



# Metropolitan Nashville and Davidson County, TN

## Legislation Details (With Text)

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<b>Type:</b>	Bill (Ordinance)	<b>Status:</b>	Passed
<b>File created:</b>	6/13/2023	<b>In control:</b>	Metropolitan Council
<b>On agenda:</b>	7/18/2023	<b>Final action:</b>	7/18/2023
<b>Title:</b>	An ordinance amending Title 2 of the Metropolitan Code of Laws to reconstruct the community oversight board as a police advisory and review committee for the Metropolitan Government of Nashville and Davidson County to fully comply with Public Chapter No. 454 of the Public Acts of 2023.		
<b>Sponsors:</b>	Jeff Syracuse, Sharon Hurt, Delishia Porterfield, Zulfat Suara, Sean Parker, Bob Mendes, Colby Sledge, Tom Cash, Ginny Welsch, Burkley Allen, Emily Benedict, Jennifer Gamble, Angie Henderson, Russ Pulley, Kyonzte Toombs, Freddie OConnell, Antoinette Lee		
<b>Indexes:</b>			
<b>Code sections:</b>			
<b>Attachments:</b>	1. Amendment No. 1 to BL2023-1990, 2. Amendment No. 2 to BL2023-1990		

Date	Ver.	Action By	Action	Result
7/21/2023	1	Mayor	approved	
7/18/2023	1	Metropolitan Council	passed on third reading	Pass
7/6/2023	1	Metropolitan Council	passed on second reading as amended	Pass
7/6/2023	1	Metropolitan Council	amended	
7/6/2023	1	Rules, Confirmations, and Public Elections Committee	approved with amendments	
7/6/2023	1	Public Health and Safety Committee	approved with amendments	
6/20/2023	1	Metropolitan Council	passed on first reading	
6/13/2023	1	Metropolitan Council	filed	

An ordinance amending Title 2 of the Metropolitan Code of Laws to reconstruct the community oversight board as a police advisory and review committee for the Metropolitan Government of Nashville and Davidson County to fully comply with Public Chapter No. 454 of the Public Acts of 2023.

WHEREAS, community advocates and groups such as the Nashville NAACP had been calling for a Community Oversight Board (“COB”) for more than four decades; and

WHEREAS, community organizations renewed demands for a COB between September 2016 and February 2017; and

WHEREAS, after the fatal officer involved shooting of Jocques Clemmons on February 10, 2017, a coalition of community organizations (officially called “Community Oversight Now”) was formed in March 2017 to collectively push for a COB; and

WHEREAS, dozens of community events were held across Nashville to educate the public on the need for a COB; and

WHEREAS, local legislative efforts supported by Community Oversight Now’s coordinating committee in 2017

were not successful; and

WHEREAS, on April 4, 2018, Community Oversight Now launched a Charter Referendum Petition to put the COB decision in the hands of Nashville voters; and

WHEREAS, after the fatal officer involved shooting of Daniel Hambrick on July 26, 2018, the COB effort gained much needed momentum and a citizen petition driven Charter Amendment establishing Metro's Community Oversight Board was approved overwhelmingly by 134,371 Nashville voters in a referendum election on November 6, 2018; and

WHEREAS, the successful creation of the Community Oversight Board was the direct result of dedicated organizing efforts of Nashville activists and supporters who recognized the need for more accountability in policing; and

WHEREAS, Public Chapter No. 454, signed by the Governor on May 17, 2023, (the "Act") effectively reverses the will of Nashville voters by preempting any existing law, ordinance, or charter provision concerning a community oversight board; and

WHEREAS, since the COB was created prior to July 1, 2023, the Metropolitan Council must comply with the provisions of the Act, within one hundred and twenty (120) days of July 1, 2023, or the community oversight board will be terminated by operation of law; and

WHEREAS, the Metropolitan Council recognizes that, in order to continue the COB work of addressing community complaints of police actions, it is required to comply with applicable Tennessee law, including the Act, unless a court rules that compliance is not necessary; and

