



ON THE BALLOT

A Report from the Bureau
of Governmental Research

NEW ORLEANS POLICE MONITOR CHARTER AMENDMENT, NOVEMBER 8, 2016

INTRODUCTION

On November 8, voters in Orleans Parish will decide on a proposed home rule charter amendment to change the structural relationships and funding among three ethics entities: the Ethics Review Board, the Office of Inspector General (OIG) and the Office of Independent Police Monitor (Police Monitor Division).¹

WHAT IT WOULD DO

The charter currently requires the City Council to create an Office of Inspector General and establish an Ethics Review Board.² The charter also requires the OIG to provide for an Independent Police Monitor Division.³ The charter dedicates at least 0.75% of the City's annual General Fund budget to the OIG and the Ethics Review Board, with funding for the Police Monitor Division included in the OIG's allocation.⁴

The proposed charter amendment would change existing provisions to:

- Remove the language placing the Police Monitor Division within the OIG and require the City Council to pass an ordinance creating an Office of Independent Police Monitor "and otherwise provide with respect thereto."
- Expand the charter definition of the Police Monitor's scope of work.⁵
- Authorize the Police Monitor to independently hire or contract for legal services.
- Require distribution of the 0.75% General Fund appropriation as follows: 0.55% to the OIG, 0.16% to the Police Monitor and 0.04% to the Ethics Review Board.
- Require the City Council to pass an ordinance that

establishes external evaluation procedures for the three ethics entities.

BACKGROUND

In 1995, voters approved charter amendments allowing the City Council to create an Office of Inspector General and requiring the Council to establish an Ethics Review Board. However, the City provided no funding and neither entity got off the ground. A decade later the mayor revived the Ethics Review Board and the City Council passed an ordinance establishing an OIG.

The Ethics Review Board appointed the City's first inspector general in 2007. The following year, the City Council passed an ordinance requiring the OIG to establish an "independent police monitoring division" and appoint an independent police monitor.⁶ Later that year, voters approved a charter amendment that outlined the duties and powers of the OIG, made the Police Monitor Division a permanent part of the Inspector General's office, and dedicated 0.75% of the General Fund to the office.

BGR supported the amendment in its October 2008 *On the Ballot* report, noting that it was important to protect the OIG from funding cuts. But BGR raised concerns about the permanent dedication of significant revenues, noting that a fixed percentage could lead to outsized budgets and a lack of accountability.⁷

That amendment instructed the OIG to provide for a Police Monitor's office as a "division" of the OIG.⁸ The City Council ordinance accompanying the amendment provided essential details for implementation.⁹

The companion ordinance, which remains in place, addresses the many issues relevant to the creation of the Police Monitor Division, including, for example, staffing, qualifications, responsibilities, and investigatory powers.¹⁰

Importantly, the ordinance calls on the Inspector General to choose the Police Monitor from among three finalists pre-

sented by a search committee.¹¹ The ordinance does not, however, allow the Inspector General to remove the Police Monitor. While he may recommend removal, it must be approved by a majority of the Ethics Review Board.¹²

The Inspector General hired the City's first Police Monitor in 2010. In 2015, the Inspector General called for her removal, citing a litany of alleged offenses.¹³ The Police Monitor defended herself against allegations of misconduct.¹⁴ She also argued that her office needed independence and separate funding in order to operate effectively.¹⁵

The Ethics Review Board never held a vote on the recommended termination. Thereafter, with the assistance of the City Council, the OIG and Police Monitor contractually agreed to a redefined operational framework.¹⁶

Under the agreement, the Police Monitor Division achieved physical, financial and operational separation from the OIG. The OIG transferred \$92,500 in excess funds from the Ethics Review Board budget to the Police Monitor Division to assist with its relocation. The OIG also agreed to provide the Police Monitor Division with 0.16% of the total dedicated funding received by the ethics entities in 2016, or nearly \$1 million. And, upon execution of the agreement, the Inspector General rescinded his recommendation to terminate the Police Monitor.¹⁷

The charter proposition seeks to make the current separation between the OIG and Police Monitor permanent and create a separate, dedicated funding source for the Police Monitor.

