

*Stephan W. Fogleman, Chair*  
*Donna M. Davis, Vice-Chair*  
*Melodie Hengerer*  
*Arnold Sampson*  
*Vacant*



**BALTIMORE CITY BOARD OF ETHICS**

June 17, 2022

The Honorable President  
Members of the City Council  
Attn: Natawna Austin, Executive Secretary  
Room 409, City Hall  
100 N. Holliday St.  
Baltimore, MD 21202

Re: City Council Bill 22-0238 – Charter Amendment – Inspector General – Advisory Board

Dear President and City Council Members:

The Baltimore City Board of Ethics (“Ethics Board”) has been asked to comment on Bill 22-0238 (“Bill”), which alters the method by which individuals are selected to serve on the Office of Inspector General (“OIG”) Advisory Board (“Advisory Board”). The Board will focus its comments on the three portions of the Bill that establish new duties for the Ethics Board and Ethics Board Chair.

First, the Bill sets forth a process by which the Ethics Board Chair randomly selects the seven members of the Advisory Board. Residents from the City’s 14 Council districts may apply for a spot on the Advisory Board, and each of the 14 Council members must select one nominee from the applicants in their district. Then, the Ethics Board Chair must randomly select five of these nominees to serve on the Advisory Board. The Ethics Board Chair must also randomly select two additional Advisory Board members from among the membership of various professional organizations.<sup>1</sup>

Second, the Bill authorizes the Ethics Board Chair to remove members of the Advisory Board at any time, subject to approval by a majority vote of Ethics Board members. Third, the Bill requires the Ethics Board Chair to train new members of the Advisory Board on the City’s Ethics Law, the rules governing the Advisory Board, and the rules governing and duties of the Inspector General. As explained more fully below, the Ethics Board cannot support the second and third of these new duties and remains neutral on the first.

The Ethics Board is established under Article VII, Section 105 of the City Charter to administer the City ordinances that “execute the provisions of ‘the Maryland Public Ethics Law’ of the Annotated Code of Maryland.” City Charter, Art. VII, § 105. *See also* City Charter, Art. II, § (68) (referencing the City’s power and authority to establish local public ethics provisions as granted by Subtitle 8 of the Maryland Public Ethics Law); Md. Code Ann., GP, § 5-806 (“The express powers contained in . . . Article II of the

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<sup>1</sup> It should be noted that the Bill does not provide an application process for these professional members, so the Bill should be amended to provide for such a process.

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***Baltimore City Board of Ethics***

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Charter of the City of Baltimore are intended and shall be deemed to incorporate and include the power and authority contained in this part.”). The Baltimore City Public Ethics Law, in turn, is contained in Article 8 of the City Code and is modeled upon the Maryland Public Ethics Law, contained in Title 5 of the General Provisions Article of the Maryland Code. The State law requires the City law to be similar in three areas related to public ethics: (1) conflicts of interest; (2) financial disclosure; and (3) lobbying. Md. Code Ann., General Provisions Art. (“GP”), § 5-807.

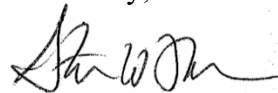
To the extent the Bill imposes substantive, discretionary duties on the Ethics Board that are not consistent with the Ethics Board’s jurisdiction under Article VII of the City Charter, Article 8 of the City Code, and Title 5 of the General Provisions Article of the Maryland Code, those duties should be eliminated from the Bill. Specifically, by authorizing the Ethics Board Chair—subject to a majority vote of the Ethics Board—to remove members of the Advisory Board, the Bill creates a new discretionary and substantive duty for the Ethics Board that does not mesh with the Ethics Board’s jurisdiction or authority under the laws discussed above. This provision is also problematic in that it gives one independent body authority over the membership of a separate, unrelated independent body.

Similarly, by requiring the Ethics Board Chair to train new members of the Advisory Board on the rules governing the Advisory Board and the rules and duties of the Inspector General, the Bill imposes a new substantive duty that it is not within the Ethics Board Chair’s purview or jurisdiction under relevant law. Moreover, it simply does not make sense to require the Ethics Board Chair to provide training on subjects that are not within the Ethics Board’s jurisdiction.<sup>2</sup>

Finally, the Bill, in requiring the Ethics Board Chair to randomly select Advisory Board members from a qualified applicant pool, does not appear to impose a new substantive, discretionary duty on the Ethics Board Chair. And, although such a duty does not appear to be authorized by any of the governing law discussed above, it amounts to a merely ministerial duty and is therefore less problematic than the other provisions described above.

Accordingly, so long as the Bill is amended to delete the Ethics Board’s jurisdiction to remove Advisory Board members and to delete the Ethics Board Chair’s duty to train Advisory Board members on the workings of the Advisory Board and the OIG, the Ethics Board does not oppose the Bill.

Sincerely,



Stephan W. Fogleman  
Ethics Board Chair

Cc: Nina Themelis, Mayor’s Office of Government Affairs  
Isabel Cumming, Ethics Board Executive Director

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<sup>2</sup> As for training on the Ethics Law, the Ethics Board already provides such training to new City officials and employees, so this provision of the Bill is unnecessary.

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c/o Office of the Inspector General / 100 N. Holliday St., Suite 635 / Baltimore, MD 21202