

CHAPTER 2. ADMINISTRATION

**SUBCHAPTER A. RULES: 1) FOR RECEIVING AND RESPONDING TO REQUESTS FOR
ADVISORY OPINIONS BY BOARD OF ETHICS, AND 2) FOR CONDUCTING
INVESTIGATIONS AND HEARINGS BY BOARD OF ETHICS ON COMPLAINTS
ALLEGING VIOLATION OF ETHICS ORDINANCE¹**

PART 1. IN GENERAL

R 2.101.

The Board shall hold regular meetings at least four times a year and such additional meetings as it deems necessary. All meetings are open to the public except that the Board may hold closed, deliberative sessions when authorized by the Michigan Open Meetings Act MCL 15.265. The Chairperson shall preside at all meetings and in his/her absence the Vice Chairperson shall preside. The Board staff shall record the minutes of all meetings and shall keep records thereof. Minutes of closed, deliberative session shall be maintained in a separate record. The Board staff shall distribute minutes of all public meetings to each member of the Board and shall make them available to the public. A majority of the members shall constitute a quorum. All decisions shall be governed by majority vote of those present. Section 2-5-106 of the Ethics Ordinance provides that each city agency shall cooperate in gathering information to assist the Board of Ethics in performing its duties.

(R 2.101; Part 1, Sec. 2, eff. 5-23-2007)

PART 2. REQUESTS FOR ADVISORY OPINIONS

R 2.201. Who May Request an Advisory Ethics Opinion.

Pursuant to Section 2-5-121 of the Ethics Ordinance, a public servant as defined in Section 2-5-3 of the Ethics Ordinance, a former public servant, or an applicant or candidate to be a public servant may request an advisory opinion from the Board of Ethics (the "Board"). The request must relate to the public servants own conduct. A

¹**City Code reference**—These rules are mandated by Sec. 2-5-101 of the 2019 Detroit City Code, *Charter Independence; Duties; Promulgation of Rules*, which provides, in pertinent part:

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(b) In accordance with Section 2-111 of the Charter, the Board of Ethics shall promulgate administrative rules to perform its duties as set forth in the Charter and this article. Whenever this article is amended, the Board of Ethics shall not take action, which requires the promulgation of any new administrative rule, until the rule has been properly promulgated under Section 2-111 of the Charter.

request for an advisory opinion is limited to the subject matter indicated in Section 2-5-121 of the Ethics Ordinance and shall be in writing addressed to the "City of Detroit Board of Ethics, c/o Executive Director, Butzel Family Center, 7737 Kercheval, Suite 213, Detroit, Michigan 48214". The request shall set forth the facts and circumstances upon which the opinion is sought, and shall be signed.

(R 2.201; Part 2, Sec. 1, eff. 5-23-2007)

R 2.202. Confidentiality of Request.

Confidentiality of the request is provided for in Section 2-5-122 of the Ethics Ordinance. The Board shall adopt internal operating procedures consistent with this provision.

(R 2.202; Part 2, Sec. 2, eff. 5-23-2007)

R 2.203. File Preparation.

The staff of the Board shall prepare a file for each request for an advisory opinion.

(R 2.203; Part 2 Sec. 3, eff. 5-23-2007)

R 2.204. Acknowledgment of Request.

Upon receipt of the request, the staff of the Board shall promptly notify the requestor(s) of the receipt of the request by first class mail. The notification shall include the timetable within which the request will be resolved. The staff of the Board shall simultaneously forward the request to each member of the Board and to the City attorney in the Law Department who represents the Board.

(R 2.204; Part 2, Sec. 4, eff. 5-23-2007)

R 2.205. Maintenance of Log.

The staff of the Board shall maintain a log of all requests for advisory opinions that are filed. This log shall contain the requestor's name, the date that the request was received at the Board, the provision(s) of the Ethics Ordinance that are implicated in the request, the date of mailing to the requestor of an acknowledgment of receipt of the request, and the date that copies of the request are forwarded to members of the Board and to the City attorney in the Law Department who represents the Board. Entries shall be made from time to time recording any extension in the processing of the request, and a record as to the disposition of the request. This log shall be a source of information for the compilation of an annual report for submission to the Mayor and City Council in accordance with Section 2-5-108 of the Ethics Ordinance.

