MEMORANDUM

TO: City Council
FROM: Cole Finegan, City Attorney
DATE: September 10, 2004
SUBJECT: Reasons the Mayor Chose a Monitor Model with a Citizen Oversight Board

I. INTRODUCTION.

During the last few weeks, several City Council members have asked why the Mayor chose a monitor model for Denver’s police oversight system and about the role of the Citizen Oversight Board in that system. [Note: The proposal also prescribes oversight of the Sheriff’s Department and limited oversight of the Fire Department.] There has always been a role for citizen involvement in the oversight process, but that role has evolved from the time the Mayor formed the Task Force through the Task Force process to the current proposal that is now before you.

In December 2003, the Mayor announced that he was creating a broad-based Task Force to make a recommendation for an improved police oversight system. The Mayor initially proposed a monitor model and asked the Task Force to carefully consider it and any other proposals to improve oversight of the Police Department. A Task Force subcommittee recommended adopting the monitor system along with a citizen board. The full Task Force largely accepted the subcommittee’s recommendation to create a monitor’s office but could not agree on the role of the citizen board and, in particular, its relationship to the monitor. Two minority reports were submitted with the final Task Force report – one by a group of community representatives on the Task Force, who submitted a proposal based upon the “San Francisco model” of police oversight, and the other by the PPA,
who submitted a proposal that would create a police auditor. Council received all three of those proposals in June 2004 and the Safety Committee was verbally briefed on the proposal during its August 11, 2004 meeting.

The Mayor's Office intensely studied those three proposals as well as oversight systems in other cities. Some cities utilize full-time employees to staff the oversight agencies; others use citizen volunteers; and still others use a mixture of full-time employees and volunteers. Some of the oversight systems only review internal investigations that have been completed and have no role in the disciplinary process; others monitor internal investigations while they occur; and still others (such as San Francisco) use agencies outside of the police department to investigate alleged police misconduct and to make some disciplinary decisions regarding police officers.

II. ADVANTAGES OF THE MONITOR MODEL

Based upon its lengthy analysis, the Mayor's Office came to believe that the monitor model (which is sometimes called the auditor model) is the correct one for Denver. One positive aspect of the monitor model is that it allows oversight personnel to actively monitor an internal investigation from the very beginning of the investigation and to continue that involvement throughout the entire investigative and disciplinary processes—"real-time" day-to-day involvement in the process. Such a system is better than one (such as Denver's Public Safety Review Commission) that only reviews investigations after they have been completed. Due to its daily involvement in the investigation, the Monitor knows exactly what occurred during the investigation. And, if the Monitor believes there are deficiencies in the investigation (such as a failure to ask critical questions of a key witness), he/she can take actions to cure those deficiencies before it is completed by requesting that IAB conduct the additional investigation or, as in the Mayor's proposal, conducting the investigation himself/herself. Also, as discussed later in this memo, the Monitor can "bring the light of day" to the process by informing the public and City officials of institutional problems in the investigation process or of shortcomings in specific investigations.

Another important aspect of the monitor system is that it is staffed with full-time, professional employees. Obviously, full-time employees can devote more time to matters than can part-time volunteers, whose time and attention are often split between multiple commitments. Not only can the City recruit and hire persons with applicable experience (such as conducting or monitoring investigations) for full-time, monitor positions but also those full-time employees will develop more expertise than someone who works only a few hours per month in an oversight
position. Consequently, the Denver Police Department and the public can have confidence that the monitor is capable of doing a good job.

The Mayor's Office also looked at the "San Francisco model," in which investigations of police misconduct and some disciplinary functions are removed from the police department and assigned to independent agencies. But for several reasons the Mayor's Office felt that, for Denver, the monitor's model is preferable to the San Francisco model. First, the authority to discipline employees is a management tool and should be placed in the hands of the Chief of Police and Manager of Safety because they are the persons responsible for the performance of the Police Department. Second, removal of disciplinary decisions from the Chief and Manager of Safety would require major changes to the City Charter. Third, the "San Francisco model" has not been a panacea in San Francisco, where there has been considerable friction between the oversight agencies and the police department. Fourth, the Mayor's Office believes that, with the Monitor as a watchdog, IAB will produce high quality investigations. Fifth, with the Monitor—who will know the case backwards and forwards—providing input to the Chief of Police and Manager of Safety on disciplinary decisions, the quality of those decisions will be greatly enhanced, as was the experience reported by the Los Angeles County Office of Independent Review. (An excerpt of that report was provided to Council on September 1st.)

It is also important to recognize that the Task Force concurred with the Mayor that the monitor model is best for Denver. For all of these reasons—and most importantly the active involvement of a professional Monitor in all phases of the investigative and disciplinary processes on a real-time basis—the Mayor's Office has concluded that the monitor model would serve Denver better than the other models.

The Mayor's Office also carefully considered how to make the best use of the Monitor's resources. For example, the Mayor's proposal requires many very important types of investigations to be monitored, such as those involving shootings, in-custody deaths, and officers charged criminally with felonies or crimes involving violent acts. In addition, the Monitor must monitor any on-going investigation or review any completed investigation when directed to do so by the Manager of Safety or the Citizen Oversight Board. Moreover, the Monitor has the right to monitor any other investigation at his/her discretion.

