

COA PROPOSAL 1-30-23

**ARTICLE 16
CIVILIAN OVERSIGHT OF
THE AUSTIN POLICE DEPARTMENT**

Section 1. Civilian Oversight

a) Civilian Oversight means the process ~~that which~~ incorporates civilian input into the administrative review and investigation of conduct of APD Officers and the review of the Austin Police Department's policies and procedures.

b) The City ~~of Austin~~ may provide for Civilian Oversight of the Austin Police Department. Civilian Oversight may only include an Office of the Police Oversight and a Community Panel/Board. Except as otherwise modified by this AGREEMENT, the City retains all management rights and existing legal authority over administrative investigations of alleged misconduct by APD Officers pursuant to TLGC, Chapter 143.

c) Except as otherwise modified by this AGREEMENT, the Chief of Police retains all management rights and authority over the process of administrative investigations of alleged misconduct by APD Officers that could result in disciplinary action pursuant to TLGC, Chapter 143.

d) Unless modified by this Article or Article 17, investigations and discipline of police officers shall remain in effect, as defined and provided for in TLGC, Chapter 143.

~~b) The purpose of Civilian Oversight is:~~

~~(1) To assure timely, fair, impartial, and objective administrative review of complaints against police officers, while protecting the individual rights of officers and civilians;~~

~~(2) To provide an independent and objective review of the policies and procedures of the Austin Police Department; and~~

~~(3) To provide a non-exclusive location for accepting administrative complaints of officer misconduct.~~

~~(4) To provide transparency in policing and thereby fostering trust between the community and the Police Department.~~

~~e) Except as otherwise provided by this AGREEMENT, the Chief of Police retains all management rights and authority over the process of administrative investigations of alleged misconduct by APD Officers that could result in disciplinary action.~~

~~d) Except as specifically permitted in this Article, the Civilian Oversight process, regardless of its name or structure, shall not be used or permitted to gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint of misconduct by an Officer. There shall be no legal or administrative requirement, including but not limited to subpoena power or an order from the City Manager or the Department, that an Officer appear before or present evidence to any individual, panel, committee, group, or forum of any type involved in Civilian Oversight. This provision has no application to any Independent Investigation authorized by the Chief of Police or the City Manager, regardless of whether the Independent Investigation was recommended by a Panel or Director of OPO, or to any hearing of an appeal of disciplinary action pursuant to this AGREEMENT and/or Chapter 143 of the Texas Local Government Code. Police Officers remain subject to orders or subpoenas to appear and provide testimony or evidence in such investigations or hearings.~~

Section 2. Definitions

In this Article:

a) “Anonymous Complaint” means any complaint under subsection (b) herein which the Complainant does not identify ~~themselves him or herself~~ or does not wish to be identified. There shall be no duty to determine or reveal the identity of a Complainant.

b) “Complaint” means either (1) an affidavit or (2) any other written or verbal communication setting forth allegations or facts that may form the basis of future allegations of misconduct against an officer and which serves as the basis for initiating an investigation. The Parties specifically agree that anonymous written or verbal communications meet this definition of “Complaint.”

c) “Complainant” means a person, ~~including an Officer,~~ claiming to be ~~a witness to or~~ the victim of, ~~or who has firsthand knowledge of,~~ misconduct by an Officer. “Complainant” does not include the Department designee in the case of an administrative referral. ~~except that the OPO may act as complainant in any allegation on its own initiative, and in the case of an anonymous complaint, the OPO or whichever entity that receives an anonymous complaint may act as Complainant. If the OPO acts as the complainant, the Director of OPO shall document the source of the complaint.~~

d) “Critical Incident” means:

- (1) Any force resulting in death.
- (2) Any force that resulted in a substantial risk of death.
- (3) Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.
- (4) Any unintentional firearm discharge resulting in another person’s injury or death.

- (5) Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).
- 6) Use of an impact weapon, including kinetic energy projectiles, and improvised improved weapons that strikes the head of a subject resulting in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ) or death.
- 7) In custody deaths: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as critical incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.
- (8) The utilization of the Precision Immobilization Technique when serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ) or death occurs.

* For the purposes of the definition of “critical incident” within this Agreement, the definition of “firearm” excludes any less lethal devices utilized by officers of the APD. A less lethal device is any device that by its design and proper use is intended to be used for less than lethal applications and is less likely to cause serious bodily injury or death.

**The definition of “serious bodily injury” found in the Texas Penal Code, Section 1.07(a)(46) will apply.

e) “External Complaint” means any complaint that is not an internal complaint.

f)e) “Independent Investigation” means an administrative investigation or inquiry of alleged or potential misconduct by an Officer, authorized by the Chief of Police or City Manager and conducted by a person(s) who is not:

(1) An employee of the City of Austin, including the Office of Police Oversight;

~~(2) An employee of the Office of Police Oversight; or~~

(2) A volunteer member of the Panel.

An “Independent Investigation” does not include attorney-client work product or privileged material related to the defense of claims or suits against the City of Austin.

g) “Internal Complaint” means any complaint by an employee of the Austin Police Department, or additional potential allegations of misconduct discovered in the course of the investigation of an initial complaint, after the complaint it initially classified.

~~*For the purposes of this Agreement the term OPM shall mean OPO and the term OPO shall mean OPM~~

Definitions in this Section shall specifically preempt definitions contained within Chapter 143 of the Texas Local Government Code for purposes of this Article.

Section 3. The Office of Police Oversight (OPO)

~~a) Access to Confidential Information~~

~~— The Director of the OPO will have unfettered access to the Internal Affairs investigation process, except as provided herein. The Director of the OPO may inquire of the Commander of the Internal Affairs Division or the Chief of Police, or the Chief’s sworn designee, as to the status of any pending IAD investigation.~~

~~b) Complaint Intake~~

~~(1) The OPO shall not gather evidence (including the review of any videos created by the police department or its’ personnel prior to a Notice of Formal Complaint being filed), interview witnesses (except the complainant as provided herein), or otherwise independently investigate a complaint or other information of police misconduct. During complaint intake, the OPO shall act as a scribe to document the complainant’s account of events. The OPO shall not ask leading questions, follow up questions, or clarifying questions. The OPO shall not have the authority to subpoena witnesses. There shall be no administrative requirement, including but not limited to an order from the City Manager or the Department, that an Officer appear or present evidence to the Director of the OPO. The OPO is authorized to accept complaints of Officer misconduct as provided in this Section.~~

~~(2) The OPO may obtain the following information in connection with the filing of a complaint of officer misconduct:~~

~~(a) The complainant’s personal information~~

~~(b) The nature of the complaint;~~

~~(c) Witness information;~~

~~(d) The incident location, date, and time; and~~

~~(e) The APD Officer(s) involved.~~

~~(3) — If the intake is in person the taking of the information provided in Section 3(b)(2). The OPO will promptly forward the completed complaint and audio recording to IAD when requested by IAD. A complainant may be subsequently interviewed by the IAD investigator for purposes of clarification or to obtain additional information relevant to the investigation. The OPO may attend any such subsequent interviews.~~

~~For external complaints, the OPO may make a recommendation for classification of the complaint to IA. The nature of the complaint and OPO's recommended classification may be made public, but shall not include the name of the complainant or officer, witness information, or the incident location, date, and time.~~

~~(4) — Personnel from the OPO shall assist an individual in understanding the complaint process and the requirements for filing a complaint but shall not solicit or insist upon the filing of a complaint by any individual.~~

~~e) — Access to Investigation Interviews~~

~~— A representative from the OPO may attend an interview of the Officer who is the subject of the investigation or administrative inquiry, as well as all witness interviews. The OPO representative may directly question the Officer who is the subject of the investigation and any witness Officer only if agreed to by the subject Officer or witness Officer or his/her representative and the IAD investigator. At the conclusion of or during a break in any interview, the OPO representative may take the IAD investigator aside and request that the investigator ask additional questions. Whether such information is sought in any witness interview is within the sole discretion of the IAD investigator.~~

~~d) — Access to Dismissal Review Hearings~~

~~— The Director of the OPO and/or one other member of the OPO may attend any Dismissal Review Hearing (or other administrative hearing or meeting conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct). Director of the OPO, and/or other member of the OPO nor the Internal Affairs Representative(s) may remain in the Hearing while the chain of command and the Chief of Police or his/her designee discusses the final classification and/or appropriate discipline, if any, to be imposed. The final classification of an allegation of misconduct is within the sole discretion of the Chief of Police, subject to the Officer's right of appeal of any discipline imposed as provided by Chapter 143 of the Texas Local Government Code and this AGREEMENT.~~

a) The City may use and employ an Office of Police Oversight (OPO), pursuant to existing legal authority and subject to the limitations of that authority and this Agreement.

b) OPO is specifically authorized to, as an exception to TLGC, Chapter 143:

