



METRO COUNCIL OFFICE

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Mike Jameson, Director and Special Counsel
Mike Curl, Finance Manager
Metropolitan Council Office

COUNCIL MEETING DATE: August 15, 2017

RE: Analysis and Fiscal Notes

Unaudited Fund Balances as of 8/9/17:

4% Reserve Fund	\$40,964,043*
Metro Self Insured Liability Claims	\$4,622,803
Judgments & Losses	\$2,918,243
Schools Self Insured Liability Claims	\$4,234,885
Self-Insured Property Loss Aggregate	\$5,270,476
Employee Blanket Bond Claims	\$651,832
Police Professional Liability Claims	\$2,409,280
Death Benefit	\$1,592,488

*This assumes unrealized estimated revenues in FY18 of \$30,902,482.

Note: No fiscal note is included for any legislation without significant financial impact.

– RESOLUTION ON PUBLIC HEARING –

RESOLUTION NO. RS2017-822 (ROBERTS) – This resolution would approve an exemption for Bare Bones Butcher, located at 906 51st Avenue North, from the minimum distance requirements for obtaining a beer permit.

The Metro Code of Laws 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, several exceptions exist to the distance requirements. Facilities within the USD separated from these protected establishments by state or federal four-lane highways are exempt, as are retailer on-sale beer permit holders in MUL districts and events catered by holders of caterers' permits. (See, Code Section 7.08.090(A)). Additionally, the Code provides a mechanism to exempt (a) restaurants or (b) any retail food store from Metro's minimum distance requirements, allowing each to obtain a beer permit upon the adoption of a resolution by the Council. (See, Code Section 7.08.090(E)). Until recently, this Code section further required restaurants to have state on-premises liquor consumption licenses to obtain such exemption. However, Ordinance No. BL2016-454, which was passed on November 15, 2016, eliminated this requirement.

A public hearing must be held by the Council prior to voting on resolutions brought under Section 7.08.090(E).

– RESOLUTIONS –

RESOLUTION NO. RS2017-823 (A. DAVIS, COOPER, & OTHERS) – This resolution would authorize the execution of an option agreement for the purchase of parcels at 864 and 865 Idlewild Drive, 0 Fernbank Drive, and 0 Yale Avenue as part of Metro’s overflow abatement program. The option for these parcels, consisting of approximately 7.31 acres, specifies a price of \$95,500 for this fee simple acquisition.

The Council previously approved acquisition of the properties on Idlewild Drive and Fernbank Drive. The director of public property has subsequently negotiated the purchase of the adjacent property on Yale Avenue. The option agreement was signed on May 30, 2017 and is valid for a period of ninety (90) days, expiring on August 28, 2017.

Section 2.24.250.F of the Metro Code allows the Director of Public Property Administration to negotiate the purchase of such property, subject to approval of the Metro Council by resolution. This was approved by the Planning Commission on July 20, 2017.

Fiscal Note: The \$95,500 price for this acquisition would be paid from the W&S Construction Capital Projects FY10 Fund (#47410).

RESOLUTION NO. RS2017-824 (SYRACUSE & COOPER) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-825 (COOPER & MURPHY) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-826 (COOPER & MURPHY) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-827 (COOPER, ALLEN, & ELROD) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-828 (O’CONNELL, ALLEN, & ELROD) - This resolution would authorize Cafe Intermezzo Nashville, LLC to construct, install, and maintain an aerial encroachment at 205 Demonbreun Street. The encroachment consists of decorative flags, gooseneck lighting, crown molding, and a two-sided 40" projecting sign.

The applicant must pay all costs of construction, installation and maintenance of the encroachments and must further indemnify the Metropolitan Government from all claims in

connection with the construction and maintenance. The applicant is also required to post a certificate of public liability insurance with the Metropolitan Clerk naming the Metropolitan Government as an insured party. The applicant must also hold the Metropolitan Government harmless from all claims connected with the installation.

The Metropolitan Government retains the right to pass resolutions or ordinances regulating the use of surrounding streets, including the right to construct and maintain utilities, and to order the relocation of facilities at the expense of Cafe Intermezzo Nashville, LLC. Metro further retains the right to repeal approval of the encroachment without liability.

