



METROPOLITAN COUNCIL

Metro Council Office

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **July 15, 2014**

RE: **Analysis Report**

Unaudited Fund Balances as of 7/9/14:

4% Reserve Fund	\$40,385,707*
Metro Self Insured Liability Claims	\$4,497,812
Judgments & Losses	\$2,998,264
Schools Self Insured Liability Claims	\$2,231,255
Self-Insured Property Loss Aggregate	\$6,224,282
Employee Blanket Bond Claims	\$647,872
Police Professional Liability Claims	\$2,823,710
Death Benefit	\$776,647

*Assumes unrealized estimated revenues in fiscal year 2014 of \$27,616,209.

– RESOLUTION ON PUBLIC HEARING –

RESOLUTION NO. RS2014-1156 (PARDUE) – This resolution approves an exemption for Venue 109 located at 109 Cude Lane from the minimum distance requirements for obtaining a beer permit. The Metro code prevents a beer permit from being issued to an establishment located within 100 feet of a church, school, park, daycare, or one or two family residence. However, the code provides a mechanism to exempt restaurants that already have a state on-premises liquor consumption license from Metro’s minimum distance requirements to obtain a beer permit upon the adoption of a resolution by the council. A public hearing must be held by the council prior to voting on this resolution.

– RESOLUTIONS –

RESOLUTION NO. RS2014-1157 (STEINE) – This resolution appropriates a total of \$2,150,000 to 30 nonprofit organizations selected to receive funding through the community enhancement grants. The fiscal year 2014-2015 operating budget for the Metropolitan Government appropriated \$675,000 for domestic violence programs, \$675,000 for education after school programs, \$450,000 for community service programs, and \$350,000 for literacy programs. This is the sixth consecutive year in which nonprofit organizations are funded through a competitive process as opposed to simply being named in the budget ordinance with little or no documentation as to how the funds are to be spent.

The review panels considered and scored the applications received and have recommended that the following agencies receive funding:

From the \$675,000 for domestic violence programs:

- \$178,600 to Legal Aid Society of Middle Tennessee and the Cumberland for legal services and court advocacy
- \$108,600 to Morning Star Sanctuary, Inc. for shelter/support services, counseling and legal assistance
- \$278,500 to Nashville Young Women's Christian Association (YWCA) for shelter and support services
- \$65,800 to Tennessee Coalition to End Domestic and Sexual Violence for legal advocacy and representation for immigrants
- \$43,500 to The Mary Parrish Center for extended shelter/transitional housing, advocacy and counseling

From the \$675,000 for education and after school programs:

- \$36,000 to Center for Refugees and Immigrants of Tennessee for homework, tutoring and enhancement activities for refugee and immigrant students
- \$33,700 to Fannie Battle Day Home for Children, Inc. for before, afterschool and summer programs
- \$47,100 to Hearing Bridges for afterschool programs for hearing impaired students
- \$135,000 to Martha O'Bryan Center for afterschool programs
- \$92,700 to McNeilly Center for Children for before and afterschool programs
- \$61,500 to Monroe Harding, Inc. for afterschool programs

(continued)

RESOLUTION NO. RS2014-1157, continued

From the \$675,000 for education and after school programs:

- \$50,500 to New Vision, Inc. for afterschool programs
- \$77,500 to Oasis Center, Inc. for afterschool and summer programs
- \$96,100 to PENCIL Foundation for afterschool and summer programs
- \$44,900 to Vanderbilt University School of Nursing for afterschool programs

From the \$450,000 for miscellaneous community agencies/services:

- \$13,000 to Family and Children's Service for emergency financial support for housing, utilities, food and transportation
- \$50,000 to Fifty Forward (Senior Citizens) for elderly care management and meal provisions
- \$78,800 to Nashville CARES for financial assistance, case management in conjunction with housing for persons with HIV/AIDS
- \$67,200 to NeedLink Nashville for emergency financial assistance with rent and utilities
- \$7,500 to Oasis Church, Inc. for food bags for students on weekend and during school vacations
- \$152,500 to Second Harvest Food Bank of Middle Tennessee, Inc. for emergency food box distribution
- \$36,000 to The Arc of Davidson County for emergency assistance for housing or utilities for disabled persons
- \$45,000 to United Way of Metropolitan Nashville for emergency financial assistance for housing and/or utilities