(R 2.205; Part 2, Sec. 5, eff. 5-23-2007)

PART 3. REVIEW AND ISSUANCE PROCEDURE

R 2.301. Preliminary Written Analysis.

Within 14 calendar days of receiving the request for an advisory opinion, a preliminary written analysis of the request shall be prepared for the Board's review. The analysis shall indicate whether the requestor(s) is a proper

party to submit a request, whether the request is without merit on its face and should be rejected without further action, or whether further action by the Board is warranted.

(R 2.301; Part 3, Sec. 1, eff. 5-23-2007)

R 2.302. Preliminary Board Action.

Within 30 calendar days of the receipt of a request at the Board offices, the Board shall review and consider the request and the analysis, and shall determine whether the request should be rejected, or whether further action is necessary.

(R 2.302; Part 3, Sec. 2, eff. 5-23-2007)

R 2.303. Assignment to Board Member.

Where further action is necessary, the Board may assign a request to a Board member on a rotating basis for review and recommendation. A Board member to whom a request is assigned shall review the facts and circumstances reflected in the request in relation to the disclosure requirements and the standards of conduct that are contained in the Ethics Ordinance. The Board member may seek the assistance of legal counsel. The Board member to whom the matter is assigned shall present a written recommendation and a draft advisory opinion within 60 calendar days of the receipt of the request at the Board offices for consideration by the full Board.

(R 2.303; Part 3, Sec. 3, eff. 5-23-2007)

R 2.304. Final Board Action.

Pursuant to Section 2-5-124(a) of the Ethics Ordinance, the Board shall dispose of a request within 91 calendar days of its receipt, or under extraordinary circumstances as defined in Section 2-5-3 of the Ethics Ordinance, within a period of an additional 35 calendar days of the receipt of a request by the Board. The Board shall review the request, the preliminary written analysis, and the recommendation and draft advisory opinion submitted by the Board member to whom the matter was assigned. The Board shall decide whether the request should be denied, whether the Board should decline to issue an advisory opinion where the request does not merit review by the Board, or whether to issue an advisory opinion in accordance with Section 2-5-124(b) of the Ethics Ordinance.

(R 2.304; Part 3, Sec. 4, eff. 5-23-2007)

R 2.305. Issuance of Advisory Opinion.

Where the Board issues an advisory opinion, the Board shall make such changes as are necessary and appropriate to the draft opinion and shall issue a final opinion which shall be entitled "Advisory Ethics Opinion No. [year of issuance] — [sequential number]." One copy of this opinion shall be provided to the requestor(s) by first class mail, one copy of the opinion shall remain in the Board file, one copy shall be filed in the Office of the City Clerk, one copy shall be filed in the Municipal Reference Library, and one copy shall be maintained in a file available for public inspection in the Board offices.

(R 2.305; Part 3, Sec. 5, eff. 5-23-2007)

R 2.306. Annual Report.

A set of the Advisory Ethics Opinions shall be included as an appendix to the annual report for submission to the Mayor and City Council in accordance with Section 2-5-108 of the Ethics Ordinance.

(R 2.306; Part 3, Sec. 6, eff. 5-23-2007)

PART 4. COMPLAINTS ALLEGING VIOLATION OF ETHICS ORDINANCE

R 2.401. Requesting and Completing the Complaint Form.

Any person may file a complaint with the Board where the person believes that a public servant may have violated the Ethics Ordinance. In order to file a complaint under Section 2-5-141 of the Ethics Ordinance, the person must complete a complaint form that is provided by the Board. A complaint form may be obtained in person or requested through the mail from the City of Detroit Board of Ethics, c/o Executive Director, Butzel Family Center, 7737 Kercheval, Suite 213, Detroit, Michigan 48214, or may be requested by telephone. The complaint form must specify which provision(s) of the Ethics Ordinance are alleged to have been violated, and the facts alleged to constitute the violation. The complaint form must be signed by the person making the complaint, and be sworn to in the presence of a notary public.

