

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

I. INTRODUCTION

The Metropolitan Nashville ~~Community Oversight Board~~ (COB) and the ~~Metropolitan Nashville Police Department~~(MNPD) (collectively “the Parties”) enter into this Memorandum of Understanding (hereinafter “MOU”) with the goal of ensuring that police services are delivered to the citizens of Nashville in a manner that effectively ensures officer and public safety, and promotes public confidence in the COB, and ~~Metropolitan Nashville Police Department~~ MNPD and in the services that each delivers.

II. DEFINITIONS

The following words and phrases as used in this chapter shall have or include the following meanings.

"Board" shall mean the Community Oversight Board.

"Chief" or "Chief of Police" shall mean the head of the ~~Metropolitan Nashville Police Department~~(MNPD)

"Employee or “employees" shall mean ~~all members~~ anyone employed by MNPD. ~~of the Metropolitan Nashville Police Department.~~

"Department" shall mean the Metropolitan Nashville Police Department.

."Investigation" shall mean the act or process of investigating or the condition of being investigated; also a detailed inquiry or systematic examination.

"Police or Police Officers" shall mean all those ~~members~~ employees of the ~~Metropolitan Nashville Police Department~~ MNPD having and exercising the powers of police officers, and shall specifically include the chief of police, the assistant chief, and all deputy police chiefs.

"Abusive Language" means harsh, violent, profane, or derogatory language which would demean the dignity of an individual and which shall also include profanity and racial, ethnic, or sexist slurs.

"Excessive Force" means the use of greater physical force than reasonably necessary to repel an attacker or terminate resistance.

"False arrest" means arrest by a police officer of the wrong person without probable cause to believe a crime has been committed and/or without a warrant and/or when the arresting party knowingly holds someone who has not committed a crime.

"False imprisonment" means intentionally restraining another person without having the legal right to do so; physically detaining someone without the legal right to do so.

~~"Police or corrections misconduct~~ **MNPD Misconduct** shall include, but not be limited to, ~~abusive language, false arrest, false imprisonment, harassment, use of excessive force, serious bodily injury, or death which is alleged to be the result of actions of an employee of the police or corrections department.~~ Shall include any improper behavior by an MNPD officer or employee of MNPD, which violates MNPD policies, criminal laws or civil rights laws.

III. JURISDICTION

A. With respect to matters within the jurisdiction of the COB under Chapter 13 of Article 11 of the Metro Charter, the Parties agree that the Office of Professional Accountability (hereinafter "OPA") shall review complaints against Metropolitan Nashville Police Department (hereinafter "Department) employees initiated by a member of the Department, **except matters that relate to misconduct against members of the public.** The Community Oversight Board-(hereinafter "Board") shall review complaints against employees initiated by the public **and matters initiated by employees that relate to misconduct against members of the public.**

~~B. The criteria for determining the categories of complaints to be referred to the Board may include, but are not limited to: allegations of, use of excessive force as defined in section XXXX of Metropolitan Nashville Police Department Manual, brutality, criminal misconduct, major breach of civil rights (including false arrest and false imprisonment), and abusive language related to race, ethnicity, religion, gender, sexual orientation or disability. All other categories of complaints will be reviewed by OPA.~~

IV. RECORDS AND EMPLOYEE ACCESS

A. So that the Board may perform its responsibilities and exercise its powers under the Metro Charter, ~~In order to accomplish its goals as set forth in the establishing Charter Amendment~~ the Board shall, have immediate and full access to all relevant ~~Department~~ (MNPD) records including but not limited to:

(1) ~~Department~~ MNPD and OPA files, citizen complaints, ethics and accountability files, disciplinary history records, training records, and the files of any other internal investigative agency charged with investigating police misconduct incidents;

(2) Department paperwork (e.g., police documents, reposts, and other ~~paperwork~~ information produced by the Department **regardless of form or format, paper or electronic**, for the purpose of investigating criminal activity or to aid in their prosecution);

(3) Department orders, rules, directives, and any other Department documents **or information, regardless of form or format**, that the Board deems relevant to the issue under its review;

(4) All Department general summaries, statistical compilations, and other internal reports or documents on officer involved shootings, injuries, arrest and complaints of abuse, training, and any other issues related to the work of the Board.

