

SECOND SUBSTITUTE ORDINANCE NO. BL2020-147

An ordinance to amend Chapter 2.196 and Section 2.222.040 of the Metropolitan Code regarding Lobbyist Registration and Disclosure.

BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Chapter 2.196 – LOBBYIST REGISTRATION AND DISCLOSURE be deleted in its entirety and replaced with the following:

Chapter 2.196 – LOBBYIST REGISTRATION AND DISCLOSURE

2.196.010 - Purpose and intent.

It is the intent of the Metropolitan Council to promote, preserve and advance public trust and confidence in our system of government by holding others and ourselves to ethical and transparent standards. Public Officials, Lobbyists, and Clients of Lobbyists should be truthful and transparent in communications and interactions with each other and the public. No one should act in any manner that will undermine the public confidence and trust in our government or in our processes. In adopting this ordinance, the Metropolitan Council also recognizes the delicate balance sought in this lobbyist regulatory framework and the rights included in the First Amendment to the United States Constitution, particularly, the right of Freedom of Speech and the right to Petition the Government for a Redress of Grievances.

2.196.020 - Definitions.

As used in this chapter, unless the context otherwise requires:

"Administrative action" means the taking of any recommendation, report or nonministerial action, the making of any decision or taking any action to postpone any action or decision, action of the mayor in approving or vetoing any ordinance or resolution, the promulgation of a rule and regulation, or any action of a quasi-legislative nature, by an official in the executive branch; however, "administration action" does not include ordinary and routine permitting, licensing, or compliance decisions by an official of the executive branch.

"Association" means a union, league, chamber of commerce, committee, club, or other membership organization.

"Board of Ethical Conduct" means the board established in Section 2.222.040, sometimes referred to as the "Board".

"Business day" means every day, except Saturday, Sunday and holidays observed by the metropolitan government.

"Candidate for public office" means an individual who has made a formal announcement of candidacy or qualified under the law of this state to seek nomination for election or elections to any metropolitan government office, or has received contributions or made expenditures except for incidental expenditures to determine if one shall be a candidate, or has given consent for a campaign committee to receive contributions or make expenditures with a view to bringing about a nomination for election or the election to metropolitan government office, and any individual who has been nominated for appointment as an official in the legislative or executive branch.

"Clerk" means the metropolitan clerk.

"Client" means any person or entity that employs, retains or otherwise arranges for a lobbyist to engage in lobbying on behalf of the person or entity for compensation, sometimes referred to as "employer".

- A. "Client" specifically includes any such person or entity notwithstanding the lobbyist's status as an employee, agent, contractor, subcontractor or other representative lobbying on behalf of such person or entity for compensation.
- B. "Client" does not include the individual employees, officers, directors, or members of a corporation, labor organization, association, or membership organization other than the chief executive officer and the chief financial officer or comparable individuals within such corporation, labor organization, association, or membership organization.
- C. A lobbying firm or law firm is not deemed to be the client of any lobbyist within the firm.

"Compensation" means any salary received or to be received by anyone acting as a lobbyist, whether in the form of a fee, salary, payment, reimbursement or other valuable consideration and any combination thereof. Compensation does not include the salary of an individual whose lobbying is incidental to regular employment.

"Contribution" shall not be construed to include the following:

- A. Services, including expenses provided without compensation by a candidate or individuals volunteering a portion or all of their time, on behalf of a candidate or campaign committee;
- B. Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned wholly or in part, or controlled by any political party, political committee or candidate;
- C. Nonpartisan activity designed to encourage individuals to vote or register to vote;
- D. Any written, oral or electronically transmitted communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to public office; or
- E. The use of real or personal property and the cost of invitations, food and beverages not exceeding one hundred dollars (\$100), voluntarily provided on an individual's residential premises for candidate related activities.

~~"Day" means any day of the week.~~

"Executive action" means the action of a commission, board, agency or other body in the metropolitan government that is not a part of the legislative or judicial branch.

"Expenditure" means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge or subscription of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure; "expenditure" also includes any honorarium.

"Gift" to an officer or employee of the legislative branch of metro government means a payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, any of which are valued at fifty dollars (\$50) or more, unless consideration of equal or greater value is received. A "gift" to an officer or employee of the executive branch of metro government means a payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, any of which are valued at twenty-five dollars or more, unless consideration of equal or greater value is received.

