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MEMORANDUM

TO: Members, Metro Board of Ethical Conduct

FROM: Saul Solomon
Kevin Klein
Allison Bussell

DATE: February 21, 2018

RE: Evaluation and Recommendation on Theeda Murphy Ethics Complaint

PRELIMINARY STATEMENT

On February 7, 2018, Davidson County resident Theeda Murphy filed a Complaint with the Metropolitan Government's Board of Ethical Conduct (the "Board") against Megan Barry, Mayor of the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government"). Broadly, the Complaint alleges that Mayor Barry violated the Metropolitan Government's Standards of Conduct and Executive Order 005 through her extra-marital relationship with former Metropolitan Nashville Police Department ("MNPD") Sgt. Robert Forrest, Jr. and other actions or inactions related to MNPD business and police policy.

The Metropolitan Department of Law retained Klein Bussell, PLLC to evaluate the Complaint and make recommendations.[1] Upon review of the Complaint, in conjunction with applicable state and local law, this office concludes and recommends as follows:

- The Board lacks jurisdiction to examine alleged violations of Metropolitan Government executive orders. Thus, the portion of the Complaint alleging violation of Executive Order 005 should be dismissed.
- The Complaint contains allegations concerning (1) an improper relationship between Mayor Barry and Sgt. Forrest and (2) actions or inactions by Mayor Barry on specific police policy issues. While allegations of an improper relationship coupled with government action could give rise to a violation of the Standards of Conduct under certain circumstances, the Complaint here contains no facts connecting Mayor Barry's relationship with Sgt. Forrest to her action or inaction on the enumerated issues. Thus, the facts alleged, even if true, would not establish that Mayor Barry violated the Metropolitan Government's Standards of Conduct through action or inaction on those issues. Moreover, the allegations regarding Mayor Barry's relationship with Sgt. Forrest, standing alone, would not establish

[1] The Department of Law retained outside counsel to conduct an independent analysis of the Complaint and provide a recommendation to avoid any appearance of bias. The Department of Law in no way dictated the results of our review, and the conclusions herein are entirely our own.

a violation of the Standards of Conduct. Those portions of the Complaint, therefore, should be dismissed.

- The allegation in the Complaint that Sgt. Forrest was paid "excessive amounts of overtime," if true, would give rise to a violation of the Metropolitan Government's Standards of Conduct. The Board, therefore, should conduct a hearing on that issue.

THE COMPLAINT

The essence of Ms. Murphy's Complaint is that Mayor Barry and Sgt. Forrest's admitted sexual relationship, standing alone and coupled with various actions or inactions by Mayor Barry relating to MNPD business and police policy, violates Executive Order 005 and the Metropolitan Government's Standards of Conduct.

The following allegations are drawn directly from the Complaint, and do not constitute this office's conclusions or recommendations:

- The Complaint, attached hereto as Exhibit 1, alleges the following concerning Mayor Barry's relationship with Sgt. Forrest:
  - *"On January 31, 2018, Mayor Barry made a public admission of a sexual relationship with Sergeant Robert Forrest, Jr. who, at the time, was serving as her chief of security while employed with the Metro Nashville Police Department (MNPD). Sergeant Forrest had been an employee of MNPD for 30 years, working as a lead investigator for drug and prostitution cases before transferring to the Office of the Mayor as part of the security team fourteen (14) years ago. They have both admitted that the relationship began in 2016. It is unclear when the relationship ended."* (Compl. at 1.)
- The Complaint contains numerous allegations relating to Mayor Barry's actions or inactions on specific MNPD-related issues. Those allegations are summarized as follows:
  - *In September 2016, without a public hearing, "Mayor Barry unilaterally approved an allocation of $1.6 million of Metro's general equipment fund to buy militarized ballistic protection for MNPD."* (Compl. at 1.)
  - *"In October 2016, Gideon's Army, a grassroots organization, published a report entitled 'Driving While Black'. The report provided strong empirical evidence that MNPD routinely harassed and intimidated Black drivers. One of the recommendations in the report was that the city needed to establish a community-based board to provide civilian oversight of police policy including training and discipline. MNPD immediately repudiated the findings of the report with the Mayor's support."* (*Id.*)
  - *"On February 10, 2017, MNPD officer Joshua Lippert killed an unarmed Black man, Jacques Clemmons."* (*Id.*)
    - *MNPD cleared Officer Lippert of wrongdoing "[w]ithin a week of the shooting."* (*Id.*)

