

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COMMUNITY OVERSIGHT BOARD
AND
THE METROPOLITAN NASHVILLE POLICE DEPARTMENT**

THIS MEMORANDUM OF UNDERSTANDING is entered into this ____ day of January, 2020, by and between the METROPOLITAN NASHVILLE COMMUNITY OVERSIGHT BOARD and the METROPOLITAN NASHVILLE POLICE DEPARTMENT.

I. INTRODUCTION

It is understood and agreed that a cooperative relationship between the Metropolitan Nashville Police Department (hereinafter Department) and the Community Oversight Board (hereinafter Board) is in the best interest of the citizens and Nashville and Davidson County. To these ends, the Department embraces the concept of a community oversight board and is committed to carrying out the provisions of Article 11 of the Metropolitan Charter and Tenn. Code Ann. § 38-8-312.

The Board and the Department (collectively “the Parties”) enter into this Memorandum of Understanding (MOU) with the goal of ensuring cooperative interaction such that police services are delivered in Metro Nashville in a manner that effectively ensures officer and public safety and promotes public confidence in the Board and Department and in the services each delivers.

II. DEFINITIONS

The following words and phrases as used in this agreement shall have the following meanings.

“Board” – means the Community Oversight Board as described in Section 11.1301 of the Metropolitan Charter.

“Chief” or “Chief of Police” – means the director of the Metropolitan Nashville Police Department as described in Section 8.201 of the Metropolitan Charter.

“Complaint” – means a claim made to the Board alleging MNPD Misconduct.

“Decommission – means an administrative action wherein the Departmentally issued police commission, and the authority granted by it, is temporarily removed or restricted.

“De-confliction” – means the process of engaging in discussions intended to reduce the risk of conflict or unnecessary duplication of effort in an area of mutual responsibility by sharing appropriate information, coordinating actions and efforts based upon availability of resources and personnel with relevant skills, and, where necessary, delegating some level of responsibility.

“Department” – means the Metropolitan Nashville Police Department as described in Sections 8.201 *et seq.* of the Metropolitan Charter.

"Director" or "Executive Director" – means the Executive Director of the Board, who reports to the Board and oversees the other Board staff.

“Employee or “Employees” – means anyone employed by the Department, including, but not limited to, Police or Police Officers.

“Intake Investigations” – means the process by which the Board receives, records, evaluates, and categorizes Complaints.

“Investigation” – means the act or process of investigating or the condition of being investigated; also, a detailed inquiry or systematic examination by the Board.

“Misconduct” – means an act or omission by a Police Officer, which if proven, may result in some form of remedial, corrective, or disciplinary action. This would include: commission of a criminal act, neglect of duty, failure to act as instructed or required, violation of a policy, rule or procedure of the Department, or conduct which may reflect unfavorably upon the employee and/or the Department.

“OPA” – means the Department’s Office of Professional Accountability as described in Section 1.130 of the Department Manual.

“Police or Police Officers” – means full-time Police Officers or part-time Police Officers as described in Tenn. Code Ann. § 38-8-201. *See also* Section 8.202 of the Metro Charter and Section 12.04.270 of the Metro Code.

III. AUTHORITY & JURISDICTION

A. Pursuant to Tenn. Code Ann. § 38-8-312(a), the authority of the Board shall be limited to the review and consideration of matters reported to the Board and the issuance of advisory reports and recommendations to the duly elected or appointed officials of the agencies involved in public safety and the administration of justice within the jurisdiction for which the Board is established.

B. To accomplish the mutual goals of effective and efficient investigative processes of the Board and the Department and to ensure cooperative investigation of allegations of Misconduct, while also recognizing the need for the public to have a choice of venue in making a complaint:

1. Complaints from the public:
 - a) Complaints received by the Board shall be evaluated and investigated by the Board in a manner consistent with established Board policies and procedures; and
 - b) Complaints received by the Department shall be evaluated and investigated by the Department in a manner consistent with established Department policies and procedures.

2. Complaints from Employees:

- a) Complaints received by the Board originating from an Employee shall be subject to a De-confliction discussion that may result in referral to the Department for investigation and handling.

C. The Board's Executive Director and the Department's Director of the Office of Professional Accountability should engage in De-confliction discussions to avoid unintentional conflicts or inefficient use of resources with respect to concurrent investigations of identical or similar complaints or events. Such discussions should occur in such a manner and frequency as necessary for the effective and efficient operation of the Board and the Department.