- A. "Gift" does not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family or from a relative within the third degree of

consanguinity of the person or of the person's spouse, or from the spouse of any such relative.

- B. "Gift" does not include the waiver of a registration fee for a conference or educational seminar.

"Honorarium" means payment of money or anything of value for an appearance, speech or article, but "honorarium" does not include actual and necessary travel expenses which are not paid or reimbursed.

"Immediate family" means a spouse or minor child living in the household.

"Influencing" means promoting, supporting, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analyses. "Influencing" does not include the furnishing of information, statistics, studies or analyses requested by an official of the legislative or executive branch to such official, or the giving of testimony by an individual testifying at an official hearing conducted by officials of the legislative or executive branch.

"Legislative action" means introduction, sponsorship, debate voting or any other nonministerial official action or inaction on any ordinance, resolution, amendment, nomination, appointment, report or any other matter pending or proposed in a council committee or in the council.

"Lobby" or "Lobbying" means to communicate, directly or indirectly, with any official in the legislative branch or executive branch for pay or for any consideration, for the purpose of influencing any legislative action or administrative action.

"Lobby" does not mean any of the following communications:

- A. with officials of the legislative or executive branches by an elected or appointed public official performing the duties of the office held;
- B. from a duly licensed attorney at law acting in a representative capacity on behalf of a client appearing before an official of the executive branch for the purpose of determining or obtaining such person's legal rights or obligations in a contested case action, administrative proceeding, or rule making procedure;
- C. from an editor or working member of the press, radio or television who, in the ordinary course of business, disseminates news or editorial comment to the general public;
- D. by an incumbent or prospective contractor or vendor, or an employee of the contractor or vendor, while engaged in selling or marketing to Metro, or any Metro department, board, or commission, by demonstrating or describing goods or services to be provided or by inquiring about specifications, terms, conditions, timing, or similar commercial information. However, the contractor or vendor, or employee of the contractor or vendor, shall be deemed to be a lobbyist if actively engaged in selling or marketing to an official in the executive branch or an official in the legislative branch whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract so marketed or sold;
- E. with officials of the executive branch by any person to promote, oppose, or otherwise influence the outcome of a decision related to the issuance or award of a bond, grant, lease, loan, incentive or any component of an economic development incentive package; provided, that any person who is otherwise required to register as a lobbyist under the provisions of this chapter shall not be deemed to fall within this exception.

"Lobbying firm" means any firm, corporation, partnership or other business entity that supplies lobbying services to others for compensation. A lobbying firm is not considered an "employer" or "client" of any lobbyist within the firm for purposes of this chapter.

"Lobbyist" means any person who engages in lobbying for compensation ~~or in the course of their regular employment.~~

"Ministerial action" means an action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to, or the exercise of, that person's own judgment upon the propriety of the action being taken. Ministerial action includes ordinary and routine permitting, licensing, or compliance decisions by an official of the executive branch.

"Official in the executive branch" means any member or employee of a commission, agency or other body in the executive branch who takes any administrative action.

"Official in the legislative branch" means any member, member-elect, any staff person or employee of the council.

"Person" means an individual, business entity, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

"Political contribution" or "Campaign contribution" means anything of value or any amount of money, in the form of an advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, digital currency, gift, pledge, purchase of a ticket to a testimonial or similar fundraising event, or subscription of money or anything of value and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of influencing a measure or nomination for election or the election of any person for public office or for the purpose of defraying any expenses of an officeholder incurred in connection with the performance of the officeholder's duties, responsibilities, or constituent services; however, "political contribution" or "campaign contribution" does not mean volunteer services.

"Solicit" means to entreat, to implore, to ask, to attempt, or to try to obtain.

~~"Volunteer Lobbyist" is a person who does not receive any compensation for services other than reimbursement of actual out-of-pocket expenses and the reimbursement is for more than ten (10) days per calendar year.~~

"Year" or "Annual" shall mean January 1st through December 31st.

2.196.030 - Administration of provisions—Powers and duties.