- *The Davidson County District Attorney asked the Tennessee Bureau of Investigation ("TBI") to investigate. The investigation "found no basis upon which to bring criminal charges against the officer" but concluded "that MNPD demonstrated significant institutional bias during their investigation."* (*Id.*)
- *When the DA referred the Clemmons case to the TBI, "MNPD was instructed to stand down and cease its investigation." The DA later "made a public statement" "when it became clear that MNPD had been conducting a parallel investigation which overlapped the TBI's investigation." "Mayor Barry did not respond," though Chief Anderson "reports directly to her."* (*Id.*)
- *The TBI and DA's office held a press conference and invited Chief Anderson. The Chief did not attend and held a separate press conference at which he "announced that he would release any disciplinary actions that may be taken within the department as soon as the Use of Force report was complete."* (*Id.* at 1-2.)
- *"The Mayor reprimanded the DA in a subsequent press conference and recounted instructing the Chief to talk to her instead of making public statements." The Mayor also stated "that there would be 'critical next steps' but provided no further detail. Currently, there is no record of follow up nor any announcement regarding the Chief's disciplinary decision."* (*Id.* at 2.)
- *Officer Lippert remains employed at MNPD. He was permitted to take the sergeant's exam despite "his past disciplinary record," including a suspension of twenty (20) days between May 2013 and October 2015.* (*Id.*)
- *In a June 2017 report, the Davidson County grand jury recommended that the Metropolitan Government "should give civilians oversight authority in cases of deadly force and suggested de-escalation training. The Department of Justice's Civil Rights Division has supported civilian oversight efforts as well."* (*Id.*)
- *The Clemmons family attempted to meet with the Chief of Police during 2017, to no avail, resulting in "press coverage" and "public embarrassment for MNPD and the city." Mayor Barry would not facilitate a meeting or otherwise try to resolve the situation, nor did she intervene or comment.* (*Id.*)

- *Following the Clemmons investigation, several community groups combined to form the Community Oversight Now Coalition (the "Coalition").* (Compl. at 2.)
  - *The Coalition "researched and developed legislation for establishing a community oversight board in Nashville beginning in March 2017."* (*Id.*)
  - *The Coalition held public hearings, which Council representatives attended. The Coalition presented to the Minority Council, and invited the Mayor and her staff, the Chief of Police, and the entire Council. A staff*

member from the Mayor's office met with the Coalition and acknowledged the importance of involving MNPD, but the Mayor's office would not facilitate such a meeting. (*Id.* at 2-3.)

- *The Coalition initially received no response from the Mayor's office after requesting in August 2017 to meet with the Mayor. After being scheduled, the meeting was delayed until after legislation was already filed with Council.* (*Id.* at 3.)
- *"[I]nstead of meeting with the Coalition, the Mayor connected with an organization based in New York which studies policing policy . . . ." The organization met with MNPD officials, including the Chief of Police. The Coalition was not included.* (*Id.*)
- *In October 2017, the Mayor publicly stated that she "would support a task force to discuss the need for civilian oversight." Before the scheduled meeting with the Coalition, the Mayor "suddenly announced that she would no longer be convening a task force" and would not support the Council's efforts to do so.* (*Id.*)

- *In November 2017, when legislation was introduced in Council, MNPD officers/FOP members who were on the Council attempted to block the first reading of the bill.* (Compl. at 3.)
  - *In December 2017, the Mayor finally met with the Coalition. She would not allow discussion of the details of the bill or how it could be adjusted to address concerns of MNPD or Metro Legal.* (*Id.*)
  - *During the meeting, the Mayor reiterated things she had done for the city in lieu of civilian oversight but would not support the bill. When Coalition members expressed concern about "possible surveillance and intimidation by the FOP, the Mayor looked extremely uncomfortable and took some notes." A pastor in the meeting questioned the Mayor "about the public disrespect that the Chief had shown her" by holding his own press conference," asking "'What does he have over you?'" The Mayor anxiously looked over the room and abruptly left.* (*Id.*)
- *The Mayor "has shown a consistent pattern of protecting the interest of MNPD whenever MNPD's interests were at odds with members of the public or other government institutions and their representatives."* (Compl. at 3.)
  - *"[I]t became increasingly apparent that Chief Anderson and MNPD felt comfortable in ignoring any authority she attempted to exercise over their actions."* (*Id.*)
  - *"[I]t does not appear that [the Mayor] has made any credible attempt to reprimand or censure the Chief for his actions which publicly flouted her authority."* (*Id.*)
- *"[The complainant] feel[s] that Mayor Barry may have been improperly influenced against the community oversight board due to her relationship with Sgt. Forrest."* (Compl. at 4.)