IV. COOPERATION AND ACCESS TO RECORDS AND INFORMATION

A. The Department agrees to adopt policies to facilitate and promote cooperation with the Board in the performance of its work in the investigation of Complaints and policy advisory development. Such cooperation shall include: the timely and complete production of requested documents and information to the full extent permitted by law. Established fees for the production of documents/information will generally be waived; however, any onerous or voluminous request, or any requests involving the expenditure of any significance of Department resources, must be approved by the Chief of Police.

B. Documentation to which the Board shall generally have routine and timely access are:

1. The current Departmental Manual;
2. Any Department-issued written directives, memoranda, rules, procedures, and regulations that may be issued to supplement the Departmental Manual;
3. Any Department accreditation standards; and
4. Departmental SOPs as referenced in Section 1.50.030 of the Departmental Manual.

C. Documents and information that the Department will make available to the Board on an expedited basis upon receipt of a written request are:

1. Police documents, reports, and other graphic information, including but not limited to in-car camera, body camera, and other recordings, related to the subject matter of a Complaint;
2. Employment records relating to the subject of Complaint, including personnel files, disciplinary history, citizen complaints, OPA and other internal investigative materials, awards and commendations, and training records; and

D. Documents and information the Department will make available as soon as reasonably practicable to the Board upon receipt of a written request are:

1. Any other Departmental documents or information the Board might request related to its work.

E. Requests made under this Section should be made to cobrequests@nashville.gov unless the Department has identified or the Board has established a point of contact for specific record requests.

V. CONFIDENTIALITY

A. The Board will maintain the confidentiality of any confidential document or confidential information received from the Department, and of any confidential information derived from any such confidential document or confidential information obtained from the Department, as required by Tenn. Code Ann. § 38-8-312(e).

B. The Department shall mark or otherwise clearly designate what documents or information it is providing to the Board that are confidential.

VI. INTAKE INVESTIGATIONS

A. Availability of Employees to the Board:

1. It is understood and agreed that Board personnel may, through the Office of the Chief of Police or directly, contact any Employee for the purposes of carrying out an investigation or otherwise seeking information.

2. It is understood and agreed that Employees may be asked to submit to interviews or other fact-finding inquiries. Employees are encouraged to cooperate with any such inquiry. Interviews with Employees should be scheduled to take into account the Employees' assigned shift, regular days off and availability.

3. Any Employee with a need or a desire to ensure that he or she is afforded the due process constitutional protections found in *Garrity (Garrity v. New Jersey, 385 U.S. 493 (1967))*, the Civil Service Rules of the Metropolitan Government or the policies and procedures of the Department, may decline the request and request that the Chief of Police issue an order requiring cooperation with the Board. Interviews occurring as a result of such an order will be scheduled by OPA taking into account the employees assigned shift, regular days off and availability.

B. Notice to Employees:

1. Notices by the Board to Employees shall be in accordance with and consistent with established Department procedures as found in the OPA Standard Operating Procedures.

C. Concurrent Investigations:

1. It is recognized that from time to time the Department and the Board will be conducting concurrent investigations. When feasible, investigative information will be shared.

VII. MEDIATION AND RESTORATIVE JUSTICE PROGRAMS

A. In certain cases the Board may offer an opportunity to participate in mediation, restorative justice, or other non-punitive remedies in response to allegations of misconduct in a Complaint. If accepted and completed by the parties no further investigation of the Complaint will be made. The purpose of such remedies is to enhance police-community trust, relationships, and understanding. The Board may contract with third-party private providers who are listed as Rule 31 mediators in Tennessee or have been jointly approved by the Board and the Department for assistance in implementing such non-disciplinary remedies.

B. The Executive Director and the OPA Director will develop and implement procedures, approved by the Board and the Department, for voluntary mediation of complaints. The procedure developed will be appropriately disseminated to employees of both the Board and the Department.

VIII. ADMINISTRATIVE LEAVE & ALTERNATIVE DUTY ASSIGNMENT

A. The Executive Director may notify the Chief of Police in writing, with sufficient facts or information to allow the Chief of Police to make an informed decision, that the Board has undertaken an Investigation and that the Director has sufficient reason to believe that a Police Officer's continued presence on the job may be detrimental to the Department or the safety of anyone, and requests that the Officer be Decommissioned, placed on administrative leave with pay, or placed on an alternate duty assignment, pending completion of the Board's investigation.

B. As soon as reasonably practicable but not to exceed five calendar days of receipt of the Director's request, the Department will provide the Director with a written response to the request advising the Director of the actions taken in response to the request or, if necessary, requesting additional information from the Director regarding the request. If additional information is requested, then as soon as reasonably practicable but not to exceed five days after the additional information has been provided, the Department will provide the Director with a written response to the request advising the Director of the actions taken in response to the request.

