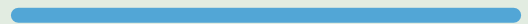
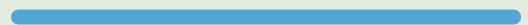
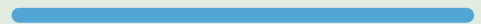
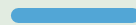




METROPOLITAN
DEPARTMENT OF LAW

LEGAL TRAINING MANUAL

ONBOARDING 2025



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Welcome to the Metropolitan Government of Nashville & Davidson County

Dear Department Head & Board or Commission Member,

Welcome to the Metropolitan Government. We truly appreciate your service to Nashville & Davidson County. This manual is designed to present basic legal concepts that apply across the Metro Government. These include the role of the Department of Law, the Open Meetings Act, Public Records, and Ethical Issues and Conflicts.

We want to acknowledge the meaningful contributions that Director Davie Tucker and the staff of the Metro Human Relations Commission made to this manual. Their suggestions improved the final product.

As a new department head or board or commission member, you should familiarize yourself with the legal duties of your department and board/commission's authority, as set forth in the Metropolitan Charter, Metropolitan Code, and any relevant state law.

Our attorneys are here to help you learn and to advise you as questions arise. In this manual, you'll find the names of the attorneys that advise your department, board or commission. You can contact them directly whenever you have questions. Feel free to reach out to me or to the Associate Director of Law who supervises the client advice side of our office, Lora Barkenbus Fox, as well.

Sincerely,

Wally Dietz
Director of Law

QUESTIONS? CONTACT US.

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The Role of the Department of Law

The Metropolitan Department of Law is created by the Metro Charter § 8.601 et seq. & additional duties are set forth in Metro Code § 2.40.010 et seq. Per Charter § 8.602, the Department of Law has the following powers and duties:

- Supervise, direct and control all of the law work of the metropolitan government, except with respect to the electric power board, which, having its own general counsel, is excepted from the provisions of this chapter.
- Furnish legal advice to the mayor, to the council and to all officers, departments, boards and commissions concerning any matters arising in connection with the exercise of their official powers or performance of their official duties.
- Represent the metropolitan government in all litigation. Collect by suit or otherwise all debts, taxes and accounts due the metropolitan government which shall be placed with it for collection by any officer, department, board or commission.
- Prepare or approve all contracts, bonds, deeds, leases or other instruments in writing in which the metropolitan government is concerned.
- Prepare or assist in preparing for introduction any proposed ordinance upon request of the mayor or any member of the council.
- Perform such other duties as may be assigned to it by ordinance.

In Fiscal Year 2024, the Department of Law handled 1056 client advice questions, 1501 contracts, 823 legislative matters, 1543 claims, 53 administrative hearings, 122 new lawsuits, and thousands of code enforcement matters.

**In other words, we do it all -
we attend board and commission meetings and provide
advice on the spot, we receive questions and provide
written advice, we draft contracts and legislation, we
represent the Metro Government and Metro employees
(including board and commission members) in lawsuits
arising out of Metro job duties, and we manage Metro's
self-insured losses funds and property insurance.**

The Government Attorney - Client Relationship

The Director of Law is a public official with a set term of office that runs concurrent with the Mayor's. Pursuant to the Metro Charter, only the Department of Law can advise and represent Metro departments, boards, and commissions, unless the Director determines that there is a conflict of interest or that the Department needs additional legal resources.

A conflict of interest does not occur because a client has a different legal interpretation. A conflict of interest occurs when the representation of one client is directly adverse to another client's and the Director of Law determines that he/she cannot provide competent and diligent representation to each affected client. These situations are very fact-specific and also involve application of the Tennessee Rules of Professional Conduct.

In cases where there is a conflict or additional legal resources are needed, the Director may decide to hire additional counsel. The Director chooses outside counsel based on area of expertise, reputation in the community, cost, and other factors. Departments and Boards or Commissions cannot hire outside counsel unless the hiring is authorized by the Director of Law, the Metro Charter, or the Metro Code.

Attorneys for governments are required by the Tennessee Rules of Professional Conduct to act in the best interests of the organization as a whole. *See* Tenn. R. Sup. Ct. 1.13. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. In a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. Comment 19 to Tenn. R. Sup. Ct. 1.13.

For example, local government attorneys are authorized by state law to bring ouster suits against public officials who knowingly or willingly commit misconduct in office. Similarly, local government attorneys have the ability to appeal a board or commission decision, on behalf of the city. The decision to appeal is rare and depends on many factors. In the past ten years, the Department of Law, on behalf of Metro, has appealed one commission decision—namely, a Civil Service Commission decision that would have reinstated a police officer who tested positive for controlled substances. The Court agreed with Metro's arguments and overturned the Commission's decision (thereby reinstating the Department's termination of the officer).