- *The complainant contends that Mayor Barry "violated the provisions of Section 2, subparagraph II, section 1 of Executive Order 005 in that her relationship with Sgt. Forrest created the appearance of giving preferential treatment (payment of excessive amounts of overtime), losing complete independence or impartiality as will be further explicated below, and affecting adversely the confidence of the public in the integrity of Metro Government."* (Compl. at 4.)
  - *"It is unknown at this time whether Chief Anderson or anyone else in MNPD knew of the relationship between the Mayor and the Sergeant, however, it is not unreasonable to assume that knowledge of such a relationship could have been used as leverage against the Mayor."* (*Id.*)
  - *"Regardless of whether anyone was aware or actively advocating to influence her decisions regarding any issue of public safety policy which was at odds with the official MNPD position, the simple fact is she knew there was at least one officer who could air her dirty laundry at a moment's notice and that fact alone brings into question her ability to be an honest broker in any discussion or consideration of these issues."* (*Id.*)

ANALYSIS

A. Local Law Requirements for Evaluation of Complaint.

Under Metropolitan Code § 2.222.040(C)(1)(e), the Department of Law (or, in this instance, its designee) must evaluate the Complaint to determine whether the facts alleged, if true, could be deemed a violation of the Metropolitan Government's Standards of Conduct. The same provision requires the Department of Law to file with the Metropolitan Clerk and issue to the Board a report that does the following:

- States whether the facts alleged in the Complaint, if true, would give rise to a violation of the Standards of Conduct; and
- Recommends that the Complaint be dismissed or that a hearing be held on the matter.

After the Department of Law issues its report and recommendation to the Board, the Chair of the Board must call a public meeting concerning the matter. At the public meeting, the Board must evaluate the Department of Law's report and decide whether to accept or reject its recommendation. In addition, the Board must decide at that public meeting whether to dismiss the Complaint or hold a hearing on the matter.

B. The Board's Jurisdiction.

Metropolitan Code § 2.222.040 creates the Board of Ethical Conduct and sets forth the Board's jurisdiction, membership, and duties and responsibilities. Section 2.222.040(C) establishes "[p]rocedures for evaluations and hearing of complaints regarding conduct . . . ." *Id.* Subsection (C)(1)(a) states that "[a]ny person may submit a complaint alleging that any one or more Metropolitan Government elected officials or members of a metropolitan government board or commission have violated the standards of conduct." *Id.*

The Complaint alleges that Mayor Barry's conduct violates both the Standards of Conduct and Executive Order 005. (Compl. at 4.) By the plain language of Metropolitan Code

§ 2.222.040, the Board has jurisdiction over any complaint alleging violations of the Standards of Conduct. Likewise, the Department of Law's charge in Metropolitan Code § 2.222.040(C)(1)(e) is to examine "whether the facts alleged in the complaint, if true, would give rise to a violation of the ***standards of conduct*** . . . ." *Id.* (emphasis added). The Department of Law does not, on the other hand, have any designated authority to examine whether the facts in the Complaint would give rise to a violation of Metropolitan Government executive orders. In fact, nothing in the Metropolitan Code—Chapter 2.222 or otherwise—provides the Board or Department of Law the authority to examine and offer recommendations concerning whether Metropolitan Government employees have violated an executive order. Thus, the Board does not have jurisdiction over alleged violations of Metropolitan Government executive orders.

Because the Board does not have jurisdiction to examine alleged violations of Metropolitan Government executive orders, the Board should dismiss the Complaint insofar as it alleges a violation of Mayor Barry's Executive Order 005.

C. The Merits of the Complaint.

1. Ethical Standards of Conduct.

The Metropolitan Standards of Conduct were adopted in response to state legislation mandating that local governmental entities adopt ethical standards for all officials and employees of such entities. *See* Tenn. Code Ann. § 8-17-103. The state legislature explained its intent as follows:

> It is the intent of the general assembly that the integrity of the processes of local government be secured and protected from abuse. The general assembly recognizes that holding public office and public employment is a public trust and that citizens of Tennessee are entitled to an ethical, accountable and incorruptible government.

Tenn. Code Ann. § 8-17-101.