(1) Release information as listed in Section 6 of this Article;

- (2) Accept anonymous complaints as defined in this Article;
- (3) Have unfettered access to the Internal Affairs investigation process;
- (4) Provide a public report setting forth the basis and concerns supporting any recommendation for an Independent Investigation; provide a public report setting forth conclusions and recommendations after its review of any Independent Investigation, once such investigation is concluded; and publicly release such recommendations in their entirety, once the Police Chief's final disciplinary decision has been made as to the subject Officer(s), regardless of whether discipline is imposed;
- (5) Publicly release external non-critical incident cases in which discipline is imposed at the level of an oral reprimand or greater;
- (6) Release information listed below, otherwise made confidential pursuant to TLGC 143.089(g), during a recorded "closeout meeting" with a Complainant:
 - (a) A verbal overview of the IAD investigative findings without providing names of any individual involved in the investigation.
 - (b) Review appropriate video footage, at the discretion of OPO.
 - (c) The final disposition of the complaint, disciplinary action taken, if any, along with which general orders were reviewed.
- (7) Upon the effective date of this Agreement, all documents, files, or information that would otherwise be considered confidential pursuant to §143.089(g) that involves a critical incident as categorized by the Chief of Police, as defined in this Agreement, created after such effective date, will be considered public information except for any applicable exceptions that may apply under the Texas Public Information Act or other applicable federal or state law, to include but not limited to Texas Gov't Code §552.108.

c) The Office of Police Oversight (OPO) shall be limited in the following areas:

- (1) OPO shall have no direct subpoena power;
- (2) OPO shall not conduct investigations independently of Internal Affairs, once alleged misconduct is initially classified; and
- (3) OPO shall release informational reports and data analysis to the ASSOCIATION prior to public release, when possible.

d e) Quarterly Meetings

On a quarterly basis, the Assistant City Manager for Government That Works for All, the Director of the OPO, the Chief of Police, the Commander of the Internal Affairs Division, and the ASSOCIATION President shall meet to discuss any issues related to the civilian oversight process.

e) Annual Meetings

On an annual basis, the City Manager, the Assistant City Manager for Government That Works for All, the Director of OPO, the Chief of Police, the Commander of the Internal Affairs Division, and the ASSOCIATION President shall meet to discuss any issues related to the civilian oversight process.

f) Reverter Provision

In the event a court order, judgment, or any other disposition from a court of competent jurisdiction holds any provision of Article 16 or any City Ordinance or Charter Amendment regarding Police Oversight is found to be invalid, the Parties agree that Article 16, its entirety, as provided within the 2018 to 2022 Meet and Confer Agreement will go into effect and remain in effect for the term of this Agreement.

Section 4. Civilian Panel/Board (“Panel”)

a) The City Manager may create a Civilian Panel/Board that separately oversees certain acts of conduct of police officers utilizing the following guidelines. ~~If the Manager creates such an entity, the City Manager and the ASSOCIATION shall meet and confer for at least thirty (30) days prior to presentation to the City Council.~~ Nothing in this Article shall limit the Authority of the City Manager to assign duties and/or tasks to the Panel/Board that are not inconsistent with this AGREEMENT.

The City Manager is entitled to use and employ the Civilian Panel ~~process proceeds~~ set forth in this Agreement, or to develop and implement a separate and different Civilian Panel process outside of this Agreement, under ~~their~~ ~~his~~ existing legal authority and subject to the limitations of that authority. If the City Manager chooses to implement a separate and different Civilian panel process, the provisions of this Article regarding the Civilian Panel shall be null and void. The City Manager alternately may propose changes or modifications to the Civilian Panel process in this Agreement. ~~and should the City Manager take that option,~~ In the event the City Manager chooses to exercise this authority, the parties agree to meet and confer in good faith toward the implementation of reasonable changes consistent with the spirit, intent, and purpose of these provisions. Changes shall be agreed to between the ASSOCIATION President and the City Manager and ratified by the City and ASSOCIATION as required by state law.

b) Function

The Panel shall serve to make recommendations and review individual cases of Officer conduct as authorized in this Article. Panel members shall perform their duties in a fair and objective manner.

c) Qualifications

To be eligible for appointment to the Panel, applicants must not have a felony criminal conviction received deferred adjudication for a felony, or be under felony indictment. Prior to appointment, Panel members must submit to a criminal background investigation to determine their eligibility

to serve on the Panel. A felony conviction, felony indictment, or felony deferred adjudication, after appointment, shall result in the immediate removal of the member from the Panel by the City Manager.

Members of the panel shall be subject to the same residency requirements as members of other City boards and commissions, as provided in Section 2-1-21 of the City Code.

d) Training

Each member must complete the training prescribed herein prior to commencing their service on the Panel, except as specified herein. The required training shall include:

(1) Attending ~~a four (3-4)~~ 20 hours of training by APD tailored specifically for Panel members including, at a minimum, the following topics:

- (a) Special Investigations Unit
- (b) Officer Involved Shootings
- (c) Response to resistance
- (d) The Police Training Academy;
- (e) Crisis Intervention Unit Team;
- (f) Firearms, including FATS training (annually);
- (g) Explosive Ordinance Disposal and Bomb and SWAT;
- (h) Annual ride-outs on at least two shifts as determined and/or approved by the Chief.
- (i) Special Weapons and Tactics;
- (i) Hostage Negotiation Team;
- (j) Austin Police Association A presentation by the ASSOCIATION
- (k) Q&A Panel – Patrol Officers; and
- (l) Training provided by the Internal Affairs Division

~~(h) Annual ride-outs on at least two shifts (14 hours) in different parts of the City during the term of a panelist, one of which must include a Friday or Saturday night in Downtown Command from 11 pm to 3 am. The Downtown Command ride-out must be completed within six months of selection as a Panelist (panelist shall be encouraged to make quarterly ride-outs), and~~

~~(2) Attending six (6) hours of training provided by the Internal Affairs Division.~~

These training requirements are subject to change by unanimous agreement of the Chief of Police, the ASSOCIATION President, and the Director of the OPO.

e) Resign to Run

Any person involved in the civilian oversight process as a Panel member, who files for public elective office shall immediately resign from their position in the civilian oversight process, and failing such resignation shall be immediately removed by the City Manager.

f) Cases Subject to Review by Panel

Regarding Officer conduct, the Panel may only review “critical incidents.”

g) Nature of Proceedings

(1) The review of any case by the Panel shall not be conducted as a hearing or trial. Except for the receipt of public input/communications as provided by this Section or an Independent Investigation authorized by this Article, the Panel shall not gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint. The Panel shall not have the authority to subpoena witnesses. There shall be no administrative requirement, including but not limited to an order from the City Manager or the Department, that a Police Officer appear or present evidence to the Panel.

(2) Not less than five (5) business days prior to a Panel meeting, the OPO shall provide the Internal Affairs Division and the individual designated by the President of the ASSOCIATION as the Panel liaison, with a copy of the Panel meeting agenda. The Panel shall not take action upon or receive public input/communications concerning any case or issue not listed as an agenda item. In order to provide adequate notice to the public, an agenda item regarding the review of a critical incident shall include the Internal Affairs case number and the date and location of the incident under review. Civilian’s wanting to address the Panel during the public input/communications section of the meeting must complete a speaker sign-up card listing the agenda item they wish to address, and will be limited to addressing the topic identified. The Internal Affairs Division shall promptly notify any Officer who is the subject of a complaint listed as an agenda item as to the scheduled Panel meeting. Notice of special meetings shall be handled in a similar manner, unless circumstances require a shorter notice, in which case the notice shall be issued as soon as the special meeting is scheduled.

(3) By virtue of its purely advisory role, the Panel is not a governmental body and is not subject to the Open Meetings Act. Those portions of the meeting during which public input/communication is accepted shall be open to the public and recorded by video and audio.

h) Access to Confidential Information by Panel

(1) Panel members shall have full access to all administrative investigative and disciplinary files necessary to perform their functions under this AGREEMENT ~~as defined in Section 4f above.~~ Panel members may ask questions and obtain specific facts, details and information from the Director of the OPO, IAD, or the Chief’s office. As part of such access, the Director of the OPO shall make available to individual Panel members all IAD case files scheduled for review ~~pursuant to Section 4(f) above.~~ Individual Panel members may review the IAD case file in the presence of a member of the OPO either at the OPO office or another City facility (such as City Hall, Library, Police Sub-station) so long as it is a secure location. The prohibitions and restrictions in Section 8 of this Article apply to any confidential information viewed by Panel

members during this review opportunity. Panel members shall not copy or remove any portion of the file. The Director of the OPO shall be responsible for security of the file.