Roles & Responsibilities of Boards and Commissions

Depending on their authorizing statutes, boards and commissions have a legislative, quasi-judicial, or advisory function. Some boards and commission have more than one of these functions.

When acting in a **LEGISLATIVE** capacity, the board or commission has direct authority over narrow policy areas.

- Examples:
 - The Planning Commission is the sole entity that decides whether land may be subdivided.
 - The Fair Board has independent authority to enter leases for entertainment purposes.
 - The School Board creates zones to determine which neighborhoods feed into which schools.
 - The Civil Service Commission adopts personnel rules governing holidays, leaves of absence, and methods of holding competitive exams for positions in the classified service.
- When acting in a legislative capacity, a board or commission member may receive input from the public “*ex parte*” (outside the meeting). However, it is best practice for the board or commission member to disclose any *ex parte* contacts in the public meeting. This promotes transparency for the public.

When acting in a **QUASI-JUDICIAL** capacity, the board or commission acts as a judge by interpreting the relevant law and applying the law to the facts. These decisions are also binding determinations. An aggrieved party may appeal this decision to Chancery or Circuit Court.

- Examples:
 - The Board of Zoning Appeals interprets the Zoning Code by applying the relevant law to the facts of each application.
 - The Historic Zoning Commission applies the Metropolitan Code and Historic Guidelines to the facts of each application.
 - The Benefit Board interprets the benefits provisions of the Charter and Code by applying the relevant law to the facts of each application for disability pension benefits.
- When acting in a quasi-judicial capacity, there must not be information or input given “*ex parte*” (outside the meeting). There is to be no contact involving the

merits of the application with any opponent or proponent outside the public hearing. The board or commission member should act only on information presented at the meeting or in written materials submitted to the board or commission as a whole. If there have been *ex parte* contacts or information received, those should be disclosed at the public meeting. Depending on the magnitude of the *ex parte* information, it may be necessary to recuse yourself from the vote.

- When acting in a quasi-judicial capacity, the board or commission acts like a trial court judge, who hears the evidence at a trial and makes a ruling. An appeal from a board or commission decision proceeds like a traditional judicial appellate process: the reviewing court reviews the administrative record and does not hear new evidence. Only if there is a credible allegation that the board or commission was motivated by bias or *ex parte* information will the reviewing court consider new evidence not contained in the record.

When acting in an **ADVISORY** capacity, the board or commission is responsible for reviewing information and making a recommendation to the Council. There is not a clear standard for whether *ex parte* information may be received, but best practice is to disclose any *ex parte* contacts in the public meeting. This promotes transparency for the public.

- Examples:
 - The Planning Commission determines whether to recommend rezonings to the Metropolitan Council.
 - The School Board adopts a budget that is recommended to the Mayor's Office and Metro Council.
 - The Study and Formulating Committee submits proposed changes to the benefit system to the Benefit Board and the Council.
 - The Charter Revision Commission provides recommendations to the Council on resolutions proposing amendments to the Charter.

Appeals

To appeal board and commission decisions, the appealing party must have standing (a sufficient legal connection to the decision). Depending on the type of case, state law may require courts to defer to a board or commission decision. However, that deference does not apply to interpreting the law or to decisions made outside of listed factors. For example, if zoning code says a decision is based on three specific factors, the board cannot add a fourth (such traffic concerns).

Boards and commissions do not play a role in appeals because they speak through their orders and minutes. On appeal, the court reviews the orders, minutes, transcript (or recording) of the meeting, and any documents that were submitted to the board or commission by the applicant, opposition, or other parties at the board meeting. For this reason, all meeting should be recorded by video (preferred) or audio.

What do I do if I think I may have a conflict of interest?

You may have to disclose the issue, in which case you may still vote, or you may have to recuse yourself from the case, which means that you do not participate in the decision. This decision will depend on the circumstances and extent of the conflict. The Department of Law attorney assigned to your board can help you make the right choice.

The Duty to Vote

It is the duty of every board or commission member who has an opinion on a question to vote. Tennessee law disfavors abstentions. This is because abstentions are essentially a vote for the prevailing side, but they are purposefully being kept out of the public record. And board members who abstain because they do not believe the law is correct are, in essence, legislating. This is not the role of board or commission members – this is the role of the legislative body. Abstaining to “let the courts decide” is impermissible because it defeats the purpose of having an administrative body with expertise in this area make an initial review.