- A. This chapter shall be administered by the metropolitan clerk. It shall be the duty of the metropolitan clerk:
1. To prescribe forms for statements, reports and other information required to be electronically filed by this chapter, and to furnish such forms to persons required to file such statements, reports and information;
 2. To ~~prepare and~~ publish formal written policies and procedures or other information developed by the Board of Ethical Conduct setting forth prescribed forms and procedures to assist persons required to file statements by this chapter and publish such policies, procedures, and information online;
 3. To preserve such statements, reports and other information required to be filed by this chapter for a period of five (5) years from date of receipt;
 4. To develop a filing, coding and cross-indexing system by lobbyist name, by client, and by subject matter or any other way consonant consistent with the purposes of this chapter;
 5. To seek from the ~~director of law~~ Board of Ethical Conduct, issue, and publish, upon proper request from any lobbyist or public official, advisory opinions upon the requirements of this chapter. Such advisory opinions shall follow the procedures set forth in 2.222.040.B;

6. To accept and file any information voluntarily supplied that exceeds the requirements of this chapter;
7. To make statements and other information filed with the clerk available for public inspection and copying during regular office hours, and to make copying facilities available at a charge ~~that is reasonable~~ calculated in the public records policy adopted by the Metro Council;
8. To prepare and publish such reports as may be deemed appropriate;
9. To promulgate any rules and regulations developed by the Board of Ethical Conduct as may be appropriate for the administration of this chapter; ~~and~~
10. To make a list of all registered lobbyists prepared pursuant to this chapter available electronically. The metropolitan clerk shall update and make the list available prior to each meeting of the Metropolitan Council. ~~This list shall identify any persons registered as a volunteer lobbyist.;~~
11. To electronically publish all information included in the annual reports filed by lobbyists; and
12. To develop, maintain, and periodically review and update internal written procedures for each critical process and task related to the administration of the lobbyist code.

B. It shall be the duty of the director of law to render opinions and give counsel to the metropolitan clerk and the board of ethical conduct regarding this chapter upon request and in a timely manner.

2.196.040 - Registration—Required when—Term—Fees.

- A.1. Every person qualifying as a lobbyist under this chapter shall register by filing an electronic form prescribed by the metropolitan clerk within five (5) business days after accepting employment as a lobbyist, as defined in Section 2.196.020. A separate registration is required for each client a lobbyist represents.
 2. Each year thereafter, the lobbyist shall register in the same manner if the lobbyist continues to engage in lobbying for that client no later than December 31st for the subsequent year.
 3. For the purpose of registration, the lobbyist has been employed once the client and lobbyist have entered into an engagement or contract.
 4. The filing shall include each of the following:
 - a. The lobbyist's name, mailing address, business address, home address, telephone number and email address.
 - b. The name, mailing address, business address, telephone number and email address for ~~each~~ the client of the lobbyist, and in the case of a corporation, association or governmental entity, the names of the individuals performing the functions of chief executive officer and chief financial officer.
 - c. A listing of the general categories of subject matters on which the registrant lobbies. The list of general categories shall be available from the metropolitan clerk.
 - d. Written proof of the lobbyist's authority to lobby on behalf of the client.
 - e. The name home address, and position of any member of the lobbyist's immediate family who is an official within the legislative or executive branch.
 - f. The extent of any direct or indirect business arrangement or partnership between the lobbyist and any candidate for public office or any official in the legislative or executive branch.
 - g. A ~~sworn~~ statement signed by the lobbyist that any employment agreement between a lobbyist and the client of a lobbyist is in writing, and the agreement does not contain any provision wherein the fee or a bonus to be paid to the lobbyist is contingent upon success of the lobbyist.
- B. At the time of registration, the lobbyist shall pay an annual filing fee of one hundred dollars (\$100) for each client for whom they are filing the registration.

- C. ~~Any person fitting the definition of volunteer lobbyist, as defined in Sec. 2.196.050, shall register as listed in subsection A, but shall be exempt from such fee.~~
- D. A person engaged in a communication that is not considered lobbying as defined in Sec. 2.196.020 need not register as a lobbyist under this section.
- ED. All fees collected by the metropolitan clerk shall be paid into the general fund of the general services district.
- FE. The annual registration fee is non-refundable and non-transferable.