If voters reject the proposition, the current agreement requires the OIG and Police Monitor Division to negotiate a memorandum of understanding that will honor the division's "operational independence, independent work product and funding structure" as outlined in the original agreement.¹⁸

ANALYSIS

The following discussion analyzes the proposed charter amendment in terms of: the necessity of the amendment; whether voters have sufficient information; whether the tax

dedication makes sense; and whether the amendment is the appropriate way to address the problem.

Is the Charter Amendment Necessary?

Proponents say the charter amendment is necessary to resolve the conflict between the OIG and Police Monitor. They reason that a permanent separation resolves the problem once and for all, stabilizes the Police Monitor's office, and eliminates a time-consuming distraction for two offices that perform important functions.

In addition, the Inspector General and Police Monitor say the amendment is necessary to fix a flawed structural relationship between the OIG and Police Monitor Division. The current charter creates two independent oversight entities – the OIG and Police Monitor – with different missions, responsibilities and activities, but requires one to operate under the supervision of the other. The Inspector General and Police Monitor say this structural relationship is unworkable.

The Police Monitor also says the amendment is necessary to allow the division to receive citizen and officer complaints. Previously, the Police Monitor shared office space with the OIG in a highly secure federal building located downtown. According to the Police Monitor, the building location was not easily accessible to the public and its security measures intimidated complainants.

Finally, the Police Monitor Division says that the office is meant to be independent, and that it cannot be truly independent under the OIG. Indeed, some form of independence is implied in the full title "Independent Police Monitor." However, other observers argue that the word "independent" refers to the Police Monitor's independence from the New Orleans Police Department (NOPD), rather than independence from all government oversight. BGR's research on the structure of other police oversight entities, discussed below, supports the latter interpretation.

Voters should be aware that there are potential alternative paths to resolving the conflict between the two parties that do not require a charter amendment. These include:

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- Maintaining the status quo. The agreement between the OIG and the Police Monitor Division requires that, should voters reject the charter change, the Police Monitor Division and the OIG will negotiate a new agreement that will honor the division's current "operational independence, independent work product and funding structure."¹⁹ And the Police Monitor has already moved to an office location that meets its needs.
- Seeking a court interpretation of the pertinent charter provisions and ordinances concerning office structure and hierarchy, and then requiring the parties to abide by that determination.
- Amending the existing ordinance to align the authority to hire and terminate the Police Monitor with one entity, whether within the OIG or the Ethics Review Board.
- Resolving the conflict as a personnel matter through the Ethics Review Board.

In short, a charter change may not be necessary to solve the conflict between the Police Monitor Division and the OIG.

As discussed in detail below, BGR looked at police oversight offices nationwide and found no clear template for structuring such an office. It also found no evidence that police oversight offices elsewhere have greater independence from political interference; indeed, the opposite may be the case in some other cities. Furthermore, there is no evidence that the conflict is due to any inherent flaw in the charter provisions making the Police Monitor a division of the OIG. Nor is the arrangement unique.²⁰

By the same token, it is not obvious that the Police Monitor Division is best situated within the OIG. As discussed below, the predominant approach among the other cities BGR examined is to have the police monitor division serve under the mayor (or city manager), with varying degrees of city council involvement.

A re-evaluation of the current structure would ideally explore best practices and weigh the pros and cons of various alternatives as part of a comprehensive analysis. BGR found no evidence that such an analysis has been conducted. However, in June 2013, the OIG produced an internal analysis calling for greater OIG authority over the Police Monitor Division and greater integration of the Police Monitor Division within the OIG – the opposite of what is now being contemplated.²¹

What Will the New Arrangement Look Like?

When voters approved the charter change establishing the Police Monitor Division, they had the benefit of a companion ordinance specifying the powers and responsibilities of the Police Monitor.²² For the current amendment, however, the City Council had not presented any companion ordinance at the time BGR prepared this report. Without a companion ordinance, the charter amendment presents an incomplete picture of the revised Police Monitor structure that would emerge upon passage of the amendment.