Bylaws & *Robert’s Rules of Order*

Bylaws and the laws governing the particular board or commission govern the procedure at each meeting. They can be very general or may be very specific, depending on the type of board or commission. Procedures that are not addressed in the bylaws or laws governing the board or commission are ordinarily governed by *Robert’s Rules of Order*. Department of Law attorneys will assist in interpretations of the bylaws or *Robert’s Rules*.

Basic principles of *Robert’s Rules* include:

1. A quorum of members must be present to transact business.
2. All members have equal votes.
3. Members bring business before the board or commission by making a motion.
4. A “second” is required for every motion, unless the motion is coming to the floor as a committee recommendation.
5. A motion to amend a motion requires a second and, even if it is “friendly,” must be approved by the board or commission as a whole, not the maker of the original motion.
6. Discussion may begin after there is a second.
7. The member who makes the motion is entitled to speak first.
8. A member must be recognized by the chair in order to speak.
9. Only one member may have the floor at a time.
10. No member may speak a second time until all other members have had the opportunity to speak once.
11. A member may not transfer his/her rights (for example, his/her time or turn to speak) during a debate.

12. Members must confine remarks to the pending question.
13. Members may not attack another member's motives.
14. Personal remarks or side discussions during debate are out of order.
15. If you need clarification about a procedure being used, you may speak without recognition and call for a "Point of Parliamentary Inquiry." The chair will ask you to state your question and will attempt to clarify the situation.
16. Debate is closed when discussion has ended or with a 2/3 vote on a motion to end debate.
17. Members have a right to know what the pending question is and to have it restated before a vote is taken.
18. The role of the Chair is to:
 - Introduce business in proper order per the agenda.
 - Recognize speakers.
 - Determine if a motion is in order.
 - Keep discussion focused on the pending motion.
 - Maintain order.
 - Rule on parliamentary questions. A chair's decision may be appealed by one member making an appeal with a second from a different member. At that point, the question moves from the chair to the board/commission for a final decision. Members have no right to criticize a ruling of the chair unless they appeal from his/her decision.
19. Minutes are a record of what was done at the meeting, not a record of what was said. They should reflect who made motions, who seconded motions or took other procedural actions, and who voted how. They should capture the exact wording of motions. They should list the board and commission members who attended and whether there was a quorum. Minutes are not intended to record everything that was said by everyone who spoke. If there is a question about who said something at meeting, that can be resolved by reviewing the video (preferred) or audio recording of the meeting.

The Open Meetings Act

Meetings Open to the Public

Board and commission meetings must comply with the Open Meetings Act. Tennessee adopted the Open Meetings Act with the policy “that the formation of public policy and decisions is public business and shall not be conducted in secret.” T.C.A. § 8-44-101(a). The meetings of governing bodies, which includes the meetings of Metro boards and commissions, are public meetings that must be open to the public. T.C.A. § 8-44-102(a). A “meeting” occurs when two or more board or commission members are making a decision or deliberating toward making a decision about public business. *Id.* (b)(2).

The Open Meetings Act does not prohibit social discussions between board and commission members. But those discussions should not veer into Metro business or policy, especially if it is an issue likely to be voted upon by at a board or commission meeting.

Notice of Meetings

Governing bodies must provide “adequate public notice” of meetings. T.C.A. § 8-44-103(a). While “adequate public notice” is not defined by statute for boards and commissions, courts have held that adequate public notice means “adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.” *Memphis Publ’g. Co. v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974).

The Metro Code requires that “[e]ach board or commission of the metropolitan government shall develop a policy, approved by the department of law, for providing adequate notice of all board or commission meeting dates, times, locations, and agendas. Metro Code § 2.68.020(A). Agendas for meetings are to be posted on the metro website on the Friday prior to the meeting. Metro Code § 2.68.020(C). In the event of an emergency, a board or commission may hold a meeting on shorter notice. Metro Code § 2.68.020(C). The Metro Code defines an “emergency” as “any circumstance where compliance with the notice provision in this section would result in significant financial harm to the metropolitan government or applicant, and where neither the metropolitan government nor the applicant is responsible for the delay.” *Id.*

Unless the laws governing a particular board or commission require a longer notice period, **the Department of Law recommends that Metro boards and commissions provide notice and agendas of their meetings at least five (5) calendar days prior to the meeting** to ensure the public has “an opportunity to become aware of and attend the meeting.” *See Englewood Citizens*, 1999 WL 419710, at *2 (Tenn. Ct. App. June 24, 1999). Such notice should be provided to the Department of Information Technology Services in a timely manner to ensure that notice can be posted five days prior, including by the Friday before the meeting. If an emergency arises and five days’ notice is not feasible, you should contact the Department of Law for guidance on whether a shorter period is justified under the law.