IX. RESOLUTION REPORTS

A. The Board will issue a Resolution Report following the Board's review of the Intake Investigation. Such Reports will include an "Investigative Finding" drawn from the evidence and may include recommendations for corrective or disciplinary actions and recommendations regarding Department policies, procedures, rules, and regulations that

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may prevent future allegations of Misconduct, as well as the need to modify or expand training.

B. Upon receipt of a Resolution Report, the Chief of Police agrees to review and provide a written response thereto within a reasonable time. Such response should include, but should not be limited to, acceptance, partial acceptance or non-acceptance of the findings and/or recommendations, a statement of reasons for the Department's decision, and a description of actions taken by the Department in response to the Report, including any factual, legal or policy issues affecting the Department's decision-making processes.

X. POLICY ADVISORY

A. From time to time the Board may recommend changes to Departmental policies. Should the Board make such recommendations, the Chief of Police agrees to provide a written response to the Board within a reasonable time. Such response should include, but should not be limited to, acceptance, partial acceptance or non-acceptance of the recommendations, a statement of reasons for the Department's decision, and a description of actions taken by the Department in response to the recommendations, including any factual, legal or policy issues affecting the Department's decision-making processes.

XI. FORCE REVIEW BOARD

A. The Department agrees that the Executive Director may elect to participate as a voting member on any or all Force Review Board meetings.

XII. NOTIFICATION OF CRITICAL INCIDENTS

A. The Department agrees to cooperate with the Board and the Department of Emergency Communications (DEC) to facilitate the Board's receiving notification of critical incidents involving Police Officers, including but not limited to uses of force involving serious injury or death or to death in custody.

XIII. CRIME SCENE ACCESS

A. While Board personnel will not be granted immediate access to any secured investigative perimeter maintained or controlled by the Department, once the scene is stabilized and secured and access to the scene will not compromise a criminal investigation, and to the extent legally permissible, the lead investigator may grant Board personnel access and escort them into the perimeter of the scene.

B. Board personnel will not remove, alter, handle or disturb any evidence or object at the scene. Photographs will be permitted. The Board is expected to acknowledge that any case details, information, existence of evidence, photographs, or other details will be maintained as confidential as may be required by the Tennessee Rules of Criminal Procedure or state law.

- C. The Board acknowledges that its investigators or other personnel may be required to present sufficient identification for perimeter personnel to document perimeter ingress and egress in official Department records.
- D. After Board personnel have indicated that they have completed all necessary procedures at the scene, they shall be escorted outside the perimeter.
- E. Notwithstanding the foregoing, the Department shall provide Board personnel with the same access to and protection at any scene as provided to non-sworn OPA members.
- F. Access into any secured investigative perimeter that is maintained or controlled by any other investigative agency will be at the sole discretion of the controlling agency.

XIV. TRAINING PROVIDED BY DEPARTMENT

- A. The Department will provide access to a Citizens Police Academy for Board members and personnel. In order to document compliance with Charter requirements, certification of completion will be provided upon physical attendance and successful completion of all sessions.
- B. The Department will provide access to other relevant training on subject matters found within any of the curriculums for Department basic and in-service training, including but not limited to Law Blocks. Access to such training will be granted upon request of the Executive Director. Effective training on a particular subject matter may be contingent on the completion of classes that serve as a precursor or prerequisite to a selected subject matter.
- C. Board members and personnel attending any training sessions conducted by the Department will be expected to conform to Department Training Academy rules and regulations.
- D. It is expected that Board members and personnel attending training conducted by the Department will participate in any generally required course-specific proficiency examinations.

XV. DISPUTE RESOLUTION, JOINT REVIEW, AND TERMINATION

- A. Should a dispute arise under this MOU, the parties agree to engage in good faith discussions to resolve the dispute and may request the Mayor and Metro Director of Law facilitate such discussions.
- B. Both parties agree to engage in a joint review of the MOU's terms at least annually and to discuss in good faith any revisions proposed during such review.
- C. Either party to the MOU may terminate its participation at any time, upon written notice to the other party.

METROPOLITAN NASHVILLE COMMUNITY OVERSIGHT BOARD

By _____
Ashlee Davis, Chair

_____ Date

By _____
Jill Fitchard, Executive Director

_____ Date

METROPOLITAN NASHVILLE POLICE DEPARTMENT

By _____
Steve Anderson, Chief of Police

_____ Date

APPROVED AS TO FORM AND LEGALITY:

Legal Advisor
Metro Community Oversight Board

_____ Date

By _____
Assistant Metropolitan Attorney

_____ Date

FILED WITH THE METRO CLERK

Metro Clerk

_____ Date