On the other hand, even if the Council presents or adopts a companion ordinance in the weeks before the election,²³ it can amend the ordinance at any time following the election. It should also be noted that the current ordinance, placing the Police Monitor within the OIG and requiring that the OIG hire the Police Monitor, would remain in place unless a new ordinance were passed.

Nonetheless, without a companion ordinance before election day, voters will be in the dark regarding key questions, including:

- Who will hire, review and, if necessary, terminate the Police Monitor? Proponents suggest that the Ethics Review Board would do so, but the charter amendment does not require that; further, there is nothing in the board's composition or experience that suggests it would be better positioned to oversee the Police Monitor than is the OIG. Moreover, under the proposed amendment, the City Council could designate itself, the mayor or even the NOPD as the hiring entity, thereby diminishing the Police Monitor's current level of independence. In fact, under the proposed language, the City Council could place the Police Monitor back under the OIG.
- The proposed charter amendment calls for external evaluation of the OIG, the Police Monitor and the Ethics Review Board. What will the evaluation process look like? The OIG, for instance, is required to undergo a peer review every three years²⁴ and an annual quality assurance review conducted by a three-member citizen committee.²⁵ The Police Monitor, as a division of the OIG, has been included in past quality assurance reviews. Proponents, including the Police Monitor, support establishing a periodic peer review by a peer civilian law enforcement oversight organization.

- Will the Police Monitor be subject to set terms of service? For instance, the Ethics Review Board appoints the OIG to a four-year term, after which he can be reappointed.²⁶
- What powers or authority will the Police Monitor have? Will the office have subpoena power, for instance? Will it be able to shield its records from public review?

BGR researched 17 police oversight offices nationwide and found that there is wide variation among them.²⁷ In 16 of the jurisdictions, the appointing authority – which hires and fires the police monitor – is a top city official (typically the mayor), the city council, or a combination of both.²⁸ In Washington, D.C., the head of the police oversight agency is hired by an appointed board.²⁹

Among the 17 police oversight offices, 11 have no set terms of office. Four jurisdictions impose three or four-year terms, while two jurisdictions require a periodic contract renewal process.³⁰

In 15 of the jurisdictions, police monitors and support personnel are hired as government employees. The two others hire the police monitor and staff as independent contractors.³¹

In 13 jurisdictions, a citizen-appointed board provides an additional layer of oversight for law enforcement.³² These citizen boards play varying roles in shaping police department policies and protocols. Four of the 13 boards review the effectiveness of the police monitor.³³

Finally, a police monitor's powers also vary widely by jurisdiction. In about half of the jurisdictions, police monitors are authorized to conduct independent investigations concerning police complaints and may also actively monitor critical incidents, such as officer-involved shootings or in-custody deaths. Five police monitors even have the power to subpoena testimony and documents for investigative purposes.³⁴

In the other jurisdictions, a police monitor's authority is more limited. Investigative authority may extend only to those investigations that have already been conducted and completed by the police department. Police monitor offices with limited investigative authority generally focus on reviewing existing protocols and providing policy recommendations for improvement.

In short, based on BGR's survey work, the reconfigured Police Monitor's office could take on a wide variety of structures and responsibilities. Moreover, the Police Monitor has characterized the division's current structure as a "unique hybrid" that is "difficult to compare to others." Given all of the unknowns, it is hard to gauge the potential success and effectiveness of the new structure without a companion ordinance.

Does the Tax Dedication Make Sense?

The proposition asks voters to permanently redistribute the General Fund appropriation among the ethics entities. For the Police Monitor, this means a 0.16% dedication in perpetuity. This amounts to nearly \$1 million in 2016,³⁵ but the figure will grow with time as the General Fund grows.

Proponents see the amendment as a further division of funding that is essential to the Police Monitor's ability to budget for and grow its staff and effectively execute the office's mission.