Contents of Agenda

The Tennessee Court of Appeals has held that “adequate public notice” for a special meeting requires that the contents of the notice reasonably describe the purpose of the meeting or the action proposed to be taken. *Englewood Citizens*, 1999 WL 419710, at *2. Failure of a meeting notice to mention a major issue to be discussed at a meeting constitutes inadequate notice. *See Neese v. Paris Special School Dist.*, 813 S.W.2d 432, 435-436 (Tenn. Ct. App. 1990).

T.C.A. § 8-44-110(a) requires that agendas for state governing bodies and local government legislative bodies “reasonably describe the matters to be deliberated or acted upon during the public meeting.” While this law does not directly apply to Metro boards and commissions, the Department of Law recommends that Metro boards and commissions adhere to this standard for agendas. Therefore, Metro boards and commissions should list the matters that will be considered at the meeting on the agenda to ensure that the public has been adequately informed of the meeting. **For example, an agenda that simply lists “old business” without an explanation as to what business will be discussed is not acceptable.** Instead, an agenda that lists with specificity the topics to be addressed at the meeting, as demonstrated below, would be acceptable.

EXAMPLE:

1. Old Business
 - a. Status of search for new director.
 - b. Recommendation of software contract with ABC Technology.

If “new business” is listed at the end of an agenda, it should be treated as an opportunity for board and commission members or staff to raise an issue that they would like discussed at a future meeting.

New business cannot serve as the time to raise a new issue, deliberate on it, and vote on it that day. If a board or commission member wishes to consider, deliberate, or act on an issue that is not described on the agenda, he or she should request that the matter be placed on the agenda for a future meeting. But note that your board or commission bylaws may provide a different way for placing matters on future agendas.

Executive Meetings

The Open Meetings Act allows non-public executive sessions of boards and commissions with Department of Law attorneys, but only to discuss pending or reasonably likely litigation. It does not allow non-public meetings for board members to discuss or vote on hiring and employment issues, contracts, or other issues that are typically considered sensitive in the private sector.

The discussion at an executive session is confidential and protected by the attorney-client privilege. This privilege should not be waived by board or commission members. In other words, board or commission members should not share information and confidential legal advice from an executive session with members of the public.

High-ranking staff for the board or commission may attend executive sessions. But metro employees or elected officials who are unaffiliated with the board or commission may not attend. If they attend, the attorney-client privilege would likely be waived.

At the executive session, board or commission members will receive information and advice from their attorney. They may ask the attorney questions. They should not declare what they plan to do based on that advice or encourage others to vote a certain way, because deliberating toward a decision must be made at a public meeting.

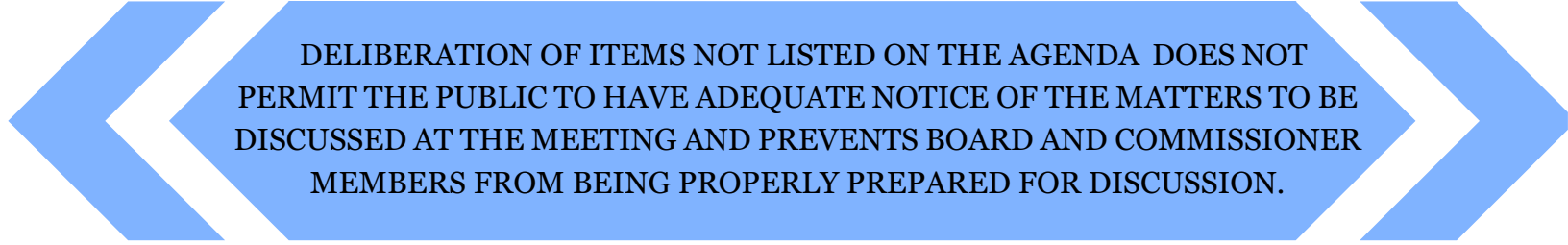
A decision that is based on an executive session must be made at a public meeting. For example, if the Department of Law recommends an action to a board or commission, the executive session will inform the board or commission of the facts of the case and reasons for that action is recommended. Board and commission members may ask questions at the executive session. But voting to take action on any issues discussed must take place at a public meeting.