Tenn. Code Ann. § 8-17-102(a)(3), which defines "ethical standards," also provides in relevant part:

> "Ethical standards" includes rules and regulations regarding limits on, and/or reasonable and systematic disclosure of, gifts or other things of value received by officials and employees that impact or appear to impact their discretion, and shall include rules and regulations regarding reasonable and systematic disclosure by officials and employees of their personal interests that impact or appear to impact their discretion.

Id.

The Standards of Conduct adopted by the Metropolitan Council provide, among other things, that "employees"[2]:

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[2] "Employee" is defined as "any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the Metropolitan Government of Nashville and Davidson

> g. Shall not receive or use for personal purposes any property, services or funds of metropolitan government unless authorized by law;
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> ***
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> i. Shall not use their metropolitan government positions improperly to secure unwarranted privileges or exemptions for themselves, relatives or others, provided, however, that this provision does not preclude employees from acting in a manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them; [and]
>
> ***
>
> k. Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person.

Metropolitan Code § 2.222.020(g), (i), (k).

These Standards of Conduct, when read in conjunction with the state law requiring the adoption of ethical standards, are clearly intended to protect and secure the integrity of the processes of local government from abuse and corruption. The Standards of Conduct are aimed at financial improprieties, improper influence over officials, and officials' improper acceptance or provision of benefits.

2. Whether the Facts, If Proven True, Could Establish Violations of the Standards of Conduct.

Metropolitan Code §§ 2.222.040(C)(1)(b)(iii)-(iv) state that an ethics complaint must contain a "[s]ummary of the facts giving rise to the complaint" and an "[e]xplanation of why those facts constitute a violation of the standards of conduct." *Id.* Here, the Complaint alleges that Mayor Barry and Sgt. Forrest's relationship, standing alone and coupled with Mayor Barry's involvement or lack of involvement in certain police policymaking, violates the Standards of Conduct.

(i) Allegations Concerning Sexual Relationship

Standard of Conduct 2.222.020(k) prohibits Metropolitan Government officials from "giv[ing] reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kindship, rank, position or influence of any person." *Id.* The existence of a consensual sexual relationship between Mayor Barry and Sgt. Forrest, even if improper, does not in itself give a reasonable basis for the impression that Mayor Barry would be improperly influenced in the performance of her official duties, or that she would be unduly affected by Sgt. Forrest's rank, position, or influence. Thus, the relationship, standing alone, does not violate Standard of Conduct 2.222.020(k).

County." Metropolitan Code § 2.222.010(5). Thus, "employee" includes the Mayor of the Metropolitan Government.

(ii) Allegations Concerning Police Policymaking

The analysis then turns to whether Mayor Barry and Sgt. Forrest's relationship, coupled with other facts alleged in the Complaint, if proven true, would constitute a violation of the Standards of Conduct. As set forth above, the Complaint alleges a litany of situations in which the Mayor declined to support or offer input into various actions taken by the Coalition to create civilian oversight over MNPD. The Complaint also alleges that the Mayor's office would not facilitate meetings or cooperation between the Coalition and MNPD. The Complaint goes on to state that the Mayor has "shown a consistent pattern of protecting the interest of MNPD whenever MNPD's interests were at odds with members of the public or other government institutions and their representatives." (Compl. at 3.)

Missing from the Complaint, however, are specific facts connecting Mayor Barry's relationship with Sgt. Forrest to her action or inaction on MNPD policy issues. Indeed, the only allegations in the Complaint that even concern Sgt. Forrest are that (1) he was having a sexual relationship with the Mayor, and (2) had been an MNPD employee for many years. But these facts, viewed collectively and in the light most favorable to the complainant, would not, if proven true, establish that Mayor Barry violated the Standards of Conduct. Even if Mayor Barry supported MNPD policies that others opposed, while at the same time having an extra-marital relationship with her security officer who is an MNPD Sergeant, those circumstances do not establish an impression of improper influence. There is simply no allegation that Sgt. Forrest had any opinion, desire, or position concerning any of the policy issues set forth in the Complaint, much less that he used his relationship with Mayor Barry to influence her on those issues. And the fact that the two had a relationship does not in-and-of-itself create an impression that Mayor Barry was improperly influenced or swayed to favor MNPD on policy issues.[3]