V. CONFIDENTIALITY

A. ~~It shall be the duty of~~ The Department agrees to provide such assistance as the Board as it may reasonably request, to cooperate fully with investigations and studies by the Board, and to provide to the Board upon request with records, personnel, and other materials which are necessary for the work of the Board. ~~The Board~~ It shall ~~be~~ maintain the confidentiality of any correspondence, unlawful for any document or information obtained through this process, ~~or created by the Board or any member of its staff, to be released to the public unless such document is deemed by the Board (following consultation with the Metropolitan Nashville Department of Law) to be a public record under the Tennessee Open Records Act.~~

B. The Board and its members shall not make public any confidential Department document, or information derived from any such confidential police document

C. All employees of Department are directed to fully cooperate with the Board by promptly and immediately producing documents, records, files, and any other information that the Board may request. In addition, employees on request of the Board shall be immediately available to meet with and be interviewed by, the Board, and/or to testify before the Board when requested. Upon notification by the Community Oversight Board Executive Director (hereinafter "Executive Director) that an employee has not cooperated with the Board as requested, the Chief of Police shall cause appropriate disciplinary action to be instituted against the Department employee, and shall notify the Board of the outcome of such action.

~~VI. CONCURRENT INVESTIGATION~~

~~A. The role of the Board is to investigate administrative (departmental) violations, and if during an investigation there are potential criminal violations, the criminal aspect of the investigation will be referred to the appropriate criminal investigative unit of the Metropolitan Nashville District Attorney's Office or the United States Department of Justice.~~

~~B. The Board may continue its investigation of the potential administrative violations, as a separate investigation from any criminal investigation. The Board may continue, or stay, an administrative investigation to assess or establish an administrative duty or omission of duty relevant to the underlying criminal investigation.~~

VII. POLICY ADVISORY

A. When the Board recommends general policy reforms in the form of Policy Advisory Reports, the Board shall will have the power to recommend that the Chief of Police take certain actions;

(1). The Board may recommend general reforms in the form of Policy Advisory reports (such as changes in training, changes in the preservation of records, changes in counseling available to officers) or specific actions directed at individual Department employees (including, but not limited to, hiring, firing, promotion, demotion, punishment, or commendation);

~~(2). However, the Chief of Police shall retain full and ultimate authority, power, discretion, management prerogatives, and responsibility to set policies or take other lawful actions he/she deems appropriate relative to the Department.~~

B. The Board may initiate a Policy Advisory studies upon its own discretion, upon request to the Board by any member of the public or the Department, or upon the request of any other Metropolitan Nashville public safety agency.

C. The Chief of Police ~~or the Chief's Designee, shall~~ agrees to provide a written response to the Board with regard to any Board Policy Advisory recommendation, and to specifically articulate the Department's position, and its reasons for that position, with regard to the recommendations in the Board's Policy Advisory Report- within 30 days.

VIII. RESOLUTION REPORTS

A. Investigative Resolution reports prepared by the Board following allegations of alleged misconduct into allegations of misconduct will include an "Investigative Finding" ~~and be made part of the Board's Resolution Report. The "investigative finding" is~~ drawn from the evidentiary facts, and may include recommendations of employee discipline or for ~~to~~ changes ~~in~~ to policies, procedures, rules, and regulations that may prevent future allegations of misconduct, as well as the need to modify or expand training.

B. The Department shall will implement policies requiring the Chief of Police to provide a responsive report to the Board for each Resolution Report received. Department responsive reports shall record, at a minimum:

~~(1) The name of the subject officer;~~

~~(2) A brief description of the factual allegations underlying the misconduct complaint;~~

~~(3) A summary of the Board's factual findings;~~

~~(4) A listing of any Department policies that the Board alleged were violated by the Department employee;~~

~~(5) A listing of any laws that the Board alleged were violated by the Department employee;~~

~~(6) The remedy, if any, recommended by the Board;~~

(1) The Department's actions taken in response to the Board's findings and recommendations;

(2) If Department declined to follow the Board's recommendations, a detailed written statement explaining Department's reasons for doing so;