Violations of the Open Meetings Act

“Any action taken at a meeting in violation of [the Open Meetings Act] shall be void and of no effect.” T.C.A. § 8-44-105. Court remedies include requiring a new and substantial reconsideration of the issues involved at a properly noticed meeting. *See Johnston v. Metro. Gov’t of Nashville & Davidson Cty.*, 320 S.W.3d 299, 310-312 (Tenn. Ct. App. 2009) (councilmembers violated the Open Meetings Act by emailing each other prior to a meeting about their views on agenda items).

In addition, a court may issue an injunction prohibiting further violations, impose penalties, and exercise court supervision over the board or commission for up to one year, with the requirement of written reporting to the court showing compliance. T.C.A. § 8-44-106; *see, e.g., Zselvay v. Metro. Gov’t of Nashville & Davidson Cty.*, 986 S.W.2d 581, 585 (Tenn. Ct. App. 1998) (one year of court supervision ordered for the Parks Board failing to fully record a vote to acquire Grassmere property in the minutes of its meeting).

A court may also order reasonable costs, including attorneys' fees, to be paid by Metro "[i]f a court finds that a governing body knew that a meeting of the body was subject to the requirement of [the Open Meetings Act] and willfully refused to comply." T.C.A. § 8-44-106 (e).



DELIBERATION OF ITEMS NOT LISTED ON THE AGENDA DOES NOT PERMIT THE PUBLIC TO HAVE ADEQUATE NOTICE OF THE MATTERS TO BE DISCUSSED AT THE MEETING AND PREVENTS BOARD AND COMMISSIONER MEMBERS FROM BEING PROPERLY PREPARED FOR DISCUSSION.

The Public Records Act

What is a Public Record?

Pursuant to T.C.A. § 10-7-503, all public records are open for inspection by any citizen of the state unless the law says otherwise. **This law creates a presumption that any record of official business that is created by a local government official is a public record.**

Personal records (e.g., emails to a spouse, grocery lists) that have no relation to government business are not public records. These are examples of common public records:

- Emails & texts
- Handwritten or typed notes
- Reports, including drafts
- Tweets, Facebook posts
- Personnel files and records/HR investigations/job applications
- Travel/leave information
- Meeting agenda and minutes
- Contract/bidding documents
- Budget/financial records
- Permit applications

These materials are public records whether they are created on government or personal devices. Metro employees can avoid having to produce public records from personal email or devices by conducting all Metro business on Metro email and devices. Board and commission members may be asked to produce public records – therefore, if you do not have a Metro email address, you should create a dedicated personal email address to use for your Metro business (e.g. TomSmithPlanning@gmail.com).

Public Records Requests

The Metropolitan Clerk is the central office responsible for receiving most Metro public records requests, including for the Mayor's Office. The requests received by the Metropolitan Clerk are assigned a number and the request is sent to the relevant department(s) and to ITS.

Within seven business days of the date that the request is made, the relevant department must provide (in writing) an estimated time frame to the requestor for when the documents will be provided. Metro is permitted to charge for copies of public records and the labor to produce them.

Note that even if a record is public, not every part of a public record may be public. Information that falls into one of the exceptions below (such as social security numbers, medical records, or the security of a government building) must be redacted before the document is released.

Exceptions to the Public Records Act

There are over 700 exceptions to the Public Records Act. The Tennessee Office of Open Records Counsel has a searchable data base for the exceptions on their webpage. Common exceptions include:

- Personally Identifying Information – e.g., social security numbers, driver licenses, alien registration numbers or passport numbers, employer or taxpayer identification numbers.
- Certain information within employee personnel files, including medical records, home phone and cell phone numbers, personal, nongovernment issued email addresses, residential street addresses for non-state employees, bank account information, health savings account, retirement account, and pension account information, and social security numbers; emergency contact information; and this information for the employee's immediate family.
- Materials relevant to ongoing or pending criminal proceedings. These records must be investigatory in nature. Ordinary public records do not become confidential due to association with a criminal proceeding.
- Information related to the security of any government building.
- Attorney-client privileged communications.
- Economic development draft agreements.
- Notes and communications protected by the deliberative process privilege. This privilege protects communications between high government officials and those who advise them in making decisions.