WHEREAS, if not for the Act, any amendments to the core makeup and scope of authority of the COB would require a referendum election receiving a majority of the vote to amend the Metropolitan Charter; and

WHEREAS, the Act authorizes the Metropolitan Council to adopt an ordinance creating a police advisory and review committee; and

WHEREAS, pursuant to the Act it is necessary to reconstruct the COB as the police advisory and review committee to review citizen complaints before the end of the current Council term and in no event later than October 29, 2023.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: Title 2 of the Metropolitan Code of Laws is hereby amended by deleting Chapter 2.106 in its entirety and replacing it with the following:

## CHAPTER 2.106 - COMMUNITY REVIEW BOARD

### 2.106.010 - Creation

To reconstruct the community oversight board initially created by Metropolitan Charter Section 11.1301 and as subsequently required by Public Chapter No. 454 of the Public Acts of 2023, there is hereby created a police advisory and review committee of the Metropolitan Government of Nashville and Davidson County to be called "The Metropolitan Community Review Board" (hereinafter may be referred to as the "Community Review Board," "MCRB," or "Board").

### 2.106.020 - Purpose

The purpose of the board is to strengthen the relationship between citizens and the department of police; to ensure the timely, fair, and objective review of citizen complaints while protecting the individual rights of police officers; and to make recommendations concerning citizen complaints to the chief of police.

#### 2.106.030 - Membership

(a) The board shall consist of seven (7) members, each of whom must:

(1) Possess a reputation for fairness, integrity and responsibility, and have demonstrated an active interest in public affairs and service;

(2) Be a registered voter of Davidson County; and

(3) Not be a current employee of a local governing body.

(b) Except as provided in subsection (a), membership of the board shall not be restricted based upon demographics, economic status, or employment history.

(c) All board members shall be appointed by the mayor and confirmed by a majority vote of the metropolitan council. The mayor may consider nominations from community organizations, nominations by private petition signed by fifty (50) Davidson County residents, and nominations by members of council when determining appointments to the board. The mayor is encouraged to consider nominating at least four persons from community organizations or private petitions. Initial appointments may be selected from the existing 11-person Community Oversight Board. No more than two (2) persons shall be appointed from one (1) metropolitan council district. Initial appointments to the board shall be made for the following terms:

(1) Two (2) members of the board shall be appointed for one-year terms;

(2) Two (2) members of the board shall be appointed for two-year terms; and

(3) Three (3) members of the board shall be appointed for three-year terms.

(d) Following the initial appointments, all subsequent appointments, except to fill vacancies, shall be for three-year terms. Vacancies occurring other than through the expiration of terms shall be filled for the remainder of the term of the member being replaced. No board member appointed pursuant to this chapter may serve more than two (2) consecutive terms.

(e) Upon making the initial appointments to the board, the mayor shall designate one

(1) member of the board to convene the first regular meeting of the board. At its first regular meeting, the board shall elect one of its members to serve as chair. The chair shall serve a term of one (1) year or until a successor is elected. The chair may appoint such other officers as the chair deems appropriate.

(f) Upon the recommendation of the majority of the board members or by a finding of the mayor, the mayor, with a majority approval of the metropolitan council, may remove any member of the board for official misconduct or neglect of duty, including for neglect of any duty specifically enumerated in subsection (j) below. Members who are absent from three (3) consecutive regular board meetings are considered to have vacated their positions on the board and may be replaced as provided for herein. Members who cease to have the qualifications for membership on the board as provided in subsection (a) of this section shall be deemed to have forfeited their position on the board.

(g) No member of the board shall receive compensation for services performed.

(h) Within six (6) months of being appointed to the board, each member shall complete the citizen's police

academy course offered by the department of metropolitan police and any other training deemed appropriate by the chief of police to educate citizens on law enforcement operations, practice, and training. Members who fail to complete required courses are considered to have vacated their positions on the board and may be replaced.