(2) In an effort to ensure the Panel has a more complete view of the types of cases the APD reviews, the Director of the OPO shall meet with the Panel twice a year to provide them an overview of APD activity up to that point in the calendar year.

i) Private Case Briefing Session

(1) ~~Regarding Section 4f above,~~ The Panel may meet in Private Session to be briefed concerning the facts of the particular case to be reviewed. The representative of the Director of the OPO and ~~or~~ the IAD representative shall present to the Panel the information obtained from the IAD investigation. ~~The duties of the IAD representative may be performed by others, including the chain of command, training staff, and/or forensics.~~ The presentation may incorporate and include members of the chain of command, training staff, forensic personnel, and other subject matter experts to ensure a thorough and accurate representation of the incident under review is accomplished. The duties of the OPO and IAD representatives may be performed by others, including the chain of command, training staff, and/or forensics. Members of the Panel may be provided with READ ONLY electronic access to all or part of the IAD files, or the physical files themselves, during these presentations.

(2) An APD Officer designated by the President of the ASSOCIATION and one individual from the Internal Affairs Division shall be present during the Panel Private Session case briefing, subject to the following provisions:

- (a) The ASSOCIATION'S Representative will not participate in the briefing and is present only as an observer, with the following exceptions:
 - (i) The ASSOCIATION'S Representative may request that the Director of the OPO allow the representative to present information relevant to a case before the Panel.
 - (ii) A Panel member may request that the ASSOCIATION'S Representative present information relevant to a case before the Panel.
 - (iii) Any information provided by the ASSOCIATION'S Representative shall be presented in a neutral manner.
- (b) The ASSOCIATION'S Representative may not be involved in the case as a witness, investigator, relative, or officer in the chain of command.
- (c) Information in the possession of the ASSOCIATION'S Representative as a result of participation in such briefing shall not be disclosed or revealed other than as necessary as a part of official ASSOCIATION business in

monitoring and enforcing this AGREEMENT, or in the normal course of dispute resolution processes under this AGREEMENT.

(3) During any private Panel briefing, the presenter should exercise discretion and omit information from the briefing that the Director of OPO ~~Police Monitor~~ deems to be irrelevant to the civilian's complaint, as well as information of a highly personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests.

(4) In addition to those individuals involved in briefing the Panel, and the ASSOCIATION'S Representative, the Director of the OPO, the Director's designee a designated attorney(s) from the City Attorney's Office may be present during the Private Case Briefing Session. No other individual may be present unless the Panel requests further information.

j) Public Session and Comments

After the Private Session, the Panel shall meet in Public Session to receive public input/communications. During the public session, the Director of the OPO shall take precautions to prevent discussion of the facts of the particular case and to prevent the Public Session from being used as a forum to gather evidence, interview witnesses, or otherwise independently investigate a complaint. Any individual who indicates that they have ~~he has~~ new or additional evidence concerning the particular case shall be referred to the Chief of Police or ~~his~~ their sworn designee. The rules that apply to civilian communications with the City Council shall apply to the public session of the Panel meetings. The Director of the OPO, in consultation with the Panel, shall set the time limits for such proceedings. ~~and~~ The Chairperson shall be responsible to prevent discussion of matters not on the Session agenda.

k) Deliberations

After receiving public input, if any, the Panel shall discuss the particular case under review in private session. The Director of the OPO, Director's designee, the IAD Commander or designee, and a designated attorney(s) from the City Attorney's Office may be present during such discussion. No other individual may be present unless, the Panel requests further information; if the Panel does so, the Director of the OPO, the Director's designee, and the IA Commander or Lieutenant, must also be present.

l) Action and Recommendations

(1) The Panel shall not take action or make recommendations not authorized by this Article. At the conclusion of the review process set forth above, the Panel, upon a majority vote of its total members, may make ~~the following~~ non-binding written recommendations to Chief of Police regarding the following matters:

- (a) Further investigation by the Department is warranted;
- (b) Department policies warrant review and/or change;
- (c) ~~A non-binding~~ Recommendation on discipline, limited to

cases involving a “critical incident” as defined in this Article;

- (d) Changes to or review of training practices ~~to the training of Officers~~, or
- (e) Changes to any other practice or procedures of the APD.
- (f) Any other recommendations ~~that are~~ based on ~~off~~ information that is publicly available.

(2) ~~The Director of the OPO may make non-binding written disciplinary recommendations on “critical incidents” as defined in this the Article. If such a recommendation is made, it shall be released after a disciplinary decision has been rendered by the Chief.~~

The final decision as to appropriate discipline is within the sole discretion of the Chief of Police, subject to the Officer’s right of appeal of any discipline imposed as provided by Chapter 143 of the Texas Local Government Code and this AGREEMENT. ~~Neither the OPO employees nor Individual members of the Panel shall~~ not publicly express agreement or disagreement with the final disciplinary decision of the Chief, other than as set forth in the written recommendation. ~~A deliberate violation of this provision shall be subject to the dispute resolution process set forth in Section 7 of this Article, but~~ A Panel member shall be permanently removed from the Panel upon a violation of this standard.

(3) Members must attend the meeting and hear the merits of the case in order to vote on a recommendation. The Panel’s recommendations shall be reduced to writing. The Panel’s written recommendations shall explain the Panel’s issues(s) or concern(s).

(4) The Director of the OPO ~~may~~ shall consult with the Panel in formulating any recommendations to the Chief of Police.

(m) Subject Officer Interviews of Critical Incident Cases

For internal affairs interviews in which the subject officer(s) of the investigation is interviewed, at the discretion of the Director of the OPO, a member of the Panel may observe, by video, the interview from an adjacent room. The Officer being interviewed shall be advised if a panel member is observing the interview. The time spent in observing the interview under this section does not count towards the panelist’s time under Section 4(g)(1). The panel member is still held to the same confidentiality requirements of the article and may not discuss or give a public opinion on the interview. However, the panel member may discuss the interview with the OPO and other panelists. Any panel member that violates this confidentiality provision shall be permanently removed from the panel and is not eligible for reinstatement.

(n) Term Limits for Panel Members

There shall be term limits for panel members. Each panel member shall serve for two (2) years on evenly staggered terms. No member may serve for more than two (2) consecutive terms. Panel members are subject to removal by the City Manager for any reason.

If, at any time during the life of this AGREEMENT, should the term limitations of this Section result in less than five (5) panel members, the City may allow a panelist to stay past their four (4) year limitation so that the Panel still has enough members to operate. However, the City shall make reasonable efforts to find a replacement panelist.

- (o) Access to previous Panel Recommendations

Panelists shall have the authority to access and review any and all Panel recommendations made in the past.

Section 5. Independent Investigation

a) The Chief of Police and the City Manager retain all management rights to authorize an Independent Investigation concerning police conduct.

~~b) The Director of the OPO may recommend that an Independent Investigation is warranted. The Director shall provide a public report setting forth the basis and concerns of the Director supporting any recommendation for an Independent Investigation. In addition, the Director shall provide a public report setting forth the Director's conclusions and recommendations after its review of any Independent Investigation.~~

Section 6. Public Release of Information

- a) Documents Subject to and Timing of Public Release:

The provisions of Section 143.089(g) of the Texas Local Government Code are expressly modified to the extent necessary to permit public release of the following documents in the manner prescribed by this Section:

(1) A Panel ~~and/or the Director of the OPO~~ recommendation that Department policies warrant review and/or change, as authorized by Section 4(1)(1)(b). Such recommendations shall be subject to public release, in their entirety, upon delivery to the Chief of Police.

(2) A Panel ~~and/or Director of the OPO~~ recommendation that further investigation by the Department is warranted, as authorized by Section 4(1)(1)(a). Such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), and only if the Police Chief imposes discipline.

~~(3) The Director of the OPO recommendation that an Independent Investigation is warranted, as authorized by Section 5(b). Such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.~~

(3 4) A Panel report setting forth the ~~Director of the OPO's~~ Panel's conclusions and recommendations after its review of any Independent Investigation, as authorized by Section 5(b). Such recommendations shall be subject to public release, in their entirety, only after the Police

Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

(5) A ~~Director of the OPO/~~ panel non-binding recommendation on discipline in a case involving a critical incident, as authorized by Section 4(1)(1)(c). Such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

(6) The body of a final report (but not exhibits) prepared by an investigator who conducts an Independent Investigation authorized by the Chief of Police or City Manager concerning police conduct, whether or not recommended by the Panel. The body of such report shall be subject to public release, in its entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

(7) Panel recommendations made under Section (4)(1)(1)(d), (4)(1)(1)(e) and Section (4)(1)(1)(f).

(8) ~~For e~~ External non-critical incident cases in which discipline is imposed at the level of an oral reprimand or greater. ~~→ OPO recommendations may be made public along with the corresponding oral reprimand (or greater).~~

(9) The Chief's response to the panel or OPO, if any, shall be made public.

