police Monitor for a term of two years, and shall be compensated in the same manner and in accordance with Ch. III Sec.(4)(a)(b)(c)(d) of this Charter. The board members so elected shall take office on the first Monday following the 30th calendar day after the final canvass of the general election, and they shall serve until their respective successors have been elected and qualified.
- (c) (1) The full "board" shall appoint the Chair from among the board's members, who will function as the Director if that person is unable to operate in the position. The Chair shall be compensated in accordance with Ch. III Sec. (4)(a)(b)(c)(d) of this Charter for the amount of time required, until the Director is able to return, or new elections are held.
- (d) (2) All members shall be appointed for a term to expire on May 19, 2015. All subsequent appointments will be made in May of each odd-numbered year for a two-year term beginning on May 19. Members shall serve until their successors are appointed and qualified.
- (e) (3) For purposes of eligibility to serve on the Office of the Police Monitor, the board created by this ordinance shall be considered a new board, so that previous service on any board will not be considered in determining membership and membership on any previously existing board will not carry over to the board created by this ordinance.

~~(b) The mayor shall appoint the board chair, and the full city council shall appoint the vice chair.~~

~~—(c) All members shall be appointed for a term to expire on September 1, 1989. All subsequent appointments will be made in August of each odd-numbered year for a two-year term beginning on September 1. Members shall serve until their successors are appointed and qualified.~~

(d) The following persons shall be disqualified for appointment to and service on the board:

(1) persons who are in violation of Article XII, "Code of Ethics" of Chapter 2 of the city code and persons disqualified from appointment pursuant to Section 8-1.4 of the city code; and

(2) persons who are employees or business associates of either an adversary party or a representative of an adversary party, and persons who have a pecuniary interest, in any pending litigation or claim against the city relating to the board or the police department or against any individual officer or employee of the police department (unless unrelated to such individual's office or employment).

(e) Any board member who is disqualified for appointment to and service on the board under Subsection (d) shall forfeit membership on the board. Upon determination by the board chair that a board member is so disqualified, the chair will notify that board member and the city secretary. The city secretary will then notify the city council that there is a vacancy on the board. A board member required to forfeit board membership will be entitled to a public hearing in accordance with Section 17, Chapter XXIV of the city charter.

(f) Under no circumstances may the city council or the board chair be authorized to waive the requirements for appointment to and service on the board referenced in Subsection (d).

(g) Each board member must attend a training session to become familiar with police procedures.

(h) The board must meet at least once each month in city hall and at other times at the call of the chair.

(i) For purposes of Sections 2-122(a)(10)(B) and 8-1.4(a)(4) of this code, the police department is deemed a department providing support services to the board. (Ord. Nos. 19818; 19983; 21153; 21514; 22259)

## LIMITATION OF TERMS

(d) A person who has served as a member of the board other than Place 15 for three consecutive two-year terms shall not again be eligible to become a candidate for, or to serve in, any place on the board except Place 15, until at least one term has elapsed

(1) A person who has served two consecutive terms as a Chair of the board, Place 15, shall not again be eligible to become a candidate for, or to serve in, Place 15 on the board until at least one term for Place 15 has elapsed.

(2) A "term" as used in Subsection (b) shall include any period of service during a board term when that period is in excess of one year, including a term from which the member resigned. It is the intent of the board and the citizens of the City of Dallas that the membership of the board be representative of the ethnic and economic diversity of the city.

SEC. 37-32. FUNCTIONS.

