

COMMUNITY OVERSIGHT BOARD
Bylaws and Rules COMMITTEE Public Forum MEETING AGENDA
Tuesday August 6, 2019 – 6:00 to 8:00 PM CDT
Howard Office Building, Sonny West Conference Room
700 Second Avenue, South
Nashville, TN 37210

Bylaws and Rules Committee

Members:

Jamel Campbell Gooch

Adele M Lewis

Danita Marsh

Andres Martinez

Brenda Ross

Matt Sweeney, Chair

Executive Director William Weeden, Ex Officio

Those who wish to speak at the meeting should sign-up on-site before the meeting begins. Doors will open at about 5:00 pm

MEETING AGENDA

- I. Call to Order and introductory remarks by committee chair Matt Sweeney.
- II. Public forum for discussion of Draft Rules of the Community Oversight Board. One representative from each community organization is invited to provide thoughts and comments about the Draft Rules for not more than 5 minutes; if time allows, individuals who are not representatives of community organizations will be invited to speak about the rules as well. Have we missed anything? Could we approach some issue in a better way? (Please see attached memo for more information).
- III. Announcements
- IV. Adjourn

4822-7704-2333

9500010-002925

NASHVILLE COMMUNITY OVERSIGHT BOARD

To: _____
From: William Weeden, Executive Director
Re: Community Input on Draft COB Rules
Date: July 15, 2019

The Nashville Community Oversight Board ("COB") is in the process of considering a set of rules ("Draft Rules"). The Draft Rules are based on the Metro Charter Amendment which created the COB, an earlier draft of an ordinance to create such a body which the Metro Council considered, but did not adopt, and the policies and procedures used by similar organizations in other states. The Draft Rules generally concern how the COB (both the Board and its Staff) will perform its duties and interact with the public.

The COB already has adopted a set of bylaws which govern the manner in which the 11 member COB board ("Board") conducts its meetings, structures its Staff and related activities. Those bylaws can be found on the COB website at <https://www.nashville.gov/Government/Boards-and-Committees/Committee-Information/ID/132/Community-Oversight-Board.aspx>

The COB requests that you review the Draft Rules; we seek your thoughts and comments about them. Have we missed anything? Could we approach some issue in a better way? **We invite your written comments and any supplemental brief oral comments as well. Please send your written comments to me by July 26, 2019 at:**

William Weeden
Nashville Community Oversight Board
214 Second Avenue, North, Suite 204
Nashville, TN 37210
Email: William.Weeden@nashville.gov

We would like to hear from you about the Draft Rules after we receive written comments from the community. **The COB drafting committee will hold a public meeting on Tuesday August 6, 2019 from 6:00 to 8:00 in the Sonny West Conference Room at the Howard Office Building, . 700 2nd Ave S, Nashville, TN 37210.** The Committee chair will invite one person present from each commenting organization to speak about the Draft Rules for not more than 5 minutes.

After the meeting, the COB drafting committee will again meet on August 13, 2019, at 4:00 pm and will review the Draft Rules, considering the comments we have received. The committee then will present the Draft Rules, including any revisions it suggests, to the Board for its consideration and possible adoption at its meeting on August 28, 2019, at 4:00 at the Lentz Public Health Building.

After the Rules have been adopted, the COB will then need to negotiate a Memorandum of Understanding with the Metro Police Department as to how those two organizations will relate to each other and work cooperatively. The COB Staff also will adopt Standard Operating Procedures to implement the Rules.

If you have any questions about any of this, please contact me. Thank you. We look forward to hearing from you.

DRAFT RULES OF THE NASHVILLE COMMUNITY OVERSIGHT BOARD

SECTION 1. Definitions

The following definitions apply to these rules:

- A. **Aggrieved Person**--Anyone who allegedly has been mistreated by a MNPB officer or employee, or the department generally. (still need this term or does Complainant sufficiently cover ?)
- B. **Board**--The 11 member governing body of the Metropolitan Community Oversight Board.
- C. **Community Oversight Board (also referred to as the COB)**--generally, the staff supervised by the Board, which implements the Board's policies, and which is led by an Executive Director.
- D. **Complaint**--the claim made to the COB alleging MNPB Misconduct.
- E. **Complainant**--anyone who has filed a Complaint or on whose behalf a Complaint has been filed.
- F. **Executive Director or Director**--the Executive Director of the Community Oversight Board, who reports to the Board and oversees the other COB staff.
- G. **Intake Investigation**-- is the process by which COB receives, records, evaluates, and categorizes Complaints.
- H. **Jurisdiction**--the authority of the Board to consider a matter as set forth in Sec. 11.1302 of the Charter of the Metropolitan Government of Nashville and Davidson County.
- I. **Mediation, Conciliation and/or a Restorative Justice programs**--are voluntary informal ways to directly address and/or resolve disagreements between individuals in a way that is mutually acceptable to each of them. Each of these methods is different and works in a its own way.
- J. **MNPB**--Metro Nashville Police Department.
- K. **MNPB Misconduct or Misconduct**-- Improper behavior by an MNPB officer or employee of MNPB, which violates MNPB policies, criminal laws or civil rights laws.
- L. **OPA**--Office of Professional Accountability of the MNPB.
- M. **Petition for Rehearing**--a request made to the Board to reconsider its decision regarding a Proposed Resolution Report.
- N. **Policy Advisory Reports**--A public report and recommendation by the Board based on community and criminal justice agency input and COB staff research and analysis regarding any aspect of the criminal justice system in Davidson County.

O. **Proposed Resolution Report**--the draft of a Resolution Report which has been prepared by the COB and submitted to the Board for its review and action.

P. **Resolution Report**--The decision by the Board on an investigation of a Claim of MNPD Misconduct.

SECTION 2. Investigations and Resolution of Complaints of Alleged MNPD Misconduct

Misconduct allegations will be investigated and resolved in accordance with the procedures established by the COB SOP, subject to the following requirements:

A. Complaints and Initiation of Investigations

(1) The COB may initiate a Misconduct investigation against a MNPD officer or employee, or the department, based on a Complaint made by a person with personal knowledge of the incident. Efforts will be made to accommodate and assist other non-English speakers in making Complaints. An unsigned, anonymous Complaint related to Misconduct may be the basis for initiating an investigation, but it will not be used as the sole basis for substantiating any charge. Additionally, the Director may initiate a Misconduct investigation based upon media reports, other public information, or a request of the Board or a Board member.

(2) COB will establish an accessible system for receiving Complaints by as many means as practically available, including in-person, by telephone, by mail, by facsimile, by email, website and by other electronic means, recognizing that as a newly created entity, all means might not be available initially. Letters, emails, texts, telephone calls or personal discussions or other contacts with Board members at, or outside of, Board meetings, or general postings of information on social media, are not Complaints and will not initiate Intake Investigations.

(3) However a complaint is received, it shall be tracked in a current database. The system shall date and sequentially number each Complaint. The database shall include the substance of the Complaint and further Intake Investigation information and shall track the matter at all stages through response by any entity to whom a Resolution Report is referred. The system will be designed to receive common types of audio and video files.

(4) The Director may notify the Davidson County District Attorney or the United States Attorney for the Middle District of Tennessee, as appropriate, of any Complaint which facially alleges the commission of a crime by a MNPD officer or employee, while reserving to the COB the right to investigate the Complaint.

(5) The COB will investigate Complaints only for events which allegedly occur on or after April 1, 2019.

(6) If at any time during an investigation the Director has sufficient reason to believe that an accused MNPD officer's continued presence on the job may be detrimental to the MNPD or the safety of anyone, then the Director, with the approval of the Board Chair, may request the MNPD Chief of Police to immediately relieve the officer of duties and cause the officer to be placed on administrative leave with pay pursuant to 4.10.190 of the MNPD Manual, pending

completion of the Board's investigation. In making such a request to the MNPD Chief of Police the Director shall inform him of the basis for the Complaint, the status of the investigation, and the evidence obtained, and shall explain the facts and circumstances causing him to believe that the officer's continued presence on the job may be detrimental to the Department or the safety of anyone.

(7) All personnel employed by the COB will maintain strict confidentiality about COB matters at all times and at no time outside of the performance of their duties will disclose or discuss the contents of any files or documents they have access to.