~~2.196.050 – Registration of Volunteer Lobbyists.~~

- A. ~~Notwithstanding any provision of this chapter to the contrary:~~
 - 1. ~~An individual who only receives from another person the reimbursement for actual out of pocket personal expenses as compensation for lobbying on behalf of such person for less than ten (10) non-consecutive days per year, then the person is not a lobbyist for purposes of this chapter and is not required to register or fulfill any lobbyist requirements imposed pursuant to this chapter.~~
 - 2. ~~An individual who only receives from another person the reimbursement for actual out of pocket personal expenses as compensation for lobbying on behalf of such person, and if the person receives the reimbursement for more than ten (10) non-consecutive days per year, then that individual shall register as a "volunteer lobbyist" on behalf of that person as their "volunteer client" and shall comply with all lobbyist requirements imposed pursuant to this chapter, but shall be exempt from the annual filing fee.~~
- B. ~~For purposes of subsection A, the term "actual out of pocket personal expenses" includes such things as legislative information services material, copying expenses, transportation costs, parking fees, and personal lodging and food expenses incurred while actually engaging in lobbying.~~
 - 1. ~~Reimbursement for transportation, parking, personal lodging, and food costs shall be limited to expenses allowed for those items in the Tennessee Department of Finance and Administration Policy 8 – Comprehensive Travel Regulations.~~
 - 2. ~~No such reimbursed expenses shall be for the benefit of any public official, except for informational materials delivered to public officials.~~

2.196.0650 - Amending or Withdrawing a Lobbyist Registration.

- A. A lobbyist must amend or update their registration statement within five (5) business days of any event or circumstance that renders the registration statement inaccurate or incomplete.
- B. Every person registered under this chapter shall file a written notice of withdrawal with the metropolitan clerk within five (5) business days following the termination of a lobbying employment agreement between the lobbyist and a client. Such notice of withdrawal shall be retained by the metropolitan clerk for a period of five (5) years, and the date of withdrawal shall be noted on the Registered Lobbyist Index posted on the metropolitan clerk's website. Lobbyists must update their registration statement within five (5) business days of any event or circumstance that renders the registration statement inaccurate or incomplete.
- C. An Annual Lobbying and Expense Report must be completed for a year in which a lobbyist was registered, regardless of any subsequent amendment or withdrawal of registration.

2.196.0760 – Annual Lobbying and Expense Report Requirements – Invitations and Gifts.

- A. Every lobbyist registered under this chapter shall electronically file with the metropolitan clerk a sworn report regarding lobbying activities and expenses no later than January 31st for the previous year. The report shall contain the following:
1. An itemized list, by date, beneficiary, amount and circumstance of the transaction, of each gift or expenditures of fifty dollars (\$50) or more made by the lobbyist on behalf of the client or anyone acting at the specific direction of the lobbyist on behalf of the client to benefit a candidate for public office, an official in the legislative branch, a member of the candidate or official's staff or immediate family, or a campaign committee or testimonial committee established for the benefit of a candidate for public office or such official;
 2. An itemized list by date, beneficiaries, amount and circumstance of the transaction of each gift or expenditure of twenty-five dollars (\$25) or more made by the lobbyist on behalf of the client or anyone acting at the specific direction of the lobbyist on behalf of the client to benefit an official in the executive branch, a member of the official's staff or immediate family, or a campaign committee or testimonial committee established for the benefit of such official;
 3. Such report shall include a sworn statement from the client attesting to the accuracy.
- B. Every lobbyist registered under this chapter shall electronically file with the Metropolitan Clerk a sworn report regarding their own lobbying activities and expenses not related to a client no later than January 31st for the previous year. The report shall contain the following:
1. An itemized list, by date, beneficiaries, amount and circumstance of the transaction, of each gift or expenditures of fifty dollars (\$50) or more made by the lobbyist or anyone acting at the specific direction of the lobbyist to benefit a candidate for public office, an official in the Legislative branch, a member of the candidate or official's staff or immediate family, or a campaign committee or testimonial committee established for the benefit of a candidate for public office or such official;
 2. An itemized list by date, beneficiaries, amount and circumstance of the transaction of each gift or expenditures of twenty-five dollars (\$25) or more made by the lobbyist or anyone acting at the specific direction of the lobbyist to benefit an official in the Executive branch, a member of the official's staff or immediate family, or a campaign committee or testimonial committee established for the benefit of such official.
- C. ~~When invitations, food, beverage, gifts, entertainment such as tickets to events, or the like are paid for by the client of a lobbyist or by a lobbyist, or person with the intent of directly or indirectly influencing legislative action, such invitation, food, beverage, gifts, entertainment such as tickets to events, or the like must extended to all members of the Metropolitan Council and be included in Annual Lobbying and Expense Reports. A copy of any such invitations or notice shall be submitted to the metropolitan clerk at least seven (7) business days in advance of the event. Entertainment, food, refreshments, meals, or beverages that are provided by a lobbyist or client of a lobbyist, may be provided to Council Members if such invitations are extended to either the entire membership of a council committee or the entire membership of the Metro Council. A copy of the invitation shall be delivered to the Metro Clerk's Office and to each member of the Council Committee or each member of the entire Council at least seven (7) days in advance of the event by the client of a lobbyist or lobbyist paying for the event and must be included in their Annual Lobbying and Expense Reports unless:~~
1. the same equal opportunity is provided to the general public;
 2. is provided at a scheduled meeting of an established and recognized association that has regular meetings; or
 3. the total aggregate cost of the expenditure or gift does not exceed the limits set forth in Section 2.222.020.
- D. In determining the threshold for the reporting levels required by this chapter of an event attended by more than one official of the legislative branch, a staff member, or immediate family member, a