(a) Subject to the procedural requirements set forth in Section 37-33, the board shall have authority to:

(1) review ~~the~~ **all** facts and evidence pertaining to an incident or complaint against a city police officer following:

~~(A) completion of all findings and recommendations of the internal affairs division of the police department;~~

~~(B) the final decision within the police department determining what, if any, disciplinary action will be taken; and~~

~~(C) if grand jury proceedings are anticipated, the conclusion of all grand jury proceedings relating to a city police officer's conduct in the incident or complaint;~~

(2) accept from citizens written complaints, signed by the person making the complaint, of police procedures, treatment of citizens, abuse, harassment, violation of civil rights, serious injury, or fatality ~~and refer the complaints to the internal affairs division of the police department for investigation;~~

(3) present to the chief of police and **District Attorney** inquiries and suggestions for further investigation concerning an incident or a complaint that comes before the board;

(4) when the board is not satisfied with the police department internal affairs division's investigation of an incident or a complaint which is properly before the board pursuant to Section 37-33, conduct an ~~additional~~ **independent** investigation into the incident or complaint;

(5) when the board is not satisfied with the police department internal affairs division's investigation of an incident or a complaint involving a fatality or serious bodily injury which is properly before the board pursuant to Section 37-33, contract, at its discretion and on a case-by-case basis, with an independent investigator with experience in the type of incident or complaint being investigated to assist and advise the board in its review of the incident or complaint;

(6) take sworn testimony from citizens about an incident or a complaint which is properly before the board pursuant to Section 37-33;

(7) subpoena witnesses in accordance with Section 37-35;

(8) request the city manager to review disciplinary action by the chief of police in a case when the board considers it appropriate; and

**(9) recommend to the Chief of Police and City Manager disciplinary actions to be taken in a case when the board considers it appropriate; and**

(10) recommend to the **Chief of Police** and city manager improvements in police department policies and procedures.

(b) Retention of an independent investigator under Subsection (a)(5) must be in accordance with city contracting procedures. If the contract does not require city council approval, the city manager will notify the city council before the contract is executed.

(c) ~~The board shall act as an advisory board to the chief of police, the city manager, and the city council.~~ **The board shall act as an independent investigative board, separate from the Dallas Police Department, and in an advisory capacity to the Chief of Police, the City Manager, and the City Council**

(d) Notwithstanding any provision of this article to the contrary, the board shall not:

~~(1) take any action, nor recommend to or request the city council or any other city authority to take any action, which interferes in any manner with the appointment, removal or discipline of any person by the city manager or any of his subordinates;~~

~~(2) review the facts and evidence of a complaint nor accept a complaint from a police officer which pertains to another police officer for which the city personnel rules or police general orders provide a grievance or appeal procedure.~~

~~(3) review the facts and evidence of a complaint nor accept a complaint from a person concerning a matter which is the subject of pending civil litigation to which the city or a city employee is a party.~~

(e) For the purposes of this article **SERIOUS BODILY INJURY** means bodily injury that creates a risk of death or that causes serious permanent or temporary disfigurement or loss or impairment of the function of any bodily member or organ, including, but not limited to, a broken long bone, rib, or fracture of the skull; mechanical injury of the neck and upper airways; multiple severe bruises wherever located; a sharp or blunt injury requiring sutures or clips; or a wound leading to blood loss requiring volume replacement. (Ord. Nos. 19818; 19983; 21131)

#### SEC. 37-33. PROCEDURES FOR REVIEW.

(a) The chief of police **and Internal Affairs** shall submit to the board a list briefly describing all citizen complaints filed with the internal affairs division of the police department **within 72 hours of receiving the complaint.**

(b) Complaints received by the board directly from citizens shall be forwarded to the internal affairs division of the police department for review and disposition.

(c) The board may only review an incident or complaint:

(1) if the incident or complaint involves a fatality or serious bodily injury to a citizen **or an alleged violation of civil rights and/or civil liberties, harassment, excessive use of force, or any other action deemed necessary to report;** or

(2) if a citizen who submitted a written complaint to the police department or the board submits to the board a written request for review of the findings of the internal affairs division of

the police department with respect to the subject matter of that complaint and at least ~~seven~~ **three** members of the board determine that the findings of the internal affairs division merit board review.