(8) The COB has the authority to investigate the following categories of alleged Misconduct by MNPD officers and employees or the department generally:

- a. violations of MNPD policy
- b. crimes
- c. civil rights violations

The COB may negotiate a memorandum of understanding (MOU) with MNPD regarding matters within its authority, authorizing OPA to exclusively investigate and resolve certain categories of Complaints involving violations of MNPD policy, while authorizing COB to investigate exclusively other categories of Complaints, including those made by a member of the public, or which involve a member of the public.

B. Intake Investigations The COB shall establish a SOP manual for the conduct of its Intake Investigations, including manner and methods. A SOP is a document which describes the regularly recurring operations relevant to the process. The purpose of the SOP is to provide guidance and information specific to this operation and to assist employees in carrying out the operations correctly. The objectives of an investigation are to:

(1) Factually establish what happened, to include all relevant information which bears on the culpability, if any, of the MNPD officer or employee;

(2) Uncover, collect and preserve all pertinent facts and evidence;

(3) Determine if department personnel were involved in a violation of law, policy, procedure, rules, regulations, ethical codes, or administrative or executive orders as established by MNPD

(4) At a minimum, the Intake Investigation SOP shall include the following:

a. Within ten (10) calendar days of receipt, the COB will acknowledge to the Complainant in writing that the Complaint has been received and will provide a copy to the MNPD officer or staff member identified or to the Chief of Police if the department generally is identified; the acknowledgment will include the identifying number of the Complaint. The Complainant will be kept reasonably informed about the status of a Complaint.

b. The Director will review each Complaint to determine whether the COB has Jurisdiction to conduct an investigation. If not, then the Director may administratively close the Complaint with periodic notice of such closings to the Board. If authority exists, or if it is unclear whether authority exists, the Director will assign the case to an investigator. Director-initiated investigations will be assigned automatically to an investigator. Complaints in other than English will be translated to English. The Director will give written notice of each investigation undertaken, including a copy of the Complaint or if not in English, the translated Complaint, to the OPA.

c. Investigations will be stayed if a criminal investigation of the alleged MNPD Misconduct is undertaken, either before or after the COB Complaint has been filed. The COB may or may not commence the investigation after the criminal investigation has concluded depending upon the outcome.

d. The Director may stay an investigation if a civil lawsuit is filed, either before or after the COB Complaint, alleging the same MNPD Misconduct. The COB may or may not commence the investigation after the civil litigation has concluded depending upon the outcome.

e. The Director will advise the Board of all stayed investigations and the reasons therefore. A stayed investigation may be closed and the matter dismissed upon the written request of the Director with the written approval of the Board Chair.

f. In all cases undertaken by the COB, except those alleging excessive force, serious bodily injury or in-custody deaths, the COB may offer Mediation, Conciliation and/or a Restorative Justice program, and if it does, the Director will advise the Complainant and the accused MNPD officer/employee of their availability and what they entail, as an alternative to an Intake Investigation and possible Board hearing. Those alternatives will be for the purpose of fully, thoroughly and frankly discussing the alleged Misconduct and attempting to arrive at a mutually acceptable conclusion of the Complaint. During such a process, which must be completed within sixty (60) days, the investigation is suspended. If not completed within that period, it will be referred for Intake Investigation.

g. All Intake Investigations which have not been stayed, or referred to Mediation/Conciliation/Restorative Justice program alternatives, will be completed, set forth in a written Investigation Report and submitted to the Director within forty-five (45) calendar days of assignment, unless that time is extended by the Director in writing for good cause stated.

h. Both Complainants and the subjects of Complaints may be represented throughout the investigation by private attorneys.

C. **Proposed Resolution Report** The COB also shall establish a SOP manual for the preparation and presentation of its Proposed Resolution Report, which at a minimum shall include the following:

(1) Within forty-five (45) days after receipt of an investigative Report, the Director, in concert with the Investigator, will prepare and submit to the Board a Proposed Resolution Report with factual findings based on the investigation. The Director shall ensure that investigation is as thorough as necessary to reach reliable and complete findings, and are objective, fair, impartial and free from political influence. The Director will consider all relevant evidence, including circumstantial, direct and physical evidence and will apply a preponderance of the evidence standard in making his findings. There will be no additional weight given to statements given by witnesses based on whether they are Complainants or an accused, or whether they are or are not law enforcement officers, nor will the Director or investigator disregard a witness's statement merely because the witness has some connection to the Complainant or because of any criminal history or any concern regarding mental illness. During its investigation, the COB will take into account any convictions for crimes of dishonesty or other indicia of untruthfulness, including evidence from a previous Misconduct investigation, but only as relevant to credibility. The Proposed Resolution Report will include the following at a minimum:

- a. Summary of the Misconduct allegation, the Complaint and any response to the Complaint, including the OPA categorization of the type of Complaint;
- b. A conclusion as to each alleged act of Misconduct as:
 1. "sustained" -- the factual findings support the allegations in the Complaint, which conduct was inconsistent with MNPDP policy;
 2. "not sustained" -- the factual findings do not support the allegations in the Complaint;
 3. "policy exoneration" -- the factual allegations in the Complaint do not violate MNPDP policy; or, although the factual findings support the allegations in the Complaint, the conduct proved was consistent with MNPDP policy;
 4. "unfounded" -- the allegations in the Complaint were proven false.
- c. Summary of the COB's investigation of the alleged Misconduct;
- d. The COB's factual findings regarding the alleged Misconduct, including any MNPDP policies, criminal laws or civil rights statutes violated;
- e. Copies of any recorded testimony, written statements, interview reports, audio or video recordings, or other exhibits;

f. A recommended remedy for any sustained MNPD Misconduct policy violations, whether disciplinary, non-disciplinary or both;

g. Any non-disciplinary remedy implemented directly by the COB, as well as an assessment of the perceived outcome and effectiveness of that remedy;

h. Determination regarding whether to refer criminal Misconduct to the District Attorney, Grand Jury, or U.S. Attorney;

i. Determination of whether to recommend MNPD policy changes based on the Misconduct investigation

D. Board Review of the Director's Proposed Resolution Report

(1) Proposed Resolution Reports will be posted on the COB website at least ten (10) calendar days before being considered by the Board at a Board meeting. The Complainant and the accused MNPD officer/employee will be given contemporaneous notice of the posting and of the scheduled date for the Proposed Report's consideration by the Board. No later than five (5) calendar days before the hearing the Complainant or the accused MNPD officer/employee, or their representatives, may request permission to speak on the at the Board meeting. Permission will not be granted regularly, but the Board Chair may grant permission for brief comments--not exceeding ten (10) minutes--each for good cause shown.

(2) The Board will review each Proposed Resolution Report. In most situations, the Board will make its decision based upon the Proposed Resolution Report and any comments by the Director without any further submission or argument by the Complainant or the accused MNPD officer/employee, as each has had the opportunity to present information to the COB during the investigation. the Board may take one of the following actions:

a. Accept the Proposed Resolution Report as submitted and send it to the agency(ies) identified in the report.

b. Accept, but modify, the Proposed Resolution Report based on information contained in the report, and as modified send it to the appropriate agency(ies).

c. Reject the Proposed Resolution Report and based on information contained therein reach a different conclusion, directing that the Director revise the report, and as modified send it to the appropriate agency(ies).

d. Return the Proposed Resolution Report to the staff for further investigation and/or analysis.

(3) No Board member shall communicate outside a hearing with the Complainant, the accused or their respective representatives about a Complaint or a matter under investigation.

(4) No Board member shall conduct their own investigations or add their own evidence to the record of the Proposed Resolution Report.

(5) Regardless of outcome, all Resolution Reports approved by the Board will be sent by the COB to the MNPDP Chief of Police and the MNPDP Office of Professional Accountability.

E. Petition for Rehearing

(1) Within ten (10) calendar days following the Board's announced decision on the Proposed Resolution Report at the hearing, the Complainant or the accused may Petition the Board in writing, with grounds set forth, for a reconsideration. Such rehearing may be granted by the Board if it is shown that there is newly discovered evidence that is material to the investigation for the party making the application which could not have been, with reasonable diligence, discovered and provided to the COB during the investigation, or that there was substantial procedural error likely to have affected the outcome.

(2) Upon the COB's receipt of a Petition for Rehearing, the Board Chair in consultation with the Director will promptly decide whether to grant or deny the request. When a rehearing is granted, the matter will be taken up at the next regularly scheduled Board meeting.