Plans for the encroachment must be submitted to the Director of Public Works for approval, along with all work and materials; and the installation, when completed, must be approved by the Director. The sign's construction must be carefully guarded and must be completed promptly, so as to cause the least inconvenience to the public.

Section 13.16.030 of the Metro Code allows the Council to approve encroachments by Resolution. This proposal has been approved by the Planning Commission.

RESOLUTION NO. RS2017-829 (O'CONNELL, ALLEN, & ELROD) - This resolution would authorize 104 5th Avenue South Investors, LLC to construct, install, and maintain an aerial encroachment at 104 5th Avenue South. The encroachment consists of a 16'x14' double-faced, illuminated projecting sign.

The applicant must pay all costs of construction, installation and maintenance of the sign and must further indemnify the Metropolitan Government from all claims in connection with its construction and maintenance. The applicant is also required to post a certificate of public liability insurance with the Metropolitan Clerk naming the Metropolitan Government as an insured party. The applicant must also hold the Metropolitan Government harmless from all claims connected with the installation.

Metropolitan Government retains the right to pass resolutions or ordinances regulating the use of surrounding streets, including the right to construct and maintain utilities, and to order the relocation of facilities at the expense of 104 5th Avenue South Investors, LLC. Metro further retains the right to repeal approval of the encroachment without liability.

Plans for the encroachment must be submitted to the Director of Public Works for approval, along with all work and materials; and the installation, when completed, must be approved by the Director. The sign's construction must be carefully guarded and must be completed promptly, so as to cause the least inconvenience to the public.

Section 13.16.030 of the Metro Code allows the Council to approve encroachments by Resolution. This proposal has been approved by the Planning Commission.

– ORDINANCES ON SECOND READING –

BILL NO. BL2017-828 (HURT) – This ordinance would alter references to “sexually oriented business” within Chapter 6.54 of the Metro Code of Laws in favor of “adult entertainment or sexually oriented business” wherever it appears in this chapter. Chapter 6.54 lists the various regulations and restrictions concerning "Sexually Oriented Businesses".

New definitions would be added in Section 6.54.010 to include "adult" or "adult entertainment". These definitions mirror those of the current "sexually oriented" definitions. Other than the name changes, there would be no substantive changes to the regulations in this chapter.

Under Tennessee’s Adult-Oriented Establishment Registration Act, “adult entertainment” is defined to refer to exhibitions of adult-oriented motion pictures, live performances, displays or dances. (Tenn. Code Ann. §7-51-1102).

Fiscal Notes: The cost for changing the name on stationery, business cards, and signage would be approximately \$2,500.

BILL NO. BL2017-829 (K. JOHNSON & VERCHER) – This ordinance would add a requirement in Section 10.20.110.C of the Metro Code of Laws (MCL) concerning trash carts. If no functional trash container from Public Works is present on the premises at the time a new owner purchases the property, Public Works would be required to provide a container at no charge if the property owner submits a request within fifteen (15) days of the verified purchase of the property.

Chapter 10.20 of the Metro Code has historically assigned responsibility to the property owner for lost, stolen or damaged carts. During a ten-year period from 2003 to 2013, the Public Works Department had a contract with a third-party vendor who agreed to provide replacement carts at the contractor’s expense. During that period, an average of 2,550 carts were replaced annually. When the contract ended in 2013, Public Works again began charging for replacement carts pursuant to the original Metro Code. Requests for replacements then plummeted to slightly more than 800 replacement requests per year.

It is anticipated that the sponsors will defer this Ordinance. If not, a substitute will likely be offered to correct a reference in the caption to the replacement of lost, stolen, or damaged trash carts.

Fiscal Note: The current cost of replacing a trash cart from Metro is approximately \$46.50 per cart.

BILL NO. BL2017-834 (SYRACUSE) – Paragraph D of Section 7.08.140 of the Metro Code of Laws (MCL) currently declares it to be unlawful "to sell, give away, or allow beer to be

consumed on any premises granted a permit under this chapter from three o'clock (3:00) a.m. to six o'clock (6:00) a.m. on weekdays and from three o'clock (3:00) a.m. to ten o'clock (10:00) on Sundays.