As noted above, BGR supported the dedication of funds to the OIG through the 2008 charter amendment, but it did so with reservations. At the time, BGR noted that some form of dedicated funding was necessary to establish and maintain the OIG's independence. This is important because otherwise the OIG's funding would be subject to the discretion of the Mayor and the City Council, which fall within the investigatory jurisdiction of the OIG. Without independent funding, the OIG would be less likely to investigate these elected officials or their political allies. Similarly, the Ethics Review Board's jurisdiction includes all elected and appointed officials, making some form of dedicated funding necessary.³⁶ Because the Police Monitor's jurisdiction is limited to the NOPD, this concern does not translate and the case for dedicated funding is less compelling.

Indeed, BGR'S survey work found no other police oversight office that receives dedicated funding. Rather, the offices that responded to BGR's survey participate in the budget process like other departments and agencies.

Dedicated funding already exists as a pot of money to be shared among the OIG, the Police Monitor and the Ethics Review Board. However, some proponents of the charter change argue that the charter creates an inherent conflict, claiming that funding for the Ethics Review Board must be approved by its subordinate, the OIG, and that the Ethics

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Review Board therefore lacks independence from the OIG.

This is incorrect. Under the current charter, the “OIG, in conjunction with the Ethics Review Board, shall receive an annual appropriation from the Council in an amount not less than 0.75% of the General Fund operating budget. . . . Of the budget percentage specified in this paragraph, an amount shall be allocated for the operation of the Ethics Review Board adequate to implement its functions efficiently and effectively.”³⁷ In practice, the OIG and Ethics Review Board have agreed to negotiate the allocation of dedicated funds between the entities each year.³⁸ The immediate past Ethics Review Board chairman told BGR there has been no difficulty with this process, despite personnel changes in the OIG and in board membership over time. He also told BGR that any Inspector General attempting to undermine the board’s budget would be subject to dismissal.

Proponents support the charter amendment because it seeks to permanently divide the dedicated funding among the three ethics entities. However, while the amendment would guarantee a specific percentage of the general fund to each ethics entity, it would also diminish flexibility in allocations among them.³⁹

As BGR has pointed out in the past, permanently dedicated funding can lead to outsized budgets and large surpluses.⁴⁰

Furthermore, guaranteed funding raises accountability issues by allowing funding to remain divided along the same lines regardless of results. This problem is magnified for the Police Monitor by the uncertainty as to who will oversee the office.

Finally, separating the two offices creates the potential for operational inefficiencies. They are now operating at two separate locations under separate leases. The public has al-

ready incurred some such costs; in 2015, the Ethics Review Board transferred \$92,500 in excess funds⁴¹ to the Police Monitor to fund relocation expenses. On the other hand, as previously discussed, the Police Monitor’s relocation established an office that the Police Monitor Division believes is more accessible and inviting to citizens and police officers who want to meet with the Police Monitor.

Is a Charter Amendment Appropriate?

The OIG’s prior attempt to use existing remedies to resolve the conflict with the Police Monitor resulted in public disagreements and reduced productivity. The charter amendment would shield those two particular entities from the future possibility of a similar scenario. However, this charter amendment risks setting a precedent for elevating matters such as this to charter-level concerns.

BGR POSITION

NO POSITION. The Police Monitor has an important mission, and the amendment would enable a new structure for the office to be enacted by ordinance. However, the charter change may not be necessary. Further, it is impossible to judge the potential benefits of the charter change without a companion ordinance. Such an ordinance would ideally have been based on a comprehensive analysis of Police Monitor offices nationwide, including the appropriateness of the permanent tax dedication. If the amendment passes, the City should immediately undertake a best practices study and craft the missing ordinance based on its findings.