The closest the Complaint comes to connecting Mayor Barry's relationship with Sgt. Forrest to Mayor Barry's actions regarding MNPD is the following statement: "It is unknown at this time whether Chief Anderson or anyone else in MNPD knew of the relationship between the Mayor and the Sergeant, however, it is not unreasonable to assume that knowledge of such a relationship could have been used as leverage against the Mayor." (*Id.* at 4.) While, in theory, a complaint could give rise to a Standards of Conduct violation where it alleged that an elected official was making decisions about a government department based in part on the influence of a relationship with someone in that department, there must be facts alleged that support a finding of influence. That is, an assertion of influence must be

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[3] *See, e.g., Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 427 (Tenn. 2011) (stating that to survive a motion to dismiss, "[t]he facts pleaded, and the inferences reasonably drawn from these facts, must raise the pleader's right to relief beyond the speculative level"); *PNC Multifamily Capital Institutional Fund XXVI Ltd. P'ship v. Bluff City Cmty. Dev. Corp.*, 387 S.W.3d 525, 556 (Tenn. Ct. App. 2012) (stating that "[c]ivil conspiracy claims must be pled with some degree of specificity in order to survive a motion to dismiss; conclusory allegations unsupported by material facts will not be sufficient to state a claim."); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007) (stating that "when allegations of parallel conduct are set out . . . they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action").

based on something more than speculation or possibility. And on its face, the statement above is entirely speculative.

At bottom, the Complaint does not allege facts establishing, or even suggesting, a connection between Sgt. Forrest and any of the MNPD issues alleged. Regardless of Chief Anderson, the FOP, or MNPD's views on any given policy decision, and regardless of whether Mayor Barry supported those issues, nothing in the Complaint connects Sgt. Forrest to any of those issues. The fact that Sgt. Forrest worked for MNPD, standing alone, does not create a connection sufficient to create an impression of improper influence.

(iii) Allegations Concerning Overtime

On the other hand, the Complaint makes out a rudimentary claim that Mayor Barry violated the Standards of Conduct in permitting Sgt. Forrest to be paid "excessive amount of overtime." (Compl. at 4.) While the Complaint contains no additional facts concerning the allegation of "excessive" overtime, accepting that fact as true could constitute a violation of several Standards of Conduct. If, for example, "excessive" overtime means that Sgt. Forrest received more overtime than was needed or advisable for business purposes, that fact, coupled with his sexual relationship with the Mayor, could create an impression of improper influence, in violation of Section 2.222.040(k). Additionally, construing the allegations in the light most favorable to the complainant, the payment of excessive overtime to Sgt. Forrest, coupled with his improper relationship with Mayor Barry, could constitute the "use for personal purposes . . . of funds of metropolitan government." Metropolitan Code § 2.222.020(g). Likewise, the fact that Sgt. Forrest was paid excessive overtime, if true, could also constitute a violation of Metropolitan Code § 2.222.020(i), which prohibits use of "metropolitan government positions improperly to secure unwarranted privileges or exemptions for . . . others, provided, however, that this provision does not preclude employees from acting in a manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them."

Because the Complaint alleges facts sufficient to state a viable claim for a violation of Standards of Conduct (g), (i), or (k) relating to the purported payment of excessive overtime to Sgt. Forrest, this office recommends that the Board examine that claim in a properly-noticed public meeting.

CONCLUSION

This office concludes that the allegations set forth in the Complaint, if proven true, could constitute a violation of the Metropolitan Government's Standards of Conduct in one respect—namely, the allegation that Sgt. Forrest was paid "excessive amounts of overtime." Mayor Barry's sexual relationship with Sgt. Forrest, coupled with the allegation that he was paid "excessive" overtime, if true, could create an impression that Mayor Barry was improperly influenced, that she used her position to secure privileges for Sgt. Forrest, or that she used public funds for personal purposes, in violation of Metropolitan Code § 2.222.020(g), (i), or (k). This does not mean that the allegations are true or that any violation has occurred. But the Complaint satisfies the threshold requirement to justify a Board hearing on the matter. This office recommends that the remainder of the claims set forth in the Complaint be dismissed.

Accordingly, this office recommends the following:

1. The Board should dismiss the Complaint insofar as it alleges violation of Executive Order 005 for lack of jurisdiction;

2. The Board should dismiss the Complaint insofar as it alleges that Mayor Barry and Sgt. Forrest's relationship, standing alone, would constitute a violation of the Metropolitan Government's Standards of Conduct;

3. The Board should dismiss the Complaint insofar as it alleges that Mayor Barry and Sgt. Forrest's relationship, coupled with Mayor Barry's action or inaction on MNPD business and police policy, would constitute a violation of the Standards of Conduct.