Tennessee Code Annotated §57-4-203(d) was recently amended by the Tennessee General Assembly to allow restaurants meeting certain criteria to serve alcoholic beverages at any time of day except from 3:00 a.m. to 4:00 a.m. But TCA §57-4-102(1) excludes beer from the definition of "alcoholic beverages."

The ordinance under consideration would amend the time restrictions in the Metro Code relating to beer to mirror the state legislation for alcoholic beverages, allowing permit holders to sell, give away or allow the consumption of beer at any time of day except 3:00 a.m. to 4:00 a.m.

BILL NO. BL2017-835 (MURPHY) – Section 16.40.150 of the Metro Code prohibits work on a building or structure between the hours of 12 midnight on Saturday and 12 midnight Sunday (with exceptions for homeowners working on their residence). Persons working on buildings and structures adjacent to residential districts must also refrain from emitting noise exceeding 70 Db(a) between 9 pm and 6 am. (Section 16.44.030).

Additionally, section 16.28.236 of the Code requires signs to be posted at major construction projects which post information including a rendering of the building, expected completion date, and contact information for the property owner, developer and contractor. But no information is required to be posted regarding noise limits, the activities allowed, or time restrictions.

Section 16.28.230 of the Metro Code of Laws (MCL) lists the requirements for posting building permits on the front of the premises before work begins. This ordinance would add a requirement to this section for a project information sign to be posted at all project sites in English and Spanish when the permit valuation is greater than \$2,500. This sign would be required to list a phone number for the project applicant as well as a phone number to use for submitting a complaint to the Codes Department.

One double-sided 24" x 36" sign would be required to be posted for every fifty (50) feet of site frontage. Such signs would be required to state:

No work is allowed to be performed on this site between the hours of 12:00 midnight Saturday night and 12:00 midnight Sunday night, unless a special permit issued by the Director of Codes Administration is posted in a conspicuous place on these premises. No noise in excess of 70 Db(a) shall be emitted from construction equipment in or beside residential districts between 9:00 pm and 6:00 am.

BILL NO. BL2017-836 (COOPER) – This ordinance would authorize the Industrial Development Board of the Metropolitan Government (IDB) to negotiate and accept payments in lieu of ad valorem taxes for the benefit of Keystone Automotive Industries, Inc. Keystone plans to construct an office building at 5846 Crossings Boulevard in Antioch for its North American support headquarters in 2018. It is estimated that 120 new full-time employees will be employed at the office by 2021 and that the project will result in capital investments of approximately \$27,250,000.

For purposes of this agreement, the "Jobs Target" is eighty percent (80%) of the anticipated increase in the number of full-time equivalent jobs. This would total 45 jobs by December 31, 2019, 80 by December 31, 2020, and 120 by December 31, 2021 and 2022.

State law permits local governments to delegate the authority to industrial development boards to enter into payment-in-lieu-of-taxes (PILOT) agreements, provided the payments are in furtherance of the public purpose of the board. PILOT agreements essentially provide tax abatements for real and/or personal property taxes the company would otherwise be required to pay to the Metropolitan Government. PILOTs are a tool utilized by Metro to provide incentives to large employers to create job opportunities and are subject to approval by the Council.

As required by the Metro Code, Keystone would be required to manage a diversified business enterprise (DBE) program with a goal of 20% of the project's hard construction costs spent with DBE firms. The company would be required to provide quarterly reports to the Council regarding DBE participation. The company would also be required to use Metro's workforce development program to ensure reasonable efforts are made to use Davidson County residents in the construction of the project.

Fiscal Note: This ordinance would provide a 60% real property tax abatement for six (6) years, assuming the building is completed by 2018. Specifically, the abatement would be 60% of the difference between the current real property taxes and what would otherwise be owed as a result of the improvements to the property. This would result in a total tax abatement of approximately \$206,337 per year through December 31, 2023.

If the number of new jobs in any given year is lower than the "Jobs Target" for that year, Keystone would be required to make an additional payment for that year. This would be an amount equal to the 60% of the increment that was abated, multiplied by two times the proportion by which the target was missed.

