

2.222.040 - Board of ethical conduct.

A. Creation, continuing jurisdiction, organization, and membership:

1. There is created the board of ethical conduct, sometimes hereinafter referred to as the "board." The board shall consist of five members, who shall have been residents of the area of the metropolitan government for not less than two years prior to appointment and shall continue such residency as a qualification for membership. No voting member shall be an official or employee of the metropolitan government or any other government. The members of the board shall serve for terms of three years each, except of the members first appointed, who shall serve for terms as provided below. The presence of four members shall be required to constitute a quorum for the board to conduct business. The president pro tem of the council shall be an ex officio, non-voting, member of the board.
2. One member each of the board shall be selected by the following organizations:
League of Women Voters of Nashville.
Nashville Area Central Labor Council.
Napier-Looby Bar Association.
Nashville Area Chamber of Commerce.
Nashville Bar Association.

Upon the selection of the member of the board by the above named organizations, the organization shall file with the metropolitan clerk evidence of the selection.

3. Any vacancy due to any cause shall be filled for the unexpired term in the same manner as the original appointment. A vacancy shall be deemed to exist upon the occurrence of any one or more of the following conditions:
 - (a) If a member moves their permanent residence out of Davidson County; dies or resigns or for any reason refuses to serve during the period for which they were appointed; or
 - (b) If the member becomes a member of the council, an official, or employee of the metropolitan government or any other government or a candidate for public office; or
 - (c) If a member fails to attend and participate in three consecutive meetings (provided said meetings were not held in the same week) or fails to attend at least two-thirds of all meetings of the board held within a calendar year, provided that said board meets at least three times during the calendar year.
4. The board shall elect from its membership a chairperson and vice-chairperson who shall each be selected for one-year terms. The metropolitan clerk or designee shall serve as the custodian of its records and minutes and shall act as the board secretary. The metropolitan attorney shall furnish legal assistance to the board.

5. The board, in addition to such other duties as may be assigned to it by ordinance, shall have the following duties and responsibilities:
 - (a) To establish and make public the procedures and rules governing its internal organization and the conduct of its affairs; and
 - (b) To maintain records of its investigations, inquiries and proceedings; and
 - (c) To render advisory opinions; and
 - (d) To conduct an investigation and make recommendations about any member's conduct as provided below.
6. The council board of conduct shall replace and supersede the council board of conduct created pursuant to Substitute Ordinance No. BL2005-659, as amended, ("hereinafter the "board of conduct");
7. The board shall have continuing jurisdiction over all matters heretofore referred to the board of conduct;
8. The incumbent five members of the board of conduct, having been selected by the organizations charged with the selection of board members, shall become the five members of the board selected by the five listed organizations, to hold office for the balance of their respective terms on the board of conduct.

B. Advisory opinions:

1. Any metropolitan government elected official or member of any metropolitan government board or commission may request, in writing, an advisory opinion of the board regarding any matter relating to conduct or compliance of future activities with the standards set forth herein. The right to request advisory opinions shall be limited to such metropolitan government elected officials or members of boards or commissions. Said written request for an advisory opinion shall be delivered to the metropolitan clerk as secretary of the board, who will promptly deliver the same to the chair of the board.
2. The board may seek from the requesting member clarification of the request, but all such requests and clarifications shall be in writing. The advisory opinion of the committee of the board shall be delivered within thirty days of the date of receipt of the request by the metropolitan clerk, unless that period is extended by the requesting member.
3. When a member has requested and received an advisory opinion and his or her conduct is in compliance with the conduct deemed acceptable in the advisory opinion, that advisory opinion shall thereafter be considered prima facie evidence that the conduct of the member does not violate these standards of conduct. In making the determination of the weight to be given to the advisory opinion the board will take into account the degree to which the request for the advisory opinion and the response accurately described the activity or conduct which subsequently formed the basis of the complaint. No such advisory opinions shall have other force of law.

C. Procedures for evaluations and hearing of complaints regarding conduct:

1. Complaint procedures:

- (a) Any person may submit a complaint alleging that any one or more metropolitan government elected officials or members of a metropolitan government board or commission have violated the standards of conduct or an executive order currently in effect which regulates the ethical standards of conduct for employees of the metropolitan government.
- (b) The complaint must be signed by the complainant and notarized, and must contain the following:
 - i. Complainant's legal name, current mailing address, and a valid telephone number and/or email address;
 - ii. Names of person or persons who committed the alleged violation;
 - iii. Summary of the facts giving rise to the complaint; and,
 - iv. Explanation of why those facts constitute a violation of the standards of conduct or current executive order which regulates the ethical standards of conduct.
- (c) The complaint must be filed with the metropolitan clerk. Upon receipt, the clerk will provide a copy of the complaint to the person or persons named therein, the director of law, and to the members of the council board of conduct.
- (d) Additionally, upon receipt of a complaint, the clerk shall provide the complainant and the named persons with a copy of the complaint procedures and hearing procedures of this Code. As used in these sections, unless otherwise noted, to "provide" is to send by U.S. Mail or to hand-deliver.
- (e) The department of law will evaluate the complaint, applying the law of the standards of conduct or current executive order which regulates the ethical standards of conduct to the facts alleged in the complaint, and shall undertake an investigation as may be deemed necessary, to determine if such complaint alleges facts, which if proven true, could be deemed to be a violation of the standards set forth in this chapter. Within fourteen calendar days from its receipt of the complaint, the department of law will issue a report concluding whether the facts alleged in the complaint, if true, would give rise to a violation of the standards of conduct or current executive order which regulates the ethical standards of conduct, and recommending either that the complaint be dismissed or a hearing be held on the complaint. The department of law shall provide its report to the chair of the board of conduct, and shall file it with the clerk.
- (f) After receiving the department of law's report, the chair of the council board of conduct shall call a meeting of the board, which meeting is open to and noticed to the public. The clerk shall also provide notice of the meeting to the director of law, the complainant, and the persons named in the complaint.
- (g) At the board's meeting, the board shall evaluate the department of law's report, and may accept or reject the department of law's recommendation. The board may decide to dismiss the complaint or call for a hearing on the complaint.
- (h) Whether or not the board holds a hearing on the complaint or dismisses the complaint, it shall issue a decision in writing. Any decision shall require the