4. The Board should schedule and conduct a hearing on the limited issue of whether Mayor Barry's relationship with Sgt. Forrest "created the appearance of giving preferential treatment" due to "payment of excessive amounts of overtime," as alleged in the Complaint.

EXHIBIT 1

To: Council Board of Ethical Conduct

2018 FEB -7 PM 4:02

Filing Date: February 7, 2018

FILED
METROPOLITAN
CLERK

Re: Complaint of Unethical Conduct by Mayor Megan Barry.

This ethics complaint is being filed by Theeda Murphy, residing at 209 Maple Street, Madison, Davidson County, Tennessee, pursuant to Section 2.222.040 of the Metropolitan Code of Laws. This complaint is being filed against Mayor Megan Barry. The specific facts are detailed below.

On January 31, 2018, Mayor Barry made a public admission of a sexual relationship with Sergeant Robert Forrest, Jr. who, at the time, was serving as her chief of security while employed with the Metro Nashville Police Department (MNPD). Sergeant Forrest had been an employee of MNPD for 30 years, working as a lead investigator for drug and prostitution cases before transferring to the Office of the Mayor as part of the security team fourteen (14) years ago. They have both admitted that the relationship began in 2016. It is unclear when the relationship ended.

During September 2016 Mayor Barry unilaterally approved an allocation of $1.6 million of Metro's general equipment fund to buy militarized ballistic protection for MNPD. This allocation was not subject to a public hearing.

In October 2016, Gideon's Army, a grassroots organization, published a report entitled "Driving While Black". The report provided strong empirical evidence that MNPD routinely harassed and intimidated Black drivers. One of the recommendations in the report was that the city needed to establish a community-based board to provide civilian oversight of police policy including training and discipline. MNPD immediately repudiated the findings of the report with the Mayor's support.

On February 10, 2017, MNPD officer Joshua Lippert killed an unarmed Black man, Jocques Clemmons. Within a week, MNPD had cleared the officer of all wrongdoing. The investigation conducted by the Tennessee Bureau of Investigation (TBI) at the request of the Davidson County District Attorney (DA) found no basis upon which to bring criminal charges against the officer, however it did find that MNPD demonstrated significant institutional bias during their investigation.

The DA referred the Clemmons case to the TBI and MNPD was instructed to stand down and cease its investigation. When it became clear that MNPD had been conducting a parallel investigation which overlapped the TBI's investigation, the DA made a public statement to that effect, to which Mayor Barry did not respond even though Chief Anderson reports directly to her.

When a public sparring match occurred at the conclusion of the investigation in May 2017 MNPD was again in conflict with another Metro department. The TBI and the DA's office held a press conference to which the Chief was invited, and which the Mayor attended, where findings were announced.They included sharp criticism of the process of MNPD, jointly stating that MNPD's actions contributed to eroding confidence in its ability to be unbiased. The Chief did not attend and, instead, held a separate press conference across town. The Chief announced that he would release any disciplinary actions that may be taken within the department as soon as

the Use of Force report was complete. The Mayor reprimanded the DA in a subsequent press conference and recounted instructing the Chief to talk to her instead of making public statements. She ended with saying that there would be "critical next steps" but provided no further detail. Currently, there is no record of follow up nor any announcement regarding the Chief's disciplinary decision.
Currently, Officer Lippert is still employed at MNPD and was recently allowed to sit for the sergeant's exam without regard to his past disciplinary record (he had been suspended for a total of twenty (20) days between May 2013 and October 2015). MNPD issued a statement in response to inquiries regarding why Lippert was allowed to take the examination which stated that he had not had any disciplinary actions for the last two (2) years, since 2015, which, per the letter of MNPD policy, permitted him to sit for the examination. The fact that he had been involved in a highly publicized and still controversial shooting was obviously not taken into consideration. That statement further stipulated that he is currently assigned to the police archives department.

In the June 2017 report, the Davidson County Grand Jury recommended that Metro should give civilians oversight authority in cases of deadly force and suggested de-escalation training. The Department of Justice's Civil Rights Division has supported civilian oversight efforts as well. In mid-July 2017, it was reported that the Mayor had not announced support for the expected filing of community oversight legislation.