(3) Any additional action taken by Department based on the Board's report

IX. ~~INVESTIGATIVE INTAKE~~ EXAMINATIONS

A. ~~A misconduct investigation is generally described as one where the subject of the investigation has been identified and disciplinary action is expected or pending. An Intake Investigation is the process by which the COB receives, records, evaluates, and categorizes complaints.~~

B. As part of its intake investigation, the Board may direct that an employee undergo an intoximeter, blood, urine, psychological, polygraph, computer voice stress analysis (CVSA), medical examination or any other exam not prohibited by law or policy, provided the examination is pertinent to an administrative investigation. ~~The MNPDP agrees that it shall adopt policies to require employees to participate in these procedures.~~

C. Polygraph and/or Computer Voice Stress Analysis (CVSA) reports may be submitted for consideration ~~with the investigative file. Polygraph/CVSA examinations unaccompanied by other objective evidence will not conclusively establish or refute allegations of misconduct. Employees will not be subject to corrective action or discipline solely on the results of a polygraph or CVSA examination.~~ in the investigative process.

X. MEDIATION AND ADMINISTRATIVE ADMISSION

A. The Board ~~shall~~ may be authorized ~~require~~ offer employees to participate in counseling, mediations, restorative justice, or other non-punitive remedies in response to allegations of police misconduct. ~~No further investigation is required if an alternative dispute resolution method is offered, regardless of whether or not the officer is guilty of the alleged misconduct.~~ The purpose of such remedies is to enhance police-community trust, relationships, and understanding. The Board is authorized to contract with third party private providers for assistance in implementing such non-disciplinary remedies.

B. The Department shall implement policies requiring its employees to comply with non-disciplinary remedial measures implemented by the Board, such as counseling, restorative practices, or mediation. However, such remedies must take place during work hours, and cannot require Department employees to give up their personal time.

C. Mediation/Conciliation meetings and negotiations may be conducted on initiated investigations within the jurisdiction of the Board and with the approval of the Executive Director. ~~In all cases, except those alleging use of excessive force, serious bodily injury or in-custody death.~~

D. Once an employee is notified of an allegation of misconduct, that if proven true would be a violation of policies, procedures, or rules of the Metropolitan Government subjecting that employee to disciplinary or corrective action, and the employee wishes to fully and completely acknowledge that behavior, the Administrative Admission process can be utilized to settle the matter without an investigation in the following manner:

(1). A complaint is received by the Board and a determination is made that:

(2). The complaint is against a member of the Metropolitan Nashville Police Department, and

(3). The allegations, if true, would constitute a violation of policies, procedures, or rules of the Metropolitan Government.

(4) Once the determination has been made that the violation meets the above criteria, the employee may admit culpability on the referenced complaint, and no further investigation will be necessary. The employee may also obtain a representative to participate in further discussion on the matter.

(5). The admission process combines an agreement between an employee and the complainant. An employee may waive representation and enter into a disciplinary agreement with the department. Employees will not be permitted to unreasonably delay resolution by use of multiple representatives or multiple successive representatives.

(6). When confidentiality of a complaint is required to assure the integrity of an on-going investigation and prior to complaint resolution, the Department employee and/or his/her representative may be instructed to maintain the confidentiality of the complaint or the investigation. Failure to follow such instruction from an authoritative source shall be grounds for disciplinary action. Nothing herein shall preclude an employee from seeking appropriate representation or legal counsel.

(7). Notification of the employee and/or representative may be delayed until an investigation is complete if the behavior described in the complaint constitutes serious or criminal misconduct, or the ability to investigate the allegations would be severely impaired by the disclosure of the investigation.

(8). The Board Executive Director will inform the employee and/or representative of the allegations against the employee. A notified representative will be given a reasonable opportunity to contact the accused employee.

(9). After discussion with the accused employee, the representative or employee may inquire from the Board Executive Director what the likely sanction recommendation will be if the misconduct is admitted.

(10). The Board Executive Director will determine what level of sanction would be recommended against the employee if he/she were to admit misconduct using the Department Disciplinary/Corrective Action Grid.

(11). The Board Executive Director will then notify the employee and/or their representative to discuss and negotiate an appropriate disposition.

(12). If the parties agree on the recommended sanction and the charges, the matter may be resolved without conducting a formal investigation into the allegations.