(R 2.401; Part 4, Sec. 1, eff. 5-23-2007)

R 2.402. Filing a Complaint.

The completed complaint form must be filed, in person or by mail, with the "City of Detroit Board of Ethics, c/o Executive Director, Butzel Family Center, 7737 Kercheval, Suite 213, Detroit, Michigan 48214". In accordance with Section 2-5-141(c) of the Ethics Ordinance, the complaint must be filed within 182 days from the date that the complainant knew, or should have known, of the action that is alleged to be a violation of the Ethics Ordinance. In no event shall the Board consider a complaint which has been filed more than two years after a violation is alleged to have occurred.

(R 2.402; Part 4, Sec. 2, eff. 5-23-2007)

R 2.403. Investigations.

Section 2-106.9(2) of the 2012 Detroit City Charter provides that the Board has the authority to conduct investigations on its own initiative through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and the appointment of independent counsel. An investigation may be initiated by a member of the Board who raises the matter at a Board meeting, but, in order for the investigation to proceed, the Board must approve the investigation at the same or subsequent Board meeting, by a three-fourths vote of Board members serving.

(R 2.403; Part 4, Sec. 3, eff. 5-23-2007)

R 2.404. File Preparation.

The staff of the Board shall prepare a file for each complaint or investigation.

(R 2.404; Part 4, Sec. 4, eff. 5-23-2007)

R 2.405. Notification of Parties.

Upon receipt of a complaint or the initiation of a Board investigation, the staff of the Board shall promptly notify the complainant and the public servant who is the subject of the complaint or investigation by first class mail. The notification shall include a brief outline of the procedure to be followed in the investigation and disposition of the matter, and notify the parties that they will be advised of the disposition of the matter. Where the Board initiates an investigation, the public servant who is the subject of the investigation shall be sent, via first class and certified mail, a written notice 1) that an investigation has been authorized and is taking place, and 2) which contains a summary of the basis for the possible violation(s). The staff of the Board shall simultaneously forward copies of the complaint to each member of the Board and to the City attorney in the Law Department who represents the Board.

(R 2.405; Part 4, Sec. 5, eff. 5-23-2007)

R 2.406. Maintenance of Log.

The staff of the Board shall maintain a log of all complaints that are filed. This log shall contain the name(s) of the complainant(s); the date that the complaint was received at the Board; the provision(s) of the Ethics Ordinance that are alleged to have been violated; the date of the mailing to the complainant of an acknowledgment of receipt of the complaint; and the date that copies of the complaint are forwarded to members of the Board, the public servant complained against, and the City attorney in the Law Department who represents the Board. Entries shall be made from time to time recording any extensions in the investigation of the complaint, and a record as to the disposition of the complaint. This log shall be a source of information for the compilation of an annual report for submission to the Mayor and City Council in accordance with Section 2-5-108 of the Ethics Ordinance.

(R 2.406; Part 4, Sec. 6, eff. 5-23-2007)

R 2.407. Communications with the Board during Pendency of the Complaint or Investigation Prohibited.

In accordance with Section 2-5-143(b) and Section 2-5-164(b) of the Ethics Ordinance, after a complaint has been filed or during a Board initiated investigation and prior to its adjudication/disposition before the Board no member of the Board may communicate regarding the complaint or investigation directly or indirectly with the complainant or respondent or his or her respective counsel in the absence of the opposing party. The Board's staff members may engage in communications necessary to investigate as directed by the Board. Where any complainant or respondent, or his or her respective counsel, attempts to communicate with a member of the Board regarding a pending complaint in the absence of the opposing party, the Board member shall report on the public record that communication occurred, the nature of the communication, and the member's response at the next regular meeting of the Board.

(R 2.407; Part 4, Sec. 7, eff. 5-23-2007)

PART 5. INVESTIGATIVE PROCEDURE

R 2.501. Preliminary Written Analysis.