ENDNOTES

- 1 New Orleans City Council Ord. Cal. No. 31,019, adopted November 19, 2015.
- 2 Home Rule Charter of the City of New Orleans, Sec. 9-401 and 9-402.
- 3 *Ibid.*, Sec. 9-401(2).
- 4 *Ibid.*, Sec. 9-401(3). See also Supplemental and Amended Memorandum of Understanding between the Ethics Review Board and the Office of Inspector General, December 12, 2012. Each year, the OIG and Ethics Review Board agree on a shared allocation and distribute the funds accordingly.
- 5 The proposed amendment would expand the charter definition of the Police Monitor’s scope of work to capture duties currently defined by ordinance: “The Office of Independent Police Monitor shall also review and analyze the numbers and types of complaints; assess the quality and timeliness of New Orleans Police Department investigations; review the adequacy of data collection and analysis; review the New Orleans Police Department Public Integrity Bureau’s policies, procedures, and resource needs; conduct risk management reviews; review the operations and effectiveness of New Orleans Police Department ‘early warning system’; review specific issues regarding supervision, training, and discipline; and conduct relevant pattern analysis.”
- 6 City of New Orleans, Code of Ordinances, Sec. 2-1121.
- 7 Bureau of Governmental Research, *On the Ballot: New Orleans, October 2008*, pp. 7-8.
- 8 Home Rule Charter of the City of New Orleans, Sec. 9-401(2).
- 9 New Orleans City Council, Ord. 27,032 M.C.S, adopted July 10, 2008.
- 10 City of New Orleans Code of Ordinances, Sec. 2-1121.
- 11 *Ibid.*, Sec. 2-1121(1). The ordinance states that “the inspector general shall create a search committee to be composed of the inspector general, serving as committee chair, the chair of the ethics review board, the chair of the criminal justice committee of the city council, the superintendent of police or his designee, a designee of the mayor, and two residents of New Orleans appointed by a vote of the criminal justice committee of the city council. The search committee shall carry on a nationwide search to identify and interview qualified candidates for the position.”
- 12 *Ibid.*, Sec. 2-1121(20).
- 13 Letter from E.R. Quatrevaux, Inspector General, to the Ethics Review Board (September 15, 2015).
- 14 Letter from Susan Hutson, Independent Police Monitor, to the Ethics Review Board (October 1, 2015).
- 15 Press Statement, Office of Independent Police Monitor, Police Monitor Susan Hutson’s Response to Inspector General’s Recommendation for Termination (October 1, 2015).
- 16 Agreement for Funding, Ordinance Change, and Charter Amendment, Office of Inspector General (OIG) and Office of Independent Police Monitor (OIPM), October 14, 2015. See also New Orleans City Council, Res. No. R-15-507, adopted October 15, 2015.
- 17 Agreement for Funding, Ordinance Change, and Charter Amendment, Office of Inspector General (OIG) and Office of Independent Police Monitor (OIPM), October 14, 2015.
- 18 *Ibid.*
- 19 *Ibid.* One observer has suggested that this agreement may run afoul of the charter provision calling for the Police Monitor’s office to be a “division” of the OIG.
- 20 For example, the New York Police Department (NYPD) is overseen by a division of the Department of Investigation, the city’s office of inspector general. The OIG for the NYPD was created to investigate, review, study, audit and make recommendations relating to the operations, policies, programs and practices of the police department. In Portland, Ore., the city auditor oversees the Independent Police Review Division.
- 21 Office of Inspector General, “The New Orleans Police Monitor Model,” concept paper, June 2013.
- 22 New Orleans City Council, Ord. 27,032 M.C.S, adopted July 10, 2008.
- 23 Home Rule Charter of the City of New Orleans, Sec. 3-112.
- 24 City of New Orleans, Code of Ordinances, Sec. 2-1120(16)(b). The peer review is conducted by the Association of Inspectors General, a national organization of which the OIG is a member, and includes an evaluation of the OIG’s work and procedures weighed against nationally accepted standards and best practices. See Letter from Thomas Caulfield, Former Co-Chair, AIG Peer Review Committee, and Executive Board Member, Association of Inspectors General to Edouard R. Quatrevaux, Inspector General for the City of New Orleans, April 6, 2015.
- 25 *Ibid.*, Sec. 2-1120(16)(a). The quality assurance review process reviews and evaluates the OIG’s annual published work product. The mayor, the City Council and the Ethics Review Board each appoint a local citizen to the committee.
- 26 *Ibid.*, Sec. 2-1120(3)(c).