It is expressly understood and agreed by the parties that any recommendation and/or report released pursuant to this Section may contain information which would otherwise be made confidential by Section 143.089(g) of the Texas Local Government Code.

b) The public release of information authorized in this AGREEMENT will be reviewed by the City of Austin Law Department to ensure compliance with this AGREEMENT and to determine whether the release of such information may be prohibited by any other law.

c) Unauthorized Release of Confidential Documents/Information:

(1) ~~Except as permitted by this AGREEMENT, employees of the OPO shall not publicly comment on the specifics of pending complaints and investigations.~~ Members of the Panel shall not publicly comment on the specifics of pending investigations prior to a Panel decision. ~~All public comments and communications by the OPO shall be factual and demonstrate impartiality to individual police officers, the Austin Police Department, the Austin Police Association, employees of the City of Austin, residents of the City of Austin, and community groups.~~

(2) Should a person participating on a Panel make public statements which, to a reasonable observer, would be perceived to express or demonstrate a position, bias, or prejudgment on the merits of a particular case that is under investigation or subject to review, prior to the completion of the civilian panel process for that case, such person will not be allowed to participate in the review, deliberation, or drafting of recommendations concerning that case. This provision does not prohibit the Panel or an individual Panel member from making generic, non-case related public statements about the Austin Police Department, or from providing information about the

process, which does not appear to prejudge the merits, or demonstrate a bias on the case. In the event of a deliberate violation of this standard, the Panel member shall be permanently removed from the Panel as set forth below.

(3) No public comment or communication (including but not limited to oral or written statements, reports, newsletters, or other materials made, released, published or distributed) by ~~the OPO or~~ Panel members will make reference to or identify an Officer by name, unless such release is then permitted by law or this AGREEMENT, or the Officer's name has become public as a matter of fact by lawful or authorized means, or by the Officer's own release. Public comments or communications by the ~~OPO and the~~ Panel shall conform to state and federal law and this AGREEMENT regarding confidentiality, and shall not contain information that is confidential or privileged under this AGREEMENT or state, federal or common law.

~~(4) All OPO written publications shall be provided to the APD and the APA simultaneously with distribution to the public. Annual Reports from the OPO shall be given to the APA five (5) working days in advance of the public release of the report.~~

(5) Any deliberate release of information that is made confidential by law or by this AGREEMENT shall result in the permanent removal of the offending member from the Panel. Any deliberate premature release of information before it may properly be released likewise will result in the permanent removal of the offending member from Panel.

~~d) Director of the OPO's Closeout Meeting~~

~~After the Chief of Police has made a disciplinary decision on a case in which a complaint has been filed, the OPO may be allowed to have a "Closeout Meeting" with the complainant. The Chief shall be notified in writing in advance of any closeout meeting and shall be allowed to have an IAD investigator present during the meeting, if the complainant agrees. Such meeting shall be recorded. During the Closeout meeting, the OPO may notify the complainant of the outcome of the disciplinary decision as provided by the Austin Police Department, even if the discipline was something less than a suspension. The OPO may also give a verbal overview of the IAD investigative findings without providing names of any individuals involved in the investigation. The OPO, may at his/her discretion review appropriate video footage during such meeting.~~

~~The OPO shall send a "close-out" letter informing the complainant of the final disposition of the complaint, disciplinary action taken, if any, along with which general orders were reviewed.~~

Section 7. Dispute Resolution

~~a) Complaints concerning the conduct of OPO employees shall be filed with the Director of the OPO, or if the complaint concerns the personal conduct of the Director, shall be filed with the City Manager. If not resolved at the first level, a fact finder shall be appointed to review relevant materials and take evidence to reach written findings of fact, which shall be expedited for final resolution within two weeks after appointment. The fact finder shall be appointed by striking an AAA list, if the parties do not otherwise agree on a fact finder. Upon conclusion of the fact finding, and after review and evaluation of the fact finder's report, the~~

~~Director (or City Manager if the complaint concerns the personal conduct of the Director) shall make a decision. The final decision shall be made by the City Manager.~~

b) Complaints concerning the conduct of Panel members shall be filed with the City Manager. If a signed complaint is filed alleging specific comments by a Panel member that violate the standards in subparagraph 6(c) above, the Panel's consideration shall be postponed or the particular Panel member shall not participate, until the matter is finally resolved. A complaint may not be based on statements or conduct previously raised and found insufficient for disqualification. Only one of such Panel members may be temporarily disqualified under this provision on a particular case. The City Manager shall promptly determine the complaint. The ASSOCIATION may appeal from the decision of the City Manager through the expedited arbitration process in this AGREEMENT. If two (2) consecutive complaints are found insufficient on a particular Panel member, subsequent complaints on that Panel member shall not result in temporary removal, but upon final determination that there has been a violation, such member shall be subject to permanent removal. Nothing shall prevent the Chief from taking disciplinary action within the statutory time frame, under the provisions of Chapter 143, as modified by this AGREEMENT.

Section 8. Access to Section 143.089(g) Files

a) Information concerning the administrative review of complaints against Officers, including but not limited to Internal Affairs Division files and all contents thereof, are intended solely for the Department's use pursuant to Section 143.089(g) of the Texas Local Government Code (the 143.089(g) file) [and in accordance with this Agreement](#). All records of the [OPO and the Panel](#) ~~OPO's Office~~ that relate to individual case investigations and the APD 143.089(g) file, although same are not APD files or records, shall have the same statutory character in the hands of the [OPO and the Panel](#) ~~OPO~~, and shall not be disclosed by any person, unless otherwise authorized by law or this AGREEMENT. Public access to such information is strictly governed by this AGREEMENT and Texas law. To the extent necessary to perform their duties, individuals involved in the Civilian Oversight process, including ~~OPO and the Panel~~, are granted a right of access to the information contained within the 143.089(g) files of Officers to the extent authorized by this AGREEMENT [and pursuant to TLGC, Chapter 143](#).

b) ~~Individuals involved in the Civilian Oversight process, including OPO and The~~ Panel, shall not be provided with information contained within a personnel file, including the 143.089(g) file of an Officer, that is made confidential by a law other than Chapter 143 of the Texas Local Government Code, such as records concerning juveniles, sexual assault victims, and individuals who have tested positive for HIV. All persons who have access to IAD files or investigative information by virtue of this AGREEMENT shall not be provided with access to any records of criminal investigations by the APD unless those materials are a part of the IAD administrative investigation file.

c) All individuals who have access by virtue of this AGREEMENT to IAD files or investigative information, including the information contained within the 143.089(g) files of Officers, shall be bound to the same extent as the Austin Police Department and the City of Austin to comply with the confidentiality provisions of this AGREEMENT, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act. All such individuals shall further be bound to the same extent as the Austin Police Department and the City of Austin to respect the

rights of individual Police Officers under the Texas Constitution and the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, including not revealing information contained in a compelled statement protected by the doctrine set forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Spevack v. Klein*, 385 U.S. 511 (1967).

d) A breach of the confidentiality provisions of this AGREEMENT and/or Chapter 143 of the Texas Local Government Code by any individual involved in Civilian Oversight:

- (1) Shall be a basis for removal from office;
- (2) May subject the individual to criminal prosecution for offenses including, but not limited to Abuse of Official Capacity, Official Oppression, Misuse of Official Information, or the Texas Public Information Act; and/or
- (3) May subject the individual to civil liability under applicable State and Federal law.
- (4) A credible allegation as determined by the City Manager shall result in an investigation.

e) The confidentiality provisions of this AGREEMENT, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act, are continuous in nature. All individuals involved in Civilian Oversight, including OPO and Panel, are subject to these confidentiality provisions even after their association with the Oversight process has terminated.

f) Following any review of an alleged violation of the confidentiality provisions of this AGREEMENT, the City Manager's office will provide information about the outcome of that review to any Officer(s) directly affected by the alleged violation.

~~Section 9. Use of Evidence from the Civilian Oversight Process in Disciplinary Appeals~~

~~Opinions or recommendations from individuals involved in Civilian Oversight in a particular case may not be used by a party in connection with an appeal of any disciplinary action under the provisions of Chapter 143 of the Texas Local Government Code and this AGREEMENT. No party to an arbitration or Civil Service proceeding may use or subpoena any member of the Panel or the OPO (unless the Director took the complaint in the relevant case) as a witness at an arbitration or Civil Service proceeding including, but not limited to live or deposition testimony, which concerns their duties or responsibilities in the oversight process or their opinions or recommendations in a particular case. This provision shall not prevent any testimony for evidentiary predicate.~~

Section ~~9.~~ 10. Partial Invalidation and Severance

In the event that a Court Order, Judgment, Texas Attorney General Opinion, or arbitration decision, which is final and non-appealable, or which is otherwise allowed to take effect, which order, judgment, opinion, or decision holds that the right of access to the information contained within the 143.089(g) files of Officers granted by this Article or the public dissemination of information pursuant to this Article, results in "public information" status under the Texas Public

Information Act of the information contained within the 143.089(g) files of an Officer, the provision or provisions resulting in such a change in the status of the 143.089(g) file shall be invalidated and severed from the balance of this AGREEMENT.