From the \$350,000 for literacy programs:

- \$41,500 to Big Brothers Big Sisters of Middle Tennessee for reading/language art skills
- \$19,000 to Book'em for books and role model volunteers for reading skills
- \$45,600 to Conexion Americas for ELS classes to immigrant and refugee adults
- \$9,800 to East Nashville Hope Exchange, Inc. for reading skills instruction
- \$43,600 to Homework Hotline for reading tutoring
- \$77,700 to Nashville Adult Literacy Council, Inc. for reading and English skills to US-born and immigrant adults
- \$112,800 to Nashville International Center for Empowerment for adult English proficiency and pre-GED instruction

State law provides that the Metropolitan Government may appropriate funds to qualifying nonprofit organizations either as part of the annual operating budget or by resolution of the council. All such organizations must enter into a contract with the Metropolitan Government outlining how the funds will be expended.

RESOLUTION NO. RS2014-1158 (STEINE) – This resolution approves a grant in the amount of \$801,400 from the state department of health to the Metro health department to provide TENNderCare community outreach services for enrolled children. These funds will be used to pay the salaries of health department employees engaged in the community outreach plan for early periodic screening, diagnosis, and treatment of children, including the Welcome Baby Project to screen for family and child risks for infant mortality at the time of a child's birth. The term of this grant is from July 1, 2014 through June 30, 2015.

RESOLUTION NO. RS2014-1159 (STITES, DOMINY & HUNT) – This resolution authorizes Metro-owned property located at 3254 Ezell Pike to be used by the department of public works as a convenience center site. The council recently approved the funding for this convenience center as part of the 2014 capital spending plan. The public works department has determined that this Ezell Pike property is ideal for a convenience center. However, the property is zoned AR2a, which does not permit convenience centers.

As part of the doctrine of sovereign immunity, governments typically are not legally bound by land use regulations. However, the Metro code provides that the various Metro government departments, agencies, boards, and commissions are to follow the requirements set forth in the code unless they are exempted from compliance for just cause upon adoption of a resolution of the council approved by 21 affirmative votes. This mechanism has been used twice in recent years to allow the parking of vehicles on the Stokes Middle School property and to approve the use of a Metro-owned parcel in Antioch as a park.

This resolution will have the effect of exempting the Ezell Pike property from the zoning code limitation on the location of a convenience center.

RESOLUTION NO. RS2014-1160 (DOMINY) – This resolution approves an amendment to an agreement between the Tennessee department of transportation and the Metropolitan department of public works for crosswalks and pedestrian signals at four Harding Place intersections. The original agreement approved in October 2011 provided 80% of the costs to construct approximately 4,800 linear feet of sidewalks and bicycle paths along Harding Place from Nolensville Pike to Tampa Drive at a total cost of \$2,206,250. The agreement was amended in 2012 to increase the amount of the state funding by \$168,300. This resolution approves an amendment to extend the deadline for information to be submitted by Metro until August 1, 2015.

The amendment to the agreement prepared by the state contains a number of misspellings and other typographical errors, but these errors should not impact the effectiveness of the amendment.

RESOLUTION NO. RS2014-1161 (STEINE) – This resolution authorizes the department of law to compromise and settle the lawsuit brought by Dr. Stacey Williams against a Metro police officer as a result of an incident that occurred on May 15, 2012 in the parking lot of Dr. Williams' pediatric office. An 8-day-old infant had accidentally been locked in a car after the baby and her mother left the pediatrician's office on an 80-plus degree day. The Nashville fire department was called to the scene to rescue the baby. Instead of breaking the window immediately, the fire department called for a locksmith service. Dr. Williams became concerned about leaving the baby in the car and asked the fire department to break the window. The baby's mother also asked that the window be broken. The fire captain at the scene adamantly refused to break the window and insisted on waiting for the locksmith service.

