

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

THIS MEMORANDUM OF UNDERSTANDING is entered into this \_\_\_\_ of \_\_\_\_\_, 2020, by and between the METROPOLITAN NASHVILLE COMMUNITY OVERSIGHT BOARD (COB) and the METROPOLITAN NASHVILLE POLICE DEPARTMENT (the Department), collectively referred to as the Parties.

**I. INTRODUCTION**

The Parties entered into a Memorandum of Understanding in January 2020. That agreement has been terminated and the relationship between the Parties going forward is governed by this agreement.

It is understood and agreed that, under the Metropolitan Charter, the COB has the independent authority to investigate allegations of misconduct by MNPD Officers and that a cooperative relationship between the Department and the COB is in the best interest of Metropolitan Nashville and its communities. 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 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 COB and Department and in the services each delivers, and provides the COB with the same access to crime scenes, documents, information, and witnesses, to the maximum extent legally permissible, as the Department's Office of Professional Accountability (OPA).

The Department Chief and the COB Executive Director agree to have regular and frequent contacts. At a minimum, meetings will occur quarterly to discuss successes and opportunities for further growth in their overall collaboration.

**II. DEFINITIONS**

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

"COB" - means the Metropolitan Nashville Community Oversight Board as described in Section 11.1301 of the Metropolitan Charter, and includes its staff agency, Metropolitan Nashville Community Oversight.

"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 COB alleging Department 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 COB, who reports to the COB and oversees the other COB personnel.

"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 COB receives, records, evaluates, and categorizes Complaints and any investigation initiated by the Director related to excessive force, serious bodily injury, or in-custody deaths.

"Investigation" - means the act or process of investigating or the condition of being investigated; also, a detailed inquiry or systematic examination by the COB.

"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. The COB has those powers and duties vested under Sec. 11.1302 of the Charter of the Metropolitan Government of Nashville and Davidson County and Tenn. Code Ann. § 38-8-312(a). Those powers include the independent authority to investigate allegations of misconduct by MNPDC Officers, to issue criminal justice policy advisory reports and recommendations to the duly elected or appointed officials of the agencies involved in

public safety and the administration of justice, and the option to establish a monitoring program that provides an ongoing review or audit of the OPA complaint process.

B. To accomplish the mutual goals of effective and efficient investigative processes of the COB 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 COB shall be evaluated and investigated by the COB in a manner consistent with established COB 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 COB originating from an Employee shall be subject to a de-confliction discussion that may result in referral to the Department for investigation and handling.
3. Use of force, serious bodily injury or deaths, in or related to police custody:
  - a) Regardless of any Complaint, both the Department and the COB may concurrently investigate incidents involving use of force, serious bodily injury, or deaths, in or related to police custody.
4. Executive Director Initiated:
  - a) The Executive Director has the authority to initiate the investigation of any appearance of misconduct or policy review.

C. The Executive Director and the Department's OPA Director 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 COB and the Department.

#### IV. COOPERATION AND ACCESS TO RECORDS AND INFORMATION

The Department agrees to adopt policies to facilitate and promote cooperation with the COB. As to the COB's investigations of Misconduct and/or use of force, serious bodily injury or deaths, in or related to police custody, these policies will ensure COB access to crime scenes, documents, information, and witnesses, consistent with the provisions herein.

- A. Documentation to which the COB shall have routine and immediate access are:
  - 1. The current Departmental Manual;
  - 2. Any Department-issued written directives, Roll-Call trainings and briefings, 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.
  
- B. Documents and information that the Department will make available to the COB 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 or an Investigation; and,
  - 2. Employment records relating to the subject of a Complaint or an Investigation, including personnel files, disciplinary history, citizen complaints, OPA and other internal investigative materials, awards and commendations, and training records.
  
- C. Documents and information the Department will make available as soon as reasonably practicable to the COB upon receipt of a written request are:
  - 1. Any other Departmental documents or information the COB might request related to its work which will be equivalent and contemporaneous to OPA access.
  
- D. Database Access:
  - 1. The Department will automate an export of databases on a weekly basis to a shared folder between the Department and the COB. Exports will include, at a minimum, to the extent permitted by law or agreement: calls for service, incidents, arrests, traffic stops, uses of force (108, 108T, 108F), sworn employees

with demographics and assignment, and disciplinary data (civilian and supervisory complaints).