(d) When the internal affairs division of the police department notifies a complainant of its findings and recommendations, it shall provide a form to the complainant which can be submitted to the board if the complainant desires to request review of the findings;

**(e) the board may review any incident, complaint, or request for review received by the board, Chief of Police, Internal Affairs and otherwise shall:**

**(1) independently investigate concurrently and in addition to, an investigation by the Internal Affairs division of the police department in accordance with Sec. 37-32;**

**(2) submit the board's evidence as part of the completed findings and recommendations of the Internal Affairs division of the police department; and**

**(3) have information, witness testimony, and all evidence gathered by the board relating to a complaint of police conduct in the incident or complaint, submitted in any and all grand jury proceedings, if any occur;**

**(4) have information, sworn witness testimony, and all evidence gathered relating to police conduct in the incident or complaint, submitted in any and all disciplinary proceedings, if any occur or are anticipated**

**(5) the board reserves the authority to initiate an independent investigation without a formal complaint being filed upon finding by at least three members of the board**

~~(e) Board review of any incident, complaint or request for review, whether received by the board from the chief of police, directly from a citizen, or otherwise, shall be postponed pending:~~

~~(1) completion of all findings and recommendations of the internal affairs division of the police department;~~

~~—(2) the final decision within the police department determining what, if any, disciplinary action will be taken; and~~

~~—(3) if grand jury proceedings are anticipated, the conclusion of all grand jury proceedings relating to a city police officer's conduct in the incident or complaint. (Ord. Nos. 19818; 19983)~~

#### SEC. 37-34. CONFIDENTIALITY.

(a) In this section, CONFIDENTIAL INFORMATION means any information that could not be obtained by the public under the Texas Open Records Act. When submitting information to the board, the police department shall place identifying marks on any confidential information.

(b) The board in reviewing a personnel matter shall hold closed meetings in compliance with the Texas Open Meetings Act, acting in a nonjudicial capacity. The confidentiality of any file, record, or other data received by the board in its review of an incident or a complaint shall be strictly maintained by every member of the board.

(c) A board member commits an offense if he discloses to another person confidential information obtained in the course of his board duties.

(d) It is a defense to prosecution under Subsection (c) that the disclosure was made:

(1) to another board member or to city staff assigned to the board; or

(2) as compelled testimony in a court proceeding.

(e) An offense under this section is punishable by a fine not to exceed \$500.

(f) Any board member who discloses confidential information to anyone other than another board member or city staff member assigned to the board or as compelled testimony in a court proceeding shall forfeit membership on the board. Upon determination by the chairman of the board that a board member has disclosed confidential information, the chairman shall notify that board member and the city secretary. The city secretary shall then notify the city council that there is a vacancy on the board. A board member required to forfeit board membership under this section will be entitled to a public hearing in accordance with Section 17, Chapter XXIV of the city charter. If requested by the board member, the city council will immediately schedule a hearing to be held at the next regularly scheduled city council meeting. The board member may designate either a public or closed hearing. (Ord. Nos. 19818; 19903; 19983)

#### SEC. 37-35. WITNESSES.

(a) The board shall have authority to issue subpoenas in accordance with the following:

(1) No subpoena may be issued without a favorable vote of at least ~~seven~~ **three** members of the board.

(2) If the issuance of a subpoena is approved by a favorable vote of at least ~~seven~~ **three** members of the board, ~~and at least two members of the technical advisory committee created pursuant to Section 37-36 concur in writing in the need for a subpoena~~, the board will be authorized to issue the subpoena. In this case, no action by the city council will be required for issuance of a subpoena.

~~(3) If the issuance of a subpoena is approved by a favorable vote of at least seven **three** members of the board, and at least two members of the technical advisory committee created pursuant to Section 37-36 do not concur in writing in the need for a subpoena, the board will be authorized to issue the subpoena only upon approval by a favorable vote of at least six members of the city council. The city manager shall place the request for approval on the agenda for the next regularly scheduled city council meeting following receipt of the request. A city council member shall not use the deferral privilege under Section 7.12 of the City Council Rules of Procedure to postpone action on the request beyond 30 days from the date the city manager receives the request.~~

(b) The board may, in accordance with the procedure described in Subsection (a), subpoena a city police officer to appear before the board if that officer is a witness to the incident giving rise to the board's investigation **or that officers' actions are subject of the incident or complaint giving**

**rise to the boards investigation,** but in no event shall the board have authority to subpoena a city police officer to appear or testify before the board or to provide information to any investigator of the board if that officer's actions are the subject of the incident or complaint giving rise to the board's investigation.