Since the baby had been locked in the car for 20 minutes, and the locksmith service had not arrived, Dr. Williams retrieved a hammer from her office and began tapping on the car window. The fire department called for police assistance describing Dr. Williams as an unruly bystander that was interfering with their rescue efforts. A Metro police officer arrived on the scene and (continued on next page)

RESOLUTION NO. RS2014-1161, continued

was told by a paramedic that Dr. Williams was behaving in a violent manner and was interfering with the fire department's rescue. The officer approached Dr. Williams and asked her to step back, but Dr. Williams insisted that she needed to save the baby. The police officer began to physically move her away from the car but their feet became tangled and they fell to the ground. After raising her up, Dr. Williams tried to get out of the grasp of the officer's arms to return to the car. The officer felt he was losing his grip and executed what is known as a "push-pull maneuver" to take her to the ground, which caused Dr. Williams to hit her head on the ground. After taking her to the ground, the officer lost his balance and fell on top of Dr. Williams.

Dr. Williams was arrested for disorderly conduct and resisting an arrest. She was detained at the scene for approximately an hour and released to her husband after being issued a citation. The criminal charges were ultimately dismissed with a note from the district attorney that Dr. Williams was acting in a medical emergency.

The locksmith service never arrived and the fire department eventually broke the window to retrieve the baby. The infant was taken to Vanderbilt Children's Hospital and diagnosed with heat related illness.

Dr. Williams sustained a concussion after hitting her head and exacerbated a previous shoulder injury incurring medical bills totaling \$6,500. She has lost some range of motion and is now unable to lift children up to the examining table. She also incurred \$4,500 in legal costs defending the criminal charges. Dr. Williams subsequently filed suit against the officer in federal court for excessive force, assault and battery, false arrest, and intentional infliction of emotional distress.

The officer's sergeant came to the scene and conducted an investigation. After interviewing some of the witnesses and the officer involved, the sergeant determined that the officer's actions were consistent with department policy while attempting to control what he believed was an unruly bystander. However, multiple witnesses later testified in depositions that it appeared the officer shoved Dr. Williams' head while taking her to the ground and that Dr. Williams was clearly just trying to help the situation.

Dr. Williams has incurred attorney fees of approximately \$50,000 to date through the discovery phase of the lawsuit. It is estimated that her attorney fees would be in excess of \$150,000 if the case went to trial. Since this lawsuit was filed in federal court alleging a federal excessive force claim, Metro would most likely be required to pay these attorney fees if a jury awarded Dr. Williams even a single dollar. While liability of the officer is questionable in this case, Dr. Williams would make a very sympathetic plaintiff. The fact that her criminal charges were dismissed and that the fire department ended up doing precisely what she had been trying to get them to do (break the window), it is reasonable to believe a jury would determine the officer's actions to be excessive.

Dr. Williams has agreed to settle this lawsuit for \$99,000, a good portion of which will go to pay attorney fees incurred to date. Taking the case to trial would likely result in a larger verdict against the officer, plus the plaintiff would recover all of her attorney's fees. This settlement is to be paid out of the judgments and losses fund.

RESOLUTION NOS. RS2014-1162 and RS2014-1163 (GILMORE) – These two resolutions authorize Nashville Trail, Inc., Bootsmore, Inc., and Betty Boots, LLC, Big Time Boots/Tri West to install and maintain aerial sign encroachments at 209 and 301 Broadway. The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the signs, and is required to post a certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party.

These resolutions have been approved by the planning commission.

Resolution No. RS2014-1162 authorizes a 3'16" x 14' sign encroaching 9'6" above the sidewalk at 209 Broadway for the Trail West store.

Resolution No. RS2014-1163 authorizes a 16' x 6" sign encroaching above the sidewalk at 301 Broadway for the Broadway Boots store.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2014-822 (GILMORE) – This ordinance amends the Metro beer code to modify the definition of “performing arts facility” to include symphony concert halls. The purpose of this ordinance is to allow the Schermerhorn Symphony Center to sell beer without providing food service. The code exempts performing arts facilities from the food requirement, but the definition of performing arts facility effectively limits the exemption to the Tennessee Performing Arts Center downtown and “Oz” located on Cockrill Bend Circle.

This ordinance expands the definition of performing arts facility to include a facility totaling more than 175,000 square feet in size that is owned by a nonprofit corporation, is located in the downtown area, and includes a concert hall at which live symphonic music is regularly performed. Facilities meeting the expanded definition would also be able to enter into a management agreement with a concessionaire to provide beer at the facility as long as the concessionaire obtains a beer permit.