For example, the target for 2020 is 80. If only 60 jobs were added, the proportion of the miss would be 25% (20/80). This would be multiplied by two, resulting in a 50% penalty. Since the abatement is defined at 60% of the standard ad valorem tax, it would be reduced to 30% for that year.

It should be noted that the penalty is capped at 100% of the abatement. Regardless of how badly a jobs target is missed, Keystone would not be required to pay anything higher than the

full standard ad valorem property taxes that would normally be due in the absence of this PILOT agreement.

BILL NO. BL2017-837 (VERCHER, K. JOHNSON, & OTHERS) – This ordinance would authorize the fee simple acquisition of real property by negotiation or condemnation for the purpose of building a new Metropolitan Nashville Police Precinct. This addition would consist of parcels at 2705 Highmeadows Drive as well as 2419, 2491, 2501, and 2505 Murfreesboro Pike.

The five parcels to be acquired are owned by the K Mart Corporation. The total appraised value of the parcels as shown on the current property records is \$8,749,800. However, it would be necessary to perform a new appraisal to determine the current fair market value of the parcels.

This was approved by the Planning Commission on July 11, 2017.

Fiscal Note: The final price for the acquisition of these properties cannot exceed \$7,450,000.

BILL NO. BL2017-838 (ALLEN) – This ordinance would update Section 5.24.010 of the Metro Code of Laws by adopting the property identification maps for the Metropolitan Government as of January 1, 2017 as the official maps for the identification of real estate for tax assessment purposes. This is a routine adoption made on an annual basis.

BILL NO. BL2017-839 (O'CONNELL, ELROD, & ALLEN) – This ordinance would authorize Third and Lea Partners, LLC to install, construct, and maintain underground encroachments in the right-of-way located at 615 3rd Avenue South. These would consist of raised planters, sidewalk grade planters, trees, irrigation, and drainage encroaching the right-of-way.

Third and Lea Partners, LLC has agreed to indemnify and hold the Metropolitan Government harmless from any and all claims in connection with the installation and maintenance of the encroachments, and would be required to provide a \$2 million certificate of public liability insurance naming the Metropolitan Government as an insured party.

This proposal has been approved by the Planning Commission.

BILL NO. BL2017-841 (WITHERS, ALLEN, & ELROD) – This ordinance would abandon easement rights that were retained by Council Bill O62-279 for any existing utilities on property located at 804 Sylvan Street, formerly known as Alley #276. It has been determined by Metro Water Services and Public Property Administration that these easement rights are no longer needed.

Amendments to this legislation may be approved by resolution.

This has been approved by the Planning Commission.

BILL NO. BL2017-842 (A. DAVIS, ALLEN, & ELROD) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning a portion of Loftin Avenue right-of-way.

This has been approved by the Traffic and Parking Commission and the Planning Commission.

A housekeeping amendment will be required to change the mandatory referral number in the caption from 2017M-018AB-001 to 2017M-019AB-001.

– ORDINANCES ON THIRD READING –

BILL NO. BL2017-799 (LEONARDO) – Section 17.08.030 of the Metro Code of Laws (MCL) presently includes "Construction/Demolition Landfill" as permitted with a Special Exception (SE) in the AG, AR2a, MUI, and MUI-A Districts. The ordinance under consideration would replace this as a use Permitted With Conditions (PC) in these districts.

The same section also presently includes "Sanitary Landfill" as a use permitted with a Special Exception (SE) in the AG, AR2a, IWD, IR, and IG Districts. This would be replaced as a use Permitted With Conditions (PC) in these districts.

This ordinance would also modify Section 17.16.110.A. to add the requirement for the Council to approve Construction/Demolition and Sanitary Landfills in accordance with Tennessee Code Annotated (TCA) 68-211-701, *et seq.* These changes are the result of the Council's previous adoption of the so-called Jackson Law (T.C.A. 68-211-701, *et seq.*) on May 2, 2017, thereby requiring Council approval of landfills and solid waste disposal and processing facilities.

