

To: Council Board of Ethical Conduct

Filing Date: February 7, 2018

Re: Complaint of Unethical Conduct by Mayor Megan Barry.

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

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

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

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

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

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

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

the Use of Force report was complete. The Mayor reprimanded the DA in a subsequent press conference and recounted instructing the Chief to talk to her instead of making public statements. She ended with saying that there would be "critical next steps" but provided no further detail. Currently, there is no record of follow up nor any announcement regarding the Chief's disciplinary decision.

Currently, Officer Lippert is still employed at MNPd and was recently allowed to sit for the sergeant's exam without regard to his past disciplinary record (he had been suspended for a total of twenty (20) days between May 2013 and October 2015). MNPd issued a statement in response to inquiries regarding why Lippert was allowed to take the examination which stated that he had not had any disciplinary actions for the last two (2) years, since 2015, which, per the letter of MNPd policy, permitted him to sit for the examination. The fact that he had been involved in a highly publicized and still controversial shooting was obviously not taken into consideration. That statement further stipulated that he is currently assigned to the police archives department.

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

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

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

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

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

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

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

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

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

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

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

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

- a. using a public office for private gain;
- b. giving preferential treatment to any person;
- c. impeding government efficiency or economy;
- d. losing complete independence or impartiality;
- e. making a Metropolitan Government decision outside of official channels; or
- f. affecting adversely the confidence of the public in the integrity of the Metropolitan Government.”

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

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

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

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

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

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

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

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

Please contact: Theeda Murphy, [REDACTED], email address:  
[REDACTED]

Signature: \_\_\_\_\_  
Theeda Murphy

Date: February 7, 2018

State of Tennessee  
County of Davidson

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

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

\_\_\_\_\_ Notary's Signature

Seal

My commission expires: \_\_\_\_\_