lobbyist may attribute only the actual cost for any gift or expenditure to each such official or member in attendance.

- E. Any person providing funds to make a gift or expenditure other than a political contribution for the purpose of lobbying shall comply with the reporting requirements of this section whenever the purpose of such funds is to assist directly or indirectly an official of the executive or legislative branch, or any educational institution to lobby a specific program or programs on which legislative action is pending. Such person shall also report the source and amount of the funds which such gift or expenditure is made.
- F. The Clerk shall send a reminder letter to lobbyists who have not filed their client's Annual Lobbying and Expense Reports by ~~January 31st~~ February 1st. On March 1st, the Clerk shall provide the Board of Ethical Conduct a list of missing or incomplete reports. A person responsible for filing a late report shall include a \$50 filing fee which shall be in addition to any other fees due.

2.196.0870 - Unlawful activities designated.

- A. No lobbyist, lobbyist's client, or anyone acting at the specific direction of a client or lobbyist shall:
 - 1. Offer or attempt to offer anything of value to an official in the legislative or executive branch, or to the official's immediate family, based on any stated or tacit understanding that the official's vote, official action or judgment would be influenced thereby.
 - 2. Make a loan of money to any candidates for public office, officials in the legislative or executive branch, or to anyone on their behalf. No candidate for public office, official in the legislative or executive branch, or a member of that person's staff or immediate family, shall solicit or accept a loan from a lobbyist.
 - 3. Knowingly or willfully make or cause to be made any false statement or misrepresentation of the facts concerning any matter for which the lobbyist is registered to lobby to any official in the legislative or executive branch or any matter which the client of a lobbyist or lobbyist is required to disclose to the metropolitan clerk.
 - 4. Pay or agree to pay a candidate for public office or an official in the legislative or executive branch compensation for real or personal property or services substantially in excess of that charged in the ordinary course of business.
 - 5. Permit a candidate for public office, an official in the legislative or executive branch, or a staff member or a member of the candidate or official's immediate family, to use the credit or credit card of a client or lobbyist or any other credit or credit card over which the client or lobbyist has control.
 - 6. Pay the lodging expenses of an official in the legislative or executive branch or immediate family of the official.
- B. No lobbyist shall:
 - 1. ~~Offer or make any political contribution or campaign contribution, including any in-kind contribution, to or on behalf of the mayor, vice mayor, any judge or chancellor, or any member of the council, or any candidates for offices.~~
 - 21. Instigate the introduction of legislation for the purpose of obtaining employment to lobby in ~~opposition~~ of that legislation.
 - 32. While engaging in lobbying on behalf of a client refuse to disclose to a Metropolitan employee or elected official upon request the identity of the client.
 - 43. ~~Shall serve as a member of any Board, Commission or governmental entity of Metropolitan government having jurisdiction to regulate the business endeavors or professional activities of any client of the lobbyist. Such lobbyist will resign from such board or commission immediately if they are employed by a client creating a conflict of interest.~~

~~5. A lobbyist shall not lobby on behalf of a client on any subject matter in which the client's interests are directly averse to another of the lobbyist's clients they are registered for.~~

- C. No official in the legislative or executive branch or a member of the official's staff or immediate family shall solicit or accept anything of value in violation of subsection A of this section.
- D. No official in the legislative or executive branch shall accept travel expenses, meals or lodging if payment of the travel expenses, meals or lodging violates this section or constitutes a prohibited gift.
- E. It is a violation of this chapter for anyone to knowingly file with the Metropolitan Clerk a sworn complaint which is false or for the purpose of harassment and will be turned over to the Director of Law to make a recommendation to the Board of Ethical Conduct for consideration.