affirmative vote of at least four members of the board. If a hearing is to be held, the decision will not be issued until after the hearing is held. The decision shall be filed with the clerk, and provided to the complainant and to the person or persons named in the complaint.

- (i) Once a complaint has been received by the members of the board, and until a written decision has been issued by the board, no member of the board shall participate in any communication regarding the allegations or merits of the complaint, outside of the board's public meetings or hearings, except as contemplated by these procedures.

2. Hearing procedures:

- (a) If the board of conduct calls for a hearing on a complaint, the hearing shall be conducted as follows:
 - i. The hearing shall be noticed to and open to the public, in accordance with these procedures.
 - ii. Notice of hearing shall be provided to the complainant and to the members or officials named in the complaint (together, the "parties").
 - iii. The parties may, but are not required to, submit material to the board. If a party does wish to submit such material to the board, the party must file the material with the clerk, and provide a copy of the same to the other parties, at least seven calendar days prior to the hearing. The clerk shall provide a copy of the same to the board members and the department of law.
 - iv. The parties shall have a full and fair opportunity, but are not required, to present their positions and facts to the board at the hearing. Each party has the right to the assistance of legal counsel. Each party shall be allotted a reasonable amount of time to make its presentation to the board.
 - v. All parties may call witnesses to give testimony at the hearing, which testimony shall be given under oath, with the witnesses stating their legal names. All witnesses will be subject to cross-examination. Each party must file with the clerk a list of the witnesses that the party intends to call at the hearing, and provide a copy of the same to the other parties, at least seven calendar days prior to the hearing. At the hearing, no party shall be permitted to call upon any person to give testimony if that person's name was not included on such list; however, the board may permit such an unnamed witness to be called by a party if, in the board's judgment, there was good cause for not timely naming the witness and the other parties would not be unduly prejudiced.
 - vi. Board members may ask questions of any party, counsel, or witness at any time during the hearing.
 - vii. The board may, in the exercise of its discretion, permit interested persons present at the hearing to offer testimony under oath, even if those persons were not called as witnesses by any party.
 - viii. The board may continue a hearing to a later date.

ix. The director of law or a metropolitan attorney shall be present during the hearing to advise the board.

3. Action of the board:

- (a) If, after a hearing, the board decides that a metropolitan government elected official or member of a board or commission violated the standards of conduct or current executive order which regulates the ethical standards of conduct, then the board shall take one or more of the following actions, as decided by affirmative vote of at least four of its members:
- i. Recommend to the council that the elected official or member of the board or commission be censured;
 - ii. Recommend to the violating elected official or member of a board or commission resign his or her respective position;
 - iii. Refer the matter to the district attorney general for appropriate action; and/or,
 - iv. Refer the matter to the director of law with a request that appropriate civil action be instituted by the metropolitan government for restitution or other relief.

(Amdt. 1 to Ord. BL2018-1111 §§ 1—4, 2018; Ord. BL2018-1111 §§ 1—4, 2018; Ord. BL2013-508 § 1, 2013; Amdt. 2 to Ord. BL2007-1382 § 3, 2007; Ord. BL2007-1382 § 3, 2007)

2.222.050 - Sanctions.

Upon receipt of a recommendation from the board that an elected official or member of a board or commission be censured by the council, the chairman of the rules-confirmations-public elections committee shall file a resolution with the metropolitan clerk providing for censure of the member, which resolution shall be adopted by an affirmative vote of twenty-one members. Said resolution may also provide for the removal of the censured member of council from any or all committees of the council and removal as chairman of a committee of the council, and/or provide for referral of the matter to other authority as appropriate.

(Ord. BL2007-1382 § 3, 2007)

2.222.060 - Enforcement.

Complaints regarding violations by employees, other than elected officials or members of boards or commissions, of the standards set forth in this chapter shall be made to the appointing authority. Decisions of the appointing authority regarding violation of the standards of conduct set forth herein by employees within the classified service may be appealed to the Civil Service Commission in accordance with the Civil Service Rules adopted pursuant to section 12.06 and 12.07 of the Metropolitan Charter.

(Ord. BL2007-1382 § 3, 2007)