ORDINANCE NO. BL2014-823 (HOLLEMAN, STEINE & TYGARD) – This ordinance approves a participation agreement between Metro parks and the Cumberland River Compact (CRC) for the removal of the low dam in Richland Creek at McCabe Golf Course. The project will consist of removing the existing dam and replacing it with a cross vane structure in an effort to improve water quality. CRC will be responsible for construction of the project and agrees to indemnify Metro as to any liability arising in connection with the dam removal up and until Metro has accepted the new structure. Metro agrees to contribute \$35,000 from the parks deferred maintenance capital fund toward the project. All other project costs will be borne by CRC.

ORDINANCE NO. BL2014-824 (GARRETT & MATTHEWS) – This ordinance designates Old Clarksville Pike between Whites Creek Pike and Eaton’s Creek Road as “Keaton’s Cut Place”. Carl Keaton operated Joelton Barber Shop from 1955 until 2003, and continues to cut hair in the Joelton area. Ordinance No. BL2012-262 established a procedure for the use of honorary street signs whereby the council, by ordinance, can authorize and direct the department of public works to install honorary street signs beneath the official street name sign for any street identified on the official street and alley acceptance and maintenance map.

This ordinance does not officially rename Old Clarksville Pike, and property owners will not be required to change their address. The designation as “Keaton’s Cut Place” is only honorary.

ORDINANCE NO. BL2014-825 (BARRY) – This ordinance readopts the Metro code prepared by Municipal Code Corporation to include supplemental and replacement pages for ordinances enacted on or before February 5, 2014. This is a routine re-adoption to ensure the Metro Code is kept up to date.

ORDINANCE NOS. BL2014-826 & BL2014-827 – These two ordinances abandon portions of alleys that are no longer needed by the Metropolitan Government. The ordinances retain all existing utility easements. Petitions evidencing the consent of the affected property owners are included as an attachment to the ordinances.

These ordinances have been approved by the planning commission and traffic and parking commission.

Ordinance No. BL2014-826 (Westerholm) abandons a portion of Alley No. 1999 adjacent to 1001 Riverside Drive that a corner of the existing building is encroaching upon. This alley closure has been requested by the owner of the affected property.

Ordinance No. BL2014-827 (Gilmore) abandons a portion of Keys Alley and Alley No. 241 near the intersection of 12th Avenue North and Grundy Street. This closure has been requested by North Gulch Partners II, LLC for the purpose of consolidating properties for future development.

ORDINANCE NO. BL2014-828 (BAKER, DOMINY & HUNT) – This ordinance abandons utility easements for properties located at 5300 Pennsylvania Avenue and 5215 Centennial Avenue. These easements were retained when a portion of 53rd Avenue North was abandoned in 1971, and Metro water services no longer has a need for the easements. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2014-829 (HOLLEMAN, DOMINY & HUNT) – This ordinance abandons approximately 175 linear feet of 20 foot water main easement for property located at 3516 Wrenwood Drive. Metro water services has no future need for this easement. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2014-830 (GILMORE, DOMINY & HUNT) – This ordinance abandons approximately 77 linear feet of an existing eight inch sewer main and easement, and accepts a new sewer manhole for properties located at 301, 307, and 315 8th Avenue South, and 300 and 312 9th Avenue South. This abandonment is necessary for construction of the Westin Music City Hotel. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2014-831 (GILMORE, DOMINY & HUNT) – This ordinance abandons approximately 190 linear feet of an existing ten inch sewer main and easement, and accepts approximately 194 feet of an eight inch sewer main for properties located at 105, 107, and 109 16th Avenue South, and at McGavock Street, unnumbered. This abandonment is necessary for construction of a new multifamily residential development. This ordinance has been approved by the planning commission.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2014-772 (WEINER & TYGARD) – This ordinance amends the Metro zoning code provisions applicable to construction/demolition (C&D) landfills. Specifically, this ordinance modifies the lot size, setback, street standards, landscaping, and hours of operation for such facilities. C&D landfills are permitted with conditions in the commercial and industrial zoning districts, and permitted as a special exception use upon approval of the board of zoning appeals in the agricultural and intensive mixed use districts. Currently, such facilities must be located on at least a one acre lot, and must be setback at least 250 feet from any residential zoning district boundary and 500 feet from any residential structure. This ordinance would increase the minimum lot size to five acres and increase the setback to 1,000 feet from residential, office, and mixed-use properties. This ordinance would also prohibit the operation of C&D facilities between the hours of 6:00 p.m. and 7:00 a.m.

