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MAYOR



## METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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### Legal Opinion 2005-01

To: Mr. Clyde Smith, Chairman  
Employee Benefit Board

Date: February 22, 2005

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You have requested a legal opinion from the Department of Law on the following questions:

#### Questions

1. What procedures must be followed in order to amend the definition of disability for the system of employee benefits for the officers and employees of the Metropolitan Government?
2. What is the correct procedure for determining the employer contribution rate for the Metropolitan Government's contribution to the employee pension fund?

#### Answers

1. In order to amend the system of employee benefits, a Study and Formulating Committee appointed by the Mayor and approved by the Metropolitan Council must first study the system of employee benefits and submit to the Employee Benefit Board the amendments that the study indicates are necessary. The Employee Benefit Board may then accept or suggest amendments to those proposed by the Study and Formulating Committee. The Employee Benefit Board must submit the proposed amendments along with its recommended changes to the Metropolitan Council for its action.
2. While the Employee Benefit Board has authority under the Metropolitan Code to determine the employer contribution rate, the Metropolitan Charter requires the annual contribution be actuarially determined and result in a plan that is actuarially sound. As long as the rate ultimately

adopted in the operating budget meets these Metropolitan Charter requirements, the officials involved in preparation and adoption of the budget, the Finance Director, the Mayor, and the Metropolitan Council, have authority under the Metropolitan Charter to raise or lower the rate proposed by the Employee Benefit Board.

## **I. Amending the System of Employee Benefits**

### Background

Ordinance No. BL2005-511 proposes to amend the system of employee benefits by amending the definition of “disability” in Sections 3.28.010 and 3.29.010 of the Metropolitan Code. (Attachment A) This bill was introduced for consideration by the Metropolitan Council on January 18, 2005. The Study and Formulating Committee appointed in 2001 filed a report in October, 2002, in which it reported its recommendation that the definition of disability not be changed. (Attachment B) The Study and Formulating Committee did not submit an amendment regarding the definition of disability to the Employee Benefit Board and, therefore, there has been no recommendation to the Metropolitan Council from the Employee Benefit Board on such an amendment.

Section 3.28.010, the section applicable to Division A members<sup>1</sup> of the system, was first adopted as the result of action by the Study and Formulating Committee, the Employee Benefit Board, the Metropolitan Council, and the Mayor. *Metropolitan Government Ordinance* 64-320, §7.05. (Attachment C). The language in the current Section 3.28.010 is identical to the language that was adopted in 1964. Section 3.29.010, the section applicable to Division B members of the system, was first adopted as the result of action by the Study and Formulating Committee, the Employee Benefit Board, the Metropolitan Council, and the Mayor. *Metropolitan Government Substitute Ordinance* O95-1452, §49. (Attachment D) The language in the current Section 3.29.010 is identical to the language that was adopted in 1995.

As recently as April, 2003, the system of employee benefits was amended following this Charter mandated procedure: the members of a Study and Formulating Committee were appointed by the Mayor and approved by the Metropolitan Council, *Minutes of the Metropolitan Council*, May 15, 2001, and June 19, 2001 (Attachment E); that committee was given an extension from its one year time limit by resolution of the Metropolitan Council as required by §13.06 of the

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<sup>1</sup>In 1964, the Metropolitan Government established a pension system composed of two plans - a General Government Plan and a Fire and Police Plan. Effective July 1, 1995, the pension system ordinances were amended; the existing two plans were both designated as Division A, while the two new plans - General Government and Fire and Police Plans - were designated Division B.

Metropolitan Charter, *Metropolitan Council Resolution* RS2002-1090 (July 17, 2002) (Attachment F); the amendments to the plan were submitted to and approved by the Employee Benefit Board, *Study and Formulating Committee, Final Report*, October 15, 2002 and *Minutes of Employee Benefit Board*, February 4, 2003, pp. 7-8 (Attachment G); those amendments were submitted to and adopted by the Metropolitan Council, *Metropolitan Council Ordinance* BL2003-1347 (April 1, 2003) (Attachment H); and approved by the Mayor on April 3, 2003. As a result of this process, correctional officers employed by the Davidson County Sheriff's Department and special police employed by the Department of Parks and Recreation were moved into the fire and police pension plan.

### Analysis

#### **Tennessee Constitution, Tennessee Statutes and Metropolitan Charter.**

The Constitution of the State of Tennessee was amended in 1953 to permit consolidated city and county governments. Tenn. Const. Art. XI, §9. In 1957 the General Assembly adopted the legislation necessary to allow a consolidated government to be created. See T.C.A. §§7-1-101 through 7-3-508. The Metropolitan Government was created pursuant to the authority of Tennessee Code Annotated, Title 7. The Metropolitan Charter was approved by referendum in June, 1962, and the Metropolitan Government was implemented on April 1, 1963. *Metropolitan Charter* § 20.21.

The enabling state legislation required the Metropolitan Charter to provide for the creation and regulation of the employees' retirement and pension system. T.C.A. §7-2-108(17). The Metropolitan Charter does provide for a system of employee benefits plans in Article 13. *Metropolitan Charter* §§ 13.01 through 13.13. Section 13.06 details the procedures for the adoption of the first plan for employee benefits as well as for the way in which amendments to the plan are to be considered. *Metropolitan Charter* § 13.06.<sup>2</sup> That section states:

**Sec. 13.06. Study and formulating committee; preparation, consideration and adoption of plan for employee benefits; subsequent committees provided for.**

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<sup>2</sup> The Charter of the former City of Nashville contained the provisions of the pension system. The Charter was adopted by private act of the Tennessee General Assembly. The pension and benefit system for the County of Davidson was also provided by private act of the General Assembly. Amendments to either were by action of the General Assembly that were required to be ratified by 2/3 vote of the local legislative body or by approval in an election by a majority of those voting. Tenn. Const. Art. XI, § 9.

There shall be a study and formulating committee consisting of five (5) persons appointed by the mayor and approved by the council. This committee shall make a study and formulate a plan for employee benefits, which shall include disability and retirement benefits and which may include medical insurance benefits and life insurance benefits. Such study shall include the design, the possible coordination of any of the employee benefit plans of such system with the Social Security Act, the administration and financing of such system and all properly related matters. For the purposes of its study and formulation, the committee is authorized to:

(a) Within the limits of its appropriation, employ the services of legal counsel, investment consultants, actuarial consultants, and the services of others which in the sole discretion of the committee may be necessary to perform its duties.

(b) Obtain from any department, board, commission, agency, officer or employee of the metropolitan government information and data with respect to the compensation of any officer or employee; his length of service with the metropolitan government, the former City of Nashville or the former County of Davidson; his retirement or other cause of termination of employment; his contribution to any employee benefit plan of the metropolitan government as well as any retirement plan listed in section 13.09 (a)-(c) of this article; and such other pertinent information and data as the board may require.

The council is hereby authorized and required to appropriate such funds as may be reasonably necessary for the work of said committee.

Within one year after its appointment, unless the time be extended by resolution of the council, the study and formulating committee shall submit to the employee benefit board a proposed system of employee benefit plans for officers and employees of the metropolitan government. Said board shall either approve the plan or indicate the specific changes which it recommends in connection therewith. Thereupon the board shall submit the approved plan or the original plan with recommended changes to the council for its action thereon and for the enactment of a system of employee benefit plans.

The mayor shall from time to time thereafter, and at least once every five years, appoint a subsequent study and formulating committee to study benefits, contributions, extent of coverage, actuarial soundness and related matters in connection with the system of benefit plans and

to submit to the employee benefits board such amendments as such study may indicate as necessary.

(emphasis added).