Records Retention Policies

The Metropolitan Government, like all local governments in Tennessee, has a schedule for how long it keeps its records. A copy of Metro's schedule can be found at: <https://www.nashville.gov/departments/metro-clerk/records-management/records-disposition-authorization>. There is a schedule for each department and also some general rules, for example:

- Minutes of board and commission meetings should be kept forever (they can periodically be sent to Metro Archives).
- Employee personnel files should be kept five years.
- Contracts should be kept seven years after ending.

Under the Metro retention schedule, whether Metro employees must keep a communication does not depend on whether it is a hand-written note, formal, letter, email, or text:

- Communications regarding policy, procedure development, or program administration between government officials, or in conjunction with citizens, should be retained for two years.
- Communications and notes that are obsolete after use may be deleted whenever they are no longer needed.

Litigation Holds

Litigation “holds” may be placed on certain documents by the Department of Law, on its own or at the request of third parties, when the Department of Law reasonably anticipates that a lawsuit may be filed by or against Metro.

A person who receives a litigation hold must preserve all documents and communications on the named topic, regardless the records retention policy and regardless of whether they are kept in email or text format, whether they are saved on a personal or government device, and whether they are saved on a hard drive, on the cloud, or in a paper file.

If a document or communication being held pursuant to a litigation hold is deleted, and the document is relevant to a lawsuit, a judge may order sanctions. Therefore, please check with the Legal Department before deciding that a litigation hold should end – we will work with you to determine whether the hold is still needed.

Ethics and Conflicts of Interest

Expectations

Metro demands a high standard of ethics from its employees and elected officials, as well as those serving on its boards and commissions. Those serving on Metro boards and commissions are expected to maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties. Metro expects that board and commission members will comply with applicable ethics rules and avoid letting conflicts of interests affect their decisions.

Metro employees and board and commission members are bound by the ethical rules set forth in Metro Code Chapter 2.222. Metro employees are also bound by Executive Order 22 and Metro Code Chapter 4.48.010 (Ethics in Public Contracting). Here is a summary:

- You cannot accept or solicit any outside benefit, privilege, exemption (e.g., meals, tickets) for you or your relatives or friends that might reasonably influence your work.
 - But, you may accept food, drinks, promotional items, or hand-produced items of value for up to \$25 from a single source each calendar year.
 - You may also accept non-cash awards of nominal or trifling value publicly presented in recognition of public service.
 - You may also accept free or discounted access to annual fund-raising benefits sponsored by a non-profit organization, if the tickets were gifted by the sponsoring organization.
- You may not use Metro property for personal use.
- You may not use Metro resources, property, or funds for private gain.
- You may not use your position to benefit yourself, relatives, or friends.
- You cannot participate in or influence any Metro decision in which you have a material financial interest.
- You may not give the impression that anyone can improperly influence you with their friendship or position.
- You may not use or disclose, other than in the performance of your official duties, confidential information gained through your position.
- You may not accept or solicit bribery. You must promptly report to the district attorney or the police any attempts made to bribe you or another employee/board member.
- Department heads and other specific high-ranking staff members listed in § 2.222 and Executive Order 22 must submit an annual disclosure form to the Metro Clerk by January 31 of each year and should amend the form within 30 days if there are any material changes to the disclosure.

- Departments and agencies may establish additional ethics requirements, which shall be filed with the Department of Law.

Violations of Metro's Ethics Rules

Allegations of ethics violations by Metro employees should be reported to the appointing authority (usually the department head), who is responsible for handling employee discipline. For employees within the classified service, the decision of the appointing authority may be appealed to the Civil Service Commission.

Allegations of ethics violations by Metro elected officials and board or commission members should be filed with the Metro Clerk for consideration by the Board of Ethical Conduct. The Board makes recommendations to the Council for discipline, which can include censure and removal.

Members of boards and commissions may request an advisory opinion from the Board of Ethical Conduct. You can make this request by reaching out to the Metro Clerk. Employees may request an advisory opinion from the Department of Law.

Attendance

The attendance of board and commission members is essential for establishing a quorum and handling important government business in a timely manner. If you do not attend meetings regularly, you may be asked to resign or you may be removed by the Metropolitan Council, pursuant to Charter § 11.109.

Reporting Unlawful Conduct

Fraud, waste, or abuse of Metro resources such as theft or misuse of government resources (e.g., time, vehicles), improper use of funds, violations of procurement code, and contract fraud should be reported to Metro's Office of Internal Audit. You can report on their website: www.nashville.gov/departments/internal-audit or by calling (615) 862-6110.