Also, Section 17.16.110 of the MCL would be amended by adding Section E. This new section would add the following requirements for sanitary landfills:

1. The minimum lot area would be one hundred (100) acres.
2. All buildings, structures, storage containers and areas, and vehicle loading/unloading areas would be required to be a minimum of one hundred (100) feet from any property line, two hundred fifty (250) feet from any residential zoning district boundary, five hundred (500) feet from any residential structure, and two thousand (2,000) feet from the property line of any school or park.
3. Screening in the form of a landscape buffer yard would be required along common property lines in all residential zone districts and districts permitting residential use.
4. Driveway access would be, at a minimum, from a collector street, not bounded by any residential zoning district from the driveway access point to the street's intersection with an arterial street. A traffic impact study would be required to demonstrate that traffic generated to/from the site would only use streets where the existing level of service is "D" and is forecasted to remain at "D" or better with the proposed landfill traffic.
5. Approval of the Metro Council would be required (per adoption of the Jackson Law.)

Finally, Section 17.40.280 would be modified to remove the existing requirement for the location of a sanitary landfill or waste transfer facility to be approved by Council *resolution* prior to the public hearing by the Board of Zoning Appeals (BZA). (Upon adoption of the Jackson Law, that requirement was replaced with a requirement for approval by *ordinance* with public hearing.)

BILL NO. BL2017-827 (O'CONNELL) – This ordinance would add minor updates to the Downtown Code regulating plan, originally adopted in 2010. Ordinance No. BL2009-586 created the new zoning district known as the “Downtown Code” (DTC), applicable to 823 acres of downtown Nashville. Most downtown properties were previously zoned commercial core (CC) or core frame (CF), permitting an array of high intensity uses, although a small number of parcels were zoned for industrial and mixed-uses. BL2009-588 consolidated these parcels into one zoning district governed by a comprehensive development plan.

The DTC comprehensive development plan is a 99-page document that governs the development of downtown. The objectives of the DTC are to allow a broad range of residential and non-residential uses, reduce reliance on automobiles, create better pedestrian streetscapes, create more open spaces, and promote infill development. To accomplish these goals, the DTC provides greater development rights, allows additional uses, and grants height bonuses for developments that incorporate open space, workforce housing, and other DTC priorities. The DTC divides the downtown area into 15 sub-districts, with each sub-district having its own set of guidelines for setbacks, height, width, and depth.

The ordinance under consideration would update the DTC standards under Chapter 17.37 of the Metro Code of Laws (MCL) by inserting two bullet points under the "Regulating Plan":

- Sub-district boundaries would extend to the centerline of all abutting public street rights-of-way. Any properties not within the sub-district boundaries of the regulating plan including, but not limited to, rail and river corridors would be considered an open space sub-district.
- Unless otherwise regulated by the DTC sub-district standards, property that is within more than one sub-district could apply for a minor modification to use the standards of either sub-district. If the Executive Director of the Planning Department finds that additional consideration is warranted, then the modification request may be submitted to the Downtown Code / MDHA Design Review Committee as a major modification.

Also, this ordinance would insert the phrase "or modifications explicitly noted herein as minor" after the words "percent or less" in the first bullet point under "Modifications to the Standards".

BILL NO. BL2017-830 (VERCHER, ELROD, & OTHERS) – This ordinance would authorize the acquisition of certain easements and property rights by negotiation or condemnation for public projects for Antioch Pike / Richards Road Sidewalk Improvements.

This has been approved by the Planning Commission.

Fiscal Note: The final price to be paid for the easements and property rights has not yet been determined. This would be paid from the FY17 Capital Projects Fund.

BILL NO. BL2017-831 (HAGAR, ELROD, & ALLEN) – This ordinance would authorize the acquisition of certain permanent and temporary easements by negotiation for the Mount Vernon Drive Stormwater Improvement Project for four (4) properties located at 3939 and 0 Old Hickory Boulevard, and 116 and 117 Mt. Vernon Drive.

This was approved by the Planning Commission on May 31, 2017. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2017-832 (WITHERS, ALLEN, & ELROD) – This ordinance would authorize the Metropolitan Development and Housing Authority (MDHA) to install, construct, and maintain aerial and underground encroachments in the right-of-way located at 800 Sylvan Street. These would consist of bio-retention areas, an irrigation system, banners, security cameras (on NES light poles), and handrails encroaching the right-of-way.