Provisions of the Metropolitan Charter are mandatory and must be followed. *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988). A Charter's authority is summarized in the *City of Lebanon* case:

In the almost 200 years of this State's existence, a substantial and comprehensive body of law controlling the exercise of municipal powers has evolved. Fundamental in this law is that municipalities may exercise only those express or necessarily implied powers delegated to them by the Legislature in their charters or under statutes. *E.g., Barnes v. City of Dayton*, 216 Tenn. 400, 410, 392 S.W.2d 813, 817 (1965); *Adams v. Memphis & Little Rock R.R. Co.*, 42 Tenn. 645, 654 (1866). As the Court of Appeals stated in *Warren v. Bradley*, 39 Tenn.App. 451, 459, 284 S.W.2d 698, 702 (1955), "it is universally recognized that municipal corporations can exercise no powers which are not in express terms, or by reasonable intendment, conferred upon them, and hence have no power [to do an act], in the absence of a charter provision or statutory enactment empowering them to do so either in express terms or by necessary implication." The charter is the organic law of the municipality to which all its actions are subordinate. *Marshall & Bruce Co. v. City of Nashville*, 109 Tenn. 495, 512, 71 S.W. 815, 819 (1902).<sup>3</sup> See also *Wilgus v. City of Murfreesboro*, 532 S.W.2d 50, 52 (Tenn.App.1975). Moreover, " [t]he provisions of the charter are mandatory, and must be obeyed by the city and its agents...." *Barnes v. Ingram*, 217 Tenn. 363, 373, 397 S.W.2d 821, 825 (1965). When a municipality fails to act within its charter or under applicable statutory authority, the action is *ultra vires* and void or voidable. *Crocker v. Town of Manchester*, 178 Tenn. 67, 70, 156 S.W.2d 383, 384 (1941). Under Tennessee law, a municipal action may be declared *ultra vires* for either of two reasons: (1) because the action was wholly outside the scope of the city's authority under its charter or a statute, or (2) because the action was not undertaken consistent with the mandatory provisions of its charter or a statute.

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<sup>3</sup> "Municipal corporations have power to pass ordinances, but, in order to be enforceable, they must be legal, reasonable, constitutional, and not contrary to valid charter provisions; and, if they do not comply with these requirements, they will be set aside by the courts as invalid and illegal." *Marshall & Bruce Co. v. City of Nashville*, 109 Tenn. 495, 512, 71 S.W. 815, 819 (1902).

*City of Lebanon v. Baird*, 756 S.W.2d at 241; See, *McQuillin The Law of Municipal Corporations*, § 12.141 (3<sup>rd</sup> Ed.)

**Limitation on Employee Benefits Board's and the Metropolitan Council's Authority.** The language of Section 13.06 of the Metropolitan Charter requires that before an amendment to the system of employee benefits may be considered, a Study and Formulating Committee must recommend an amendment. In the absence of such recommended amendment, an amendment to the system of employee benefits cannot be considered by the Employee Benefit Board or the Metropolitan Council. The language describing the responsibility of the Study and Formulating Committee is:

... to study benefits, contributions, extent of coverage, actuarial soundness and related matters in connection with the system of benefit plans and to submit to the employee benefits board such amendments as such study may indicate as necessary.

*Metropolitan Charter* § 13.06. In subsections (a) and (b) of Metropolitan Charter § 13.06, the Study and Formulating Committee is given broad authority to acquire all the services and information it decides are necessary from within or from outside the Metropolitan Government. The procedure to be followed by the Employee Benefit Board when it receives the amendment submitted by the Study and Formulating Committee is not set out in the paragraph that discusses future changes. The preceding paragraph that describes the procedure for adopting the original system of employee benefits is the only procedure set out. It is the procedure that has been followed for amendments as recently as 2002<sup>4</sup>, and in the opinion of the Department of Law, is the procedure that the Charter intends to be followed. Inserting “amendment” into that paragraph results in the following:

... (T)he study and formulating committee shall submit to the employee benefit board a proposed system (*proposed amendments*) of employee benefit plans for officers and employees of the metropolitan government. Said board shall either approve the plan (*amendments*) or indicate the specific changes which it recommends in connection therewith. Thereupon the board shall submit the approved plan (*amendments*) or the original plan (*amendments*) with recommended changes to the council for its action thereon.

*Metropolitan Charter* § 13.06 (with added insertion of “amendments”).

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<sup>4</sup> See Attachment F.

The use of the word “(t)hereupon” in the last sentence of that paragraph appears to have been used to create a limitation. “Thereupon” has more than one meaning, as has been discussed by the U.S. Supreme Court as follows:

The word ‘thereupon’ is construed by appellants as an adverb of time, meaning immediately thereafter. But this is only one of its uses. It is employed more frequently to express the relation of cause or of condition precedent. It is in the latter sense that it is used here, and its meaning is that the determination as to the practicability of the project and the making of contracts are precedent conditions to the estimate of cost and public notice. See *Porphyry Paving Co. v. Ancker*, 104 Cal. 340, 342, 37 Pac. 1050. The notice must follow the coming into existence of the conditions.

*Yuma County Water Users’ Ass’n et al. v. Schlecht et al.*, 262 U.S. 138, 145, 43 S.Ct. 498, 500, 67 L.Ed. 909 (1923); *State ex rel. Warnick v. Wilson*, 178 P.2d 277, 280 (Kan. 1947) (“It (‘thereupon’) is used for the purpose of referring to a cause or condition precedent.”).

Applying the definition of “thereupon” that limits the consideration of changes to the system of employee benefits to changes recommended by the Study and Formulating Committee is supported by the lack of a procedure for changes. The Charter clearly expected the system of employee benefits to be carefully studied by the Study and Formulating Committee as evidenced by its authority to acquire a wide range of expert advice and a responsibility to make changes based upon actual data. *Metropolitan Charter* § 13.06 (a) & (b). There is an absence of a procedure in the Charter for Employee Benefit Board or Metropolitan Council initiated changes to be referred for the opinion of the Study and Formulating Committee. Had the Charter intended the Employee Benefit Board or the Council to be able to initiate changes and adopt them in the absence of a recommendation for change, it would have established a referral process as it did in *Metropolitan Charter* § 11.505 for mandatory referrals to the Planning Commission and *Metropolitan Charter* § 11.905 for Traffic and Parking Commission referrals. This absence of a process that would refer proposed changes initiated by the Employee Benefit Board or the Council to the Study and Formulating Committee for its opinion supports the intention to restrict changes to only those changes initiated and recommended by the Study and Formulating Committee. It is unlikely that the Charter would not have provided for an opinion from the Study and Formulating Committee, at a minimum, if the Charter indeed intended for the Employee Benefit Board or the Council to be authorized to initiate changes.

The Metropolitan Charter states that “when any power is vested by this Charter in a specific officer, board, commission or other agency, the same shall be deemed to have exclusive jurisdiction within the particular field.” *Metropolitan Charter* § 2.01, ¶36. Additionally, the Charter states that “(t)he council is authorized to legislate with respect to the powers of the metropolitan government granted by article 2 hereof, except as otherwise provided in this Charter.” *Metropolitan Charter* § 3.06. The authority to initiate amendments to the system of employee benefits as been given to the Study and Formulating Committee by the language of Section 13.06 of the Metropolitan Charter. The courts are likely to interpret this section to have vested that power in the Study and Formulating Committee such that there is a limitation on the authority of the Employee Benefit Board and the Metropolitan Council to initiate amendments to the system of employee benefits. In the absence of a recommended amendment from the Study and Formulating Committee, it is the opinion of the Department of Law that the condition necessary as a prerequisite for the Employee Benefit Board or the Metropolitan Council to have the authority to promulgate legislation amending the system of employee benefits has not been fulfilled and the Metropolitan Council is without authority to amend that portion of the Metropolitan Code.

Courts are to look to the plain language of a statute and give effect to the ordinary meaning of the words. *State v. Jennings*, 130 S.W.3d 43, 46 (Tenn.2004); *Cohen v. Cohen*, 937 S.W.2d 823, 827 (Tenn.1996). We presume that the legislature purposefully chose each word used in a statute and that each word conveys a specific purpose and meaning. See *Jennings*, 130 S.W.3d at 46; *Bryant v. Genco Stamping & Mfg. Co.*, 33 S.W.3d 761, 765 (Tenn.2000). Further, we must “ascertain and carry out the legislature's intent without unduly restricting or expanding a statute's coverage beyond its intended scope.” *Jennings*, 130 S.W.3d at 46 (quoting *Lavin v. Jordon*, 16 S.W.3d 362, 365 (Tenn.2000)). Only if the plain language of a statute is ambiguous must we look beyond the statutory language to determine the legislature's intent. *Id.*

*State v. Denton*, 149 S.W.3d 1, 17 (Tenn. 2004); *Carson Creek Vacation Resorts, Inc. v. State, Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993).