Within 14 calendar days of the receipt of a complaint or the initiation of an investigation by the Board, a preliminary written analysis shall be prepared for the Board's review. The analysis shall indicate whether the

matter is without merit on its face and should be dismissed without further action, or whether further investigation and review by the Board is warranted.

(R 2.501; Part 5, Sec. 1, eff. 5-23-2007)

R 2.502. Response by Public Servant Complained Against.

The public servant who is the subject of a complaint or an investigation initiated by the Board shall have the opportunity to submit to the Board a written response within 14 calendar days of receipt of notice of the matter. If the public servant does not submit a written response within 14 days, the public servant shall not be precluded either from submitting a written response later during the investigation, or from participating in any hearing which may be conducted regarding the matter.

(R 2.502; Part 5, Sec. 2, eff. 5-23-2007)

R 2.503. Preliminary Board Action.

Within 30 calendar days of the receipt of a complaint or the initiation of a Board investigation, the Board shall review and consider the preliminary analysis and the public servant's written response, if any, and determine whether the matter should be dismissed, whether further investigation is necessary, or whether a hearing is to be held.

If the Board determines that a substantial question of material fact has been presented, it shall schedule a public hearing and issue a Notice of Charges regarding the Board initiated investigation as provided for in Section 2-5-165 of the Ethics Ordinance.

(R 2.503; Part 5, Sec. 3, eff. 5-23-2007)

R 2.504. Dismissal of Complaint or Board Initiated Investigation.

Where the Board determines that a matter should be dismissed without further action, the Board's staff shall send notice of the dismissal by first class mail to the complainant and to the public servant. The notice shall contain a brief statement of the reason(s) for dismissal. The grounds for dismissal.

(R 2.504; Part 5, Sec. 4, eff. 5-23-2007)

R 2.505. Further Investigation.

Where the Board determines that a complaint or Board initiated investigation is not without merit on its face, but the matter is not ready for a hearing to be held because of the lack of necessary relevant information, the Board shall instruct its staff or the City attorney, or both, to conduct any further investigation, and they shall provide the necessary information to the Board within 30 business days. Upon receipt of such information if the Board determines that a substantial question of material fact has been presented, it shall schedule a hearing on the Complaint or Issue a Notice of Charges regarding a Board initiated investigation. Where the Board determines that no violation has occurred based on the information reviewed, the Board shall dismiss the complaint or close the investigation and notify the complainant and the respondent of its decision.

(R 2.505; Part 5, Sec. 5, eff. 5-23-2007)

PART 6. SCHEDULING OF HEARING, NOTICES OF HEARING, AND AVAILABILITY OF FILE

R 2.601. Scheduling.

Where the Board determines that an administrative hearing is necessary, such hearing shall be scheduled not later than 60 calendar days after receipt of the complaint or approval of the investigation or under extraordinary circumstances as defined in Section 2-5-3 of the Ethics Ordinance within an additional 28 day period. The location, date, and time for an administrative hearing shall be scheduled by the staff of the Board. The date of a hearing shall be set so as to enable the Board to dispose of a complaint or Board initiated investigation within 91 calendar days after its receipt, or under extraordinary circumstances within an additional 28 day period, in accordance with Section 2-5-145(a) and Section 2-5-165(a) of the Ethics Ordinance. The complainant and the respondent shall be notified by certified mail of the date, place, and time for the hearing. The notice shall also state that the hearing will be public, that the parties may be represented by counsel, that the parties may present witnesses, that all witness will be sworn and subject to cross examination and that the Board may require the attendance of witnesses whose testimony, in the judgment of the Board, will aid in the resolution of the issues.

(R 2.601; Part 6, Sec. 1, eff. 5-23-2007)

R 2.602. Conduct of Hearing.

The Board Chairperson, or the Chairperson's designee who shall be another member of the Board, shall conduct the hearing before the Board.

(R 2.602; Part 6, Sec. 2, eff. 5-23-2007)

R 2.603. Notices.