(3) No Board member will knowingly communicate with a member of the public, the accused, their respective representatives or an organization about the subject of the request for reconsideration. Information and correspondence that is not in the record at the time the request for reconsideration is submitted only may be considered in making a decision if it is accepted as new evidence on remand from the Board to the COB.

F. Advocacy on Behalf of COB Resolution Reports

The Director and COB may advocate on behalf of the findings and recommendations contained in COB Resolution Reports that are forwarded to MNPDP, the District Attorney, the Grand Jury, or U.S. Attorney's Office.

SECTION 3. Policy Advisory Reports

A. At, or without, the request of the Board or a Board member, the COB may review and investigate any aspect of the Davidson County Criminal Justice system without need for anyone having filed a Complaint as to any policy or practice. To assure the best use of resources, however, before undertaking such a matter, the Director shall advise and seek input from the Board.

B. The COB may publish Policy Advisory Reports addressing any aspect of Davidson County's Criminal Justice System, after presentation to and approval by the Board.

C. Such reports shall be based on the following considerations:

(1) Community input, which should be actively solicited from those communities that are most directly affected by the policies at issue.

(2) Policy research and analysis, which will take into account insights from the fields of criminology, criminal justice, law enforcement theory, civil rights, and racial justice. Such analyses will, to the extent practicable, assess the costs and benefits of the policies at issue, including the potential harms that may be imposed by the investigation, arrest, incarceration, and/or prosecution of members of the community.

(3) Legal analysis of the policy at issue in relation to Tennessee and/or federal law.

D. The Board will review such Proposed Advisory Reports. In conducting such reviews, the COB may solicit the input of affected criminal justice agencies, community representatives, professionals in the field, or other experts. The COB may also conduct public hearings on the proposal at issue.

E. If the COB approves the proposal, the COB will publish the Policy Advisory Report. Publication of such report will authorize the Director to work with the affected criminal justice agencies toward implementing any recommendations in the Advisory Report.

SECTION 4. Community Comments at Board Meeting

A. The Board will regularly provide a time for public comment at its meetings, although not necessarily at every meeting. Board meeting agendas will note time provided for public comment. At those meetings, any person or organization with a direct local interest in an issue the Board has authority to consider may speak, except as to matters noted in Part C below; those interested in speaking at the Board meeting will be asked to sign in on a speakers sheet 30 minutes before the Board meeting begins so an orderly process for the speakers may be arranged. The public comment time will be limited so the Board may discuss its other scheduled matters. Each resident may speak for three (3) minutes, although in unusual situations that time may be modified by the Board Chair depending on the number of people who wish to speak and the Board's agenda.

B. Anyone resident who wants to speak at a Board meeting who is not fluent in English, and is otherwise unable to provide an interpreter, may request the COB to provide the assistance of an interpreter. Requests for the assistance of an interpreter will need to be made at least three (3) business days before a Board meeting. While the COB cannot guarantee that an interpreter will be available, it will make a reasonable effort to meet timely requests at no cost to the requesting resident.

C. Public comment by an Aggrieved Person, the Complainant or an MNPD officer/employee about a Proposed Resolution Report, which has been submitted to the Board for review, is addressed separately in Rule 2, Part D. If someone wants to speak about an alleged incident of Misconduct at a Board meeting, the Chair will ask the person whether they have filed a Complaint with the COB. If the answer is no, the person will be asked to make a Complaint so it may be investigated, rather than discussing it at the meeting. If the person says yes they have, then the Chair should tell them that once the investigation is completed, a report will be sent to the Board for its consideration, rather than it then be discussed. If a Resolution Report has been submitted to the Board for consideration, the Chair should explain to the speaker how to request to speak about the report when it comes to the Board.

D. Periodically, and at least twice a year, the Board will hold public forums in the community. Those forums may be about a specific issue or issues, or it may be a general meeting to listen and discuss any matter of local concern about law enforcement and conduct, other than those matters addressed in Part C above. Those interested in speaking at the forum will be asked to sign in on a speakers sheet 30 minutes before the meeting begins so an orderly process for the speakers may be arranged. The Board may limit the number of speakers and the time each may speak at a forum depending on number of people who wish to speak.