E. The Administrative Admission or Mediation Agreement can occur at any point between the receipt of the complaint and before the conclusion of a Resolution Report.

F. The Admission Agreement and Mediation Agreement process cannot be used, or function, without the complete and unwavering truthful admission of the employee. Employees must be truthful concerning all circumstances surrounding the complaint. An employee's admission concerning the complaint will not preclude a complete investigation and/or additional discipline, where indicated by previously undisclosed circumstances or circumstances unknown at the time of settlement.

G. A full investigation may also be conducted if the Board Executive Director receives any new information regarding the original matter.

H. Upon Administrative Admission of misconduct, through written waiver and agreement of all parties, there will be no departmental or civil service appeal of the agreed sanction

XI. ADMINISTRATIVE LEAVE AND ALTERNATE DUTY ASSIGNMENT

A. General Provisions

(1). At any time during the Board's misconduct investigation when grounds exist for disciplinary action and/or there is sufficient reason to believe the accused employee's continued presence on the job may be detrimental to the department or the safety of anyone, including the employee, the Board Executive Director may initiate a request that an employee be relieved of police power by submitting the request directly to the Chief of Police.

(2). The Board Executive Director must document the facts and circumstances supporting the decision to place the employee on administrative leave or alternative duty assignment. Such documentation shall be included with any corrective/disciplinary action taken.

XII. FORCE REVIEW BOARD

A. The Force Review Board examines whether **MNPD** policies and procedures governing the use of force have been followed. The Chief of Police has the discretion of convening a Force Review Board as a result of any departmental use of force incident. The Chief of Police shall be the final authority within the department as to the disposition of each incident reviewed by the board.

B. A representative of ~~the Community Oversight Board~~ **COB** shall ~~will~~ be designated as a non-voting member of the Force Review Board.

~~C. A representative of the Community Oversight Board shall be a member of the Force Review Board to review the following matters:~~

~~(1). All uses of force involving firearms discharges~~

~~(2). All uses of force involving the use of deadly force, or any force which results in death or serious bodily injury.~~

~~(3). Uses of less than lethal force when such force is applied through the use of a primer activated weapon.~~

~~(4). Any incident referred to the board by the Executive Director of the Community Oversight Board.~~

~~D. The Community Oversight Board Executive Director, after reviewing the circumstances of the use of force, may issue a policy advisory report or recommendation to the Chief of Police, detailing his/her conclusion as to whether the weapon discharge was within departmental policy. If the Community Oversight Board Executive Director reasonably believes that the employee's actions may have been outside the parameters of the department's policies, procedures, or directives, a recommendation regarding remedial training and/or corrective/disciplinary action shall be included.~~

~~E. In addition to reports from Force Review Boards occurring throughout the year, the Chief of Police may schedule a Departmental Force Review Board annually. The core members shall review each use of deadly force and all cases reviewed by the Force Review Board for the purpose of identifying any potential patterns and/or systemic problems and to report their findings and recommendations to the Chief of Police.~~

~~(1). Core members of the annual Departmental Force Review Board shall include a representative from the Community Oversight Board.~~

XIII. "CALL-OUT" PROCEDURES

~~A. It is the policy of the Metropolitan Nashville Police Department that the public will be provided the best police services possible. Every effort will be made to adequately and promptly respond to calls for service and calls for assistance from on-duty personnel.~~

~~B A. Therefore, this policy is provided to facilitate the call-out of additional and/or specialized personnel to assist with certain incidents.~~ The COB shall have the right to be notified of, and respond to, MNPD incidents requiring the call-out of additional and/or specialized personnel to assist with certain incidents as describe in Title 15.10.050 of the MNPD Manual.

C. “On-call” or “Call-Out” personnel are those individuals that are assigned to respond to incidents or calls for assistance outside of normal working hours for the component to which they are assigned.

D. The call-out procedures described herein shall apply to the ~~Community Oversight Board~~ COB.

E. The criteria for ~~Board~~ COB call-out shall include;

(1). All police personnel involved shootings;

(2). In-custody deaths;

(3). Any other situations as deemed necessary by the Board Executive Director.