For each hearing day, the staff of the Board shall prepare a notice in each matter that lists the file number, the name of the public servant(s) who are scheduled for hearing on that day, and shall post the list at the Board offices and shall make the list available to each member of the Board.

(R 2.603; Part 6, Sec. 3, eff. 5-23-2007)

R 2.604. File Availability.

On the hearing day, the staff of the Board shall make available the official file for each complaint that is scheduled to each member of the Board.

(R 2.604; Part 6, Sec. 4, eff. 5-23-2007)

PART 7. HEARING AND DISPOSITION PROCEDURE

R 2.701. Representation by Counselor *In Pro Per*.

The complainant and the public servant may represent himself or herself, or may be accompanied and represented by an attorney who is licensed to practice law in the State of Michigan.

(R 2.701; Part 7, Sec. 1, eff. 5-23-2007)

R 2.702. Hearing Record.

Each administrative hearing shall be recorded by electronic or stenographic means to preserve the evidence.

(R 2.702; Part 7, Sec. 2, eff. 5-23-2007)

R 2.703. Oath of Witnesses.

All witnesses shall be placed under oath prior to the commencement of their testimony.

(R 2.703; Part 7, Sec. 3, eff. 5-23-2007)

R 2.704. Professionalism.

Administrative hearings shall be conducted in a professional manner.

(R 2.704; Part 7, Sec. 4, eff. 5-23-2007)

R 2.705. Burden of Proof.

The complainant shall have the burden of proving the alleged violation of the Ordinance by a preponderance of the evidence. In the case of an investigation initiated by the Board, the independent counsel designated by the Board shall bear the burden of proof. In either case the Board shall consider the evidence impartially. The respondent shall have the right to be present, to be represented by counsel, to testify, to produce and examine witnesses, to cross examine adverse witnesses, and to introduce such other evidence that is relevant and material to the issues determined by the presiding hearing officer.

(R 2.705; Part 7, Sec. 5, eff. 5-23-2007)

R 2.706. Presentation and Admission of Evidence.

The admission of evidence shall not be limited by the Michigan Rules of Evidence during the conduct of administrative hearings, except for those Rules with respect to privilege which are governed by common law as modified by state statute or court rule. In addition, pursuant to Section 2-111(7) of the 2012 Detroit City Charter, the admission of any evidence where the admission would be contrary to due process of law is prohibited.

(R 2.706; Part 7, Sec. 6, eff. 5-23-2007)

R 2.707. Briefs on Legal Issues.

Where deemed necessary, the parties may be required to submit briefs on relevant legal issues prior to, or within seven calendar days after the conclusion of an administrative hearing.

(R 2.707; Part 7, Sec. 7, eff. 5-23-2007)

R 2.708. Disposition of Complaints or Board Investigations.

The Board shall review all evidence presented and shall render a written decision on the basis of a majority vote of the members present and serving within 91 calendar days following the date of receipt of the complaint or the Board's initiation of an investigation. Under extraordinary circumstances the Board may extend this time by an additional 28-day period in accordance with Section 2-5-145(a) and Section 2-5-165(a) of the Ethics Ordinance. In accordance with Section 2-5-145(c) and Section 2-5-167 of the Ethics Ordinance, the Board shall make findings of fact and conclusions of law as to whether a violation of the Ethics Ordinance has occurred. This decision shall be entitled "In re: [name of public servant]", and dated as of the date of issuance. Upon finding by a preponderance of the evidence that a violation of the Ethics Ordinance has occurred, the Board shall take such action as provided for in Section 2-5-145, Section 2-5-146 or Section 2-5-168 of the Ethics Ordinance. The Board shall prepare an official record of the hearing, which shall include the notice of hearing, all documents considered by the Board, and a transcript of the evidence presented at the hearing. One copy of this decision shall be provided to the complainant(s), one copy shall be provided to the public servant, one copy shall be provided to the Office of the City Clerk, one copy shall be provided to the Municipal Reference Library, and one copy shall remain in the Board file.

(R 2.708; Part 7, Sec. 8, eff. 5-23-2007)