While no Tennessee cases have been found that deal with the limitations on a legislative body's authority due to the lack of the initiation of a change by another governmental body, one case from the State of Washington did deal with such a limitation. The Supreme Court of Washington held that a state statute establishing a process for amending a zoning ordinance and specifying that the zoning ordinance could be amended upon recommendation or concurrence of the planning commission was a limitation on the authority of the city commission. The zoning



ordinance could not be amended by the city commission in the absence of a recommendation or concurrence as it was a pre-condition for the commission's authority and had not been met. *Lauterbach v. City of Centralia*, 49 Wash.2d 550, 558, 304 P.2d 656, 661 (1954); 70 Ops. Cal. Atty. Gen. 214, 1987 WL 247247 (Cal.A.G.); *cf.*, *City of Austin v. Castillo*, 25 S.W.3d 309, 314 (Tex.App. 2000) (Governing body was powerless to dispense with precondition provided in statute of setting the amounts of police assignment pay and the conditions under which it is payable.)<sup>5</sup> Applying this analysis, where the Study and Formulating Committee has found that no change is needed and has not submitted an amendment, an action by the Employee Benefit Board or the Metropolitan Council to adopt an amendment would be without authority and ultra vires.

It is evident that the power conferred by this act was to tax such property, privileges, and other things as had been theretofore taxed, or thereafter ordered to be taxed, by the legislature, or the city under authority of the legislature; but it did not confer the power to create new privileges, and assess taxes for their exercise, and, as we have already seen, no such power exists independent of legislative authority. It clearly appears, therefore, that the contemplated action of the council was illegal and ultra vires;

...

(T)here is a broad distinction between the exercise of legislative authority when the power or jurisdiction to exercise it has been conferred by law and an attempt to legislate upon matters clearly ultra vires. Where there is power and authority conferred by law to do any legislative act, the discretion of the council cannot be controlled; but, when there is no legislative authority or power, injunction will lie. A municipal corporation has no discretion to do any act which is clearly

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<sup>5</sup> "The governing body of every municipality ordinarily possesses power to amend as well as to enact ordinances. Indeed, power in a municipality to legislate on a subject implies, in the absence of provision in the grant of power to the contrary, a power, at any time after enactment of legislation on the subject, to change or alter that legislation in the mode prescribed for, and subject to any limitations imposed on, the exercise of the power. The power to enact ordinances or to adopt resolutions necessarily implies power in the same body to amend them. Even where a city has the power to amend ordinances, that power is neither absolute nor limitless. In some instances, however, the power of amendment of an ordinance need not be implied from a power of enactment and exists under provision of charter or statute. Whether the power to amend exists by implication only or by express provision, an amendment must be within the confines of the charter or statutory authority under which alone the municipal corporation can act; no doctrine of emergency can justify an amendment beyond the legislative power of the municipal corporation." 6 *McQuillin Mun. Corp.* § 21.02 (3rd ed.).

illegal and beyond its power. *Des Moines Gas Co. v. City of Des Moines*, 44 Iowa, 505; *Roberts v. City of Louisville (Ky.)* 17 S. W. 216; High, Inj. § 1241, and cases cited; *People v. Dwyer*, 90 N. Y. 402; *Murphy v. East Portland*, 42 Fed. 308.

*International Trading Stamp Co. v. City of Memphis*, 47 S.W. 136, 137 (Tenn. 1898); *Rutherford v. City of Nashville*, 4 Beeler 499, 168 Tenn. 499, 79 S.W.2d 581, 584 (1935) (stating “(i)t is settled that charter requirements, prescribing the method to be pursued by a municipal body, are mandatory, and unless complied with, any attempted exercise of power is void.”); *State ex rel. Lightman v. City of Nashville*, 2 Beeler 191, 166 Tenn. 191, 60 S.W.2d 161, 162 (1933) (City of Nashville was required to follow Charter preconditions in order to validly adopt a zoning ordinance.)

**Exceeding Amendment Authorized by Study and Formulating Committee.** While the language of Metropolitan Charter § 13.06 seems clear and unambiguous, an issue may be raised about whether the last paragraph would allow an amendment recommended by the Study and Formulating Committee on one subject to then permit the Metropolitan Council to change anything in the entire system of employee benefits. An “amendment” is defined as:

A formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specif., a change made by addition, deletion, or correction; esp., an alteration in wording.

*Black's Law Dictionary* (8th ed. 2004), “Amendment”. The plain language of the Charter section states that the Study and Formulating Committee is to “submit to the employee benefits board such amendments as such study may indicate as necessary.” *Metropolitan Charter* § 13.06. By using the plural of the word “amendment”, the Charter envisions that the Study and Formulating Committee will study benefits, contributions, extent of coverage, actuarial soundness of the plans and related matters of the system and make recommendations to specific areas through the use of multiple amendments with each amendment addressing a different area. In the absence of a specific recommendation resulting in an amendment to a specific area, the Charter limits the Employee Benefit Board and the Metropolitan Council to consideration of the issues covered by the Study and Formulating Committee’s recommended changes addressed in the proposed amendment.

This reasoning is supported by cases that discuss the analogous situation of changes to zoning ordinances that must be reviewed by a planning commission before consideration by the legislative body. In instances where the legislative body amends the legislation that was reviewed by the planning commission, the courts require that such amendment be minor.

If a proposed zoning ordinance is amended so substantially that a new proposal is, in effect, created we think it clear that both the state statute and municipal code provision require it to be submitted to the planning commission for its consideration before the municipal legislative body may finally act upon it. To hold otherwise would defeat the clear intent of the statutory requirement that the legislative body have available, before it acts, the recommendations of the commission. We do not suggest, however, that the test for determining whether a proposed zoning ordinance, as amended, must be resubmitted to a planning commission is the same as the test for determining whether a proposed ordinance, as amended, must be passed on three different days because it became a new bill. The purposes of the two requirements are not identical.

The purpose of requiring submission to the planning commission is to give the legislative body the advantage of the commission's expertise on land use planning with respect to the proposal that it must either adopt or reject. A revision in a proposed zoning ordinance that would not, under Mitchell, create a new bill mandating passage for the requisite number of days under an applicable charter or statute, might nevertheless be so important as to require resubmission of the proposal to the commission. The test is whether the revision is so substantial as to create a strong probability that the commission's recommendation would have been affected by the revision. If the change is both inconsequential and produces no detrimental effects to those who would oppose it, then the revised proposal is not required to be resubmitted.

The lawmaking powers of the municipality being vested in its governing body, there is no requirement that it abide by the commission's suggestions. It is required, however, that it have before it those suggestions when it acts. The statutory requirement is meaningless unless the fundamental considerations created by the terms of the ordinance militating for and against its adoption were actually before the commission. Consideration by the courts of the substantially of the revision is properly limited to an examination of the face of the ordinance.

*Wilgus v. City of Murfreesboro*, 532 S.W.2d 50, 53-54 (Tenn.Ct.App.1975). See, *State ex rel. Browning-Ferris Industries of Tennessee, Inc. v. Board*, 806 S.W.2d 181, 188 (Tenn.App. 1990). The purpose of Charter requirement that legislation amending the system of employee benefits is to originate in the Study and Formulating Committee is to give

the Metropolitan Council, the Employee Benefit Board, and the Mayor the advantage of the commission's expertise, study, and consideration of the system of employee benefits and the affect that proposed changes will have. As in the zoning cases, the Charter requirement is meaningless unless the fundamental considerations created by the terms of the proposed amendment militating for and against its adoption were actually before the Study and Formulating Committee.

## II. Determining the Employer Contribution Rate

### Analysis

**Metropolitan Charter and Metropolitan Code.** The Employee Benefit Board is given the responsibility by the Metropolitan Charter to advise<sup>6</sup> the mayor and the council of the anticipated financial requirements of each employee benefit plan so that the financial requirements are included in the budget and tax levy ordinances for the ensuing fiscal year. *Metropolitan Charter* § 13.05(f) (emphasis added)<sup>7</sup>. Further, the Charter requires the retirement plans to be actuarially sound; that is, the annual contributions that must be made by the Metropolitan Government must be determined as “the sum of normal cost and five (5) percent of the unfunded past service liability, where normal cost and past service liability shall be determined actuarially by a qualified independent actuary based on the entry age normal cost method of funding or the unit credit cost method of funding.” *Metropolitan Charter* § 13.10<sup>8</sup>.

