

337. The Coordinating Office shall not be located in, or immediately adjacent to, NOPD Headquarters, District Headquarters, or a District Substation.

B. Coordinating Office Responsibilities

338. Within 365 days of the Effective Date, or as funding is established, the City shall develop and implement and the Coordinating Office shall maintain a searchable list of off-duty secondary employment opportunities, which can be accessed through either the existing NOPD employee web site or another accessible database.

339. The Coordinating Office shall maintain a roster of NOPD employees interested in working off-duty secondary employment.

340. The Coordinating Office shall establish a rotation system that provides a fair and equitable number of secondary employment opportunities to all NOPD employees in consideration of preferences for assignment and availability. The Coordinating Office shall rotate NOPD employees working Recurring Secondary Employment positions at least every 365 days. The Director shall determine when NOPD employees may return to work for the same employer. This 365 day RSE rotation requirement shall not apply to those individual officers who regularly work recurring assignments at Major Special Event venues, schools, banks, churches, and hospitals. The Director may grant an exception to this rule if the secondary employment work being done requires unique or specialized knowledge or training.

341. The Coordinating Office shall fill all new secondary employment opportunities and temporary vacancies pursuant to written and consistently applied criteria. NOPD employees shall not be permitted to select substitutes or allow another employee to work an assigned secondary job in place of the employee.

342. The Coordinating Office shall establish an after-hours notification system, which provides them the capability of accepting information and making assignments 24 hours a day, 365 days per year.

343. The Coordinating Office shall remove NOPD employees from the secondary employment roster where the employees are performing unsatisfactorily, are under suspension, administrative reassignment, or have been charged with a crime.

344. Approval to work secondary employment is not automatically based on assignment through the Coordinating Office. Members shall also be required to comply with all NOPD

internal procedures governing off-duty secondary employment, including the completion of an NOPD Secondary Employment Authorization Form.

345. The Coordinating Office shall develop and implement a plan for working with NOPD to ensure that supervisors conduct in-person inspections of secondary employment sites based upon the frequency worked. Supervisory oversight at Major Special Events or larger venues, which meet minimum supervisor staffing level requirements specified under this Agreement, shall be the responsibility of those ranking officers who were selected by the Coordinating Office to work the secondary employment assignment. The required number of supervisory officers specified under minimum staffing requirements for Major Special Events or larger venues must be present for the duration of the secondary employment assignment.

346. The Coordinating Office shall ensure that no NOPD employee is supervising another employee of higher rank.

347. The Coordinating Office shall be responsible for collecting and maintaining a searchable database of all secondary employment worked. This database shall be searchable by secondary employment assignment and by employee and shall identify the employee working the secondary employment, secondary employment hours, and assignment locations. This database shall maintain historic and current information on all employees' secondary employment.

348. A schedule of fees will be established by the City to offset costs associated with the coordination and required support provided through the Coordinating Office to take into account costs, including but not limited to, administrative fees, hourly wage rates, and equipment usages. The schedule of fees shall be publicly available.

349. The Coordinating Office shall be responsible for the annual, public release of the following information:

- a) The number of NOPD employees who worked secondary employment by District and rank;
- b) The average number of secondary employment hours worked by District and rank;
- c) The salaries of Coordinating Office employees and the Coordinating Office's administrative operational costs; and
- d) The net and gross amounts of City income derived through secondary employment.

350. The Coordinating Office shall ensure that all potential employers are notified of their responsibilities, including:

- a) Agreeing that individuals or entities seeking to employ off-duty NOPD employees to work secondary employment must work through the Coordinating Office;
- b) Making all payments in advance and acknowledgement that advanced payments may be subject to forfeiture or penalty assessment associated with late cancellations;
- c) Agreeing to have secondary employees sign in and sign out every work day; and
- d) Acknowledging that they are prohibited from providing any compensation, either cash or in-kind, including bonuses or gifts, beyond nominal compensation in the form of food or beverages, to an NOPD employee or the friend or relative of an NOPD employee in exchange for any secondary employment services provided.

C. Secondary Employment Compensation

351. The Coordinating Office, working with NOPD and the City, shall develop and implement an auditable payment system that ensures that secondary employment pay is made to NOPD employees.

352. NOPD employees working secondary employment shall not be permitted to receive any compensation, either cash or in-kind, including bonuses or gifts, unless such compensation, bonus, or gift, is provided through and documented by the Coordinating Office and is in accordance with the Louisiana Ethics Code for public employees. Nominal compensation in the form of food or beverages is permitted in accordance with the Louisiana Ethics Code for public employees.

353. Travel time to and from secondary employment shall not be compensated, unless it involves specialized patrol services or use of specialized equipment.

354. NOPD employees are not permitted to solicit secondary compensation or employment. Individuals or entities seeking to employ NOPD employees to work secondary employment must work through the Coordinating Office.

355. NOPD shall advise all officers that attempting to circumvent or circumventing the secondary employment policy or the Coordinating Office shall subject officers to discipline as warranted, up to and including dismissal.

D. Limitations on Secondary Employment Work

356. NOPD and the Coordinating Office shall establish a standard form by which NOPD employees can register to work secondary employment assignments. No employee shall be eligible to work secondary employment without first registering with the NOPD Compliance

Section and obtaining authorization from the employee's direct supervisor and unit commander. Secondary employment authorization shall be valid for one calendar year. When determining whether an NOPD employee qualifies for authorization to work secondary employment, NOPD and the Coordinating Office shall evaluate factors that include:

- a) The quality of the employee's primary employment performance, assessed pursuant to written criteria;
- b) Whether the employee is an active member of the NOPD or grandfathered Reserve officer in good standing;
- c) The applicant's disciplinary record, complaint history, and work performance history;
- d) The applicant's level of experience; and
- e) Whether the employee is seeking a supervisory or non-supervisory position.

Non-supervisory NOPD employees may not supervise secondary employment.

357. Only a POST certified commissioned member who has successfully completed his/her FTO training and has achieved permanent status as Civil Service "Police Officer I" may work police-related secondary employment assignments unsupervised.

358. POST certified commissioned members who completed FTO training, but have not obtained permanent status of Civil Service "Police Officer I," may work secondary employment if supervised by a ranking officer at the grade of sergeant or above.

359. POST certified commissioned members hired as lateral transfers successfully completing FTO training may work authorized secondary employment unsupervised.

360. Regardless of prior approval, members shall not engage in secondary employment while absent in the following status: sick; Injured On-Duty; Worker's Compensation; Maternity Leave; Leave Without Pay; or Suspended or under Administrative Reassignment with a restricted police commission. Members must return to full duty status and have completed a full tour of duty prior to working a secondary employment opportunity.

361. Secondary employment for City departments and agencies shall be prohibited. Instead, departments and agencies shall cover compensation for employees through authorized City reimbursement procedures.

362. In addition to the secondary employment positions prohibited under current NOPD policy, the following types of work or services shall be prohibited as secondary employment:

- a) Work in or for Alcoholic Beverage Outlets as defined under NOPD policy;

- b) Private investigations;
- c) Chauffeur services; except where chauffeur services to public officials, executives or celebrities is secondary to a primary purpose of security. Notwithstanding the foregoing prohibition, motorcycle escorts for chauffeur services and limousines are permitted;
- d) Security at sexually oriented businesses;
- e) Employment requiring that the employee act as a civil process server; and
- f) Security at pawn shops.

363. NOPD employees are prohibited from working secondary employment that conflicts with the employee's NOPD duties and ethical obligations. Prohibitions include:

- a) Representing anyone before any court or agency of the City, with or without compensation, on a matter in which the City is a party or has a substantial interest;
- b) Serving as an expert witness in his or her private capacity in any civil or criminal proceeding in which the City is a party or has a substantial interest;
- c) Working secondary employment during court hours while the employee is under a conflicting subpoena;
- d) Disclosing confidential information acquired in an official capacity to any secondary employer;
- e) Using on-duty time to conduct investigations or take other law enforcement action on behalf of a secondary employer, where there would be an actual conflict of interest or appearance of a conflict of interest;
- f) Knowingly participating in, or soliciting the creation of, any corporation, company, trust, fund, or cooperative banking account for the purpose of billing, receiving compensation, or coordinating services of secondary employment; and
- g) Taking an assignment that will interrupt or occur during the employee's assigned on-duty NOPD shift.

364. Secondary employment by NOPD employees will be limited to a maximum of 24 hours per seven day work week (Sunday through Saturday). Exceptions to the hour limitation may be granted for Major Special Events where manpower requirements are so intensive that sufficient resources may not be available for the safe operation of the event (e.g., Jazz Fest, Mardi Gras). Application for such an event exception will be made in advance via interoffice correspondence (NOPD Form 105) by an employee or event commander that estimates the number of hours an

employee can exceed the maximum threshold. The application will be forwarded through the appropriate chain of command for final approval by the Superintendent. Secondary employment in excess of the 24-hour limitation cannot be worked unless approved in advance by the Superintendent.

365. No employee, including Reserve officers, shall work more than 16 hours within a 24-hour period. (The 24 hour period begins the first time the employee reports for either regular duty or secondary employment allowing for a minimum of eight hours of rest within each 24-hour period.) These hours are cumulative and include normal scheduled work hours, overtime, off-duty secondary employment, and outside employment.

366. Commissioned Reserve officers are allowed to register for and work secondary employment assignments through the Coordinating Office if they are full time active duty officers in good standing or Commissioned Reserve Officers on the Effective Date. The following further limitations and restrictions shall apply to all Reserve members, however:

- a) Plain clothes secondary employment coordinated through the Coordinating Office must be approved by the Superintendent or his designee prior to allowing any Reserve officer to work in plain clothes;
- b) Reserve officers shall not work secondary employment for their current employer or for anyone for whom they have worked full time during any period within two years of the Effective Date;
- c) Reserve officers shall not work secondary employment during the first year after graduation from the Reserve Police Academy;
- d) Reserve officers who volunteer a minimum of 36 hours in a calendar month are eligible to work a maximum of 28 hours in secondary employment during the following calendar month (e.g., a reserve officer who volunteers 36 hours in August would be eligible to work a maximum of 28 hours of secondary employment in September);
- e) Reserve officers who volunteer a minimum of 40 hours in a calendar month will be eligible to work a maximum of 32 hours of secondary employment during the following calendar month;
- f) Reserve ranking officers are not authorized to approve secondary employment. All request forms shall be submitted to the Commander of the Reserve Division for approval and forwarding through the chain of command;

- g) Reserve officers shall attach a copy of their monthly time report to their secondary employment authorization request form;
- h) Reserve officers shall follow all policies and procedures of NOPD, the NOPD Reserve Division and this Agreement while working secondary employment; and
- i) Reserve officers are prohibited from coordinating secondary employment for any member of the Department, either regular or reserve members. Reserve officers are also prohibited from individually or cooperatively coordinating secondary employment and the collection of fees for secondary employment contracted through the Coordinating Office.

E. Secondary Employment Employee Responsibilities

367. NOPD employees seeking to work any secondary employment shall submit a signed Secondary Employment Registration Form ("Registration Form") initially and annually thereafter to the Coordinating Office. This Registration Form shall include acknowledgment that:

- a) the employee understands that working a secondary employment is a privilege subject to strict criteria;
- b) the employee represents NOPD while working secondary employment;
- c) the employee must abide by all NOPD policies while working secondary employment; and
- d) the employee may be disciplined by NOPD for policy violations committed while working secondary employment.

368. Employees working secondary employment shall have the same responsibility to carry appropriate departmental equipment (e.g., police radios) and document their activities in the same manner as if they were on-duty, including completing incident, arrest, and use of force reports, and reporting allegations of misconduct or observed misconduct.

F. Secondary Employment Supervision

369. Working with NOPD, the Coordinating Office shall determine the number of employees and supervisors necessary to work a secondary job, considering factors that include:

- a) The anticipated number of people attending the function;
- b) Whether alcoholic beverages will be served;
- c) Whether the event is open to the public or is private/by invitation only;
- d) The location of the event; and
- e) The history of the event and employer.

370. The minimum supervisory requirements for any secondary employment assignment shall be:

- a) Secondary employment requiring the simultaneous or overlapping schedule of one to four officers may be worked without a ranking officer. In these instances, the most senior officer accepts responsibility for secondary employment related notifications. Supervisory oversight shall be the responsibility of a patrol supervisor in the District of the secondary employment assignment, though officers engaged in secondary employment are expected to abide by general directions from the coordinating office;
- b) Secondary employment requiring the simultaneous or overlapping schedule of five to nine officers shall include at least one ranking officer of at least the grade of sergeant or lieutenant;
- c) Secondary employment requiring the simultaneous or overlapping schedule of 10 to 14 officers shall include at least two ranking officers of at least the grade of sergeant or lieutenant;
- d) Secondary employment requiring the simultaneous or overlapping schedule of 15 to 19 officers shall include at least two ranking officers of at least the grade of sergeant and one supervisor of at least the grade of lieutenant;
- e) Secondary employment requiring the simultaneous or overlapping schedule of 20 to 24 officers shall include at least three ranking officers of at least the grade of sergeant and one supervisor of at least the grade of lieutenant;
- f) Secondary employment requiring the simultaneous or overlapping schedule of 25 to 29 officers shall include at least three ranking officers of at least the grade of sergeant and two supervisors of at least the grade of lieutenant;
- g) Secondary employment requiring the simultaneous or overlapping schedule of 30 officers or more shall include supervisory coverage in addition to that specified above based on the following graduated scale:
 - (1) One sergeant or above for every five members;
 - (2) One lieutenant or above for every two sergeants;
 - (3) One captain or above for every three lieutenants.

371. Sergeants and lieutenants shall be allowed to back-fill a police officer opening, but those supervisors electing to fill such a vacancy are eligible for compensation at the hourly rate

approved for the police officer position as negotiated between the Coordinating Office and the employer. Captains or above shall only be allowed to fill open vacancies at a supervisory staffing level equivalent to a captain's position.

372. Supervisors shall supervise NOPD employees working secondary employment in the same manner as if they were working their primary employment.

373. The Coordinating Office will implement a system so that on-duty NOPD patrol supervisors are aware of each secondary job within that supervisor's geographical coverage area and the identity of each employee working each secondary job.

374. The Coordinating Office will implement a system so that each District shall have a current and historical record of all secondary employment worked in the District.

**XVII. MISCONDUCT COMPLAINT INTAKE, INVESTIGATION, AND
ADJUDICATION**

NOPD and the City agree to ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all investigative findings are supported using the preponderance of the evidence standard and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent. To achieve these outcomes, NOPD and the City agree to implement the requirements set out below.

A. Reporting Misconduct

375. NOPD agrees to continue to require any Department employee who observes or becomes aware of any act of misconduct by another employee to report the incident to a supervisor or directly to PIB for review and investigation. Where an act of misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to PIB. Failure to report or document an act of misconduct or criminal behavior is an egregious offense and shall be grounds for discipline, up to and including termination of employment.

B. Response to Internally Discovered Infractions

376. NOPD agrees to develop and establish protocols that require supervisors to take appropriate disciplinary or non-disciplinary corrective action when the supervisor becomes aware of an infraction committed by an officer that is not reported from outside the Department and does not require an immediate PIB notification (e.g., improper use of sick leave, improper attire). The infraction and the supervisor's response shall be reported to PIB within five business

days. PIB shall review the report and supervisory response to determine whether additional investigation is required and to evaluate the imposed discipline or corrective action to determine whether the supervisory response was fair and consistent with NOPD disciplinary protocols.

C. Preventing Retaliation

377. The City and NOPD agree to expressly prohibit all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct. Within 270 days of the Effective Date, and annually thereafter, the City, through PIB, shall review NOPD's anti-retaliation policy and its implementation. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and the supervisors' performance in addressing and preventing retaliation. Following such review, the City shall modify policy and practice as necessary to protect individuals, including other NOPD officers and employees and civilians, from retaliation for reporting misconduct. Retaliation for reporting misconduct or for cooperating with an investigation of misconduct is an egregious offense and shall be grounds for discipline, up to and including termination of employment.

D. Staffing, Selection, and Training Requirements

378. NOPD agrees to continue to have a civilian serve as PIB commander.

379. NOPD and the City agree to ensure that a sufficient number of well-trained staff is assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of this Agreement. NOPD and the City further shall provide sufficient resources and equipment to ensure that thorough and timely criminal and administrative misconduct investigations are conducted. ICOs shall report directly to the PIB Commander on PIB-related matters.

380. Within 365 days of the Effective Date, NOPD agrees to review the staffing of PIB and ensure that misconduct investigators and commanders possess excellent investigative skills, a reputation for integrity, the ability to write clear reports, and the ability to be fair and objective in determining whether an officer committed misconduct. Officers with a sustained complaint of, or who have been disciplined for, excessive use of force, false arrest, unlawful search or seizure, sexual harassment, discrimination, or dishonesty shall be presumptively ineligible for assignment to PIB.

381. Officers promoted to the rank of Lieutenant shall, within a reasonable time frame, serve a rotation in PIB.

382. All personnel conducting NOPD officer misconduct investigations, whether assigned to PIB, a District, or elsewhere, shall receive at least 40 hours of initial training in conducting officer misconduct investigations within 365 days of the Effective Date, and shall receive at least eight hours of training each year. This training shall include instruction in:

- a) investigative skills, including proper interrogation and interview techniques; gathering and objectively analyzing evidence; surveillance; and data and case management;
- b) the particular challenges of administrative police misconduct investigations, including identifying alleged misconduct that is not clearly stated in the complaint or that becomes apparent during the investigation; properly weighing credibility of civilian witnesses against officers; using objective evidence to resolve inconsistent statements; and the proper application of the preponderance of the evidence standard;
- c) relevant state, local, and federal law, including state employment law related to officers and the rights of public employees, including but not limited to La. Rev. Stat. 40:2531, "Rights of Law Enforcement Officers While Under Investigation," and local Civil Service Commission requirements, as well as criminal discovery rules such as those set out in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Brady v. Maryland*, 373 U. S. 83 (1963); and
- d) NOPD rules and policies, including the requirements of this Agreement, and protocols related to criminal and administrative investigations of alleged officer misconduct.

383. Within 365 days of the Effective Date, NOPD agrees to develop and implement a plan for conducting regular, targeted, and random integrity audit checks, or "sting" audits, to identify and investigate officers engaging in at-risk behavior, including: unlawful stops, searches, and seizures (including false arrests); discriminatory policing; use of excessive force; secondary employment abuse; failure to take a complaint failure to report misconduct or complaints; or other patterns of misconduct or potentially criminal behavior.

E. Complaint Information

384. Within 365 days of the Effective Date, the City and NOPD agree to develop and implement a program to ensure broad knowledge throughout the New Orleans community about

how to make misconduct complaints, and the availability of effective mechanisms for making misconduct complaints. The requirements below shall be incorporated into this program.

385. The City and NOPD agree to make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including, at a minimum, NOPD headquarters, District stations, NOPD and City websites, City Hall, courthouses within New Orleans, all public libraries, the IPM, the Orleans Public Defenders, and at the offices or gathering places of community groups. Individuals shall be able to submit misconduct complaints through NOPD and City websites and these websites shall include complaint forms and information regarding how to file misconduct complaints.

386. NOPD agrees to post and maintain a permanent placard at all police facilities describing the external complaint process. The placards shall include relevant contact information, such as telephone numbers, email addresses, and internet sites. Officers shall provide the officer's name and badge number upon request. If an individual indicates that he or she would like to make a complaint or requests a complaint form, the officer shall immediately inform his or her supervisor who will respond to the scene to assist the individual in providing appropriate forms and/or other available mechanisms for filing a misconduct complaint.

387. Complaint forms and related informational materials shall be made available and posted in Spanish, Vietnamese, and English.

F. Complaint Intake, Classification, Assignment, and Tracking

388. NOPD agrees to, within 365 days of the Effective Date, revise policy and train all officers and supervisors to ensure that they properly handle complaint intake, including how to properly provide complaint materials and information and the consequences for failing to take complaints.

389. The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint, shall be grounds for discipline, up to and including termination.

390. NOPD agrees to accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any LEP individual who wishes to file a complaint about an NOPD officer or employee shall be provided with a complaint form in English, Spanish, or Vietnamese, as appropriate, and the appropriate

translation services required to file a complaint, and such complaints will be investigated in accordance with this Agreement.

391. All officers and employees who receive a misconduct complaint in the field shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the complaint. All misconduct complaints received outside of PIB shall be documented and submitted to PIB by the end of the shift in which it was received.

392. Upon notification by the City Attorney's Office, the DA, or judges or magistrates, NOPD agrees to ensure that allegations of officer misconduct are identified and investigated as misconduct complaints. The City Attorney's Office agrees to forward copies of all civil suits alleging misconduct by an NOPD officer to PIB.

393. NOPD agrees to track, as a separate category of misconduct complaints, allegations that an officer has in any way interfered with a civilian's First Amendment right to observe, record, and/or verbally comment on the performance of police duties in an area open to the public, or where the individual has a right to be, such as a person's home or business. Improper interference with this right includes improperly detaining or arresting individuals for interfering with a law enforcement investigation, disorderly conduct, or similar charges.

394. NOPD agrees to track, as a separate category of misconduct complaints, allegations of discriminatory policing, along with characteristics of the complainants. NOPD agrees to ensure that complaints of discriminatory policing are captured and tracked appropriately.

395. Within 365 days of the Effective date, PIB shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, PIB shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the complaint is made. Where a misconduct complaint is received in the field, a supervisor shall obtain the unique numerical identifier and provide this identifier to the complainant.

396. NOPD's centralized numbering and tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic

assessment of compliance with NOPD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.

397. Where a supervisor receives a misconduct complaint in the field alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide this information and evidence to PIB. This information includes the names and contact information for all complainants and witnesses, the names of all NOPD officers and employees involved in or witnessing the alleged misconduct, and any available physical evidence, such as voluntarily provided video or audio recordings, or documentation of the existence of such recordings where the witness chooses not to provide the recording. The supervisor shall take photographs of apparent injuries, or the absence thereof, unless the complainant/subject objects or declines.

398. Within three business days of the receipt of a misconduct complaint, PIB shall determine whether the complaint will be: assigned to an ICO or supervisor; retained by PIB for investigation or referred to the appropriate outside agency; and whether it will be investigated criminally.

399. NOPD agrees to develop and implement a complaint classification protocol that is allegation-based rather than anticipated outcome-based to guide PIB in determining where a complaint should be assigned. This complaint classification protocol shall ensure that PIB or an authorized outside agency investigates allegations including:

- a) serious misconduct, including but not limited to: criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft;
- b) misconduct implicating the conduct of the supervisory or command leadership of the subject officer; and
- c) subject to the approval by the Deputy Superintendent of PIB, allegations that any commander requests be conducted by PIB rather than the subject officer's District/Division.

400. Where NOPD or the City determines that an externally-generated complaint contains no allegations of misconduct, the complaint shall receive a disposition of "exonerated" or "unfounded" and include for tracking purposes an indication that it was a complaint regarding service or otherwise contained no allegations of misconduct. NOPD agrees to cease the use of "No Violation Observed," "NIMS," or similar dispositions of misconduct allegations. NOPD

will use the classification “No Formal Investigation Merited” to resolve only the following types of complaints:

- a) complaints disputing traffic citations, except that allegations of misconduct contained in such complaints (e.g., racial profiling, illegal search, excessive force) will be classified and investigated according to its merits;
- b) complaints alleging a delay in police service such as patrol response or detective follow-up, where the preliminary investigation demonstrates that the delay is due to workload. However, if the preliminary investigation discloses that misconduct such as negligence rather than workload caused the delay, the complaint will be classified according to its merits;
- c) complaints regarding off-duty officer conduct of a civil nature, unless the alleged conduct or its effects constitute misconduct or have a substantial nexus to the officer’s employment; and
- d) complaints in which the preliminary investigation demonstrates that the subject officer does not work for NOPD or where the identity of the subject officer cannot be determined, despite the best efforts of PIB.

401. A misconduct complaint investigation may not be conducted by any officer who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct.

G. Investigation Timeframe

402. NOPD and the City agree to make good faith efforts to have state law amended to permit a reasonable timeframe for the completion of administrative investigations of officer misconduct so that such investigations can be thorough, reliable, and complete.

403. All administrative investigations conducted by PIB shall be completed within the time limitations mandated by state law and within 90 days of the receipt of the complaint, including assignment, investigation, review and final approval, unless granted an extension as provided for under state law or Civil Service exemption, in which case the investigation shall be completed within 120 days. Where an allegation is sustained, NOPD shall have 30 days to determine and impose the appropriate discipline, except in documented extenuating circumstances, in which case discipline shall be imposed within 60 days. All administrative investigations shall be

subject to appropriate interruption (tolling period) as necessary to conduct a concurrent criminal investigation or as provided by law.

H. Collection of Evidence

404. Officer misconduct investigations shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent extenuating circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant.

405. All witnesses, including officers witnessing or involved in an incident that becomes the subject of a misconduct complaint, shall provide a written statement regarding the incident or be interviewed as described below.

406. Where the alleged misconduct is particularly serious or interviews of the subject officer(s) or other witnesses may be necessary to sufficiently investigate the allegation, the investigator shall conduct an in-person interview. The interview shall be recorded in its entirety, absent, in the case of non-officer witnesses, specific documented objection.

407. Each officer, witness, and complainant shall be interviewed separately. A NOPDAI not involved in the underlying complaint will be used when taking statements or conducting interviews of any Vietnamese or Spanish speaking LEP complainant or witness.

408. The misconduct investigator shall seek to identify all persons at the scene giving rise to a misconduct allegation, especially all NOPD officers. The investigator shall note in the investigative report the identities of all officers and other witnesses who were on the scene but assert they did not witness and were not involved in the incident. The investigator shall conduct further investigation of any such assertions that appear unsupported by the evidence.

409. All misconduct investigation interview recordings shall be stored and maintained in a secure location within PIB.

410. NOPD agrees to require officers to cooperate with administrative investigations, including appearing for an interview when requested by an NOPD or Inspector General investigator and providing all requested documents and evidence. Supervisors shall be notified when an officer under their supervision is summoned as part of an administrative investigation, and shall facilitate the officer's appearance, absent extraordinary and documented circumstances.

411. If at any time during complaint intake or investigation the investigator determines that there may have been criminal conduct on the part of any officer or employee, the investigator

shall immediately notify the PIB commander. The PIB commander shall immediately notify the Superintendent, the DA and/or USAO, and the Monitor of the initiation of a criminal investigation. The subject officer shall not be compelled to provide a statement to administrative investigators where there is a potential criminal investigation or prosecution of the officer, until the remainder of the investigation has been completed, unless after consultation with prosecuting agency (e.g., DA or USAO) and the PIB commander, such compulsion is deemed appropriate by the Superintendent. NOPD and the City agree to consult with the DA to develop and implement protocols to ensure that the criminal and administrative investigations can be conducted in parallel as appropriate and are kept separate after a subject officer has provided a compelled statement.

412. Nothing in this Agreement or NOPD policy shall hamper an officer's obligation to provide a public safety statement regarding a work related incident or activity. NOPD agrees to make clear in policy and training that all officer statements in incident reports, arrest reports, use of force reports, and similar documents, and statements made in interviews such as those conducted in conjunction with NOPD's routine use of force review and investigation process, are part of each officer's routine professional duties.

I. Analysis of Evidence

413. In each investigation, NOPD shall consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will NOPD disregard a witness' statement merely because the witness has some connection to the complainant or because of any criminal history. NOPD shall make efforts to resolve material inconsistencies between witness statements.

414. The resolution of any misconduct complaint must be based upon the preponderance of the evidence. A misconduct investigation shall not be closed simply because the complaint is withdrawn or because the alleged victim is unwilling or unable to provide additional information beyond the initial complaint. In such instances, the investigation shall continue as necessary within the allowable investigation timeframes established under this Agreement to resolve the original allegation(s) where possible based on the evidence and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found

guilty of an offense shall not be the deciding factor as to whether an NOPD officer committed the alleged misconduct, nor shall it justify discontinuing the investigation.

415. The misconduct investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:

- a) "Unfounded," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did not occur or did not involve the subject officer;
- b) "Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;
- c) "Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred; or
- d) "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate NOPD policies, procedures, or training.

416. The PIB commander shall accept the investigator's recommended disposition and the Superintendent shall approve the disposition, unless the disposition is unsupported by a preponderance of the evidence or additional investigation is necessary to reach a reliable finding. Where the disposition is unsupported by a preponderance of the evidence, the PIB Commander may correct the disposition or order additional investigation, as necessary.

417. In addition to determining whether the officer committed the alleged misconduct, administrative investigations shall assess and document whether: (a) the police action was in compliance with training and legal standards; (b) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; and (d) the incident suggests that NOPD should revise its policies, strategies, tactics, or training. This information shall be shared with the relevant commander(s) who shall document the commander's disagreement or agreement with these findings, refer any recommendations to the appropriate individual to implement the recommended change, document the implementation of these recommendations, and return the documentation to PIB.

J. Integrity of Investigative File and Evidence

418. Division/District-Level investigation reports and all related documentation and evidence shall be provided to PIB immediately upon completion and approval by the appropriate supervisor of the investigation, but no later than three business days.

419. All investigation reports and related documentation and evidence shall be securely maintained in a central and accessible location until the officer who was a subject of the complaint has severed employment with NOPD.

K. Communication with Complainant

420. Each misconduct complainant will be kept informed periodically regarding the status of the investigation. The complainant will be notified of the outcome of the investigation, in writing, within ten business days of the completion of the investigation, including regarding whether any disciplinary or non-disciplinary action was taken.

L. Discipline Process and Transparency

421. NOPD agrees to ensure that discipline for sustained allegations of misconduct will be based on the nature of the allegation and defined and consistent, mitigating and aggravating factors, rather than the identity of the officer or his or her status within NOPD or the broader community. NOPD and the City agree to develop and implement procedures to ensure that discipline is fair and consistent.

422. NOPD agrees to use a disciplinary matrix that:

- a) establishes a presumptive range of discipline for each type of rule violation;
- b) increases the presumptive discipline based both on an officer's prior violations of the same or other rules;
- c) sets out defined mitigating or aggravating factors;
- d) requires that any departure from the presumptive range of discipline must be justified in writing;
- e) provides that NOPD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
- f) provides that NOPD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

423. NOPD and the City agree to establish a unified system for reviewing sustained findings and assessing the appropriate level of discipline pursuant to NOPD's disciplinary matrix, in order to facilitate consistency in the imposition of discipline. All disciplinary decisions shall be documented, including the rationale behind any decision to deviate from the level of discipline set out in the disciplinary matrix.

424. NOPD and the City agree to develop and establish written policies and procedures to ensure that the City Attorney's Office provides close guidance to NOPD at the disciplinary stage to ensure that NOPD's disciplinary decisions are as fair and legally defensible as possible.

425. The City agrees to request the Civil Service Commission to, within 90 days of the Effective Date, post online its full decisions related to NOPD discipline in a timely manner.

M. Annual Report

426. PIB shall include in its annual report a summary of each misconduct complaint, including a description of the allegation, the final approved disposition, and any discipline imposed. PIB's annual report shall also include aggregate misconduct complaint data showing the number of each type of complaint and the number and rate of sustained cases after final approval, and shall provide an analysis of this data that identifies trends and concerns and documents NOPD's response to the identified trends and concerns. The PIB and IPM shall coordinate and confer with each other in collecting, analyzing, and reporting this data to avoid or minimize duplication of efforts or resources.

XVIII. TRANSPARENCY AND OVERSIGHT

To ensure comprehensive, effective, and transparent oversight of NOPD, NOPD and the City agree to develop, implement, and maintain systems that are meant to be sustained after the completion of this Agreement. To facilitate effective and constitutional policing and increase trust between NOPD and the broader New Orleans community, these oversight systems shall ensure that improper incidents, practices, or trends, are identified and corrected in an equitable and timely manner. To achieve these outcomes, NOPD and the City agree to implement the requirements set out below.

A. Data Collection and Public Reporting

427. All NOPD audits and reports related to the implementation of this Agreement shall be publicly available via website and at the Police Department, City Hall, and other public locations, to the fullest extent permissible under law.

428. Within 30 days of its implementation, each NOPD policy, procedure, and manual, including those created pursuant to this Agreement, shall be posted online and otherwise made publicly available, unless NOPD documents a reasonable security reason for keeping the policy, procedure, or manual private. Where a portion of a manual may not be suitable for public availability, NOPD agrees to make the remainder of the manual publicly available.

429. NOPD shall collect and maintain all data and records necessary to facilitate and ensure transparency and wide public access to information related to NOPD decision making and activities, as permitted by law.

B. United States Attorney Criminal Justice Coordination Group

430. Within 120 days of the Effective Date, NOPD shall develop and implement a system of formal coordination between a command-level NOPD official and the DA, municipal and state court judges, the Orleans Public Defenders, the FBI, the USAO, and the IPM. This criminal justice coordination group shall be convened by the USAO and shall meet monthly to share regular feedback regarding the quality of NOPD arrests and indicia of misconduct; to refer specific allegations of misconduct for investigation; and to receive an update on the status of previous referrals.

431. The NOPD command-level official shall be accountable for documenting feedback and referrals received; ensuring that operational changes based upon this feedback are considered and made as appropriate; ensuring that all allegations of misconduct are investigated; and providing an update each month to the USAO-convened criminal coordination group regarding the status of investigations of previously referred allegations of misconduct, and the status of consideration of operational changes as a result of feedback received from the group.

C. District Community Outreach Programs and Meetings

432. Within 180 days of the Effective Date, NOPD agrees to develop and implement a Community Outreach and Public Information program in each NOPD District.

433. The Community Outreach and Public Information program shall include at least one semi-annual open meeting in each of NOPD's eight Districts for the first year of this Agreement, and one meeting in each District annually thereafter. These open meetings shall be led by the Superintendent or Deputy Superintendent and shall inform the public about the requirements of this Agreement; NOPD's progress meeting these requirements; and address areas of community concern related to public trust and constitutional policing. At least one week before such meetings, the City shall widely publicize the meetings using earned media opportunities. In determining the locations of the meetings, NOPD shall consider factors such as easy access to public transportation and child care.

434. The Community Outreach and Public Information meetings shall include summaries of all pertinent audits and reports completed pursuant to this Agreement and inform the public of any policy changes or other significant actions taken as a result of this Agreement.

435. For at least the first two years of this Agreement, every NOPD officer and supervisor assigned to a District shall attend at least two community meetings (e.g., NONPACC and other meetings with residents, business and religious groups) per year in the geographic area to which the officer is assigned.

D. Police-Community Advisory Board

436. DOJ acknowledges that NOPD and community representatives have acted jointly to create a PCAB to facilitate regular communication and cooperation between the Department, the City, and community leaders, including youth leaders, such as through the development of a community advisory panel and the collaborative development of policing strategies and priorities.

437. NOPD agrees to work collaboratively with PCAB to develop and implement public safety strategies that respect and reflect each community's public safety priorities and concerns about particular police tactics. To the extent specified below, NOPD agrees to seek PCAB's assistance, counsel, and input to build community consensus on potential recommendations in areas including the following:

- a) community policing strategies;
- b) accountability for professional/ethical behavior by individual police officers;
- c) special task forces that meet high priority community need;
- d) central policy changes, where applicable, that improve quality of life;
- e) resource allocations to meet high priority, difficult issues;
- f) strategies for a qualified and diverse workforce;
- g) providing information to the community and conveying feedback from the community to NOPD; and
- h) ways to provide data and information, including information about NOPD's compliance with this Agreement, to the public in a transparent and public-friendly format, to the greatest extent allowable by law.

438. NOPD further agrees to participate in quarterly meetings scheduled by PCAB; to allow the meeting agenda to be determined by the PCAB; and to have command/executive level staff representation present at all regularly scheduled meetings.

E. Community-Based Restorative Justice Project

439. NOPD and the City agree to participate in a community-based restorative justice project. NOPD, the City, and DOJ will work to identify an entity to fund and administer this project. The aim of this project shall be to help remedy mistrust between NOPD and the broader New Orleans community and create an environment for successful problem-solving partnerships.

F. Office of the Independent Police Monitor

440. This Agreement in no way diminishes the authority and oversight provided by the IPM pursuant to city ordinance and the related Memorandum of Understanding between the IPM and NOPD.

441. NOPD and the City agree to provide the IPM ready and timely access to the information necessary to fulfill its duties. The IPM shall have all access to confidential information, including all protections and authority of state law, as does New Orleans' Office of Inspector General.

442. NOPD and the City agree to abide by the November 10, 2010, Memorandum of Understanding between the NOPD and the IPM. This MOU is hereby incorporated by reference into this Agreement.

443. In determining the timing and content of its reviews and audits, the IPM will coordinate with the Monitor and NOPD to minimize duplication of effort, recognizing that overlapping or redundant audits may be necessary on occasion to assess the quality and reliability of various internal and external oversight mechanisms.

XIX. AGREEMENT IMPLEMENTATION AND ENFORCEMENT

A. Role of the Monitor

444. The Monitor shall assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in the constitutional and professional treatment of individuals by NOPD.

445. The Monitor shall be subject to the supervision and orders of the Court, consistent with this Agreement. The Monitor shall only have the duties, responsibilities and authority conferred

by this Agreement. The Monitor shall not, and is not intended to, replace or assume the role and duties of the City and NOPD, including the Superintendent.

446. In order to assess and report on the Defendant's implementation of this Agreement and whether implementation is resulting in the constitutional and professional treatment of individuals by NOPD, the Monitor shall conduct the reviews, audits, and assessments specified below, and such additional audits, reviews, and assessments as the Monitor or the Parties jointly deem necessary to determine whether this Agreement has been implemented as required.

B. Compliance Reviews and Audits

447. The Monitor shall conduct compliance reviews or audits as necessary to determine whether the City and NOPD have implemented and continue to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that the City and NOPD have: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) ensured that the requirement is being carried out in actual practice. Compliance reviews and audits shall contain the elements necessary for reliability and comprehensiveness.

Compliance reviews and audits may be conducted using sampling and compilation data as consistent with reliability and comprehensiveness. Outcome Assessments in Section XIX.C. may not require a review of all NOPD data on a specific statistic or category.

C. Outcome Assessments

448. In addition to compliance reviews and audits, the Monitor shall conduct assessments to measure whether implementation of this Agreement is resulting in constitutional policing. These outcome assessments shall include collection and analysis of the following outcome data:

a) Use of Force measurements, including:

- (1) Rate of force used per arrest by NOPD overall and by force type, geographic area (i.e., zone), type of arrest, age, race, gender, and ethnicity;
- (2) Canine bite ratio;
- (3) Rate of force complaints that are sustained and rate that are not sustained, overall and by force type; geographic area (i.e., zone), source of complaint (internal or external), type of arrest, age, race, gender and ethnicity;
- (4) Uses of Force that were found to violate policy overall and by force type, geographic area (i.e., zone), type of arrest, age, race, gender and ethnicity;

- (5) Number and rate of Use of Force administrative investigations/reviews in which each finding is supported by a preponderance of the evidence; and
- (6) Number of officers who frequently or repeatedly use force, or have more than one instance of force found to violate policy.

b) Stop, Search, and Arrest measurements, including:

- (1) Number and rate of arrests for which there is documented reasonable suspicion for the stop and probable cause for the arrest, overall and broken down by geographic area (i.e., zone), type of arrest, age, race, gender, and ethnicity;
- (2) the DA's acceptance and refusal rates of arrests made by NOPD and reasons for refusals, when made available by the DA, including those factors and information indicating that a failure to prosecute was due to the quality of officer arrests or concerns regarding officer conduct, overall and broken down by geographic area (i.e. zone), type of arrest, age, race, gender, and ethnicity; and
- (3) Number and rate of searches that result in a finding of contraband, overall and broken down by geographic area (i.e., zone) type of arrest, age, race, gender, and ethnicity.

c) Bias-Free Policing and Community Engagement measurements, including:

- (1) Number and variety of community partnerships, including particular partnerships with youth;
- (2) homicide clearance rate;
- (3) Comparative response time between LEP and non LEP individuals seeking assistance from NOPD and change in response time to LEP individuals.;
- (4) Accurate classification of reports of sexual assault and domestic violence; and
- (5) Clearance rate of sexual assault and domestic violence cases, overall and broken down by whether the case was cleared by arrest or by exception, including accuracy of clearance type.

d) Recruitment and Training measurements, including:

- (1) Number of highly-qualified recruit candidates;
- (2) Officer and agency reports of adequacy of training in type and frequency; and