(i) Members of the board shall:

(1) Respect an individual's, including a police officer's, right to privacy, and maintain confidentiality of records;

(2) Maintain the confidentiality of internal affairs unit files, personnel files, and other files, records, or recordings received pertaining to their membership on the board;

(3) Excuse themselves from participating in the review of any complaint in which they have a personal, professional, or financial conflict of interest; and

(4) Conduct themselves in a manner that ensures public confidence in the fairness, impartiality, and integrity of the board, and refrain from making any inappropriate or prejudicial comments regarding any matter being reviewed by the board or which may be reasonably expected to be reviewed by the board.

(j) The Director of Law shall investigate an allegation of misconduct by a board member or their staff and submit a written report of the investigative findings to the mayor and the metropolitan council.

#### 2.106.040 - Board Staff

(a) The board shall be served by an executive director who is selected by the mayor and approved by a majority of the members of the board. The executive director position shall be in the unclassified service.

(b) The executive director shall:

(1) Possess a reputation for fairness, integrity and responsibility and have demonstrated an active interest in public affairs and service;

(2) Be a registered voter of Davidson County;

(3) Not be a former employee of a law enforcement agency for the preceding twelve (12) months;

(4) Possess prior investigative experience, such as would be possessed by an attorney or a local law enforcement officer;

(5) Respect an individual's, including a police officer's, right to privacy, and maintain confidentiality of records;

(6) Maintain the confidentiality of all law enforcement records and files that the executive director or board receives as a result of the board's performance of its official duties;

(7) Not participate in the review of a complaint in which the executive director has a personal, professional, or financial conflict of interest;

(8) Conduct the duties of the office in a manner that maintains public confidence in the fairness, impartiality, and integrity of the board, and refrain from making inappropriate or prejudicial comments regarding a matter being reviewed by the board or which may be reasonably expected to be reviewed by the board; and

(9) Comply with all rules applicable to other employees of the Metropolitan Government.

(c) No person shall be approved as an executive director until the person has:

(1) Supplied a fingerprint sample for the purpose of a state criminal history background check and investigation to be conducted by the Tennessee Bureau of Investigation, as well as a national criminal history background check to be conducted by the Federal Bureau of Investigation; and

(2) Submitted to a lawfully administered test designed to detect the presence of a controlled substance or a controlled substance analogue.

(d) The Board shall prepare annually a budget for the coming fiscal year, and shall submit such budget to the mayor in accordance with the Metropolitan Charter. Subject to annual appropriation in the operating budget, the board may employ staff as may be necessary to carry out the purposes of the board to be managed by the executive director. The salaries and benefits of board staff shall be as fixed in the pay plan adopted pursuant to Article 12 of the Metropolitan Charter.

#### 2.106.050 - Duties of the Executive Director

(a) The executive director shall accept written, sworn complaints from members of the public regarding misconduct of metropolitan police officers and shall forward these complaints to the head of the police department internal affairs unit within three (3) business days of their receipt. Upon receipt of any such complaint, the police department internal affairs unit shall immediately undertake an investigation of the allegations pursuant to the standard operating procedures of the police department. The executive director may also accept unsworn or anonymous complaints, and if accepted, refer the complaints to the police department internal affairs unit for investigation.

(b) Upon notification by the head of the internal affairs unit that an investigation of an allegation of police misconduct is closed, whether such investigation was prompted by a complaint received by the executive director or otherwise, the executive director shall review the internal affairs unit file or the referral action form and determine whether the investigation is complete.

(1) If the executive director finds that the investigation is complete, then the executive director shall file a report with the board at its next regularly scheduled meeting that contains a copy of the internal affairs unit case, summary, or referral action form, and any documentation of disciplinary action pertaining to the case.

(2) If the executive director finds that the investigation is not complete, then the executive director shall notify the board, at its next regularly scheduled meeting, that, in the executive director's opinion, additional investigation or additional time may be required for the investigation to be complete.