Unlawful conduct, including theft, forgery, fraud, or any other act of unlawful taking, waste, or official misconduct involving public money, property, or services should be reported to the State Comptroller of the Treasury. You can report through their website <https://comptroller.tn.gov/office-functions/investigations/fraud-waste-and-abuse.html>.

Contracts, MOUs, Grants, & Donations

Contracts

A contract is any agreement that binds Metro or any department thereof to do or not do something in exchange for something from the other contracting party. Contracts may be in the form of contracts, leases, memorandums of understanding, agreements, easements, releases, licenses, waivers, or other similar binding agreements.

- Department heads may not execute contracts without proper authorization.
- Contracts must be approved by the Metro Council unless there is an exception. The biggest exception is for contracts entered through the procurement process.
- All contracts, including any amendments, addenda, and change orders, must be approved by the Department of Law. Metro Charter § 8.602(e).
- Insurance requirements, or the lack thereof, in any Metro contract must be approved by the Director of Insurance. Metro Code §§ 2.40.190A(B) & (F); 4.24.020.
- All contracts, including amendments, addenda and change orders, that involve any fiscal obligation or forfeiture by Metro must be approved by the Director of Finance. Metro Charter § 8.103(e); Metro Code § 4.24.020.
- All computer-related purchases must be approved by the Director of ITS. Metro Code § 2.24.115.
- Real estate contracts, including office space leases, must be approved by the Planning Commission. Metro Charter § 11.505.
- The Mayor is generally the person authorized to execute a contract on behalf of Metro when Council approval is required. The Mayor must also sign amendments, addenda, and change orders to contracts. Metro Code § 4.24.020.
- The Purchasing Agent must sign all contracts issued by the Purchasing Division, as well as approve any change, revision, or modification of any contract requiring Metro's expenditure of money or relinquishment of rights or privileges. Metro Code § 4.24.020. The Mayor must also sign procurement contracts. *Id.*
- Competitive bidding is required by the Charter and state law for all purchases or contracts, unless an exception applies.
- Delegated Purchases
 - A delegated purchase is one that is less than \$25,000.00 in value. The process is initiated and managed by the contracting department/agency. Annual training and a signed delegated purchase authority agreement are required to exercise this option. No requirements may be split to keep the value of goods or services

between \$0 or \$25,000.00.

- Generally, if Metro has an existing contract for the good or service, then the delegated purchase should be made against the contract. A master list of active and available contracts is available on the internal resources page.
- If Metro does not have an existing contract for the good or service, then the relevant department/agency is responsible for soliciting and documenting the appropriate number of quotes:
 - \$0 - \$4,999.99 → one (1) written quote required.
 - \$5000.00 - \$50,000.00 → three (3) written quotes required with the award going to the offer most advantageous to Metro.
 - A form for collecting quotes is available from the Finance Department.

MOUs

A Memorandum of Understanding (i.e., Intergovernmental Agreement) is an agreement between Metro departments, boards, commissions, or quasi-governmental agencies (such as WeGo/MTA and NES) that allocates funds, services, property or equipment between those departments, boards, commissions, or agencies.

Under Metro Code § 5.04.065, if an MOU is not reflected in the operating budget and is valued in excess of \$500,000, it must be a formal MOU, submitted to the Finance Department and approved by the Metro Council by 21 votes. Separate allocations that add up to \$500,000, made less than 24 months apart, also need this approval.

Grants

A “**grant**” is a donation or gift of funds or services **with conditions** (i.e., **the grantor requires that the gift be used for a specific purpose**). Grants can be in the form of a formal contract between Metro and the grantor or a letter or other written communication from the grantor directing that the funds be used for a specific purpose. Both grant approvals and grant acceptances require Council approval, unless there is an exception.

- Grant Applications – Grant applications require Council approval by Resolution unless (A) the department/board/commission has independent authority to accept grants; or (B) the application meets the following requirements: the grant, if awarded, would not require a cash match from Metro; the application does not contain any provisions that would subject Metro or its employees to liability; and the Departments of Finance and Law are notified in writing of the grant application at the time it is submitted.
- Finance Division of Grant/Administration – All grants where Metro is the grantee/recipient are processed through the Finance Department’s Division of Grants Administration. The grantee/recipient department completes required Finance forms and submits the grant documentation to Grants

Administration. Grants Administration then processes and provides the grant documents to the Department of Law for review, approval, and preparation of legislation.