F. The decision governing Community Oversight Board response to an "on-call" notification is a discretionary function of the Community Oversight Board Executive Director

XIV. “CALL-OUT” CRIME SCENE ACCESS

A. Only persons actively involved in the investigation should enter the inner perimeter of the crime scene. It shall be the responsibility of the Incident Commander or appropriate department supervisory personnel to ensure that people do not enter a crime scene unless necessary. Persons actively involved in the investigation may include staff from the ~~Community Oversight Board~~ COB who will ~~generally~~ be admitted ~~after the evidence has been secured~~ when the incident involves an officer involved shooting, in-custody death, or any other situations as deemed necessary by the Board Executive Director.

XV. “CALL-OUT” SECURITY FOR COMMUNITY OVERSIGHT BOARD

A. The Crime Scene Investigations on-duty supervisor, or the on-duty Crime Scene Investigations officer-in-charge, is given the authority and responsibility for determining when a sworn officer is to accompany a Community Oversight Board member to the scene of a call-out. In making the determination, the supervisor or officer-in-charge shall take into consideration those circumstances such as time of day, nature of the crime, probability of the perpetrators return to the scene, the probability of further acts of violence and type of location. All Department personnel who may be dispatched to provide such security for Board staff shall assume the request has originated with the Crime Scene Investigations supervisor, officer-in-charge, or Board Executive Director and proceed accordingly. In implementing this policy the following guidelines shall be followed:

(1). When Community Oversight Board staff is dispatched to a given location, the Crime Scene Investigations on-duty supervisor, on-duty Crime Scene Investigations officer-in-charge, or Board Executive Director, shall determine if sworn back-up is required. If it is determined that such back-up is required and no sworn Crime Scene Investigations personnel are available, the Community Oversight Board Executive Director shall request the County-wide dispatcher to notify the appropriate Precinct dispatcher.

(2). In those circumstances when Board staff and a sworn member are dispatched to a scene and upon their arrival it is determined that the sworn security is not needed, the Board staff member will inform the Crime Scene Investigations officer-in-charge who may permit the sworn member to check back into service.

XVI. PROFESSIONAL DEVELOPMENT

A. **MNPD** agrees to provide all newly appointed full time **Community Oversight Board COB** personnel ~~will receive with~~ information ~~or and~~ training regarding:

(1). The ~~Metropolitan Nashville Police Department~~ **MNPD** role, purpose, goals, policies, and procedures;

(2). ~~Metropolitan Nashville Police Department~~ **MNPD** working conditions and regulations; and

(3). Responsibilities and rights of ~~Metropolitan Nashville Police Department~~ **MNPD** employees.

~~B. All newly hired full time Community Oversight Board employees will also receive "Community Oversight Board New Employee Orientation" training provided by the Metropolitan Personnel Department's Training Section. The Board Executive Director will choose classes deemed appropriate for Community Oversight Board personnel from the Metropolitan Nashville Police Department In-Service Training Catalog, or the Metropolitan Nashville Police Department Training Division staff will assist by the Board Executive Director by designing classes specifically for the Community Oversight Board functions. The scheduling of these classes shall be managed by the Board Executive Director in consultation with the Metropolitan Nashville Police Department Training Division staff.~~

XVII. COMMUNITY OVERSIGHT BOARD CITIZEN'S POLICE ACADEMY

A. In a continuing effort to strengthen the partnership with the **Community Oversight Board COB**, the ~~Metropolitan Nashville Police Department~~ **MNPD** ~~has~~ **will** established a Community Oversight Board Citizen's Police Academy. The academy is a series of classes designed to provide Community Oversight Board personnel a detailed overview into the operation of the

Metropolitan Nashville Police Department. It will give Community Oversight Board personnel the opportunity to see how officers are trained and what officers go through on the streets..

B. The five key objectives of the program are:

(1). To familiarize Community Oversight Board and staff members with the function of the department;

(2). To obtain a better understanding of why different situations are handled a certain way;

(3). To provide another channel of communications between the ~~Community Oversight Board~~ COB and the ~~Department~~ MNPD;

(4). To promote oversight support for the ~~Department~~-MNPD; and

(5). To help members of the ~~Metropolitan Nashville Police Department~~ MNPD become more aware of concerns of the ~~Community Oversight Board~~. COB