~~Section 11. Dismissal of Current Lawsuit~~

~~—The ASSOCIATION will dismiss without prejudice its pending lawsuit concerning civilian oversight (case No. D-1-GN-18-000923, Dist. Ct. of Travis County) within 10 calendar days of the effective date of this AGREEMENT. The ASSOCIATION agrees that during the term of this AGREEMENT (including any agreed extensions) it will not file, authorize, support, or participate in any lawsuit raising any of the claims against the City that are included in the scope of its pending lawsuit concerning civilian oversight.~~

Section ~~10, 12.~~ Remedies

a) Benefit of the Bargain

The CITY expressly retains its right and ability to proceed with the determination of whether or not police misconduct occurred and the authority of the Chief to impose disciplinary action. The ASSOCIATION recognizes the fact that such reservations are essential to this AGREEMENT. No dispute concerning the operation and function of the Director of the OPO's Office or the Panel shall impair or delay the process of the Chief's investigation and determination of whether or not police misconduct occurred and the degree of discipline, if any, to impose. This includes internal dispute resolution procedures in this AGREEMENT, any grievance process or arbitration, and any litigation over such issues. In other words, any such dispute resolution processes may proceed, as set forth in this contract or by law, but the disciplinary process may likewise and simultaneously proceed to its conclusion without delay. The statutory time period for the Chief of Police to take disciplinary action against an Officer shall be tolled to the extent of any period in which a court order, injunction, or TRO, obtained by the Officer involved or the ASSOCIATION on behalf of the Officer, halts the Department's investigative or disciplinary process. In no event will the actual time exceed the timeframe ~~180 calendar days~~, as defined and provided for in Article 18, Section 8 of ~~for in Chapter 143 of the Texas Local Government Code, as modified by under other provisions~~ of this AGREEMENT. The parties agree that the processes in this AGREEMENT, together with the remedies set forth and the procedural protections and rights extended to Officers in this AGREEMENT are adequate remedies at law for all disputes arising under this Article.

b) Expedited Arbitration

The parties have agreed to expedited arbitration for all unresolved grievances related to the application or interpretation of this Article in order to achieve immediate resolution and to avoid the need for court intervention in equity. Such arbitrations shall be conducted pursuant to the Expedited Labor Arbitration Procedures established by the American Arbitration Association ("AAA"), and in effect at the time of the dispute. To be appointed, the arbitrator must be available to hear the arbitration within thirty (30) calendar days of selection and a decision shall be made within one (1) week of the hearing. The parties agree to create a list of pre-approved arbitrators. Failing same, or in the absence of an available arbitrator from such pre-approved list, the arbitrator

designated by the AAA shall be required to be licensed as an attorney in the State of Texas. The parties both agree that the arbitrator has the discretion to receive and hear issues and testimony by written submission or phone conference, but may also require live testimony where appropriate.

~~Section 13. — Mediation~~

~~————The OPO initiate a mediation program within the office wherein complainants with a “C” or “D” classification may meet the officer that is the subject of the complaint with a certified mediator to see if a resolution to the complaint may be reached. Participation in such mediation is strictly voluntary on the part of the officer. If mediation is agreed to, the CITY and ASSOCIATION agree that the mediator may be given access to 143.089(g) information from the case to help achieve a resolution to the case. The mediator will sign a confidentiality agreement prohibiting the public release of such information. Once mediation has been agreed to, the matter cannot be returned to the Department to be handled as a disciplinary matter.~~

Section 11. CJIS

The City and its representatives shall comply with all rules and regulations in relation to access to the Criminal Justice Information Services (CJIS) system.

Section 12. Effective Date of OPO Provisions

a) The provisions of Article 16 relating to OPO will take effect beginning July 1, 2023. Prior to the effective date of these provisions, Article 16, as provided within the Meet and Confer Agreement in effect from 2018 to 2022, will remain in effect until such effective date of July 1, 2023.

b) Prior to the effective date of these provisions, a Transition Committee consisting of the Director of the OPO, the Chief of Police, the Commander of the Internal Affairs Division, and the ASSOCIATION President, or the respective designee of any, shall meet to discuss the transitionary process and issues related to civilian oversight.

ARTICLE 17 PROTECTED RIGHTS OF OFFICERS

Section 1. Effect of Article

a) The following provisions shall apply to the administrative investigation of alleged misconduct by APD Police Officers and the process of administrative discipline. To the extent of any conflict between this AGREEMENT and the provisions of Chapter 143 of the Texas Local Government Code, the provisions of this AGREEMENT shall control. To the extent of any conflict between this Article and any other provision of this AGREEMENT, this Article shall control.

b) To be considered by the CITY as a basis for investigation and/or discipline, there must be a complaint as defined in this Article and Article 16.

Section 2. Definitions

In this Article:

a) ~~“Anonymous Complaint” shall mean “Anonymous Complaint” as defined in Article 16.~~

b a) “Complaint” shall mean “Complaint” as defined in Article 16.

c b) “Complainant” shall mean “Complainant” as defined in Article 16.

d e) “Disciplinary Action” means suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions.

e) ~~“Inquiry” means a review of critical incidents or other incident, ordered by the Chief of Police or their sworn designee. Inquiries are generally for issues that could destroy public confidence in, and respect for the Department or which is prejudiced to the good order of the Department.~~

f d) “Investigation” means any administrative ~~investigation~~ search for and gathering of facts, statements and evidence, including a preliminary review, regarding an internal or external complaint, of alleged misconduct by an ~~police~~ Officer that could result in disciplinary action.

~~e) “Investigator” means an agent or employee of the Department or an Independent Investigator who is conducting an investigation.~~

g f) “Statement” means any communication (oral or written) setting forth particulars or facts regarding the alleged misconduct under investigation.

h g) “Evidence” means statements, reports, records, recordings, documents, computer data, text, graphics, videotape, photographs, or other tangible forms of information, including a “complaint.”

i) “Normally assigned working hours” means those hours during which an Officer is actually at work or at the person’s assigned place of work but does not include any time when the person is off duty on authorized leave, including sick leave.

Section 3. Compelled Testimony

There shall be no legal or administrative requirement, including but not limited to subpoena power or an order from the City Manager or the Department, that an Officer appear before or present evidence to any individual, panel, committee, group, or forum of any type involved in Citizen Oversight with the exception of an order of the Chief to appear and provide testimony or evidence to OPO within the confines of an internal affairs investigation. This provision has no application to any Independent Investigation authorized by the Chief of Police or the City Manager, regardless of whether the Independent Investigation was recommended by the Community Panel or the Director of OPO, or to any hearing of an appeal of disciplinary action pursuant to this AGREEMENT and/or Chapter 143 of the Texas Local Government Code. Police Officers remain subject to orders or subpoenas to appear and provide testimony or evidence in such investigations or hearings.

Section 4. Investigative Process ~~Access to Records by Officers~~

a) Internal Affairs shall be responsible for the handling and processing of all Internal Complaints.

b) Any external complaints alleging Officer misconduct must be received by Internal Affairs within 5 business days of receipt of such complaint.

c) The Chief of Police or sworn designee shall have final decision-making authority on both the initial classification and final classification of all complaints.

d) Initial investigation classification shall not be included when publishing external complaints to any website.

e) No one involved in any investigation of a complaint shall publicly comment on the specifics of any complaints and/or investigations, with the exception of general status of the stage of investigation and except as otherwise allowed by this Agreement.

f) No internal complaint shall be made public until discipline has been administered and no internal complaint may be made public if the complaint results in no discipline being administered, unless such internal complaint involves a “critical incident.”

g) Access to Records

1a) Not less than ~~twenty-four (24)~~ ~~forty-eight (48)~~ hours before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer shall be provided a copy of the complaint(s). The Department may omit the name and/or identity of the person making the complaint. In the event that the

complaint(s) does not contain all allegations of misconduct under investigation, not less than ~~twenty-four (24)~~ ~~forty-eight (48)~~ hours before the investigator begins the initial oral or written interrogation of the Officer, the investigator must inform the Officer in writing of the additional allegations being investigated. This paragraph does not apply to a Dismissal Review Hearing or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct.

2 b) Before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer and ~~their his~~ representative shall be provided an opportunity to review any videotape, photograph, or other recording of the operative conduct or alleged injuries, if any, which is the subject of the allegations if such recording is within the possession or control of the Department.

3 e) An Officer is entitled to a copy of ~~their his or her~~ statement to the Internal Affairs Division at the time when the statement is finalized and signed by the Officer, but the statement remains confidential in the hands of the Officer pursuant to 143.089(g), APD policy, and orders of non-communication about internal investigations, except for consultations with counsel and/or ASSOCIATION representatives who are not involved in the investigation.