- Independent Authority/Need for Appropriation of Grant Awards – Certain departments/boards/commissions have independent authority under the Metro Charter or Code, to accept grants (e.g., Planning Commission [Charter § 11.504(b)]; Metro Action Commission – Authority to accept federal and state grants [Metro Code § 2.108.050]).
- Even if a department/board/commission has the authority to accept grants, the awards must still be appropriated by Council. If the award is reflected in the Budget Ordinance adopted by Council, no further legislation is needed. If the award is not in the Budget Ordinance, the grant award must be appropriated to the department by Council Resolution.
- Required Approvals Grant applications, awards, and amendments require the approval of the Director of Finance [Charter § 8.103(e)]; the Department of Law [Charter § 8.602(e)]; and the Director of Insurance [Metro Code § 2.40.190(f)]. This approval process applies even if the department, board, or commission has independent authority to accept grants.
- Conditional Mayoral Approval of Grant Applications – Conditional Mayoral Approval is authorized when it is not possible to obtain Council approval prior to the grant application deadline. [Metro Code § 2.08.045]. The process is as follows: the grantee/recipient department submits the grant application to the Division of Grants Administration; Grants Administration processes and routes the application to the Departments of Finance and Law for review and approval; the grant application is routed to the Mayor, who signs it contingent upon Council approval; and the grant application is submitted to Council for approval as soon as possible.
- Grants from Metro to Nonprofits – Metro grants to nonprofits do not go through the Division of Grants Administration for processing and instead are handled in the same manner as departmental legislation. These grants require Council approval by Resolution unless the funds at issue were appropriated to the specific nonprofit in the Budget Ordinance adopted by Council. Nonprofits must provide the following information, per Metro Code § 5.04.070 and other Metro rules:
 - A copy of its corporate charter or other articles, constitution, bylaws, or instruments of organization;
 - A copy of a letter from the Internal Revenue Service evidencing the fact that the organization is a nonprofit, tax-exempt organization under the Internal Revenue Code of 1986, as amended;
 - A statement of the nature and extent of the organization's program that serves the residents of the metropolitan government;
 - The proposed use of the funds to be provided by the metropolitan government;

- The proposed budget of the organization, indicating all sources of funds and a line-item identification of the proposed expenditure of metropolitan government funds;
- Audit information.
- Additional information may be requested by the office of financial accountability, including requests for additional information or supporting documentation related to the requirements in this subsection.
- A certification of assurance and Non-Profit Grants Manual Acknowledgement Form. A copy of these forms can be found in the Non-profit Grants Manual, on the webpage for the Grants Division of the Finance Department

Donations

A **“donation”** is a donation or gift of funds or services with **no conditions**; it may be used for any purpose. The donor should indicate in writing that although they would like for the donation to be used for a specific purpose, it is up to the receiving department/board/commission to determine how to use the funds or donated personal property. If there is any doubt as to whether strings are attached, treat the donation as if strings are attached and have it approved as a grant.

All donations of real property or interests in real property require Council approval. Metro departments, boards, and commissions may accept and expend any other donations with a value of \$7,500 or less. Donations with a value greater than \$7,500 are approved by Council Resolution and, if not already in the budget, must be appropriated by Council Resolution.


Additional Information & Resources

The Metro Charter and Code can be found at:

https://library.municode.com/tn/metro_government_of_nashville_and_davidson_county

Here some other helpful links and answers to common questions the Department of Law fields:

- www.nashville.gov/departments/law
- www.nashville.gov/departments/government/non-discrimination
- <https://comptroller.tn.gov/office-functions/open-records-counsel>
- Each board and commission must file its bylaws and any rules/regulations with the Metropolitan Clerk, pursuant to Charter § 11.107.
- Board and commission meetings must be held in Metro-owned buildings unless using a private, leased building has been approved by the Metro Council. Metro Code § 2.68.010.
- All boards and commissions must meet in person, except that there are limited exceptions for the school board.
- All Metro employment positions are in the classified service (civil service) unless provided otherwise by the Charter or Code. Charter § 12.08. Non-civil service positions are at-will. There are very few positions that can be filled by contract employees because specific authorization is required.
- Even if there is a charitable purpose, government entities cannot hold raffles or silent auctions.



Have a legal question about an item on an agenda?
Reach out to us before the meeting so we can research
the issue and provide timely advice.