(c) At each regularly scheduled board meeting, the executive director shall file a report with the board that details the resolution of unsworn or anonymous complaints that the executive director has been able to resolve without an investigation by the internal affairs unit.

(d) The executive director may request legal services and advice from the department of law. If the director of law determines that the provision of legal services and advice would constitute a conflict of interest, the director of law shall so advise the executive director. The executive director may then request the director of law to provide outside counsel for such legal services and advice.

(e) The executive director shall:

(1) Ensure the proper recording of the minutes of the board;

(2) Maintain proper records and files pertaining to board business;

- (3) Receive and record all exhibits, petitions, documents, or other materials presented to the board in support of or in opposition to a question before the board;
- (4) Comply with state law and local ordinances regarding notice of meetings;
- (5) Provide complainants with information about the complaint process;
- (6) Be a notary public;
- (7) Compile statistical information regarding complaints of misconduct by police officers as reported to the executive director from a member of the public, reported to the internal affairs unit where the investigation was reviewed by the executive director, or which were initiated by the executive director; and
- (8) Include the information compiled under subsection (e)(7) in an annual report to the chief of police, the mayor, and the metropolitan council of the board's activities.

#### 2.106.060 - Powers and Duties of the Board

- (a) The board shall review all reports of the executive director submitted in accordance with the provisions of section 2.106.050(b).
- (b) After a finding by the executive director that an investigation is not complete, the board may, by a majority vote of its members:
  - (1) Request the chief of police to conduct a further investigation of the incident, specifying that additional information is needed; or
  - (2) Direct the executive director to return the investigation to the internal affairs unit for additional investigation.
- (c) The executive director shall report any additional investigative findings made to the board, and upon completion of its inquiry, the board shall report its written findings and conclusions to the chief of police and the mayor.
- (d) The board shall have access to all public records it deems necessary to conduct its affairs in furtherance of its duties under this chapter, including department of metropolitan police records. Such records include:
  - (1) Complaints and supporting documents provided by complainants;
  - (2) Offense, incident, and arrest reports; and
  - (3) Incident-related documents such as schedules, dispatch notes, dispatch tapes and transcriptions, citations, photographs, and records of interviews with complainants, employees, and witnesses.
- (e) The board shall not access nonpublic records, including employee medical records, or records that are otherwise exempt from disclosure under any state or federal law. Notwithstanding the foregoing, any document provided to the board that is confidential under state or federal law must be treated as confidential and must not be released to the public.
- (f) Upon completion of the review of an internal affairs investigation, the board may, subject to its own

specific findings and conclusions, make recommendations to the chief of police for the improvement of law enforcement policies and activities and to benefit the community.

(g) The board shall, at least once a year, compile a comprehensive report of its activities. The report shall contain statistics and summaries of citizen complaints, including a comparison of the board's findings and conclusions with those of the internal affairs unit, along with the actions taken by the chief of police. The board's annual report shall be submitted to the:

- (1) Executive director for inclusion in the executive director's annual report to the chief of police;
- (2) Mayor;
- (3) Metropolitan Council;
- (4) Chairs of the civil justice and criminal justice committees of the house of representatives; and
- (5) Chair of the judiciary committee of the senate.

(h) The board may request legal services and advice from the department of law. If the director of law determines that the provision of legal services and advice would constitute a conflict of interest, the director of law shall so advise the board. The board may then request the director of law to provide outside counsel to the board for such legal services and advice.

(i) If the executive director is prohibited from participating in the review of a complaint pursuant to section 2.106.040(b)(7), the board may petition the mayor to appoint a temporary assistant to perform the duties of the executive director.

#### 2.106.070 - Procedure

(a) The board shall adopt rules of procedure for the transaction of board business not inconsistent with this chapter.

(b) Four (4) members of the board shall constitute a quorum. No meeting of the board shall commence or continue in the absence of a quorum. A majority vote of those forming a quorum is required for any action by the board except where otherwise specified in this chapter.