2.196.0980 – Lobbyist identification.

When speaking at a public hearing, presenting or speaking at a community meeting, or engaging in lobbying activities, a lobbyist must identify themselves by name and the client they are representing or speaking on behalf of at that time.

2.196.10090 – Lobbyist Compensation.

- ~~A. A client may not compensate or incur an obligation to compensate a lobbyist for compensation contingent in whole or in part upon the occurrence, nonoccurrence or amendment of any administrative or legislative action.~~
- ~~B. A lobbyist may not engage in or agree to engage in lobbying for compensation contingent in whole or in part upon the occurrence, nonoccurrence, or amendment of any administrative or legislative action.~~

No employer of a lobbyist shall offer or pay, and no lobbyist shall solicit or accept any fee, compensation or bonus for lobbying wherein the amount of the fee, compensation or bonus is contingent upon achievement of an outcome deemed to be successful for the employer.

2.196.1100 – Cooling Off Period.

- A. An Elected Official or public employee may not, within 12 months following the voluntary termination of office, or employment, or leaving Elected Office, obtain employment in which they will be able to take direct advantage, unavailable to others, of matters with which they were directly or indirectly involved during a term of office or during employment. A department head or employee of the mayor's office shall not be registered as a lobbyist within 12 months of voluntary cessation of their official responsibilities in matters which were directly within their former official responsibilities or employment with Metro Government. For this section, "Official Responsibility" means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with other, either personally or through subordinates, to approve, disapprove or otherwise direct metropolitan government action.
- B. An Elected Official ~~or public employee may~~ shall not be registered as a lobbyist within 12 months following the voluntary termination of office, ~~or employment,~~ or leaving Elected Office.

2.196.1210 – Complaints Procedures.

- A. Complaint procedures:

1. Any person may submit a complaint alleging that any one or more person, lobbyist, or client of a lobbyist has violated the provisions of this chapter.
2. The complaint must be filed electronically with the Metropolitan Clerk and be signed by the complainant and notarized, and must contain the following:
 - a. Complainant's legal name, current mailing address, home address, and a valid telephone number and email address;
 - b. Names and contact information of the individuals who committed the alleged violation, if possible;
 - c. Summary of the facts giving rise to the complaint;
 - d. Explanation of why those facts constitute a violation of this chapter; and
 - e. Any supporting documentation of the violation
3. Upon receipt, the clerk shall:
 - ~~1a.~~ Provide a copy of the complaint to ~~the individuals named therein~~, the director of law, and to the members of the board of ethical conduct electronically ~~and by U.S. Postal Service~~.
 - ~~1b.~~ Provide the complainant and the named persons with a copy of the complaint, ~~procedures and hearing procedures, Board Actions, Penalties and Sanctions, Enforcement Procedures and Appeal Rights of the Board of Ethical Conduct, and~~ of this Code electronically and by U.S. Postal Service by certified mail.
4. 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.
5. The department of law will evaluate the complaint, applying the law of this chapter 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 this chapter. Within fourteen (14) business 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 this chapter, and including a recommendation to either dismiss the complaint or hold a hearing 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 on the same day.
6. Within three (3) business days of receiving the department of law's report, the chair of the board of ethical conduct shall set 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 ~~electronically, the complainant, and the individuals named in the complaint. The clerk shall provide notice of the meeting to the complainant and the named persons electronically and by U.S. Postal Service by~~ certified mail.
7. 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. At this meeting, the board may decide to dismiss the complaint or call for a hearing on the complaint and set a date for the hearing.
8. 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.
9. Any decision shall require the affirmative vote of at least four members of the board.
10. The decision shall be filed with the clerk, and provided to the complainant and to the individuals named in the complaint.

2.196.120 – Hearing Procedures.