(c) Every person appearing before the board to testify concerning an incident or a complaint being reviewed shall have the right to counsel. All statements and testimony before the board must be given under oath. Nothing in this article shall be construed to deprive any individual of rights given under constitutional, statutory or common law.

(d) If a city police officer appears before the board, whether pursuant to a board request or subpoena, the officer shall be entitled to:

~~—(1) payment by the city of reasonable fees for private legal counsel of the city police officer's choice; and~~

(2) all rights afforded an individual under constitutional, statutory or common law to the full extent as would be afforded to that officer as a defendant in a criminal proceeding.

(e) A city police officer ~~shall not~~ **may** be subjected to departmental or other administrative disciplinary action:

(1) for refusing to appear voluntarily before the board;

(2) for refusing to answer any question on constitutional grounds or otherwise upon recommendation of legal counsel; or

(3) based upon the subject matter of that officer's testimony provided to the board or to any investigator of the board. (Ord. Nos. 19818; 19903; 19983)

#### ~~SEC. 37-36. TECHNICAL ADVISORY COMMITTEE.~~

~~—(a) There is hereby created the technical advisory committee to be composed of three members appointed by the city manager. The technical advisory committee is not a board or commission subject to Chapter 8 of this code or Chapter XXIV, Section 13 of the city charter.~~

~~—(b) Each member of the technical advisory committee shall be an individual with at least 10 years of law enforcement experience in a recognized local, county, state or federal law enforcement agency and, to the extent possible, appointments to the technical advisory committee will be representative of the ethnic diversity of the city and will include individuals with substantial patrol officer experience.~~

~~—(c) Active law enforcement professionals employed in Dallas County by the state, the county, or any local government may not be members of the technical advisory committee. In addition, former city of Dallas police officers may not be members of the technical advisory committee. Members of the technical advisory committee are not required to be residents of the city nor qualified voters in the city.~~



~~—(d) Members of the technical advisory committee shall serve three year terms, shall be subject to the same conflict of interest and confidentiality restrictions as are applicable to members of the board, and shall be subject to forfeiture of membership on the same basis as members of the board.~~

~~—(e) Members of the technical advisory committee shall attend and participate fully in all meetings and deliberations of the board including closed sessions, but shall not be entitled to vote as members of the board.~~

~~—(f) The technical advisory committee shall use its expertise and experience in law enforcement matters and procedures to assist the board to the fullest extent possible in the review and investigation of all incidents and complaints coming before the board.~~

~~—(g) Prior to the issuance of a subpoena by the board, the technical advisory committee shall make a separate determination as to the need for the subpoena and each member of the technical advisory committee shall submit to the board a written statement either concurring in or dissenting to the need for the subpoena. This separate determination shall be based on the information otherwise available to the board and the technical advisory committee's collective experience and expertise in comparable investigative efforts.~~

~~—(h) The technical advisory committee is an advisory committee and shall not have any oversight responsibility or oversight authority with respect to the board. (Ord. Nos. 19818; 19983)~~

#### SEC. 37-37. ADMINISTRATIVE ASSISTANCE.

- (a) The city manager shall designate an administrative assistant from his staff to receive citizen complaints for referral to the police department and to aid the board and the technical advisory committee in their work. (Ord. 19983)
- (b) The board shall be designated an office in city hall, and be provided with all equipment and materials as required to function professionally; the city will provide board phone number, facsimile number, city website link with pertinent information regarding the board, and other business related materials with the City of Dallas seal attached.**

#### SEC. 37-38. FUNDING.

No funding for the board ~~or the technical advisory committee~~, including expenses of the board and the committee and of persons appearing before the board, shall be included in the budget for the police department, all such funding to be provided by the city from separate sources. (Ord. 19983)