Regular meetings of the board shall be held no less than quarterly, on the first Wednesday of January, April, July and October or as the board may otherwise elect. A scheduled meeting may be rescheduled at the preceding regular meeting. The chair and three (3) members of the board may call a special meeting of the board upon at least five (5) days' notice.

(c) Board meetings and records shall be open to the public in accordance with the provisions of the Tennessee Open Meetings Act and Public Records Act. The board shall provide an opportunity for public comment about an investigation being reviewed by the board pursuant to rules established by the board.

(d) The chief of police, or their designee, may attend meetings of the board and provide information and advice to, or accept the recommendations of, the board, if any.

#### 2.106.080 - Limitations

(a) The board does not have the authority to issue subpoenas for documents or to compel witness testimony. This limitation does not prohibit the issuance of a subpoena approved by resolution of the metropolitan council pursuant to Section 38-8-312 of the Tennessee Code Annotated.

- (b) The board and its staff shall not review an investigation:
- (1) Concerning any incident occurring prior to January 1, 2023;
  - (2) Prior to the closure of an investigation by the internal affairs unit or of a criminal investigation;
  - (3) While the complainant, the officer(s) complained about, or a witness is actively engaged in pursuing a remedy provided by the rules and regulations of the civil service commission; or
  - (4) Where the complainant has initiated, threatened, or given notice of the intent to initiate litigation against the metropolitan government or any of its employees.
- (c) The board shall not direct the chief of police to alter or impose disciplinary action against any employee of the department of metropolitan police.
- (d) To the extent not preempted by state law, the board shall have all the powers and duties provided in Section 11.1301 of the Metropolitan Charter.

#### 2.106.080 - Severability

If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be unenforceable by a court of competent jurisdiction, such clause or provision and the remainder of this chapter shall remain effective and enforceable to the fullest extent allowed by law, and all clauses and provisions of this chapter are hereby declared to be severable.

Section 2: This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

#### Analysis

This ordinance, as amended, amends Title 2 of the Metropolitan Code of Laws to establish a police advisory and review committee, to be called the Metropolitan Community Review Board, in compliance with Public Chapter No. 454 of the Public Acts of 2023.

On May 17, 2023, Governor Bill Lee signed into law Public Chapter No. 454, which preempts any existing law that created a police advisory and review committee, community oversight board, or other similar police oversight body which does not comply with the requirements of the Public Chapter as of January 1, 2023. This means that the Community Oversight Board, which was approved by voters at referendum on November 6, 2018, is preempted by the new state law.

The state law requires local governments that created a police advisory committee, community oversight board, or other similar police oversight body to conform with the new state law within 120 days of July 1, 2023, or the police advisory committee, community oversight board, or other similar police oversight body is terminated. The state proscribes precisely the requirements that must be included in the police advisory review committee adopting legislation and does not allow for deviation from the substantive requirements.

This ordinance creates a police advisory and review committee to be called the Metropolitan Community Review Board ("MCRB") in compliance with the new state law. The state law sets forth the requirements that the MCRB must adhere to in detail. The board will be made up of seven members appointed by the mayor and



confirmed by the Council. All members must possess a reputation for fairness, integrity, and responsibility and have demonstrated an active interest in public affairs and public service, be a registered voter of Davidson County, and not be a current employee of a local governing body. The members will serve staggered three-year terms.

MCRB members will be required to complete the citizen's police academy course offered by the Metropolitan Nashville Police Department ("MNPd") and any other training deemed appropriate by the Chief of Police to educate citizens on law enforcement operations, practice, and training.

The executive director of the MCRB will be selected by the mayor and approved by a majority vote of the MCRB. The executive director must possess a reputation for fairness, integrity, and responsibility and have demonstrated an active interest in public affairs and service, be a registered voter of Davidson County, not be a former employee of a law enforcement agency for the preceding 12 months, possess prior investigative experience, respect an individual's right to privacy, maintain confidentiality of records, not participate in the review of any complaint where the executive director has a conflict of interest, conduct the duties of office in a manner that maintains public confidence, and comply with all rules applicable to other employees of the Metropolitan Government. The executive director must submit to a background check conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation and must submit to a drug test.