BA. Hearing procedures:

1. If the board of conduct calls for a hearing on a complaint, the hearing shall be conducted as follows:

- a. The hearing shall be noticed to and open to the public, in accordance with these procedures.
- b. Notice of hearing shall be provided to the complainant and to the individual named in the complaint (together, the "parties").
- c. 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 (7) business days prior to the hearing. The clerk shall provide a copy of the same to the board members and the department of law.
- d. 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.
- e. 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 (7) business 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.
- f. Board members may ask questions of any party, counsel, or witness at any time during the hearing.
- g. 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.
- h. The board may continue a hearing to a later date.
- i. The director of law or a metropolitan attorney shall be present during the hearing to advise the board.
- j. The board shall abide by any applicable policies, rules, or procedures promulgated by the board as otherwise permitted in chapter 2.222.

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2.196.130 – Actions, Penalties, Sanctions, Enforcement and Appeals of Decisions of the board:

A. Actions:

1. If, after a hearing, the board decides that an individual violated the procedures set forth in this chapter, then the board shall take one or more of the following actions, as decided by affirmative vote of at least four of its members:
 - a. Recommend to the Council that the elected official or member of the Board or commission be censured;
 - b. Recommend to the violating elected official or member of a Board or commission resign their respective position;
 - c. ~~Recommend to the metropolitan clerk~~ Suspend the registration of the lobbyist ~~be suspended or that a person be prohibited or prohibit the person~~ from registering as a lobbyist for a period of up to two years. The Metropolitan Clerk shall act to prohibit or suspend registration upon a decision by the Board following the procedures set forth in this section 2.196.140;
 - d. Direct the metropolitan clerk to issue a citation;
 - e. Refer the matter to the district attorney general for appropriate action; and/or,
 - f. 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.

2. The Board of Ethical Conduct may take into account the following mitigating factors and include them in the written record of the vote:
 - a. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.
 - b. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.
 - c. Prompt self-reporting. The violator is found to have reported promptly the violation to the Clerk or the Board of Ethical Conduct.
3. The Board of Ethical Conduct may take into account the following aggravating factors and include them in the written record of the vote:
 - a. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
 - b. Repeat violation. The violator previously has been found by the Board of Ethical Conduct or by a court of competent jurisdiction to have violated the same or similar provisions.
 - c. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethical Conduct into the same violation.

~~2.196.130 Violations—False Complaints, Penalties, Sanctions, Enforcement.~~

- ~~A. False Complaints: It is a violation of this chapter for anyone to knowingly file with the Metropolitan Clerk a sworn complaint which is false or for the purpose of harassment and will be turned over to the Director of Law to make a recommendation to the Board of Ethical Conduct for consideration.~~
- B. Penalties: In addition to the suspension and registration prohibition actions noted in subsection A. of this Section, Anyone found by a court of competent jurisdiction to be in violation of this chapter may be punished by a fine of up to fifty dollars (\$50) per day per violation and/or the prohibition from registration, or suspension of a current registration, for a period not to exceed two years. The Metropolitan Clerk shall act to prohibit or suspend registration upon recommendation by the Board of Ethical Conduct following the procedures set forth in section 2.196.90.
- C. 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 timely file one or more resolutions with the Metropolitan Clerk, for the next regularly scheduled Council Meeting to do one or more of the following:
 1. Providing for censure of the member, which resolution shall require twenty-one affirmative vote to be adopted.
 2. Providing for the removal of the censured member of Council from any or all committees and/or removal as chairman of a committee of the Council which resolution shall require twenty-one affirmative vote to be adopted.
 3. Providing for the censure or removal of a Board/Commission member which resolution shall require twenty-one affirmative votes to be adopted.
- D. Enforcement:
 1. Board recommendations and complaints regarding violations by employees, other than elected officials, 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.
 2. The metropolitan clerk shall issue citations at the direction of the Board.

E. Appeals: Any suspension or revocation under this chapter may be appealed by writ of certiorari to the Circuit or Chancery Courts of Davidson County within sixty days from the date of the action taken by the board.

Section 2. That Section 2.222.040.A.5 of the Metropolitan Code be amended to add the following subsection e:

- e. To conduct an investigation and make recommendations regarding any alleged violation of the lobbyist code as set forth in Chapter 2.196 of this code, using the procedures set forth in Section 2.196.085.

Section 3. Be it further enacted, that this ordinance shall take effect January 1, 2021, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:



Kathleen Murphy
Member of Council