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<sup>6</sup> **advice** (ad-vĪs). 1. Guidance offered by one person, esp. a lawyer, to another. *Black's Law Dictionary* (8th ed. 2004), “advice”.

<sup>7</sup> **Sec. 13.05. Duties of metropolitan employee benefit board.**

In addition to the other duties imposed by this Charter or by general law, it shall be the duty of the board to:

...

(f) Advise the mayor and the council of the anticipated financial requirements of each employee benefit plan adopted by the metropolitan government, as well as the retirement plans listed in Section 13.09 (a)-(c) of this article so that such financial requirements shall be included in the budget and tax levy ordinances for the ensuing fiscal year.

<sup>8</sup> **Sec. 13.10. Retirement plans to be actuarially sound.**

Any retirement plan adopted by the metropolitan government pursuant to Section 13.06 hereof shall be actuarially sound; that is, annual contributions shall be made by members of such retirement plans and by the metropolitan government to a fund or funds established and invested for the sole purpose of financing benefits provided in accordance with the provisions of such retirement plans. The amount of such annual contributions by the employees and the metropolitan government shall be determined as the sum of normal cost and five (5) percent of the unfunded past service liability, where normal cost and past

Metropolitan Code § 3.16.050<sup>9</sup> provides that the amount of the annual contribution is to be determined by the Employee Benefit Board using an “employer contribution rate” that is determined in one of two ways. It may be set at 100.3% of the prior year’s rate. Alternatively, it may be set as the ratio of the “actuarially determined contribution level” (the sum of normal cost plus a Board determine percentage of unfunded past liabilities – such percentage not being less than the actuarial valuation interest rate) to the amount of the valuation payroll. Additionally, the Code provides:

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service liability shall be determined actuarially by a qualified independent actuary based on the entry age normal cost method of funding or the unit credit cost method of funding.

- <sup>9</sup> A. The metropolitan government shall contribute to the fund not later than June 30th of each fiscal year an amount equal to a percentage of the annual payroll of members who are eligible employees and who are covered for pension benefits, in accordance with Sections 3.28.010 through 3.28.080, Sections 3.29.010 through 3.29.080, and Chapters 3.32, 3.33, 3.36 and 3.37, the percentage to be known as the "employer contribution rate." The employer contribution rate applicable for any fiscal year shall be determined by resolution of the board at a public meeting held at least four months prior to the beginning date of such fiscal year and filed with the metropolitan clerk and shall be at least the smaller of (1) three-tenths of one percent plus the employer contribution rate applicable to the prior fiscal year, or (2) an employer contribution rate, which shall be the ratio of the actuarially determined contribution level to the amount of the valuation payroll, on the basis of an actuarial valuation of the system made as of the last day of the fiscal year preceding the adoption of the contribution rate. The actuarially determined contribution level shall be the sum of normal cost and a percentage of unfunded past service liabilities, such percentage to be determined by the board at a level at least equal to the actuarial valuation interest rate. The actuarial valuation shall be made by a qualified or accredited actuary according to accepted and sound actuarial principles and methods and based on actuarial assumptions which have been recommended by said actuary and approved by the board.
- B. The total amount of employer contribution shall be divided on a sound actuarial basis between the six Trust Funds, A through F, to provide the benefits to be paid from each of such trust funds under the plans defined in Section 3.08.010 in accordance with the last actuarial valuation as determined by such actuary and approved by the board. The "Metropolitan Employee Benefit Trust Fund of the Metropolitan Government of Nashville and Davidson County" as it exists on the date of the amendment codified in this section, shall be equitably allocated after such date to create Trust Funds A through F respectively on the basis of an actuarial valuation of the system as determined by such actuary and approved by the board. Provided, the metropolitan government shall not contribute to the fund for those employees who are eligible to participate in the state requirement for county paid judges pension plan and who elect to do so. (Ord. 95-1452 §§ 39, 40, 41, 1995; prior code § 32-1-31). M.C.L. § 3.16.050.

The actuarial valuation shall be made by a qualified or accredited actuary according to accepted and sound actuarial principles and methods and based on actuarial assumptions which have been recommended by said actuary and approved by the board. The actuarial valuation shall be made by a qualified or accredited actuary according to accepted and sound actuarial principles and methods and based on actuarial assumptions which have been recommended by said actuary and approved by the board. *M.C.L.* § 3.16.050

While the Metropolitan Code specifies that the Employee Benefit Board is to determine the employer contribution rate, its determination is to be made pursuant to explicit guidelines. These guidelines are set out in the Metropolitan Charter and the Metropolitan Code. They require the Employee Benefit Board:

- base its determination on “accepted and sound actuarial principles and methods and based on actuarial assumptions which have been recommended by (the) actuary and approved by the board” (*M.C.L.* § 3.16.050 (A)); and
- to set the rate such that the pension plans are actuarially sound. *Metropolitan Charter* § 13.10.

**Under funding.** Should the Employee Benefit Board propose an employer contribution rate that is not based on the advice of the actuary such that the rate is not sufficient to maintain the retirement plans’ actuarial soundness, it would be an *ultra vires* action. *City of Lebanon v. Baird*, 756 S.W.2d at 241; *see also Dombrowski v. City of Philadelphia*, 431 Pa. 199, 221, 245 A.2d 238, 250 (1968) (Pennsylvania Supreme Court upheld trial court’s order requiring city to make payments to fund pension plan that was not actuarially sound as required by the city’s charter.) In the event of such *ultra vires* action, the Director of Finance would be required to revise the proposed employer contribution rate (based on the information provided by the qualified independent actuary) as necessary to maintain the actuarial soundness of the plan. *Metropolitan Charter* §§ 13.10 & 6.02<sup>10</sup>. By the same analysis, the Metropolitan Charter

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<sup>10</sup> **Sec. 6.02. Preparation of annual operating budget.**

The director of finance shall obtain from all officers, departments, boards, commissions and other agencies for which appropriations are made by the metropolitan government, or which collect revenues for such government, such information as shall be necessary for him to compile the annual operating budget; and it shall be the duty of all such officers, departments, boards, commissions and agencies to furnish the director such information as he may require at such time or times and in such form as the director may prescribe.

Not later than three months prior to the end of each fiscal year, said director shall distribute to each of the agencies identified in the preceding paragraph all forms necessary for the preparation of the operating budget for the succeeding fiscal year. Such forms shall be returned to the director with the

requires the Mayor and the Metropolitan Council to determine (based upon the Charter provided guidance - "information provided by the qualified independent actuary") that the employer contribution rate used will maintain the plans' actuarial soundness. *Metropolitan Charter* §§ 6.04, 6.06 & 13.10. The mandate of Metropolitan Charter Section 13.10 that the annual contribution is to be actuarially determined and result in a plan that is actuarially sound is binding upon each official responsible for the preparation and adoption of the annual operating budget. *Metropolitan Charter* § 13.10.

**Over funding.** Should the Employee Benefit Board set the employer contribution rate at an amount higher than the amount necessary to maintain the plan's actuarial soundness, under the Metropolitan Charter that determination is advisory. *Metropolitan Charter* § 13.05(f). The Director of Finance, the Mayor, and the Metropolitan Council still have authority under the Metropolitan Charter to revise the rate that is actually used in the course of preparing the annual operating budget so long as the rate proposed maintains the actuarial soundness of the retirement plans based on the information provided by the qualified independent actuary. *Metropolitan Charter* §§ 6.02, 6.04, 6.06 & 13.10. *See generally, Retired Public Employees Council of Washington v. Charles*, 148 Wash.2d 602, 62 P.3d 470 (2003) (The Supreme Court of the State of Washington permitted the contribution rate to be lowered by the legislative body as the plan would still be actuarially sound.)

### Conclusions

**Changing Definition of Disability.** Section 13.06 of the Metropolitan Charter requires disability benefits, along with retirement benefits, be included in the system of employee benefits. That Charter section specifies the manner in which amendments to the system of employee benefits must be promulgated. Sections 3.28.010 and 3.29.010 as currently encoded were both adopted as a part of the system of employee benefits in compliance with the requirements of Section 13.06 of the Metropolitan Charter. In order to amend those sections, Section 13.06 of the Metropolitan Charter must be followed. This requires: (1) appointment by the Mayor and approval by the Metropolitan Council of the members of a Study and Formulating Committee; (2) study and analysis by the Study and Formulating

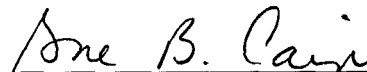
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information desired not later than two months prior to the end of the current fiscal year. On the basis of the information so received and otherwise secured by him, said director shall prepare and transmit to the mayor a proposed operating budget for the next fiscal year of the kind and scope set forth in section 6.03 hereof. In preparing the proposed budget, the director may revise, as he may deem necessary, the estimates or requests made by the various officers, departments, boards, commissions and agencies, but any such agency shall be entitled to a hearing before the director with reference to any contemplated changes in its budget requests or estimates.