The executive director will accept written, sworn complaints from members of the public regarding misconduct of MNPd officers. The complaints will be forwarded to the head of the MNPd office of professional accountability within three business days of receipt. Upon receipt of any such complaint, the MNPd office of professional accountability will immediately undertake an investigation of the allegations pursuant to standard procedures. The executive director may accept unsworn or anonymous complaints and, if accepted, refer the complaints to the MNPd office of professional accountability for investigation.

The head of the MNPd office of professional accountability will notify the executive director when an investigation of misconduct is closed. Upon notice of a closed investigation, the executive director will review the office of professional accountability file or the referral action form and determine whether the investigation is complete. If complete, the executive director will file a report with the board with a copy of the case summary or referral action form and any documentation of disciplinary action. If incomplete, the executive director will notify the board that additional investigation or time may be required for completion.

The executive director will file a report of the resolution of unsworn or anonymous complaints that the executive director has been able to resolve without an investigation by the office of professional accountability at each MCRB meeting.

The executive director is responsible for the minutes of the board, maintaining proper records and files pertaining to board business, comply with state law and local ordinances regarding meeting notice, provide complainants with information regarding the complaint process, compile statistical information regarding complaints, and provide an annual report on the statistical information to the Chief of Police, Mayor, and Metropolitan Council. The executive director must also be a notary public.

The MCRB must review all reports of the executive director. After a finding of the executive director that an investigation is not complete, the board may, by a majority vote of its members, require the Chief of Police to conduct a further investigation of the incident, or direct the executive director to return the investigation to

the office of professional accountability for additional investigation. The executive director must report any additional findings to the board and, upon completion of the inquiry, the MCRB must report its findings and conclusions to the Chief of Police and Mayor.

At least once a year, the MCRB must compile a comprehensive report of its activities including statistics and summaries of citizen complaints, comparisons of the MRCB's findings and conclusions with that of the office of professional accountability, along with actions taken by the Chief of Police. The annual report will be submitted to the Chief of Police, Mayor, Metro Council, Chairs of the civil justice and criminal justice committees of the Tennessee House of Representatives, and the chair of the judiciary committee of the Tennessee Senate.

The both executive director and the MCRB may request legal services from the Department of Law.

The MCRB may not issue subpoenas for documents or to compel witness testimony. However, the Metro Council may issue a subpoena by resolution. This subpoena must be issued by a majority vote, must not be in the form of a blanket authorization, and must not be issued for documents that are confidential under state or federal law.

The MCRB is prohibited from investigating any incident occurring before January 1, 2023, any incident prior to the closure of the investigation by the office of professional accountability or of a criminal investigation, while a remedy is actively being pursued though the rules and regulations of the Civil Service Commission, or where the complaint has initiated, threatened, or given notice of an intent to initiate litigation of the Metropolitan Government or any of its employees.

The MCRB created by this ordinance pursuant to state law differs from the Community Oversight Board set up in Chapter 11.13 of the Metropolitan Charter in many ways. The COB was an 11-member board, while the MCRB is a seven-member board. The COB provided for seven members nominated by community organization or petition, two members nominated by the Council, and two members nominated by the Mayor, with all members being approved by the Council. The MCRB provides for all members to be appointed by the Mayor and confirmed by the Council. The COB was given authority to investigate allegations of misconduct, while the MCRB will review complaints and the investigation of complaints by the police department office of professional accountability instead of conducting investigations itself.

The state law requires that at least two readings of the ordinance be approved by a 2/3 vote of the Council. Because first reading was on the consent agenda, one of the two higher threshold votes has been met. If legislation creating a police advisory and review committee pursuant to the state law isn't adopted before October 29, 2023, Metro will be prohibited from creating such an entity in the future.

An amendment added at the Council's July 7, 2023 meeting delays the effective date of this ordinance to October 27, 2023.