27 BGR's research was guided by a list of civilian oversight agencies throughout the country that are members of the National Association for Civilian Oversight of Law Enforcement (NACOLE). BGR drew from a list of cities that have hired an individual police monitor, police auditor, or executive director of a civilian oversight agency, as opposed to those that function only as an oversight board or body. Specifically, BGR researched the police monitor offices located in Austin, Texas; Chicago; Denver; Eugene and Portland, Ore.; Fresno, Los Angeles, Orange County, Palo Alto, Sacramento, San Francisco and San Jose, Calif.; King County, Wash.; Minneapolis; New York City; Tucson, Ariz.; and Washington, D.C. BGR notes that the Chicago Independent Police Review Authority and the Orange County Office of Independent Review are in the process of restructuring.

28 In New York City, the OIG for the NYPD is appointed by the Commissioner of the Department of Investigation.

29 In Washington, D.C., the executive director of the Office of Citizen Complaint Review is hired by the Citizen Complaint Review Board. The Board is comprised of one member of the Police Department and four members with no affiliation to law enforcement. Board members are appointed by the mayor, subject to Council confirmation, and serve staggered three-year terms.

30 BGR's research found four-year terms imposed in Chicago, King County, Wash., and San Jose, Calif. and a three-year term imposed in Washington, D.C. The executive director of the Orange County Office of Independent Review and the Palo Alto police auditor are subject to a periodic contract renewal process.

31 Employees of the Orange County Office of Independent Review and the Palo Alto Independent Police Auditor office are hired as independent contractors.

32 BGR's research found civilian review boards in Austin, Texas; Chicago; Denver; Eugene and Portland, Ore., King County, Wash.; Los Angeles, Sacramento and San Francisco, Calif.; Minneapolis; New York City; Tucson, Ariz.; and Washington, D.C.

33 The civilian review boards in Denver, Eugene, Ore., and Washington, D.C., review the effectiveness of the police monitor. In Los Angeles, the Board of Police Commissioners serves as the head of the Police Department and also oversees the Office of Inspector General for the Department.

34 BGR's research found that police oversight agencies in Chicago, Denver, Los Angeles, Portland, Ore., and Washington, D.C., have subpoena power.

35 BGR calculation based on City of New Orleans, 2016 Adopted Operating Budget, pp. 48 and 442. The City's general fund for fiscal year 2016 totals \$601.7 million.

36 City of New Orleans Code of Ordinances, Sec. 2-767.

37 Home Rule Charter of the City of New Orleans, Sec. 9-401(3).

38 Supplemental and Amended Memorandum of Understanding between the Ethics Review Board and the Office of Inspector General, December 12, 2012.

39 It should be noted, however, that the proposed amendment would allow the ethics entities to agree between or among themselves to reallocate the dedicated funds.

40 In November 2015, for instance, BGR reported that dedicating a percentage of all Orleans Parish property revenues to the assessor's office allowed that office to amass a surplus equivalent to 110% of its operating budget. See BGR, *The \$1 Billion Question: Do the Tax Dedications in New Orleans Make Sense?* November 2015, p. 15. Under the current charter framework, the OIG and the Ethics Review Board have ended some years with a surplus and returned it to the City for general fund use. The OIG returned approximately \$143,000 in unused funds to the City from 2011 to 2015. Prior to 2011, the OIG returned larger amounts when funding was dedicated for a fully staffed office but all personnel had not been hired yet.

41 According to the Inspector General, the OIG held onto dedicated funding in 2015 during negotiations with the Police Monitor. The OIG said that when the agreement between the OIG and Police Monitor was executed, little time remained in the fiscal year to make additional expenditures, resulting in a larger than usual amount of unused funds.

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