The Monitor will also be heavily involved in the disciplinary process. The Monitor will review the pre-disciplinary letter to make sure that all necessary facts have been included in the letter and that all appropriate rule violations have been referenced. Plus, the Chief of Police and Manager of Safety are required to confer
with the Monitor prior to making their disciplinary decisions. Consequently, the Monitor, unlike the PSRC, will play a significant role in influencing the disciplinary sanctions that are imposed upon officers and in evaluating the disciplinary decisions of the Chief and Manager of Safety.

Finally, the Monitor will report to the public, the Mayor, City Council, the Citizen Oversight Board, the Manager of Safety, and the department heads his/her assessment of the investigatory and disciplinary processes. That puts transparency in the system. Accordingly, the Monitor should improve the quality of both of those processes — and the confidence Denver’s citizens have in the processes.

III. THE ROLE OF THE CITIZEN OVERSIGHT BOARD IN THE MAYOR’S PROPOSAL

If so much rests on the Independent Monitor, why then did the Mayor include the Citizen Oversight Board in his proposal and what is its role in the process envisioned by the Mayor? The answer to that lies largely in the history of police oversight in Denver and in the Task Force’s recommendation.

For more than a decade, the PSRC has relied upon citizen volunteers to provide (limited) oversight of the Police and Sheriff Departments. Now, however, it is time for Denver to move to an oversight system where the primary work is performed on a real-time basis by professional, full-time employees. But, since the citizens of Denver have come to expect citizen volunteers to play a role in oversight — and the Mayor believes they can play a meaningful role — the Mayor has proposed a Citizen Oversight Board with roles that are more appropriate for citizen volunteers than being the first line of defense in overseeing IAB investigations and making recommendations as to whether officers have violated department rules.

The Citizen Oversight Board shall serve as a “watchdog” to ensure that the Monitor’s Office satisfactorily performs its role of monitoring investigations and making well-considered disciplinary recommendations. In order to be a watchdog over the Monitor, the Citizen Oversight Board will: (a) have regular meetings with the Monitor (at least bi-monthly); (b) regularly receive information from the Monitor as to the status of investigations and the Monitor’s activities in watching over those investigations as they unfold; (c) regularly receive information from the Monitor as to disciplinary decisions by the Chief of Police and Manager of Safety and the Monitor’s recommendations as to the proper level of discipline; (d) meet at least three times per year with the public; and (e) annually report to the public.
the Mayor, and City Council as to its assessment of the Monitor’s performance. Some cities that utilize monitor models do not have a citizen’s group looking over the shoulder of the monitor but the Mayor believes that having a citizens’ group review the Monitor’s work will increase the confidence of Denver’s citizens in the oversight process.

The Citizen Oversight Board, however, will not be the group primarily responsible for overseeing IAB investigations and making disciplinary recommendations. That, again, is the role of the professional Monitor, who, unlike the members of the Citizen Oversight Board, will have the ability to become immersed in every aspect of the investigation and should be in an excellent position to determine whether the investigation was thorough and to make appropriate disciplinary recommendations to the Chief of Police and the Manager of Safety. The Citizen Oversight Board will, nevertheless, have a limited role in overseeing the investigation and disciplinary process – as opposed to its primary role of overseeing the Monitor’s performance. The Citizen Oversight Board can review information, including IAB files if appropriate, on active investigations and can make suggestions to the Monitor regarding those investigations. The Citizen Oversight Board can also inform the Monitor of its position on disciplinary decisions. In addition, the Citizen Oversight Board can direct the Monitor to monitor a pending investigation or to review a completed investigation. With those powers, the Citizen Oversight Board can play a vital role in the oversight process while leaving the day-to-day work to the full-time professionals.

The Citizen Oversight Board will also be involved in making policy-level recommendations to the department heads, Manager of Safety, Mayor, City Council, and public regarding the investigative and disciplinary processes and other issues of concern to the citizenry. Additionally, the Citizen Oversight Board will function as a conduit for communications between the community and City officials.

Again, it should be noted that the Mayor considered the recommendation of the Task Force in designing a role for the Citizen Oversight Board. Although the great majority of the Task Force members seemed to support some role for citizens in the oversight process, there was no consensus – and, in fact, considerable dispute – over the role citizen volunteers should play in the oversight process. Due to that notable lack of consensus, the Mayor’s Office spent many hours considering the best role for citizens in the oversight process before arriving at the role outlined in the proposal. Since the Mayor’s proposal was presented to Council, the dialogue has already produced several notable changes that strengthen the role of the Citizen Oversight Board. [Note: The Mayor has also
strengthened citizen participation on the Police Department’s Use of Force Review Board and the Disciplinary Review Board.

In summary, although no oversight system can totally eliminate controversial police shootings and disciplinary decisions, the Mayor has offered the citizens of Denver the best available model: (1) a professional, full-time Monitor that is independent of the Police Department and that will have the time and resources to monitor on a real-time basis investigations of the types of cases that are most controversial; and (2) a Citizen Oversight Board whose primary role is to ensure that the Monitor’s Office performs to the level that the City and the public expects.