4 d) Before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer and ~~their his~~ representative shall be allowed to review the portions of any document(s) in which it is alleged that the Officer provided false, incomplete, inconsistent, or conflicting information, or in which it is alleged that the Officer omitted information in violation of any law or Department policy.

5 e) Before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer and ~~their his~~ representative shall be allowed to review any report, supplement, use of force report, or other statement recorded or written by the Officer, setting forth particulars or facts regarding the operative conduct which is the subject of the allegation(s).

6 f) Not less than ~~twenty-four (24)~~ ~~forty-eight (48)~~ hours before a Dismissal Review Hearing (or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an officer for alleged misconduct):

(i) The Officer and ~~their his~~ representative shall be allowed up to eight hours to review any and all evidence gathered or obtained during the investigation. The evidence available for review shall include the IA summary, if any; and

(ii) The Department shall provide written notice of the alleged policy violations and the specific range of discipline being considered. The Chief of Police shall not be restricted to the alleged policy violations and/or the

range of discipline provided pursuant to this Subsection in making the final decision as to discipline, if any.

7.g) When the Chief of Police is notified that the Panel plans to review a case involving a “critical incident” ~~or an allegation of a civil rights violation~~, the Officer and ~~their~~ ~~his~~ representative shall be given an opportunity to meet with the Internal Affairs investigator and review witness statements and photographic or videotape evidence contained in the IA file, for up to eight hours.

8.h) Neither the Officer nor ~~their~~ ~~his~~ representative will be permitted to make copies of any witness statements, audio tapes, photographic or videotape evidence reviewed; however, they may take written notes only, provided that they comply with the confidentiality and use provisions in Section 6.

9.i) Nothing in this Article shall be construed as requiring the Department to provide or make available for review by the Officer or ~~their~~ ~~his~~ representative any evidence from criminal investigations ~~by~~ unless that evidence is a part of the Internal Affairs Division administrative file. No criminal investigation material that is part of the Internal Affairs Department case file can be provided to the Officer ~~released~~ if there is a pending criminal investigation or judicial proceeding, without authorization from the criminal investigative authority.

(h) There shall be no administrative requirement, including but not limited to an order from the City Manager or the Department, that an Officer appear or present evidence to the Director of the OPO or their designee, unless within the confines of an Internal Affairs Investigation.

i) If at any point following initial complaint classification, additional potential policy violations are identified, said violations shall be administered through the internal complaint processing system.

j) All sworn personnel shall be interviewed during their normally assigned working hours as defined herein, unless waived by the affected personnel.

Section 5. Dismissal Review Hearings (The Officer’s Loudermill Hearing)

When a Dismissal Review Hearing (or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct), is held, the following procedures shall apply:

a) It shall be optional for the Officer who is the subject of the investigation to attend and answer any questions at the hearing. Questions posed at the DRH do not constitute an “investigation” as defined in Section 2(d). No negative inference will be permitted should the Officer elect not to attend or answer questions. If the Officer chooses not to attend or has

determined ~~they~~ ~~he/she~~ will not answer any questions at the hearing, the Officer must give 48 hours notice to the Department by filling out the necessary waiver form.

b) Should the Officer choose to attend, the Officer may audio tape the portions of the hearing in which the chain-of-command and Chief of Police or ~~their~~ ~~his~~ designee discuss the IAD investigation and the disciplinary decision with the Officer.

c) The Chief shall provide prior written notice to the ASSOCIATION of any scheduled DRH (or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct) so that the ASSOCIATION may provide guidance and representation to the subject officer. Included in this section are meetings concerning Officers on probation that the Department has identified as needing to separate from the Department for any reason.

Section 6. Dismissal Review Deliberations

When Dismissal Review Deliberations (or any other post administrative hearing deliberations conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct), is held, the following procedures shall apply:

- a) No one other than the Chain of Command up to the Chief may remain in the hearing while the chain of command and the Chief or their sworn designee discusses the final classification and/or appropriate discipline, if any, to be imposed. The final classification of an allegation of misconduct is within the sole discretion of the Chief.
- b) Prior to the Chief's determination on final classification, the OPO shall have the opportunity to make a separate recommendation to the Chief as to final classification.
- c) Prior to the Chief's determination on of discipline, the OPO shall have the opportunity to make a separate recommendation to the Chief as to discipline, if any.
- d) The final classification of an allegation of misconduct is within the sole discretion of the Chief.
- e) Nothing herein shall limit the Officer's right of appeal of any discipline imposed as provided by TLGC Chapter 143 and this Agreement.
- f) Nothing herein shall preclude the Chief from delegating disciplinary authority to sworn personnel in accordance with the level of classification of the conduct, in which case the OPO recommendations shall be made to that designee.

Section 7. 6 Public Release of Records and Misuse of Information

- a) Documents Subject to and Timing of Public Release:

The provisions of Section 143.089(g) of the Texas Local Government Code are expressly modified to the extent necessary to permit public release of the following documents in the manner prescribed by this Section:

1. Upon the effective date of this Agreement, all documents, files, or information relating to a critical incident as categorized by the Chief of Police, as defined in the Agreement, that would otherwise be considered confidential pursuant to §143.089(g) that are created after such effective date, will be considered public information except for any applicable exceptions that may apply under the Texas Public Information Act or other applicable federal or state law, to include but not limited to Texas Gov't Code §552.108.
2. All documents, files, information that would otherwise be considered confidential pursuant to §143.089(g) that involves a critical incident as categorized by Chief of Police, as defined in this Agreement that are created prior to the effective date of this Agreement, will remain confidential as a matter law and pursuant to any applicable exceptions that may apply under the Texas Public Information Act, or any other state, or federal statute.

The access to records provided in Section 4 of this Article has been granted in exchange for the following agreements intended to ~~ensure~~ ~~insure~~ confidentiality and to prevent retaliation or the threat of retaliation against any witness in an investigation:

- a) Information provided or made available for review remains confidential in the hands of the Officer and his/her representative pursuant to 143.089(g), this Agreement, APD policy, and orders of non-communication about internal investigations, except for consultations with counsel and/or ASSOCIATION representatives who are not involved in the investigation.
- b) Retaliation or the threat of retaliation by an officer, or by an individual at the direction of the Officer, against the author of an Internal Affairs statement is strictly prohibited. A sustained violation of this Subsection shall result in either a temporary or indefinite suspension.
- c) If an Officer is suspended for an alleged violation of Section 6(b), the Officer shall have the right to appeal the suspension to the Civil Service Commission or to an Independent Third Party Hearing Examiner pursuant to the provisions of this AGREEMENT and Chapter 143 of the Texas Local Government Code. The Commission or the Hearing Examiner shall decide whether the specific charge related to this Section is true. If the charge is found to be true, the Commission or Hearing Examiner must affirm the disciplinary action and cannot amend, modify, or reduce the period of disciplinary suspension. Sections 143.053(e) & (f) of the Texas Local Government Code are hereby superseded to the extent of any conflict with this Section.

Section 7. Right to Representation

An Officer who is the subject of an investigation or administrative inquiry shall have the right to be represented by an attorney of the Officer's choice or an ASSOCIATION representative or both during an interview provided the attorney/representative complies with the Internal Affairs interview protocol. An Officer shall have the right to be represented by an attorney or an ASSOCIATION representative or both of the Officer's choice during a Dismissal Review Hearing

(or administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct.)

Section 8. Violation of Officer's Rights

If the Department or any investigator, or any civilian granted access to the investigative process pursuant to this AGREEMENT violates any of the provisions of this Article or of Section 143.312 of the Texas Local Government Code while conducting an investigation, the violation may be considered by the Civil Service Commission or a Hearing Examiner in any disciplinary appeal hearing if the violation substantially impaired the Officer's ability to defend against the allegations of misconduct.

Section 9. Scheduling of Indefinite Suspension Appeal

If an Officer appeals an indefinite suspension to an Independent Third Party Hearing Examiner, the parties will make a good faith effort to schedule the appeal of an indefinite suspension within ~~90~~ 180 days of the date the Officer was indefinitely suspended.

COA Proposal 1-20-23

ARTICLE 18
DISCIPLINARY ACTIONS, DEMOTIONS & APPEALS

Section 1. Suspensions of Three (3) Days or Less

a) Appealable and Non-Appealable Suspensions

It is understood that officers will make some errors during their career involving rule violations, including those who are good, professional police officers. The parties agree that short disciplinary suspensions are for the purpose of reinforcing the need for compliance with departmental standards and not necessarily as punishment.

The parties agree that when an Officer is suspended for 1, 2, or 3 days the Officer may choose one of two methods of dealing with the suspensions as listed below.

(1) Suspensions that may not be appealed. The Officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The Officer must agree that there is no right to appeal if this method of suspension is chosen.

(2) Suspensions that may be appealed. The Officer may appeal the suspension to arbitration or the Civil Service Commission. If the Officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the Officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the Officer shall be fully reinstated with no loss of pay or benefit.

b) Arbitration Costs on Appealable Suspensions

In the event that an Officer appeals a 1, 2 or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.

To facilitate such payment on the part of the Officer ~~they~~ ~~he~~ shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the CITY ~~they~~ ~~he~~ authorizes up to one hundred dollars (\$100.00) per month to be deducted from ~~their~~ ~~his~~ regular pay until such time as what would usually be the CITY's portion of the arbitrator's costs have been satisfied.

(c) The Department will continue to promote programs that emphasize counseling and training for policy violations described by the Chief to be minor in nature and for which the Chief believes the behavior can be corrected through training and counseling.

Section 2. Suspensions of Fifteen (15) Days or Less

If the Chief determines to suspend an Officer for fifteen (15) calendar days or less, the Chief may, at ~~their~~ ~~his~~ sole discretion in hardship cases, authorize use of the Officer's accumulated vacation leave to cover all or part of the suspension. It is also understood and agreed that if the Chief permits the use of vacation days for suspension, such days off shall be considered as equal punishment to traditional unpaid days of suspension. In no case will sick leave be substituted for unpaid days of suspension.

Section 3. Mutually Agreed Temporary Suspensions of Sixteen (16) to Ninety (90) Calendar Days

a) The Police Chief may, in cases the Chief deems to warrant indefinite suspension, offer to impose instead a suspension without pay for a period from sixteen (16) to ninety (90) calendar days. If the Officer accepts the mutually agreed suspension, there shall be no appeal either to the Police Civil Service Commission, to the District Court or to a Hearing Examiner. It is also understood and agreed that if the Chief permits the use of vacation days for suspension, such days off shall be considered as equal punishment to traditional unpaid days of suspension. In no case will sick leave be substituted for unpaid days of suspension.

b) In cases where the Officer's TCOLE license is suspended, the Chief of Police may impose a non-appealable suspension commensurate with the period during which the license is suspended.

Section 4. Payment for Accrued Leave upon Indefinite Suspension

a) An Officer who has been indefinitely suspended may, upon request, be paid in a lump sum for up to two hundred forty (240) hours of accrued vacation and up to one hundred sixty (160) hours of accrued exception vacation.

b) If the indefinite suspension is overturned as a result of the appeal, the Civil Service Commission or a Hearing Examiner may restore such leave, but a total award of leave and back-pay, if any, shall be offset by the amount paid to the Officer under Section 4(a) above.

Section 5. Alternative Discipline by the Police Chief

In considering appropriate disciplinary action the Police Chief may require that an Officer be evaluated by a qualified professional designated by the Police Chief. If that professional recommends a program of counseling and/or rehabilitation for the Officer, the Police Chief may, as an alternative to temporary or indefinite suspension, or in combination with a temporary suspension, require that the Officer successfully complete the recommended program. The program of counseling and/or rehabilitation will be completed on the Officer's off-duty time, unless the Police Chief approves the use of accrued vacation leave or sick leave. The Officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the Officer's health insurance plan. If the Officer's misconduct involves alcohol-related behavior, the Police Chief may require that the Officer submit to mandatory alcohol testing, when ordered by the Police Chief, for a specified period of time. If, after entering the program of counseling and/or rehabilitation, the Officer fails or refuses to complete the program, the Officer may be indefinitely suspended. The Officer has the right to appeal to the Police Civil Service

Commission or to a third party Hearing Examiner any discipline imposed under this Section by filing an appeal notice in accordance with the provisions of Chapter 143. On appeal, the Police Civil Service Commission or Hearing Examiner shall have the same duties and powers set forth in Chapter 143, but shall not have the power to substitute a program of counseling and/or rehabilitation different from the program imposed by the Police Chief or to substitute any period of suspension for the required program of counseling and/or rehabilitation.

Section 6. Alternative Discipline by Agreement

In considering appropriate disciplinary action, the Police Chief may require that an Officer be evaluated by a qualified professional designated by the Police Chief. If that professional recommends a program of counseling and/or rehabilitation for the Officer, the Police Chief may offer the Officer the opportunity to enter into an alternative disciplinary agreement under which the Officer would accept a temporary suspension of up to ninety (90) calendar days and agree to successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Police Chief. The program of counseling and/or rehabilitation will be completed on the Officer's off duty time, unless the Police Chief approves the use of accrued vacation leave or sick leave. The Officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation, which are not covered by the Officer's health insurance plan. If the Officer's misconduct involved alcohol related behavior, the Police Chief may require that the Officer submit to mandatory alcohol testing, when ordered by the Police Chief, for a specified period of time. If the Officer accepts the opportunity for agreed alternative discipline, the Officer may not appeal any terms of the Agreement. If the Officer fails to successfully complete the program of counseling and/or rehabilitation, the Officer may be indefinitely suspended without right of appeal.

Section 7. Last Chance Agreement

a) In considering appropriate disciplinary action, the Police Chief may require that an Officer be evaluated by a qualified professional designated by the Police Chief. If that professional recommends a program of counseling and/or rehabilitation for the Officer, the Police Chief may offer the Officer, as an alternative to indefinite suspension, the opportunity to enter into a last chance agreement. The agreement may include the following provisions in addition to any other provisions agreed upon by the Officer and the Police Chief.

(1) The Officer will successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Police Chief.

(2) The program of counseling and/or rehabilitation will be completed on the Officer's off-duty time, unless the Police Chief approves the use of accrued vacation leave or sick leave. The Officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation, which are not covered by the Officer's health insurance plan.

(3) The Officer will agree to a probationary period not to exceed one (1) year, with the additional requirement that if, during the probationary period, the Officer commits the same or a similar act of misconduct, the Officer will be indefinitely suspended without right of appeal.

b) If the Officer's misconduct involves alcohol-related behavior, the Police Chief may require that the Officer submit to mandatory alcohol testing, upon order by the Police Chief, for a specified period of time. If the Officer accepts the opportunity for a last chance agreement, the Officer may not appeal any terms of the agreement. If the Officer fails to successfully complete the agreed upon program, the Officer may be indefinitely suspended without right of appeal.

Section 8. Extending Disciplinary Deadline by Agreement

1) The Chief may not suspend the officer for ~~complain of~~ an act that occurred earlier than the 365th ~~180th~~ day preceding the date the Chief discovers such act. ~~suspends the officer;~~ For the purpose of this Section, discovers shall mean the time at which a supervisor at the rank of Assistant Chief or above has notice of the potential misconduct; or

2) If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the police officer is subject to a criminal penalty, the Chief may also investigate and suspend an officer past this time frame if the Chief considers delay to be necessary to protect a criminal investigation of the person's conduct. If the Chief intends to indefinitely suspend the officer after the 365th period from date of discovery, the Chief must file with the attorney general, a statement describing the investigation and its objectives within 365-days after the date the act complained of was discovered. The City retains all rights as allowed pursuant to §143.056 Tex. Loc. Gov't Code as it relates to procedures after a felony indictment or a misdemeanor complaint, not otherwise modified herein. For the purposes of this section discovered shall mean the time at which a supervisor at the rank of Assistant Chief or above has notice of the potential misconduct. The Chief must allege that the act complained of is related to criminal activity. The Chief shall not be required to prove a criminal culpable mental state under this section, nor shall the Chief be required to prove charges under a criminal "beyond a reasonable doubt" standard.

b) An Officer and the Chief, or sworn designee, may agree to extend this deadline for imposing discipline for a period not to exceed additional thirty (30) day increments. Either the Officer or the Chief may offer or request the extension. The agreement to extend ~~their his~~ deadline shall be in writing and shall be signed by both the Officer and the Chief, or sworn designee.

c) Any disciplinary action taken by the Chief before the extended deadline shall be considered timely. An agreement to extend the deadline does not affect an Officer's right of appeal from the disciplinary action.

Section 9. Hearing Examiner Retained

The CITY recognizes that during the term of this AGREEMENT Officers have the right to an appeal of an indefinite suspension or suspension for a definite number of days (subject to the provisions herein on non-appealable suspensions of 1 to 3 days) before a Hearing Examiner as provided in Section 143.057 of the Texas Local Government Code. During the term of this AGREEMENT, the parties specifically agree to retain this right of appeal, as modified herein,

notwithstanding any change to Section 143.057 which may occur as a result of court or legislative action.

Section 10. Hearing Examiner Provisions

In order to be mutually accepted on the Hearing Examiners list, an individual must be impartial to the ASSOCIATION and the CITY, shall be a member of the American Arbitration Association (AAA), have formal training in presentation and evaluation of evidence, and have experience in deciding municipal employment issues.

Section 11. Procedures for Hearings before Police Civil Service Commission and Independent Hearing Examiners

It is expressly agreed that Police Civil Service Commission hearings and hearings before Hearing Examiners under 143.057 are informal administrative hearings and are not subject to discovery or evidentiary processes. Specifically it is understood that neither the Texas Rules of Evidence (TRE) nor the Texas Rules of Court (TRC) apply to such hearings. If the Department calls a witness to testify during a hearing and that witness has given a statement to Internal Affairs regarding the pending case, then the Department will provide a copy of that statement to the Officer's counsel at the time the witness is called to testify.

Section 12. Procedures before Hearing Examiners

In any proceeding before a Hearing Examiner, the following procedures shall be followed:

- a) The Department shall furnish the charge letter to the Hearing Examiner by delivering a copy to the AAA far enough in advance, so that the Hearing Examiner receives the copy at least five (5) calendar days before the start of the hearing.
- b) The Officer may furnish a position statement to the Hearing Examiner by delivering copies to the AAA and to the Department far enough in advance, so that the Hearing Examiner and the Department receives the copies at least five (5) calendar days before the start of the hearing.
- c) At the close of the presentation of evidence, the Hearing Examiner shall conduct a posthearing conference with counsel for the Department and the Officer and advise counsel what issue(s) the hearing officer wants covered in posthearing briefs. This does not preclude either party from briefing anything not requested by the Hearing Examiner.
- d) Failure of the AAA to meet its obligations as set out in this Subsection does not jeopardize the hearing rights of either the CITY or the Officer.

Section 13. Submission of Briefs in Lieu of a Hearing

- a) If the Officer and the CITY agree, the appeal may be decided through the submission of written briefs to the Civil Service Commission or a Hearing Examiner, without holding a public hearing. The Agreement shall be reduced to writing and signed by the Officer and the Police Chief, or their respective representatives.

1. The parties shall endeavor to agree to the parameters of the briefs, including the submission of exhibits, affidavits and issues to be decided.
2. Written briefs shall be submitted within thirty (30) calendar days of the date the written agreement is signed.
3. Reply briefs shall be submitted within fifteen (15) calendar days of the date the initial brief is submitted.
4. No additional briefs shall be allowed except upon permission of the Hearing Examiner / Civil Service Commission Chairperson.
5. The parties may mutually agree to extend the time periods; however, if no agreement is reached additional time shall be granted to the parties only under extraordinary circumstances as determined by the Hearing Examiner / Civil Service Commission Chairperson.
6. The Hearing Examiner/ Civil Service Commission Chairperson may hold a telephone conference call(s) with the parties to address the contents of the briefs or any other relevant issues.

b) If the parties do not agree to decide the appeal through the submission of briefs, the appeal shall proceed to a public hearing as provided for in Chapter 143.

c) The Hearing Examiner / Civil Service Commission shall endeavor to issue a ruling within thirty (30) calendar days after the receipt of the final briefs. This provision specifically supersedes the statutory requirement in Chapter 143 that the Commission must issue its decision on the same day a case is heard.

d) Failure of the Hearing Examiner / Civil Service Commission to meet their ~~his/her/its~~ obligations as set out in this Subsection does not jeopardize the rights of either the CITY or the Officer.

Section 14. Special Appeal Process for Demotions

a) This Section applies only to involuntary demotions based on misconduct or performance issues. It does not apply the following:

- (1) Demotions related to the return from military service of another Officer;
- (2) Demotions caused by a reduction in force;
- (3) Demotions related to the reinstatement of another Officer after recovery from a disability;
- (4) Demotions from the rank of Assistant Chief of Police;
- (5) Demotions related to the reinstatement of another Officer after indefinite suspension; or
- (6) Demotions due to return to work of an ASSOCIATION representative on ABL.

b) If the Chief chooses to demote an Officer, the Chief shall file with the Civil Service Commission a written statement giving the reasons for the demotion. A copy of the written statement shall be furnished immediately to the affected Officer.

c) The Officer may appeal the demotion by filing a written appeal notice with the Director of Civil Service within ten (10) [calendar](#) days after the date of the demotion. The Officer may elect to appeal to an independent third-party Hearing Examiner selected in accordance with the provisions of Section 143.057 of the Local Government Code, as amended by this AGREEMENT. The Officer's election to appeal to a Hearing Examiner must be contained in the Officer's initial notice of appeal.

d) During the pendency of the appeal, the Officer's rank and pay shall not be changed but the Chief may reassign the Officer to perform duties appropriate to the rank held by the Officer immediately prior to the promotion. The Officer's absence from [their](#) ~~his~~ promoted position shall not create a vacancy, but the Chief may pay higher classification pay to another Officer to perform the duties of the promoted position.

e) If the Officer appeals to the Civil Service Commission, the decision of the Commission is final and may not be appealed further. If the Officer appeals to a Hearing Examiner, the decision may be appealed only on the grounds that the Hearing Examiner was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means.

f) If the Commission or Hearing Examiner upholds the Chief's demotion, the Officer shall be returned to the rank held immediately prior to the promotion, the Officer's pay shall be adjusted accordingly, and the Officer's name shall be permanently removed from the promotional eligibility list if the list is still in effect. The Officer's time in grade in the promoted position shall not count toward eligibility for future promotion.

g) If the Commission or Hearing Examiner overturns the Chief's demotion, the Officer shall be returned to the promoted rank in an assignment to be determined by the Chief.

h) In addition to the provisions listed in Section 18 *Preemption*, below, this Section shall be entitled to preemption including but not limited to Sections 143.010, 143.015, 143.054, 143.57 and all provisions of Subchapter B of the Texas Local Government Code Chapter 143.

Section 15. Substitution of Demotion for Indefinite Suspension

In the appeal of an indefinite suspension, the Civil Service Commission or a Hearing Examiner may substitute a demotion for the indefinite suspension imposed by the Chief.

Section 16. Mediation

The CITY shall implement a voluntary mediation process concerning both citizen and internal complaints. The ASSOCIATION may appoint two persons to work with the CITY in developing the specific operating procedure. The process shall include and be based upon the following concepts:

a) Mediation shall be an option offered to the complainant at the time the initial complaint is filed, [or any other time during the investigatory process in which the IAD Lieutenant](#)

deems appropriate, for minor nature complaints, such as rudeness. The Chief or their designee shall have final authority as to whether mediation is an appropriate avenue for remedy or whether a traditional IAD investigation is better suited for the alleged misconduct.

b) For a complaint to proceed to mediation, both the Officer and the complainant must voluntarily agree.

c) Once mediation has been agreed to, the matter cannot be returned to the Department to be handled as a disciplinary matter.

Section 17. Effect of Contract Expiration

The provisions of this AGREEMENT shall remain in full force and effect after expiration of this AGREEMENT as to:

a) Any investigation assigned a Control Number by the Internal Affairs Division prior to the expiration of this AGREEMENT;

b) Any disciplinary decision by the Chief prior to the expiration of this AGREEMENT; or

c) Any appeals of such disciplinary action.

Section 18. Authority of the Civil Service Commission/Hearing Examiner

If an Officer is indefinitely or temporarily suspended, the Officer shall have the right to appeal the suspension to the Civil Service Commission or to an Independent Third Party Hearing Examiner pursuant to the provisions of this AGREEMENT and Chapter 143 of the Texas Local Government Code. The Commission or the Hearing Examiner shall decide whether the specific charge related to this Section is true. If the charge is found to be true, the Commission or Hearing Examiner may affirm or reduce the suspension imposed by the Chief of Police to a temporary suspension not to exceed 180 calendar days.

Section 19. Access to IAD File

If an Officer appeals a disciplinary action, and provides a written request, the CITY will provide to the Officer and ~~their~~ ~~his/her~~ representative a copy of the un-redacted IAD file within 5 business days of receiving the request. The file remains confidential in the hands of the Officer and ~~their~~ ~~his/her~~ representative to the extent the release of such information is still protected from public disclosure by Local Government Code Section 143.089(g), this Agreement or other state and federal law. Additionally, all individuals who have access by virtue of this AGREEMENT to IAD files or investigative information, including the information contained within the 143.089(g) files of police officers, shall be bound to the same extent as the Austin Police Department and the CITY of Austin to comply with the confidentiality provisions of this AGREEMENT, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act. All such individuals shall further be bound to the same extent as the Austin Police Department and the CITY of Austin to respect the

rights of individual police officers under the Texas Constitution and the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, including not revealing information contained in a compelled statement protected by the doctrine set forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Spevack v. Klein*, 385 U.S. 511 (1967). The Officer and ~~his/her~~ **their** representative shall not be provided information contained within an IAD file that is made confidential by a law other than Chapter 143 of the Texas Local Government Code, such as records concerning juveniles, sexual assault victims, and individuals who have tested positive for HIV.

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