The family of Jocques Clemmons was understandably disappointed at the outcome of the investigations and requested a meeting with the Chief through every avenue available in the months immediately after the conclusion of the investigations. They received no response for months (from May through September 2017). Mayor Barry was not willing to facilitate this meeting and offered only platitudes even after her own son's life was tragically lost. In an attempt to get a response from MNPD, the family began a sit-in outside of East Precinct in September 2017. This situation culminated in November 2017 when the family, along with a handful of supporters, went to the temporary MNPD headquarters to request a meeting with the Chief. MNPD was nonresponsive to the family and instead called the building owner who requested that the group leave. The situation escalated into absurdity when the building owner threatened to call MNPD to arrest the group for trespassing on his property. Even though the incident was being reported in the press as it happened (resulting in public embarrassment for MNPD and the city), Mayor Barry did nothing to attempt to resolve the situation. Eventually the family met with a representative, however, attempts to meet with the Chief later that week fell through when the Chief would not allow the Clemmons family to bring a counselor into the meeting with them for emotional support, instead insisting they meet alone without a third-party witness. All of this was reported in the press and the Mayor did not intervene or comment.

In the wake of the Clemmons investigation, several community groups came together and formed the Community Oversight Now Coalition (Coalition) which researched and developed legislation for establishing a community oversight board in Nashville beginning in March 2017. The Metro Council was already fully engaged in the process. The Coalition held public hearings in the community which many Council representatives attended and made a presentation to the Minority Caucus to which the entire Council, the Mayor and her staff, and the Chief were invited. The Mayor did not make time to attend any of the events. In July 2017, Coalition members met with a member of the Mayor's staff who indicated the importance of involving MNPD but stated

that the Mayor's office would not assist in facilitating such a meeting and that they were doubtful the Chief would even comply with a request from the Mayor to attend.

In August 2017, a request was made on behalf of the Coalition for a meeting with the Mayor. Besides receiving a standard response stating that there was a general two (2) week window between requests for a meeting and the actual scheduling of a meeting, there was no other response from the Mayor's office for over two (2) months. The scheduling of the meeting was consistently delayed and the Coalition was not granted a meeting until after the bill was filed with Council.

During that time, and instead of meeting with the Coalition, the Mayor connected with an organization based in New York which studies policing policy and arranged for their CEO to meet with various, hand-picked people from the Nashville community and with MNPD officials, including the Chief. The Coalition was not included. The New York organization does not address community oversight and specifically stated that they would research traffic stops and MNPD's policy regarding traffic stops.

On October 29, 2017, with no formal communication between herself and the Coalition, she made a public statement that she would support a task force to discuss the need for civilian oversight. However, before the scheduled meeting with the Coalition, she suddenly announced that she would no longer be convening a task force, nor would she support Council in their efforts to do so.

On November 7, 2017 when the bill was first introduced in Council, former MNPD officers who are now Council members took the unprecedented position of attempting to block the first reading of the bill. Supported by the FOP, they demonstrated that they would stop at nothing to keep to the bill from passing.

The mayoral meeting with the Coalition finally occurred on December 21, 2017 with about a dozen representatives. When the Mayor arrived at the meeting, she would not allow any discussion of the details of the bill or how it could be adjusted to address the stated concerns of MNPD or Metro Legal, though Jon Cooper, Metro's Law Director, was in attendance. Instead she iterated all of the things that she has done for the city in lieu of civilian oversight and refused outright to support the bill. While Coalition members were expressing concern about possible surveillance and intimidation by the FOP, the Mayor looked extremely uncomfortable and took some notes. At one point a pastor asked her flatly about the public disrespect that the Chief had shown her by holding a separate press conference than the TBI, DA and herself, asking "What does he have over you?" she surveyed the room with an anxious look and soon after, abruptly left the meeting.

In instance after instance, she has shown a consistent pattern of protecting the interest of MNPD whenever MNPD's interests were at odds with members of the public or other government institutions and their representatives. She has also shown a pattern of inconsistency in her statements and positions regarding community oversight which seemed erratic and capricious. Furthermore, it became increasingly apparent that Chief Anderson and MNPD felt comfortable in ignoring any authority she attempted to exercise over their actions and it does not appear that she has made any credible attempt to reprimand or censure the Chief for his actions which publically flouted her authority.

Section 2.222.020 of the Metro Code states in subparagraph (k) that employees "Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person."

Section 2 of Executive Order 005, instituted by Mayor Barry effective February 24, 2016, provides in subparagraph II, section 1: Employee Responsibilities that each employee of Metro Government "...shall avoid any action, whether or not specifically prohibited by this order, departmental codes of ethics, or Metro Code of Laws Section 2.222.020, which might result in, or create the appearance of:

a. using a public office for private gain;

b. giving preferential treatment to any person;

c. empeeding government efficiency or economy;

d. losing complete independence or impartiality;

e. making a Metropolitan Government decision outside of official channels; or

f. affecting adversely the confidence of the public in the integrity of the Metropolitan Government."

