

## **SECTION 10.56.090: Board - Powers and Duties**

- A.
1. There is imposed upon the Board in addition to those functions and duties set forth in Article 10, Chapter 1, of the Charter of the Metropolitan Government, the authority, power and duty to adopt, promulgate and enforce such rules and regulations to carry out the provisions of this Chapter which the Board deems necessary in order to achieve and maintain such levels of air quality as will protect human health and safety and to the greatest degree practical, prevent injury to plant life and property, foster the comfort and convenience of the inhabitants of the Metropolitan Government area and promote the economic and social development of the Metropolitan Government area; provided, that such rules and regulations shall not conflict with any laws of the State, the Charter of the Metropolitan Government or any ordinance of the Metropolitan Government, nor shall such rules and regulations exceed the limits of authority granted to the Board in this Chapter.
  2. The Director shall recommend to the Board such rules and regulations as he considers necessary consistent with the general intent and purpose of this Chapter to prevent, abate and control air pollution. Thereupon, the Board shall fix and hold a public hearing, as provided herein, with respect to the rules of their amendments, and the Board may approve or reject such recommended rules or amendments, in whole or in part, or it may modify and approve them as so modified. Thereafter, the Board may amend or add to the rules and regulations, on recommendation of the Director, or on its own initiative, but only after a public hearing on the proposed amendments.
  3. Such rules and regulations or any amendments thereto shall be approved by the Director of law as to legality, and the same shall then be filed with the secretary of the Board and the Metropolitan Clerk. After such rules and regulations or any amendments thereto of the Board have been so adopted in the manner herein provided, such rules and regulations shall have the force and effect of law.
- B. In exercising its powers to prevent, abate and control air pollution, the Board shall have the following powers and duties:
1. Develop and prepare a general comprehensive plan for the prevention, control and abatement of air pollution recognizing varying requirements for different areas of the Metropolitan Government;
  2. Establish, modify or amend, after public hearing, a system of permits applicable to installation or modification of facilities capable of becoming a source of air pollution;
  3. Establish, modify or amend, without hearing, rules and regulations with respect to procedural aspects of:

- a. Hearings,
  - b. Filing of reports and orders,
  - c. Issuance of permits, and
  - d. All other matters not specifically requiring a hearing;
4. Require that any person whom the Board has reason to believe is or may be about to be causing or contributing to air pollution to furnish the Board pertinent information required by it in the discharge of its duties under this Chapter; provided, that no such person shall be required to disclose any secret formulas, processes or methods used in any manufacturing operation carried on by or under his direction;
  5. Cause to be instituted in a court of competent jurisdiction, legal proceedings to compel compliance with any provision of this Chapter or with any order or determination issued by the Board;
  6. Collect and disseminate information relative to air pollution, encourage voluntary cooperation of affected persons or groups in preserving and restoring a reasonable degree of air purity and advise, consult and cooperate with other agencies, persons or groups in matters pertaining to air pollution;
  7. Prescribe and provide, at its discretion, for payment and collection of reasonable fees for the review of plans and specifications required to be submitted pursuant to this Chapter. Such fees shall be deposited with the Metropolitan Treasurer and shall be used to supplement the budget of the Metropolitan Health Department.
  8. Adopt, promulgate and enforce such other rules and regulations which the Board deems necessary to carry out the provisions of this Chapter; provided, that nothing in this Chapter shall be deemed to grant the Board any jurisdiction or authority with respect to air pollution existing solely within commercial or industrial plants, works or shops or to affect the relationship between employers and employees with respect to or arising out of any condition of air pollution, so long as such internal pollution does not affect the ambient air outside the plant, works or shops.
- C. In addition to any other power granted to it by this Chapter, the Board is granted the authority to assess a civil penalty in an amount not to exceed the sum of twenty five thousand (\$25,000.00) dollars per day for each day of violation against any person in violation of this Chapter or of any regulation adopted pursuant to this Section.
1. The assessment of a civil penalty shall be made by the Director against any person determined to be in violation of this Chapter or of any regulation adopted by the Board pursuant to this Section. Notice of such assessment shall be provided by certified mail, return receipt requested.

2. Any person against whom an assessment is made by the Director may appeal to the Board by filing a request with the Director for review by the Board. Request for review by the Board must be made in writing and filed within thirty days of the receipt of the assessment and shall state with particularity the grounds for the appeal. Any such appeal shall stay the effect of the assessment.
3. Failure to appeal the assessment within thirty days shall be a waiver of the right to appeal and be deemed as consent to the assessment which shall become final upon approval by the Board.
4. Any assessment of civil penalty appealed to the Board shall be heard pursuant to the provisions of the contested cases provisions of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, Part 3. The assessment of civil penalty shall be upheld unless the preponderance of the evidence shows that the assessment was unlawfully levied or unreasonably severe.
5. No assessment of civil penalty, whether brought to the Board by appeal or for confirmation by the Director, shall be final until such assessment is approved by the Board at any regular meeting or duly called special meeting. The Board may alter or modify the terms of any civil penalty, but any increase in the amount of civil penalty or which otherwise imposes a greater burden upon the person against whom the penalty is assessed shall not become final until such person receives written notice thereof and is provided the right to petition the Board for modification of such assessment in the same manner as an appeal from assessment of civil penalty by the Director.
6. The Director may enter into consent decrees with any person in violation of this Chapter or of any regulation adopted pursuant to this Chapter, and, after approval by the Board shall have the same effect and be enforceable in the same manner as a civil penalty.
7. The Board may cause an action to be filed with the chancery court for Davidson County for judgment to enforce any final assessment of civil penalty or consent decree and for any execution of any judgment so obtained.
8. In assessing a civil penalty, the Director and the Board may consider all factors listed in Section 10.56.100, and may include any expenses and actual damages incurred by the Metropolitan Government in investigating, removing, correcting or cleanup of the effects of the violation, including loss or destruction of plant or animal life.