E. The parties have entered into an agreement with the District Attorney General for the Twentieth Judicial District regarding access to records, otherwise protected by Tenn. R. Crim. P. 16, and release of those records directly to the COB by the Department. The provisions of that agreement are hereby incorporated by reference.

## **V. CONFIDENTIALITY**

A. The COB 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 COB that are confidential. Records provided under Section IV(E) are designated as confidential.

## **VI. INTAKE INVESTIGATIONS**

A. Availability of Employees to the COB:

1. It is understood and agreed that COB 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. Whenever an Employee is notified of such request, the Employee shall respond to the notification within the time period stated in the notification. Willful or intentional refusal to cooperate may be grounds for disciplinary action. Interviews with Employees should be scheduled to take into account the Employees' assigned shift, regular days off, and availability.

3. The Executive Director or Assistant Executive Director will determine the location of COB interviews, which will take place at the COB office currently located at 222 2nd Ave North, Suite 370-M, Nashville, TN, 37201, or other Metropolitan Government facility. All interviews will be audio and/or video recorded. Photographs of an Employee may be taken, if such photos are pertinent to an administrative investigation. Such photos will be treated as confidential until and unless the Department authorizes their public release.

B. Notice to Employees:

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

2. 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 COB. Interviews occurring as a result of such an order will be scheduled by OPA, taking into account the Employee's assigned shift, regular days off, and availability.
3. When an Employee receives official notification that they have become the subject of a formal COB investigation, the investigator shall issue the Employee a brief statement of the allegations and provide the Employee with information concerning their rights and responsibilities relative to the investigation.
4. An Employee who withholds information during an investigation, or fails to cooperate with an investigation, is subject to disciplinary action by the Department. This discipline may be in addition to any other disciplinary action based on conduct disclosed by the primary investigation.
5. The Employee under formal investigation shall also be given the following admonitions preceding an interview by an investigator:
  - a) You have the right to be informed of the allegations involved.
  - b) You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office.
  - c) Statements made during any interviews may be used as evidence of misconduct or as the basis for seeking disciplinary action against you.
  - d) If you have received a direct order from the Department Chief of Police to cooperate in this investigation, any statements made by you during these interviews cannot be used against you in any subsequent criminal proceeding, nor can the fruits of any of your statements be used against you in any subsequent criminal proceeding.
  - e) If you so request, a person of your choice may be present to serve as a witness during the interviews.
  - f) If you refuse to answer questions relating to the performance of your official duties, or knowingly provide false or misleading information, you will be subject to discipline from the Department, which may include dismissal.
6. Counsel During an Interview - Employees may have an attorney, employee group representative, supervisor, or a personal representative with them during any COB investigative interview. The representative cannot be involved

as a participant in the interview, as a witness, or where there is an allegation that the representative is a participant in any manner. The Employee representative's role is that of an observer only.

C. Concurrent Investigations:

1. It is recognized that from time to time the Department and the COB will be conducting concurrent investigations. When feasible, investigative information will be shared.
2. Neither party shall discourage potential witnesses from cooperating with an investigation by the other party.

## **VII. MEDIATION AND RESTORATIVE JUSTICE PROGRAMS**

A. In certain cases, except in those alleging use of excessive force, serious bodily injury or deaths, in or related to police custody, the COB may offer an opportunity to participate in mediation, restorative justice, or other non-punitive remedies in response to allegations of misconduct in a Complaint. The Department will adopt policies encouraging its Employees to participate in such voluntary remedial programs. If such a remedial program is offered to and completed by the Employee, no further investigation of the Complaint will be made by either the COB or the Department. The purpose of such remedies is to enhance police-community trust, relationships, and understanding. The COB may contract with third-party private providers who are listed as Rule 31 mediators in Tennessee, or have been jointly approved by the COB and the Department, for assistance in implementing such non-disciplinary remedies.

B. The Executive Director, and the OPA Director, will develop and implement procedures for voluntary mediation of complaints. The procedure developed will be appropriately disseminated to employees of both the COB 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 COB 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 public safety and requests that the Officer be Decommissioned, placed on administrative leave with pay, or placed on an alternate duty assignment, pending completion of the COB's investigation.

B. Within five calendar days of receipt of the request, or as soon as reasonably practicable based on the facts and circumstances of each case, including the seriousness and/or urgency of the request, the Department shall provide a written response advising of any action taken in response to the Director's request. If the Department requires additional information about the Director's request, then the Department will provide a written response as soon as reasonably practicable, but not to exceed five calendar days, after the additional information has been provided.