Committee followed by its submission of amendments to the Employee Benefit Board; (3) review by the Employee Benefit Board of the amendments and submission to the Metropolitan Council along with any changes to the amendments recommended by the Employee Benefit Board; (4) action by the Metropolitan Council on the proposed amendments; and (5) approval or veto by the Mayor with possible subsequent action by the Metropolitan Council related to any veto. The Study and Formulating Committee did not submit an amendment regarding the definition of disability to the Employee Benefit Board and, therefore, there has been no recommendation from the Employee Benefit Board on such an amendment to the Metropolitan Council. Until such an amendment is properly promulgated and forwarded to the Metropolitan Council, there is no authority to adopt a change in the definition of disability.

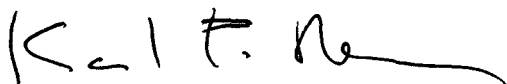
**Determination of the Employer Contribution Rate.** While the Employee Benefit Board has authority under the Metropolitan Code to determine the employer contribution rate, the Metropolitan Charter requires the annual contribution be actuarially determined and result in a plan that is actuarially sound. As long as the rate ultimately adopted in the operating budget meets these Metropolitan Charter requirements, the officials involved in preparation and adoption of the budget, the Finance Director, the Mayor, and the Metropolitan Council, have authority under the Metropolitan Charter to raise or lower the rate proposed by the Employee Benefit Board.

THE DEPARTMENT OF LAW OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY



Sue B. Cain  
Deputy Director of Law

APPROVED BY:



KARL F. DEAN  
Director of Law



cc: The Honorable Bill Purcell, Mayor  
The Honorable Howard Gentry Jr., Vice-Mayor  
Ms. Dot Shell Berry  
Mr. B. R. Hall, Sr.  
Ms. Pat Harris  
Mr. David Manning  
Sgt. Edward C. Mason, II

Mr. Thomas Storey  
Mr. Charles A. Trost  
Ms. Betsy Walkup  
Mr. H. Russell White

Attachment A

**ORDINANCE NO. BL2005-511**

**An Ordinance amending Section 3.28.010 and Section 3.29.010 of the Metropolitan Code by amending the definition of disability to permit the determination of disability to continue the same as applied since 1963 by the Employee Benefit Board.**

Whereas, the essential provisions in Chapter 3.28 and Chapter 3.29 of the Metropolitan Code relating to the definition of disability have remained unchanged since the adoption of the original Metropolitan Code in 1963; and

Whereas, an opinion of the Department of Law has been issued that interprets the definition of "disability" under certain circumstances that would change the determination of disability utilized by the Employee Benefit Board consistently since 1963; and

Whereas, it is in the best interest of the employees of Metropolitan Government and of the citizens of Metropolitan Government to amend the definition of "disability" to ensure that the granting of disability pensions continue to follow the past uniform practice.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Section 3.28.010 of the Metropolitan Code shall be and the same is hereby amended by deleting subsections A. and B. in their entirety and substituting in lieu thereof the following new subsections:

" A. A member whose termination occurs because of disability while he is a fire fighter or policeman or in the line of duty, as provided in Section 3.28.040, shall be deemed to be "disabled" if he becomes disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability he is unable to perform the duties any occupation in the metropolitan government which is offered to him at a rate of earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience.

"Disability", when applied to a fire fighter or a policeman, shall mean the inability and/or the incapacity to perform the duties of a fire fighter or policeman.

B. A member whose termination occurs because of disability, other than in the line or duty, and who is then not a fire fighter or policeman, shall be deemed to be "disabled" if he becomes disabled as a result of medically determinable bodily injury or disease or

mental disorder so that during the continuation of his disability he is unable to perform the duties any occupation in the metropolitan government which is offered to him at a rate of earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience."

Section 2. Section 3.29.010 of the Metropolitan Code shall be and the same is hereby amended by deleting subsections A. and B. in their entirety and substituting in lieu thereof the following new subsections:

A. A member whose termination occurs because of disability while he is a fire fighter or policeman or in the line of duty, as provided in Section 3.29.040, shall be deemed to be "disabled" if he becomes disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability he is unable to perform the duties any occupation in the metropolitan government which is offered to him at a rate of earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience.

"Disability", when applied to a fire fighter or a policeman, shall mean the inability and/or the incapacity to perform the duties of a fire fighter or policeman.

B. A member whose termination occurs because of disability, other than in the line or duty, and who is then not a fire fighter or policeman, shall be deemed to be "disabled" if he becomes disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability he is unable to perform the duties any occupation in the metropolitan government which is offered to him at a rate of earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience."

Section 3. This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: J. B. Loring, Harold White, Billy Walls, Tommy Bradley, Sam Coleman, Feller Brown, John Summers, Parker Toler, Rip Ryman, David Briley, Buck Dozier, Carl Burch, Jim Forkum, Jason Alexander, Ginger Hausser, Erik Cole, Jamie Isabel, Diane Neighbors, Pam Murray, Brenda Gilmore, Edward Whitmore, Carolyn Baldwin Tucker, Jim Shulman, Charlie Tygard, Lynn Williams, Michael Craddock, Greg Adkins, Michael Kerstetter, Jim Gotto, Chris Whitson, Adam Dread, Vivian Wilhoite, Jason Hart, Ludy Wallace, Amanda McClendon

<b>LEGISLATIVE HISTORY</b>	
Introduced:	January 18, 2005

Passed First Reading:	January 18, 2005
Referred to:	Budget & Finance Committee Personnel Committee
Passed Second Reading:	
Passed Third Reading:	
Approved:	
By:	

Attachment B

**STUDY & FORMULATING COMMITTEE**

Area: Disability

Issue: Definition of Disability – The definition is basically that a person has a permanent impairment that prevents him from working. For Fire and Police this applies to their own job for IOD disability and any job for medical disability although they may not be required to return in anything other than their original job. For general employees this applies to any job in Metro for the first two years and any occupation after two years. In practice, the Board grants disability pensions to employees even if the disability is not permanent.

Source: Code 3.28.010 3.28.060 3.29.010

Options:

- Leave as is – no change
- Maintain current definition and contract for medical advisor to the Board to make determinations of disability
- Adopt the Social Security definition (incapable of doing any work for at least one year – no temporary or partial disability)
- Adopt definition from similar agency, such as State of Tennessee

Pros & Cons:

Pros to Change

- Fewer disability pensions granted, may make it possible to improve pensions for those severely disabled
- Fewer reviews for those severely disabled
- Better coordination with Social Security

Cons to Change

- Removes safety net for those with less severe impairments
- More employees would need to participate in voluntary short term and long term disability insurance

Cost: Unknown although a tighter definition, or stricter implementation of the current definition, would be a cost avoidance for future savings

Raised By: Staff

**Recommendation: No change. The problem appears to be in the administration of the plan more than in the definition. (9-5-02)**

Attachment C

BILL NO. *bill 320*

**AN ORDINANCE PROVIDING FOR THE ENACTMENT OF A  
METROPOLITAN EMPLOYEE BENEFIT SYSTEM.**

WHEREAS, the Study and Formulating Committee authorized by Section 13.06 of the Metropolitan Charter has submitted to the Metropolitan Employee Benefit Board a proposed system of employee benefit plans for the officers and employees of the Metropolitan Government; and,

WHEREAS, the Metropolitan Employee Benefit Board has approved this original plan with modifications; and,

WHEREAS, it is desirable and in the best interests of The Metropolitan Government of Nashville and Davidson County that this system be enacted to provide for a system of employee benefits for the officers and employees of the Metropolitan Government.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the employee benefit plan as submitted by the Study and Formulating Committee and approved with recommended changes heretofore adopted and approved by the Metropolitan Employee Benefit Board, a copy of which is attached hereto and made a part hereof, be enacted as the new Metropolitan Employee Benefit System as provided by Article 13 of the Metropolitan Charter of The Metropolitan Government of Nashville and Davidson County.

Section 2. That this ordinance shall take effect from and after September 1, 1964, the welfare of The

Metropolitan Government of Nashville and Davidson County  
requiring it.

INTRODUCED BY:

Tom M. Groves

Members of Council

APPROVED BY:

Beverly Bulley  
Metropolitan Mayor

RECOMMENDED BY:

Joe E. Tarrence  
Director of Finance

RECOMMENDED BY:

METROPOLITAN EMPLOYEE BENEFIT BOARD

Robert Karachuk  
Chairman

Joe E. Tarrence

W. H. Jones Jr.

John W. Cole

Joseph H. Cunningham

Norman M. Henshaw

James L. Summers

APPROVED AS TO FORM AND LEGALITY:

Robert B. [Signature]  
Director of Law

Robert B. [Signature]  
Assistant Metropolitan Attorney

**METROPOLITAN EMPLOYEE BENEFIT SYSTEM**

**AS**

**PROPOSED BY**

**THE STUDY AND FORMULATING COMMITTEE**

**AND APPROVED BY**

**THE METROPOLITAN EMPLOYEE BENEFIT BOARD**

**AUGUST 24, 1964**

**CONSULTANTS AND ACTUARIES: BLAIR, FOLLIN, ALLEN & WALKER, INC.  
NASHVILLE, TENNESSEE**



**Section 7.05 Definition of Disability.** A Member whose Termination occurs because of permanent disability while he is a Fireman or Policeman or in line of duty, as provided in Section 7.03, shall be deemed to be "disabled" (a) if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability for a period of two (2) years following said disability he is unable to perform the duties of any occupation in Metro which is offered to him at a rate of Earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience and (b) if, during the continuation of his disability for a period beyond such two (2) years, he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his Earnings While Disabled and his Gross Disability Pension does not exceed one hundred percent (100%) of his Frozen Earnings; subject, however, to all other requirements of Article 7. A Member whose Termination occurs because of disability, other than in line of duty, and he is then not a Fireman or Policeman, shall be deemed to be "disabled" if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that

7-2

during the continuation of his disability he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his Earnings While Disabled and his Gross Disability Pension does not exceed one hundred percent (100%) of his Frozen Earnings; subject, however, to all other requirements of Article 7.

**ORIGINAL**

METROPOLITAN COUNTY COUNCIL  
 Bill No. 64-320

**AN ORDINANCE PROVIDING FOR THE  
 ENACTMENT OF A METROPOLITAN  
 EMPLOYEE BENEFIT SYSTEM**

The within bill approved as to form and  
 legality.

Metropolitan Attorney

Introduced SEP 1 1964  
 Passed first Reading SEP 1 1964

Referred to Personnel Committee  
 Referred to Finance Committee  
 Reported SEP 15 1964  
 Passed second Reading OCT 20 1964

Referred to \_\_\_\_\_  
 Passed third Reading NOV 4 1964

Approved NOV 9 1964  
 By Secretary  
 Treasurer

Departments Notified \_\_\_\_\_  
 Advertisers \_\_\_\_\_  
 Dates \_\_\_\_\_

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Approved  
 Passed second Reading OCT 6 1964

SUBSTITUTE BILL NO. 095-1452

AN ORDINANCE AMENDING THE METROPOLITAN EMPLOYEE  
BENEFIT SYSTEM AS SET OUT IN METRO CODE SECTIONS  
3.08.010 THROUGH 3.44.070.

WHEREAS, the Metropolitan Employee Benefit System is created pursuant to Section 13.01 of the Metropolitan Charter, and

WHEREAS, Section 13.02 of the Metropolitan Charter creates the Metropolitan Employee Benefit Board, whose responsibility it is to administer, manage, and coordinate the benefit plans of the Metropolitan Government, and

WHEREAS, Section 3.08.040 B of the Metropolitan Code empowers the Metropolitan Employee Benefit Board to employ the services of consultants, and

WHEREAS, in December of 1993 the Metropolitan Employee Benefit Board, working in conjunction with the Metropolitan County Mayor and the Study and Formulating Committee, hired Alexander & Alexander Consulting Group to do a comprehensive study of the Metropolitan Employee Benefit System, as codified in the Metropolitan Code between Sections 3.08.010 and 3.44.070, and

WHEREAS, such study has now been completed and reported to the Metropolitan Employee Benefit Board, and

WHEREAS, such report has also been reviewed through the collective bargaining process, as set out in Chapter 3.56 of the Metropolitan Code, with the Fraternal Order of Police, the Nashville Fire Fighters and Fire Service Employees Association, the Nashville Police Civilian Association, and Service Employees Union, and

WHEREAS, collective bargaining with the various employee groups has been reviewed by the Metropolitan County Mayor and approved by same, and

WHEREAS, the Metropolitan Employee Benefit Board has reviewed and approved a revised report made by Alexander & Alexander Consulting Group that incorporated the requests and recommendations agreed to through the collective bargaining process after negotiations with the various employee groups, and

WHEREAS, the final report to the Metropolitan Employee Benefit Board was consistent with recommendations made to the Metropolitan County Mayor by the Study and Formulating Committee,

Whereas, the adoption of the following amendments and additions to the employee benefit system, by Ordinance of the Metropolitan County Council, is in the best interest of The Metropolitan Government of Nashville and Davidson County and the employees thereof.

NOW, THEREFORE, BE IT ENACTED BY THE METROPOLITAN COUNTY COUNCIL:

Section 49. The Metropolitan Code of Laws is amended by creating Chapter 3.29. The language under this chapter is as follows:

16

The provisions of this chapter shall apply only to those members who are covered under Division B of the system.

(a) 3.29.010 Disability defined.

A. A member whose termination occurs because of permanent disability while he is a fire fighter or policeman or in the line of duty, as provided in Section 3.29.040, shall be deemed to be "disabled" (1) if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability for a period of two years following such disability he is unable to perform the duties of any occupation in the metropolitan government which is offered to him at a rate of earnings equal to or higher than he was receiving at the time of his disability for which he is reasonably capable by reason of training, education or experience, and (2) if, during the continuation of his disability for a period beyond such two years, he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his earnings while disabled and his gross disability pension does not exceed one hundred percent of his frozen earnings; subject, however, to all other requirements of this chapter.

"Disability," when applied to a fire fighter or a policeman, shall mean the inability and/or the incapacity to perform the duties of a fire fighter or policeman.

of policeman.

B. A member whose termination occurs because of disability, other than in the line of duty, and who is then not a fire fighter or policeman, shall be deemed to be "disabled" if he becomes permanently disabled as a result of medically determinable bodily injury or disease or mental disorder so that during the continuation of his disability he is incapable of engaging in any business or occupation or to perform any work for compensation, gain or profit, so that the sum of his earnings while disabled and his gross disability pension does not exceed one hundred percent of his frozen earnings; subject, however, to all other requirements of this chapter.

C. Loss by severance of both

**ORIGINAL**

SUBSTITUTE METROPOLITAN COUNTY COUNCIL

NO. 095-1452

JUN 19 4 14 PM '95

FILED  
METROPOLITAN  
COUNCIL

AN ORDINANCE AMENDING THE METROPOLITAN  
EMPLOYEES BENEFIT SYSTEM AS SET OUT IN  
METRO CODE SECTIONS 3.06.010 THROUGH  
3.44.070.

MINUTE BOOK #57 PAGE 14

Introduced JUN 20 1995  
 SUBSTITUTE BILL  
 INTRODUCED JUN 20 1995  
 Referred to BUDGET & FINANCE AND  
 PERSONNEL COMMITTEES  
 Amended JUN 20 1995  
 Passed second Reading JUN 20 1995  
 Referred to \_\_\_\_\_  
 Passed third Reading JUN 27 1995  
 Approved JUN 29 1995  
 By [Signature]  
 Metropolitan Mayor  
 Departments Notified JUN 29 1995  
 Admitted \_\_\_\_\_  
 \_\_\_\_\_

Minutes

**Metropolitan Council Meeting  
Tuesday, May 15, 2001**

---

The Metropolitan Council met in regular session on this date at 7:00 p.m. in the Metropolitan Courthouse.

The invocation was offered by Reverend Inman Otey.

The Metropolitan Council gave the pledge of allegiance to the American Flag.

The roll was called and the following members were present during the progress of the meeting: Ferrell, Briley, Gentry, Tucker, Gilmore, Black, Nollner, Majors, Hall, Campbell, Hart, Dillard, Balthrop, Brown, Ponder, Derryberry, Stanley, Loring, McClendon, Greer, Hausser, Wallace, Haddox, Whitmore, Hand, Bogen, Summers, Shulman, Arriola, Sontany, Holloway, Kerstetter, Knoch, Jenkins, Turner, Williams, Lineweaver, and President Steine (38); Absent: Waters, Beehan, Alexander (3).

The Minutes of the regular meeting of May 1, 2001 were approved.

---

**Study and Formulating Committee (For Employee Benefits)**

Appointment of Mr. Cecil Branstetter to the Study and Formulating Committee (for Employee Benefits). The Rules-Confirmations-Public Elections Committee recommended the appointment, and Mr. Ferrell moved for confirmation, which motion was seconded and adopted by a unanimous vote of the Council.

Appointment of Mr. Johnny Crumby to the Study and Formulating Committee (for Employee Benefits). The Rules-Confirmations-Public Elections Committee recommended the appointment, and Mr. Ferrell moved for confirmation, which motion was seconded and adopted by a unanimous vote of the Council.

Appointment of Ms. Darlene Lewis to the Study and Formulating Committee (for Employee Benefits). The Rules-Confirmations-Public Elections Committee recommended the appointment, and Mr. Ferrell moved for confirmation, which motion was seconded and adopted by a unanimous vote of the Council.

Appointment of Ms. Marguerite Sallee to the Study and Formulating Committee (for Employee Benefits). At the request of the nominee, the appointment was withdrawn without objection.

Appointment of Mr. Charlie Trost to the Study and Formulating Committee (for Employee Benefits). The Rules-Confirmations-Public Elections Committee recommended the appointment, and Mr. Ferrell moved for confirmation, which motion was seconded and adopted by a unanimous vote of the Council.

## Minutes

### **Metropolitan Council Meeting Tuesday, June 19, 2001**

---

The Metropolitan Council met in regular session on this date at 7:00 p.m. in the Metropolitan Courthouse.

The invocation was offered by Councilmember Lynn Williams.

The Metropolitan Council gave the pledge of allegiance to the American Flag.

The roll was called and the following members were present during the progress of the meeting: Ferrell, Waters, Briley, Gentry, Tucker, Gilmore, Black, Nollner, Majors, Hall, Beehan, Campbell, Dillard, Balthrop, Brown, Ponder, Derryberry, Stanley, Loring, McClendon, Greer, Hausser, Wallace, Haddox, Whitmore, Hand, Bogen, Summers, Shulman, Arriola, Sontany, Holloway, Kerstetter, Knoch, Jenkins, Turner, Williams, Lineweaver, and President Steine (39); Absent: Hart, Alexander (2).

The Minutes of the adjourned meeting of June 12, 2001 were approved.

---

#### **Study & Formulating Committee (For Employee Benefits)**

Appointment of Mr. Charles W. Fentress to the Study and Formulating Committee (For Employee Benefits). The Rules-Confirmations-Public Elections Committee recommended the appointment, and Mr. Ferrell moved for confirmation, which motion was seconded and adopted by a unanimous vote of the Council.



**Attachment F**

**RESOLUTION NO. RS2002-1090**

**A resolution extending the term of the study and formulating committee.**

WHEREAS, the Metropolitan Mayor appointed a study and formulating committee to study the system of employee benefits provided to officers and employees of the Metropolitan Government pursuant to Section 13.06 of the Metropolitan Charter; and

WHEREAS, such appointments to the study and formulating committee were approved by the Metropolitan Council; and

WHEREAS, the study and formulating committee will not complete its work within one year; and


WHEREAS, it is necessary and desirable to extend the term of the study and formulating committee.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. The term of the study and formulating committee appointed by the Metropolitan Mayor and approved by the Metropolitan Council is hereby extended to October 15, 2002.

Section 2. This Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Jim Shulman, David Briley

LEGISLATIVE HISTORY	
Referred to:	Personnel & Housing Committee
Introduced:	July 16, 2002
Adopted:	July 16, 2002
Approved:	July 17, 2002
By:	

**Attachment G**

**STUDY &  
FORMULATING  
COMMITTEE**

**Final Report**

Charles A. Frost, Chairman

Carl Branstetter

Johnnie Curditt

Charles Fortness

Doretha Stahl Berry

October 16, 2003

**STUDY & FORMULATING COMMITTEE**

**Area:** Service Pension – Fire & Police

**Issue:** Correction Officers and Park Rangers (all levels of classifications) are currently in the general pension system. Considering the risks in their jobs, there are requests to include them in the Fire & Police pension plan.

**Source:** Code Chapter 3.37

**Options:**

- Leave as is
- Include the Correction Officers and Park Rangers (all levels of classifications in the pay plan) in the Fire & Police pension plan

**Pros:**

- Jobs are higher risk than most jobs in the general pension plan
- Increased benefit for employees

**Con:**

- Cost

- Include all employees of the Sheriff's Office in the Fire & Police pension plan

**Pros:**

- Increased benefit to employees

**Cons:**

- Cost
- Sheriff's employees have counterparts in the general government who would also like the increased benefit. This would extend not only to other Warrant Officers but also to all clerical workers, custodians, etc (i.e., the entire workforce). It is not as clear that these jobs have the daily increased risk to warrant the additional benefit.

**Cost:** The Metro Council has appropriated approximately \$600,000 in the 2002-03 budget for this purpose.

**Raised by:** Sheriff Gayle Ray, SEIU Local 205, employees of the Sheriff's Department

**Recommendation:** Include Park Rangers, Sergeants & Lieutenants: Correctional Officer 1, 2, Sergeant & Lieutenant as listed in the general pay plan to the Police & Fire pension plan (7-23-02)

**MINUTES**

**METROPOLITAN EMPLOYEE BENEFIT BOARD**

**February 4, 2003, 9:36 a.m. Room 163, Civil Service Conference Room, 222 Building**

The Metropolitan Employee Benefit Board met in regular session on Tuesday, February 4, 2003 at 9:36 a.m. in Room 163, Civil Service Conference Room, 222 Building.

Those members present were:

Chair Clyde D. Smith, Vice Chair Betsy Walkup; Members: Albert Berry, James Cardwell, Sr., Pat Harris-Wingfield, B. R. Hall, Sr., John W. (Billy) Lynch, David Manning, Edward C. Mason, II, H. Russell White.

- A. Approval of the January 7, 2003 minutes and January 21, 2003 special called minutes.

Betsy Walkup moved approval of the January 7, 2003 minutes. This motion was seconded by Albert Berry and approved unanimously. Albert Berry moved approval of the January 21, 2003 special called minutes. This motion was seconded by Billy Lynch and approved unanimously.

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**New Business:**

5. Amendment to the pension plan for correctional officers and park rangers.

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Minutes  
Metropolitan Employee Benefit Board  
February 4, 2003  
Page 8

Billy Lynch moved approval of the proposed language to amend the plan to include correctional officers and park rangers in the police and fire pension plan. This motion was seconded by David Manning.

After discussion of council approval and budgeting, a vote was taken and the language to amend the plan was approved unanimously.

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Attachment H

BILL NO. BL2003-1347

An ordinance amending Section 3.08.010 of the Metropolitan Code of Laws to include correctional officers employed by the Davidson County Sheriff's Department and special police employed by the Department of Parks and Recreation in the pension plan for members with fire and police credited service.

Whereas the Metropolitan County Council has adopted a system of employee benefits know as the Metropolitan Employee Benefit System; and

Whereas the system of employee benefits includes retirement benefits for officers and employees of the Metropolitan Government; and

Whereas the Metropolitan County Council has provided more favorable retirement benefits for certain employees in public safety positions in the Police Department and Fire Department in order to reflect the physical and mental demands of such positions; and

Whereas it has been determined that certain employees of the Davidson County Sheriff's Department and the Department of Parks and Recreation in public safety positions should also be afforded more favorable retirement benefits to reflect the physical and mental demands of their positions; and

Whereas an actuarial determination of the cost of such benefit improvement has been made; and

Whereas the Metropolitan Employee Benefit Board has approved the more favorable retirement benefits for certain employees of the Davidson County Sheriff's Department and the Department of Parks and Recreation.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Section 1. That Section 3.08.010 of the Metropolitan Code of Laws is hereby amended to add the following new definition:

"Correctional officer" means an eligible employee who is a correctional officer in the Davidson County Sheriff's Department as determined in accordance with the qualifications of a correctional officer prescribed by applicable rules and regulations of the civil service commission and having direct contact with inmates as a regular and necessary part of the employees duties and responsibilities.

Section 2. That Section 3.08.010 of the Metropolitan Code of Laws is hereby amended by deleting the definition of "current police and fire service" in its entirety and adding the following new definition:

"Current police and fire service" means all continuous, uninterrupted service after April 1, 1963, of an eligible employee during which time he is a fireman, policeman or correctional officer and is a member; provided, however, such service shall not include any service after a member's compulsory retirement age.

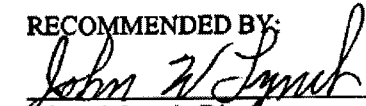
Section 3. That Section 3.08.010 of the Metropolitan Code of Laws is hereby amended by deleting the definition of "policeman" in its entirety and adding the following new definition:

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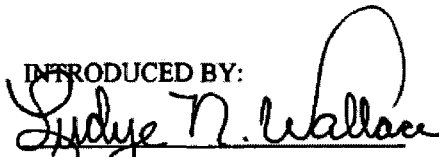
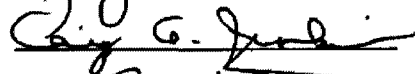
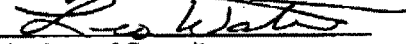
"Policeman" means an eligible employee who is a police officer in the department of police, as determined in accordance with the qualifications of a police officer prescribed by applicable rules and regulations of the civil service commission. "Policeman" shall also include personnel employed by the Department of Parks and Recreation designated as special police pursuant to Section 11.1005 of the Metropolitan Charter. An eligible employee in the department of police who is not a police officer shall not be deemed to be a policeman. A policeman shall not lose his standing by virtue of a voluntary transfer into a civilian position, once having established credited service as a policeman, provided written application to continue such designation is approved by the board. Such application filed with the board will only be approved by the board on a showing that the policeman has sustained a disability that prevents him from maintaining his position as a policeman, and stating that the policeman wants to move to a civilian position rather than take disability retirement.

Section 4. That this ordinance shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

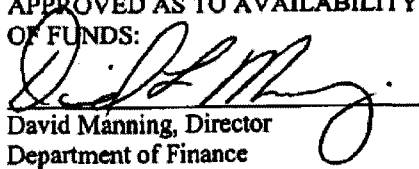
RECOMMENDED BY:

  
\_\_\_\_\_  
John W. Lynch, Director  
Human Resources

INTRODUCED BY:

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
Members of Council

APPROVED AS TO AVAILABILITY  
OF FUNDS:

  
\_\_\_\_\_  
David Manning, Director  
Department of Finance

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
Metropolitan Attorney



BL2005-13

1644-C

## BPS&M

Bryan Patterson, Smith & Mitchell LLP  
A Wells Fargo Company

March 10, 2002

Mr. John Kennedy  
Assistant Director - Human Resources  
Metro Employee Benefit Board  
102 Stahlman Building  
Nashville, TN 37201

Dear John:

**Re: Proposed Benefit Improvements**

The purpose of this letter is to respond to your request for financial information relating to recent benefit improvement proposals.

Expected liabilities for each of the proposals are outlined below together with a discussion of each. Calculations are based upon census data and actuarial assumptions utilized in preparing the June 30, 2001 actuarial valuation for the Metro Open Plan, for which an actuarial valuation is performed annually. Our calculations implicitly assume that each modification is effective on July 1, 2001.

**Police and Fire - Service Retirement after 30 Years**

This proposal was put forth by MFFA and FOP. The proposal would provide service retirement after 30 years of service, regardless of age. The proposed pension is a percentage of total compensation, using 2% of average pay for each of the first ten years, 2.5% for each of the next ten years, and 3% for each of the final ten years. The proposed formula would provide a career employee with thirty years of service a pension equal to 75% of their final average compensation.

The proposed formula would have no early retirement provision; everyone is assumed to retire at his or her service retirement date following 30 years of service.

We have determined the impact of the proposed enhancement under two scenarios:

**Scenario 1** - Assuming participants will retire according to the retirement rates currently assumed for the annual actuarial valuation.

**Scenario 2** - Assuming participants will retire when they have thirty years of service, but no earlier than age 50 and no later than age 60.

Scenario 2 assumes that most participants will retire at an earlier age. Under Scenario 1, many participants are assumed to continue working beyond the time when they have 30 years of service. Under the proposed formula, participants would accrue no additional benefits for service after 30 years.

Under Scenario 1, the change in the benefit formula for fire and police employees is expected to increase the present value of benefits by \$55,000,000. The Metro contribution would increase by 1.36% of covered

Mr. John Kennedy  
March 10, 2002  
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compensation. Under Scenario 2, where participants are assumed to retire upon reaching 30 years of service, the change in the benefit formula is expected to produce an increase in the present value of benefits of \$125,000,000. The Metro contribution under Scenario 2 would increase by 3.64% of covered compensation.

The wide variation between these two scenarios highlights the significance of the assumed retirement date in the studies. The assumed retirement dates for Scenario 1 are those currently used in the annual actuarial valuation and have been demonstrated as reasonably reflecting actual retirement patterns over time by our experience studies, the last of which was prepared in 1997. However, the proposed elimination of accruals for periods beyond 30 years of service is certain to have some impact on retirement patterns. Scenario 2 can be thought of as a "worst-case" scenario, with participants retiring at the time most costly for the plan. The expected result would likely be somewhere between these two scenarios.

#### Correctional Officers and Park Rangers

We prepared a study of the impact of adding Correctional Officers and Park Rangers to the Fire and Police Plan. In April of last year, we projected an increase of \$9,600,000 in the present value of benefits for this change and a 0.15% increase in the Metro contribution rate. With our current study, reflecting employee data as of July 1, 2001, the expected increase in the present value of benefits is \$9,100,000 with an increase in the Metro contribution rate of 0.13% of covered compensation.


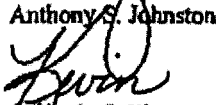
Of the total cost listed, approximately 90% is associated with adding the Correctional Officers to the Fire and Police Plan. The remaining 10% is associated with the Park Rangers. In the data we have available for the pension plan, we do not have the necessary employee codes to provide a breakdown of the costs between the various Correctional Officer and Park Ranger ranks. If you would like the cost distribution by rank within each of the two classifications, please let us know and we will request the necessary information.

If the Correctional Officers and Park Rangers are included in the benefit enhancement study above, the increase in the present value of benefits and contribution rate under Scenario 1 is \$67,200,000 and 1.54% respectively. Under Scenario 2, the increases are \$140,400,000 and 3.92% respectively.

Calculations are based upon census data and actuarial assumptions employed in the recently completed July 1, 2001 actuarial valuation. Different assumptions, if adopted at a later date, would produce different results.

We appreciate the opportunity to assist the Board in the analysis of the proposals discussed above. Please advise if we may be of further assistance in discussing the results of the analysis.

Sincerely,

  
Anthony S. Johnston  
  
S. Kevin Sullivan

MINUTE BOOK 1167 PAGE NO. 127

**ORIGINAL**

**METROPOLITAN COUNTY COUNCIL**

Bill No. BL 2003-1347

2003 FEB 25 PM 1:49

FILED  
METROPOLITAN  
CLERK

An ordinance amending Section 3.08.010 of the Metropolitan Code of Laws to include correctional officers employed by the Davidson County Sheriff's Department and special police employed by the Department of Parks and Recreation in the pension plan for members with fire and police credited service.

*Introduced* MAR 4 2003

*Passed First Reading* MAR 4 2003

*Amended* \_\_\_\_\_

*Passed Second Reading* MAR 18 2003

*Passed Third Reading* APR 1 2003

*Approved* APR 3 2003

*By*   
Metropolitan Mayor

*Advertised* \_\_\_\_\_

*Effective Date* \_\_\_\_\_