MDHA has agreed to indemnify and hold the Metropolitan Government harmless from any and all claims in connection with the installation and maintenance of the encroachments, and would be required to provide a \$2 million certificate of public liability insurance naming the Metropolitan Government as an insured party.

This proposal has been approved by the Planning Commission.

BILL NO. BL2017-833 (COOPER) – The U.S. Department of Housing and Urban Development (HUD) imposes a duty upon all cities and public housing authorities that receive federal funds for housing and community development to “affirmatively further fair housing (or AFFH). This duty includes requirements not to discriminate in housing programs and to address segregation and barriers related to race, color, religion, sex, familial status, national origin, or disability.

To fulfill its obligations as a HUD fund recipient, the Metropolitan Government, along with the Metropolitan Development and Housing Agency (MDHA), is required to conduct an Assessment of Fair Housing (AFH) that includes an analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals prior to the next Five-Year Consolidated Plan and Five-Year Public Housing Authority (PHA) Plan.

The next Five-Year Consolidated Plan cycle will begin June 1, 2018. Metro is required to submit an Assessment of Fair Housing to HUD no later than 270 days prior to the start of the next cycle. Therefore, the submission deadline is September 1, 2017.

MDHA's current Five-Year PHA Plan cycle would not begin until October 1, 2019. However, MDHA wishes to be included in a joint AFH with Metro to be submitted to HUD no later than September 1, 2017. This is permissible by HUD, but an agreement formalizing the collaboration and respective responsibilities related to individual goals would be required.

The public comment period on the draft AFH concluded on July 10, 2017. Five public hearings were held throughout Davidson County and an additional public hearing was held before the MDHA Board of Commissioners.

The ordinance under consideration would adopt the 2017 Joint Assessment of Fair Housing (AFH) for Metro and MDHA. It would also authorize the Mayor to submit the AFH to HUD and to execute a memorandum of understanding with MDHA to formalize the collaboration and respective responsibilities related to individual goals under the AFH.

The applicable goals and priorities identified in the AFH would be incorporated into MDHA's next Five-Year Consolidated Plan. Progress on meeting those goals would be reported by MDHA in the Consolidated Annual Performance and Evaluation Reports (CAPER).

Amendments to the AFH related to local government requirements may be adopted by resolution.

GRANTS AND DONATIONS LEGISLATION – AUGUST 15, 2017

Legislative Number	Parties	Amount	Local Cash Match	Term	Purpose
RS2017-824	From: The Friends of Two Rivers Mansion To: Metro Nashville Parks and Recreation Department	Not to exceed \$18,870.80	\$37,229.47	July 1, 2017 through June 30, 2018	The grant proceeds would be used to provide funding for one employee's salary to provide administrative support at Two Rivers Mansion. This would pay for 19 hours per week for 52 weeks. This was approved by the Parks Board on July 11, 2017.
RS2017-825	From: Tennessee Department of Labor and Workforce Development To: Nashville Career Advancement Center (NCAC)	\$3,820	\$0	The end date of the grant would remain June 30, 2018.	This second amendment to the grant would add \$3,820 to the grant proceeds for a new grant total of \$2,004,589 to establish career services for eligible adults, youth, and dislocated workers with barriers to employment, education, training, and support services to succeed in the labor market. \$1,804,131 of this revised grant total would be used as program funds. The remaining \$200,458 would be used for administrative costs.
RS2017-826	From: Tennessee Department of Labor and Workforce Development To: Nashville Career Advancement Center (NCAC)	\$2,846	\$0	The end date of the grant would remain June 30, 2018.	This second amendment to the grant would add \$2,846 to the grant proceeds for a new grant total of \$1,492,490 to establish programs to prepare adult service recipients for employment. \$1,343,242 of this revised grant total would be used as program funds. The remaining \$149,248 would be used for administrative costs.

Legislative Number	Parties	Amount	Local Cash Match	Term	Purpose
RS2017-827	From: Keep America Beautiful / Lowe's Community Partner Grant To: Metro Public Works Department	Not to exceed \$20,000	\$0	The final report would be due before December 1, 2017.	The grant proceeds would be used to plant trees and daffodils at schools during the Hands on Nashville Day and Nashville Tree Foundation's ReLeafing Day.