Subparagraph II, section 3 of Executive Order 005 specifically states: "This order applies to the Mayor...."

We feel that Mayor Barry may have been improperly influenced against the community oversight board due to her relationship with Sgt. Forrest. Additionally, we contend that she violated the provisions of Section 2, subparagraph II, section 1 of Executive Order 005 in that her relationship with Sgt. Forrest created the appearance of giving preferential treatment (payment of excessive amounts of overtime), losing complete independence or impartiality as will be further explicated below, and affecting adversely the confidence of the public in the integrity of Metro Government.

It is unknown at this time whether Chief Anderson or anyone else in MNPD knew of the relationship between the Mayor and the Sergeant, however, it is not unreasonable to assume that knowledge of such a relationship could have been used as leverage against the Mayor. Regardless of whether anyone was aware or actively advocating to influence her decisions regarding any issue of public safety policy which was at odds with the official MNPD position, the simple fact is she knew there was at least one officer who could air her dirty laundry at a moment's notice and that fact alone brings into question her ability to be an honest broker in any discussion or consideration of these issues.

Furthermore, this revelation has created a climate in which she will now have no ability to back any form of civilian oversight or any reform of MNPD policy, investigations or disciplinary processes without opening the door to questions regarding why her view has softened or changed entirely. At this point, any shift would allow the opposing side to legitimately interrogate her statements of objectivity.

The MNPD has fiercely opposed oversight and has created a threatening, intimidating atmosphere where opponents of the bill are afraid to speak up. Members of the Minority Caucus have clearly felt uncomfortable in supporting and advocating for the bill, as evidenced by the overwhelming abstention from the second hearing vote which would have allowed a public hearing so that the voices of Nashvillians who are impacted daily by these decisions could be heard.

In an anonymous letter written to all council members days before introduction of the bill at first reading, by an officer who was only identified as a member of the FOP, personal social media posts by Coalition members were referenced, evidence that either MNPD or the FOP or both organizations are conducting surveillance of Coalition members. The Coalition communicated their concerns about police intimidation and surveillance to the Mayor at the December 21st meeting.

No matter the intent of her decisions, the results stemming from them have impeded the efforts of Nashvillians seeking to rectify the 63% trustworthiness rating felt by Davidson County residents who are not white people. This puts the efforts of Coalition and the other citizens who support a process of transparency and accountability, which dozens of other cities have implemented and operated with for decades, in an impossible predicament. The long-term effect of the Mayor's actions and statements regarding policing have had a lasting impact on the relationship between Metro government and its residents, eroding trust and creating a wall of suspicion which may be impossible for her to breach. Citizens of color, in particular, have felt unseen and unheard throughout this process and, in their eyes, the Mayor has absolutely no credibility.

Given that that the FOP, acting as a surrogate for MNPD, has not hesitated in using intimidation and veiled threats as tactics against the imposition of oversight, it is reasonable to infer that the Mayor's relationship to Sgt. Forrest had some influence over her decisions and her actions in regard to civilian oversight. Her conduct left the impression, for anyone who was aware of the relationship, that she could be improperly influenced. Now that the relationship has been made public, we, as citizens, can have no clear assurance that her decisions and her actions, particularly around public safety and policing, were not made under duress. We are requesting that a full investigation be made into possible ethics violations by the Mayor and by Sgt. Forrest. We are hoping that such an investigation will provide some answers and some much needed clarity which could go far in re-establishing trust in public institutions and government.

Please contact: Theeda Murphy, phone number (615) 473-7933, email address: theeda2012@me.com.

Signature: _____ Date: February 7, 2018

Theeda Murphy

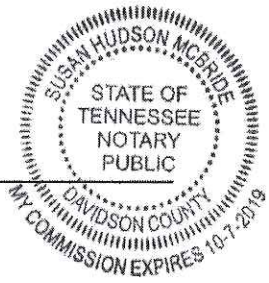
State of Tennessee
County of Davidson

On this 7th day of February, 2018, before me personally appeared Theeda Murphy, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that such person executed the same as such person's free act and deed.

Witness my hand, at office, this 7th day of February, 2018.

Susan Hudson McBride Notary's Signature

Seal



My commission expires: