



Takoma Park City Council Meeting – May 8, 2024 Agenda Item 7

Work Session

Council Resolution Authorizing the City Manager to Execute Memorandum of Agreement Between the Office of Administrative Hearings and the City of Takoma Park.

Recommended Council Action

Pass a resolution authorizing the City Manager to execute the Memorandum of Understanding between the Office of Administrative Hearings (OAH) and City of Takoma Park.

Context with Key Issues

The Maryland Public Safety Article Title 3 requires the chief executive officer of the county to appoint an actively serving or retired administrative law judge (ALJ) to serve as the chair of any police trial board.

Every ALJ appointed to a trial board shall be the chair of the trial board, responsible for being the sole person to rule on any motions before the trial board, and being the sole person to prepare the written decision of the trial board, including the findings, conclusions, and recommendations of the majority of the trial board, in accordance with Title 3 subsection 106(j) of the Public Safety Article.

Title 9 of the State of Government Article authorizes the Chief Administrative Law Judge of the Office of Administrative Hearings to provide an Administrative Law Judge (ALJ) on a contractual basis to other governmental entities. The Chief Administrative Law Judge has delegated that authority to the Director of Administration for the OAH.

Each time the City and its Police Department desire to convene a trial board, the City shall request that the chief executive officer of Montgomery County, Maryland request from OAH, in writing, via email to the OAH Chief ALJ and the OAH Executive ALJ and Director of Operations, the name of an ALJ who may be appointed by the chief executive officer of Montgomery County to be a member of a trial board.

Council Priority

Engaged, Responsive, Service-Oriented Government

Environmental Considerations

There are no environmental concerns related to this item.

Fiscal Considerations

The OAH shall be compensated for the work performed at a rate of \$200 per hour of an ALJ appointed to a trial board.

The City shall reimburse the OAH all reasonable travel expenses, including but not limited to food, lodging, and travel expenses, pursuant to the IRS Standard for Mileage Rates and U.S. General Services Administration Per Diem Rates.

The City shall pay any court reporter costs associated with any recording of any final hearing and any dispositive motions hearing(s) of a trial board that it chooses to have recorded.

The overall fiscal impact will be difficult to accurately estimate as the costs will be based on the number and complexity of cases that move forward to a trial board.

Racial Equity Considerations

There are no racial equity considerations or concerns related to this item.

Attachments and Links

Draft Resolution

Draft MOA between the OAH and City of Takoma Park

Introduced by:

CITY OF TAKOMA PARK, MARYLAND

RESOLUTION 2024-

**AUTHORIZING THE CITY MANAGER AND POLICE CHIEF TO EXECUTE A
MEMORANDUM OF AGREEMENT BETWEEN THE OFFICE OF ADMINISTRATIVE
HEARINGS AND THE CITY OF TAKOMA PARK, MARYLAND**

WHEREAS, Title 3 section 102 of the Public Safety Article provides that each county shall have a police accountability board to, *inter alia*, “receive complaints of police misconduct filed by members of the public”; and

WHEREAS, Title 3 section 101(e) of the Public Safety Article provides that the term “Law enforcement agency” is defined as it is in Title 3 section 201 of the Public Safety Article; and

WHEREAS, Title 3 section 201(d)(1) of the Public Safety Article defines the term “Law enforcement agency” (“LEA”) as “a governmental police force, sheriff’s office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State”; and

WHEREAS, Title 3 section 106 of the Public Safety Article establishes “Trial board[s]” relating to police accountability boards and LEAs; and

WHEREAS, Title 3 subsection 106(a)(1) of the Public Safety Article requires LEAs to establish a trial board process; and

WHEREAS, Title 3 subsection 106(a)(1) of the Public Safety Article establishes that trial boards are responsible for “adjudicate[ing] all matters for which a police officer is subject to discipline” relating to a complaint of police misconduct filed in accordance with Title 3 subsections 102(c) and 103 of the Public Safety Article; and

WHEREAS, Title 3 subsection 106(b)(1)(i) of the Public Safety Article requires “the chief executive officer of the [C]ounty” to appoint “an actively serving or retired administrative law judge . . .” to trial boards established under Title 3 section 106 of the Public Safety Article; and

WHEREAS, Title 3 subsection 106(c)(1)-(3) of the Public Safety Article requires “The actively serving or retired administrative law judge . . .” appointed to a trial board to “be the chair of the trial board; be responsible for ruling on all motions before the trial

board; and prepare the written decision of the trial board, including the findings, conclusions, and recommendations of [a majority of] the trial board”; and

WHEREAS, Title 9 subsection 1604(b)(1)(ii) of the State Government Article authorizes the Chief Administrative Law Judge of the OAH to provide an Administrative Law Judge (“ALJ”) “on a contractual basis to other governmental entities” and the Chief Administrative Law Judge has delegated that authority to the Director of Administration for the OAH.

NOW, THEREFORE, BE IT RESOLVED THAT the City Manager and the Police Chief are hereby authorized to execute the Memorandum of Agreement with Office of Administrative Hearings for the purpose of convening trial boards pursuant to the requirements set forth in the Public Safety Article under Title 3.

Adopted this ___ day of May, 2024.

ATTEST:

Jessie Carpenter, CMC
City Clerk

MEMORANDUM OF AGREEMENT
BETWEEN
THE OFFICE OF ADMINISTRATIVE HEARINGS
AND
THE CITY OF TAKOMA PARK, MARYLAND

This Agreement is made on this ___ day of _____ between the Office of Administrative Hearings (the “OAH”) and the City of Takoma Park, Maryland, a municipal corporation of the State of Maryland (the “City”) (“the Parties”);

WHEREAS, Title 3 section 102 of the Public Safety Article provides that each county shall have a police accountability board to, *inter alia*, “receive complaints of police misconduct filed by members of the public”;

WHEREAS, Title 3 section 101(e) of the Public Safety Article provides that the term “Law enforcement agency” is defined as it is in Title 3 section 201 of the Public Safety Article;

WHEREAS, Title 3 section 201(d)(1) of the Public Safety Article defines the term “Law enforcement agency” (“LEA”) as “a governmental police force, sheriff’s office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State”;

WHEREAS, Title 3 section 106 of the Public Safety Article establishes “Trial board[s]” relating to police accountability boards and LEAs;

WHEREAS, Title 3 subsection 106(a)(1) of the Public Safety Article requires LEAs to establish a trial board process;

WHEREAS, Title 3 subsection 106(a)(1) of the Public Safety Article establishes that trial boards are responsible for “adjudicate[ing] all matters for which a police officer is subject to discipline” relating to a complaint of police misconduct filed in accordance with Title 3 subsections 102(c) and 103 of the Public Safety Article;

WHEREAS, Title 3 subsection 106(b)(1)(i) of the Public Safety Article requires “the chief executive officer of the [C]ounty” to appoint “an actively serving or retired administrative law judge . . .” to trial boards established under Title 3 section 106 of the Public Safety Article;

WHEREAS, Title 3 subsection 106(c)(1)-(3) of the Public Safety Article requires “The actively serving or retired administrative law judge . . .” appointed to a trial board to

AGREEMENT BETWEEN OFFICE OF ADMINISTRATIVE HEARINGS AND THE CITY OF TAKOMA PARK, MARYLAND (cont.)

“be the chair of the trial board; be responsible for ruling on all motions before the trial board; and prepare the written decision of the trial board, including the findings, conclusions, and recommendations of [a majority of] the trial board”;

WHEREAS, Title 9 subsection 1604(b)(1)(ii) of the State Government Article authorizes the Chief Administrative Law Judge of the OAH to provide an Administrative Law Judge (“ALJ”) “on a contractual basis to other governmental entities” and the Chief Administrative Law Judge has delegated that authority to the Director of Administration for the OAH;

WHEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is expressly acknowledged, the Parties agree as follows:

I. Duties and Responsibilities of the Parties

1. Every time that the City desires to convene a trial board containing an ALJ as a member, the City shall request, in writing, via email to the OAH Chief ALJ and the OAH Executive ALJ and Director of Operations, the name of an ALJ who may be appointed by the chief executive officer of Montgomery County to be a member of a trial board. OAH email addresses may be found at <https://msa.maryland.gov/msa/mdmanual/25ind/html/01admin.html> or may be obtained by calling OAH at (410) 229-4100. OAH shall endeavor in good faith to provide the name of an ALJ to the City within five (5) business days of the request of the City. The City, or the chief executive officer of Montgomery County, shall notify OAH within five (5) business days of the appointment by the chief executive officer of Montgomery County of the ALJ to serve on the trial board.
2. Any ALJ provided by OAH to the chief executive officer of Montgomery County will have received the requisite training under Title 3 subsection 106(d) of the Public Safety Article.
3. Every ALJ appointed to a trial board shall be the chair of the trial board, responsible for being the sole person to rule on any motions before the trial board, and being the sole person to prepare the written decision of the trial board, including the findings, conclusions, and recommendations of the majority of the trial board, in accordance with Title 3 subsection 106(j) of the Public Safety Article.
4. The City shall inform OAH as soon as practicable of the issuance of any notice(s) of hearing(s) before a trial board if the City desires to have an ALJ appointed to the trial board. The notices shall be timely and all trial board hearings shall be subject to the appointed ALJ’s availability and schedule. The appointed ALJ’s availability and schedule shall be confirmed prior to the City or applicable LEA issuing any notice(s) of hearing(s) before a trial board. At a minimum, copies of all notices shall

AGREEMENT BETWEEN OFFICE OF ADMINISTRATIVE HEARINGS AND THE CITY OF TAKOMA PARK, MARYLAND (cont.)

be sent to the applicable LEA and applicable police officer accused of misconduct, members of a trial board, OAH, and the appointed ALJ. Notice(s) to OAH and the appointed ALJ may be made by email. Notices shall, at a minimum, include the name of the person requesting the hearing, the mailing address of the person requesting the hearing, the email address and phone number of the person requesting the hearing or an affirmative statement that such information is unavailable, and the notice of agency action including the statement of charges and any applicable codes of conduct of the City or applicable LEA for which the hearing request has been filed.

5. The initial notice of hearing before a trial board shall include an insert to all recipients of a copy of the City's or applicable LEA's procedures for conducting the trial board as well as a copy of OAH's Rules of Procedures, which are located in Title 28 of the Code of Maryland Regulations (COMAR 28.02.01). The conduct of the trial board hearing shall be governed by the procedures of the City or the LEA but, in the absence of procedure(s) governing the conduct of the trial board hearing, the provisions of COMAR 28.02.01 shall take precedence and are incorporated by reference into the City's or applicable LEA's procedures. The initial notice of hearing shall indicate and confirm this.
6. Any trial board proceeding physically occurring at the OAH headquarters, located at 11101 Gilroy Rd, Hunt Valley, MD 21031, shall be coordinated by the City or applicable LEA by coordinating, at a minimum, the date, time, and hearing room number at the OAH with the OAH Clerk's Office.
7. The default location of all in person trial board proceedings involving an ALJ is the City of Takoma Park Police Station located at 7500 Maple Avenue, Takoma Park, MD 20912. By election of the applicable LEA or police officer accused of misconduct, the location of all in person trial board proceedings involving an ALJ may be changed. If an alternative location cannot be agreed on between the applicable LEA and police officer accused of misconduct, then the ALJ shall decide the physical location, which may include the default location, or any other location. If the location of an in-person trial board proceeding involving an ALJ is not the City of Takoma Park Police Station, then the City shall be responsible for providing an appropriate location capable of accommodating the total number of people anticipated to be present (including the public) at the trial board proceeding. If necessary, the ALJ may direct the removal of any individual(s) whose conduct impedes the orderly progress of any in person trial board proceeding or restrict attendance because of physical limitations.
8. All trial board hearings shall be held in person. With the consent of all parties, a trial board proceeding involving an ALJ may be conducted remotely. With the consent of all parties, a witness may testify remotely. In the event trial board proceedings are

AGREEMENT BETWEEN OFFICE OF ADMINISTRATIVE HEARINGS AND THE CITY OF TAKOMA PARK, MARYLAND (cont.)

conducted remotely, OAH will administer and control the electronic proceedings. If necessary, the ALJ may direct the removal of any individual whose conduct impedes the orderly progress of any trial board proceeding or restrict electronic access because of technical limitations.

9. The deliberations of a trial board shall be confidential. The City or applicable LEA will instruct and impress upon the other two members of a trial board who are not an ALJ the requirement that deliberations remain confidential and that such confidentiality shall not expire or be waived.
10. The ALJ will announce a bench decision of the trial board at the conclusion of deliberations following a trial board hearing. In accordance with Title 3 subsection 106(j) of the Public Safety Article, within 45 days after the final hearing by a trial board, the ALJ shall issue a written decision consistent with the bench decision. The ALJ shall draft the decision of the trial board in accordance with the pertinent law and consistent with the announced trial board decision. OAH shall deliver the written decision to each party or party representative by mail or email.
11. The City or applicable LEA may choose to schedule a court reporter certified by a national or state certifying body to be present to record a final hearing and any dispositive motions hearing(s) of a trial board. If the City or applicable LEA choose not to provide a court reporter, if possible, the OAH or ALJ may at their discretion record a final hearing and any dispositive motions hearing(s) of a trial board. If the OAH or the ALJ records a final hearing and any dispositive motions hearing(s) of a trial board, then no transcript of any hearing will be provided by OAH unless ordered and paid for by the requesting person or entity.
12. The OAH shall provide the record of the proceedings before a trial board, including any evidence, to the applicable LEA at the time the trial board issues the findings, conclusions, and recommendations of a majority of a trial board.

II. Costs

1. The OAH shall be compensated for the work performed at a rate of \$200 per hour of an ALJ appointed to a trial board. The OAH will not be compensated for travel time of an ALJ, though travel expenses shall be reimbursed by the City to OAH pursuant to paragraph II. 3.
2. The OAH shall provide the City a written itemized bill that includes a detailed breakdown, in attorney billable-hour format, of the time expended by an ALJ relating to serving as an appointed member of a trial board, including a description of the type of work performed by the ALJ (subject to the deliberative process privilege of the ALJ and trial board).

AGREEMENT BETWEEN OFFICE OF ADMINISTRATIVE HEARINGS AND THE CITY OF TAKOMA PARK, MARYLAND (cont.)

3. The City shall reimburse the OAH all reasonable travel expenses, including but not limited to food, lodging, and travel expenses, pursuant to the IRS Standard for Mileage Rates and U.S. General Services Administration Per Diem Rates.
4. The OAH shall provide the City with an itemized bill within thirty (30) days of when the written findings, conclusions, and recommendations of a majority of a trial board is issued.
5. Upon receipt of the written findings, conclusions, and recommendations of a majority of a trial board as described in paragraphs I. 3 and I. 10, and the itemized bill as described in paragraphs II. 2 and II. 4, the City shall transfer the amount set forth in the itemized bill to the OAH within thirty (30) days. If the City disputes any charge(s) in the itemized bill, the City shall respond to the OAH in writing within ten (10) days from receipt of the itemized bill. The OAH shall respond in good faith in writing to any disputed charge(s) within ten (10) days from receipt of the City's dispute and the OAH shall provide a new itemized bill as described in paragraph II. 2. The City shall then transfer the amount set forth in the new itemized bill, regardless of any remaining disputed charge(s), within ten (10) days of receipt of the OAH's new itemized bill.
6. The City shall pay any court reporter costs associated with any recording of any final hearing and any dispositive motions hearing(s) of a trial board that it chooses to have recorded.
7. The City or applicable LEA shall pay any costs associated with any request(s) for accommodation provided by OAH, including but not limited to an interpreter(s) or audio assistive technology equipment/software equipment or software for any witnesses.

III. Term of Agreement

This Agreement is effective when executed by each of the Parties, has no termination date, and is terminable at will by either of the Parties with written notice to the non-terminating Party.

IV. Exclusivity of Agreement

1. This Agreement is the exclusive agreement of the Parties with respect to this subject matter and supersedes all prior agreements, representations, proposals, written and oral, relating to the subject matter.
2. The Parties expressly acknowledge that this Agreement is the product of mutual negotiation and state that neither party shall be construed to be the primary drafter of the Agreement.

AGREEMENT BETWEEN OFFICE OF ADMINISTRATIVE HEARINGS AND THE CITY OF TAKOMA PARK, MARYLAND (cont.)

V. Amendment

This Agreement may be amended only by mutual agreement in writing executed by both Parties. Except for a specific provision which may be amended, this Agreement shall remain in full force and effect after such amendment subject to the same laws, obligations, conditions, rules, provisions and regulations as it was prior to any amendment.

VI. Governing Law

This Agreement shall be governed and construed in accordance with Maryland Law.

VII. Representation of Authority

Each party to this Agreement represents and warrants to the other that it has full right, power, and authority to execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed on the date written at the beginning of this Agreement.

OFFICE OF ADMINISTRATIVE HEARINGS

Danara Harvell
Director of Administration
Office of Administrative Hearings

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Kevin M. Cox
Assistant Attorney General

CITY OF TAKOMA PARK, MARYLAND

Robert DiSpirito, City Manager