There will be a proposed substitute for this ordinance in keeping with the planning commission staff recommendation.

ORDINANCE NO. BL2014-776 (GILMORE) – This ordinance amends the Metro zoning code to create a "Music City Cultural Heritage Overlay District" for parts of Broadway, Second Avenue North, and Printer's Alley in downtown Nashville. This ordinance is partially modeled after an ordinance in San Francisco, CA. The purpose of the Music City Cultural Heritage Overlay District is to protect specific areas of downtown that are considered integral to Nashville's identity. The ordinance would require new businesses locating on Lower Broadway, Second Avenue or Printer's Alley to "contribute to the cultural fabric of the district". For retail businesses, 75% of the items offered for sale must support the cultural heritage district by promoting the district or musicians, craftsmen/makers, or performance venues. Other businesses would be required to include a live performance venue.

As written, this ordinance also would prohibit chain establishments (identified in the ordinance as "formula uses"). A formula use is defined in the ordinance as an establishment that, along with eleven or more other establishments, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark, or a servicemark.

This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2014-783 (A. DAVIS, STEINE & OTHERS) – This ordinance authorizes the acquisition of property located at 864 Idlewild Drive for a Metro water services project. This property is to be used for the construction of the Gibson Creek equalization facility as part of the Clean Water Nashville Overflow Abatement program. The estimated acquisition cost for the property is \$40,400. The ordinance provides that future amendments to this legislation may be approved by resolution. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2014-818 (STEINE) – This ordinance amends the Metro Code regarding the approval of grants and the acceptance of donations. In 2002, the council enacted Ordinance No. BL2002-1186 to provide that all grants to Metro could be approved by resolution of the council instead of exclusively by ordinance. The purpose of the 2002 ordinance was to implement the recommendation of an independent consultant to help speed up the grant approval process. Although this ordinance has been the law since 2002, it was never officially codified in the Metro Code. Subsequently, in 2006 the council approved Ordinance No. BL2006-1015 to allow donations of less than \$5,000 to be approved by resolution. Donations in excess of \$5,000 must be approved by ordinance.

This ordinance codifies the existing practice regarding the approval of grants by resolution, and provides that all donations of less than \$5,000 may be accepted by the recipient department without council action. The amount of staff time and resources associated with approving small donations by resolution in many cases outweighs the value of the donation. Donations in excess of \$5,000 would require council approval by resolution.

ORDINANCE NO. BL2014-819 (A. DAVIS) – This ordinance, as amended, amends the Metro property standards code pertaining to the definition of high weeds. This code provision was last amended in 2005 to require all exterior property areas to be maintained free from weeds in excess of twelve inches. "Weeds" include all grasses, annual plants, and vegetation, but does not include trees, shrubs, cultivated flowers, ornamental grasses, and gardens. The code also exempts parks and greenways, as well as property in a "natural state" subject to an intentional design on file with the beautification commission. The codes department has interpreted the exclusion of shrubs as preventing the department from citing property owners who have wild, uncultivated bushes growing in their yards.

This ordinance would define "weeds" as all grasses, annual plants, and vegetation that grow without reasonable intent or purpose to cultivate, harvest, or use for human consumption, or are not otherwise trimmed or controlled. Ornamental grasses, trees, trimmed shrubs, or cultivated flowers and gardens would not be considered weeds.

ORDINANCE NO. BL2014-820 (STEINE & DOMINY) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Carillon II Investment Partners to fund the operation and maintenance of a public pressure sewer extension at the Heron Pointe development. The developer will be will be constructing 3,899 linear feet of 4" sewer main and a new pump station to serve the three phases of the Heron Pointe subdivision in lieu of constructing multiple individual sewer pump stations. Carillon has agreed to pay \$250,000 to offset the future costs associated with the maintenance of this infrastructure.