## **IX. RESOLUTION REPORTS**

A. The COB will issue a Resolution Report following its 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 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 forty five (45) calendar days. 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 COB may recommend changes to Departmental policies. Should the COB make such recommendations, the Chief of Police agrees to provide a written response to the COB within forty five (45) calendar days. 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 or, if unavailable, the Assistant 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 COB and the DEC to facilitate the COB's receiving notification of critical incidents involving Police Officers, including but not limited to, uses of force involving serious bodily injury, or deaths, in or related to police custody.

## **XIII. CRIME SCENE ACCESS**

The purpose of this section is to ensure that COB has appropriate access to certain Department crime scenes, as soon as possible and as close as possible, in order to

facilitate completion of COB responsibilities and to increase transparency of Department operations.

A. On any Department controlled crime scene comprising critical incidents involving Police Officers, including but not limited to, uses of force involving serious bodily injury, or deaths, in or related to police custody, the COB shall have the following access:

1. Outer Perimeter of crime scene:

COB staff will be allowed immediate access inside the outer perimeter, as soon as the Department Incident Commander determines that the scene is safe and secure.

2. Inner Perimeter of crime scene:

When the Department investigative supervisor has determined that the inner perimeter, including all known evidentiary items, is safe and secure, the Department lead investigator shall, upon request, escort the COB personnel into the inner perimeter, including areas designated as a part or portion of the crime scene.

3. Such access shall be identical to that granted to OPA personnel, irrespective of their presence, and sufficient for COB personnel to observe the Department personnel as they investigate the crime scene. It is agreed and acknowledged that the Department may not be able to facilitate COB access into those parts of a crime scene which the Department has accessed pursuant to a search warrant or other exception to the 4<sup>th</sup> Amendment to the U.S. Constitution.

B. COB personnel will not remove, alter, handle, or disturb any evidence or object at the scene. Photographs will be permitted. The COB 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 COB acknowledges that its investigators or other personnel may be required to present sufficient identification for the perimeter personnel to document perimeter ingress and egress in official Department records.

D. After COB personnel have indicated that they have completed all necessary procedures at the scene, they shall be escorted outside the inner perimeter.

E. The Department lead investigator on the scene or designee shall brief the responding COB personnel regarding the incident at regular intervals, providing the same information as given to OPA and, when possible, shall do so contemporaneously.

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 COB 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. COB members and personnel will be afforded the opportunity to attend make up classes when their schedules do not permit attendance at an originally scheduled class. Additionally, the Department will work with designated COB members and personnel to tailor the academy into a more condensed schedule and focused curriculum addressing those subjects most directly applicable to the COB's responsibilities. Program participants will be provided with written course materials and, when available, access to online training modules and/or computer-assisted training. The completion of an online training module or computer-assisted training on a particular subject or course will meet the specified training requirements component for an academy subject. The five key objectives of the academy program will be to:

1. familiarize the COB with Department structure, functions, operations, and policies, and the Department with the operations and concerns of the COB;
2. provide the COB with an understanding of why the Department handles particular situations in certain ways;
3. provide another channel of communication between the COB and the Department;
4. promote oversight support within the department; and,
5. promote mutual respect and understanding between the COB and the Department.

B. The Department will provide the COB with 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 and de-escalation training. 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. COB 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 COB members and personnel attending training conducted by the Department will participate in any generally required course-specific proficiency examinations.

E. Upon request, the Director shall be allowed to ride along with Department officers for training purposes. There shall be no limitation on the number of ride-alongs taken.

**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 sixty (60) days written notice to the other party.

**METROPOLITAN NASHVILLE COMMUNITY OVERSIGHT BOARD**

Signature on File	12-1-2020
Andres Martinez, Chair	Date

Signature on File	11-18-2020
Jill Fitchard, Executive Director	Date

**METROPOLITAN NASHVILLE POLICE DEPARTMENT**

Signature on File	12-2-2020
John Drake, Chief of Police (Interim)	Date

**APPROVED AS TO FORM AND LEGALITY:**

Signature on File	11-19-2020
R. Todd Pinckley, Legal Advisor Metro Community Oversight Board	Date

Signature on File	12-2-2020
Bob Cooper, Director of Law Metro Nashville Department of Law	Date

**FILED WITH THE METRO CLERK**

Signature on File	12-14-2020
Metro Clerk	Date