SECTION 5. Community Education and Involvement

A. The COB will prepare and distribute to the public an informational document about the COB and the Board, and specifically outlining the Complaint process. This document will describe the methods for making a Complaint and a brief description of the investigative process. The document will be distributed to the public online and made available in the police stations, the Davidson County Courthouses, and in other Metropolitan Government departmental and private sector offices. The information will also be available to the news media.

B. While only the Board Chair and the Executive Director can officially speak for the Board, members of the Board and the staff generally will be available to attend various community and professional group meetings for the purpose of sharing information about the Board and the COB, their roles and responsibilities.

SECTION 6. Training

Board members and COB employees will receive, and are required to undertake, the following training:

A. Initial training for both Board members and COB staff shall include:

(1) Metropolitan Nashville's Citizen Police Academy or an equivalent training, including a ride along; and

(2) civil rights and equity training from entities concerned with police oversight.

B. Additional recommended training for Board members and COB staff include:

(1) Tennessee Bureau of Investigation shooting simulator training;

(2) Ongoing civil rights, cultural sensitivity, unconscious bias, equity, procedural justice, search and seizure, use of force and training from entities concerned with police oversight

C. Whenever a Board member attends, as a representative of the Board, a training program, including any seminar where training or education is a component, the Board member will prepare a written report to the Board summarizing key information learned and provide a copy of the materials provided.

D. As approved and directed by the Director, the COB staff will undergo additional training pertinent to their areas of responsibility

SECTION 7. Annual Reports

The COB's annual report will include, at a minimum, the following:

A. A statistical report on the COB's resolutions of allegations of MNPB misconduct. This report should provide the following information both in summary, and detailed by the race, gender, and ethnicity of Complainant:

- (1) The number of Misconduct Complaints received;
- (2) The number of Misconduct investigations initiated;
- (3) The number of Misconduct investigations resolved;
- (4) The average number of days required to resolve Misconduct Complaints, from receipt of the Complaint to final resolution;
- (5) The number and percentage of Complaints resulting in a finding of "Sustained," "Not Sustained," and "Policy Exoneration";
- (6) The number and percentage of Complaints alleging the following Misconduct categories resulting in a finding of "Sustained," "Not Sustained," and "Policy Exoneration":
 - a. Excessive Force;
 - b. Violation of Civil Rights;
 - c. False Arrest;
 - d. False statements;
 - e. Race Discrimination.
- (7) The number and percentage of "Policy Exoneration" determinations resulting in a review of the relevant MNPB policy(ies);
- (8) The number and percentage of Complaints resulting in a finding of criminal Misconduct by an MNPB officer;
- (9) The number of MNPB Misconduct cases referred to the District Attorney's Office, Grand Jury, or U.S. Attorney's Office;
- (10) The number and percentage of Complaints resulting in the imposition of non-disciplinary remedial measures implemented directly by the COB;

(11) The number and percentage of Complaints resulting in a recommendation of discipline;

(12) The number and percentage of Complaints resulting in a recommendation of the following categories of discipline:

- a. Reprimand;
- b. Suspension;
- c. Termination.

(13) The number of matters resolved by Mediation/Conciliation/Restorative Justice programs

B. A report on community engagement and input received during the year, including:

- (1) The initiatives taken by the COB to actively engage with the community;
- (2) The criminal justice concerns raised by the community, and the identity of those organizations and/or individuals endorsing the concerns who wish to be identified;
- (3) The actions taken in response to concerns raised by the community.

C. A listing of all Policy Advisory Reports issued by the COB during the year, and the following information regarding each Advisory Report:

- (1) A summary of the relevant criminal justice institution(s)' receptiveness and response to the Advisory Report;
- (2) A summary of any specific feedback provided by the institution which was the subject of the report;
- (3) A summary of the steps taken to work with the relevant institution toward implementation of the Advisory Report;
- (4) A summary of any policy or other changes implemented by the relevant institution in response to the Advisory Report;
- (5) A determination regarding whether each existing Policy Advisory initiative merits continuation into the following year.

D. A report on the COB' s efforts to develop and maintain positive relationships with Davidson County's criminal justice agencies, and any reciprocal efforts by those agencies.