



METROPOLITAN COUNCIL

Metro Council Office

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **September 10, 2013**

RE: **Analysis Report**

Balance As Of:	<u>8/28/13</u>	<u>8/29/12</u>
<u>GSD 4% RESERVE FUND</u>	*\$30,826,675	\$29,186,211

*** Assumes estimated revenues in fiscal year 2014 in the amount of \$26,373,400**

– RESOLUTION ON PUBLIC HEARING –

RESOLUTION NO. RS2013-826 (S. DAVIS) – This resolution approves an exemption for Keisha’s Ballroom & Deli located at 1315 Lischey Avenue from the minimum distance requirements for obtaining a beer permit. The Metro code prevents a beer permit from being issued to an establishment located within 100 feet of a church, school, park, daycare, or one or two family residence. However, the code provides a mechanism to exempt restaurants that already have a state on-premises liquor consumption license from Metro’s minimum distance requirements to obtain a beer permit upon the adoption of a resolution by the council. A public hearing must be held by the council prior to voting on this resolution.

– BILLS ON PUBLIC HEARING –

ORDINANCE NO. BL2013-516 (CLAIBORNE) – This zoning text change modifies the provisions applicable to the creation of specific plan (SP) zoning districts in response to a recent Tennessee Court of Appeals decision that struck down the Gallatin Road SP. The court based its decision upon the failure of the 2007 Gallatin Road SP ordinance to comply with the zoning code provisions applicable to SP zoning in general. The intent of SP zoning at the time it was created was to provide a more flexible tool for rezoning specific parcels of property to allow for design-based guidelines and use restrictions in order to be consistent with the surrounding neighborhood. Since then, SPs have often taken on more of a regulatory role.

The provisions in the zoning code pertaining to the enactment of SP districts require that the application be initiated by a property owner who has a firm intention to develop according to the development schedule submitted, that a site specific plan be filed for the development, and that a development phasing and construction schedule be submitted. The Gallatin Road SP was initiated by the district council members and planning department, not property owners. Further, there was no development plan that met requirements of the code. The court held that the Gallatin SP on its face did not meet these code requirements for SPs, and thus was invalid. The court did not address the underlying issue regarding whether SPs can distinguish among different financial uses since it determined the bill itself was not properly enacted.

This zoning text change has been prepared by the planning department in response to the Court of Appeal’s ruling. First, the ordinance would clarify that SP applications can be submitted by the property owner, the planning department, or a member of council. Second, the ordinance provides that either a conceptual site plan or a regulatory plan must be submitted with the application, as opposed to a site plan for the development with a construction schedule. The SP may be submitted for an individual property or a larger area, such as the Gallatin Road corridor. Finally, the ordinance replaces the mandatory four year review process for SPs with a process similar to the one used for inactive planned unit development districts. A review to determine inactivity of a SP could be initiated by a property owner, the planning department, or a member of council after the SP has been in place for six or more years.

This ordinance has been approved by the planning commission.

– RESOLUTIONS –

RESOLUTION NO. RS2013-827 & RS2013-828 (STEINE & GILMORE) – These two resolutions approve an appropriation of \$500,000 and the execution of a grant agreement with Music City Productions, Inc., to incentivize the production of the television show *Nashville* airing on ABC. Filming for Season 2 of *Nashville* is currently underway. Season 1 of the show was watched by over five million viewers each week in the U.S., and *Nashville* has been aired in more than 20 countries. The purpose behind this appropriation is to incentivize the continued production of the show locally because of the promotional value and contribution to the local economy the show provides. It is estimated that the show will spend over \$40 million in this region for labor, goods, and services.

State law broadly allows local governments to make grants for economic and community development purposes.

Resolution No. RS2013-827 appropriates \$500,000 from the undesignated fund balance of the general fund of the general services district to cover the \$500,000 economic development incentive grant for *Nashville*. It is estimated that, after this appropriation, the undesignated fund balance will be 7.4% of the total general fund at the end of fiscal year 2014. Metro's policy is to maintain a fund balance of at least 5%.

Resolution No. RS2013-828 approves the \$500,000 grant agreement with Music City Productions, Inc., based in Santa Monica, CA. Music City Productions will be required to provide certification to Metro that a majority of the production for at least 13 episodes of the show airing on ABC was actually performed within the geographical boundaries of the Metropolitan Government of Nashville and Davidson County.

RESOLUTION NO. RS2013-829 (STEINE) – This resolution approves an annual grant in the amount of \$71,000 from the state arts commission to the Metro arts commission for operating support. There is a required local match in the amount of \$71,000 to be provided from the Metro arts commission budget. The funds will be used for general operating support of the arts commission, not as pass-through funding for other arts organizations. The term of the grant is from July 1, 2013 through June 30, 2014.

RESOLUTION NO. RS2012-830 (PARDUE) – This resolution approves an interlocal agreement between the Metropolitan Government, Nashville Electric Service (NES), and the City of Goodlettsville for access to the 800-MHz emergency radio dispatch and response system. The Metropolitan Government and NES jointly own and operate the emergency radio dispatch and radio response system utilizing 800-MHz radio frequencies licensed by the Federal Communications Commission (FCC). This system was jointly funded by Metro and NES, with Metro general services now maintaining the system and NES contributing funds to help pay for its maintenance.

Goodlettsville is constructing a 5-channel, 700/800 MHz radio site and desires to interface directly with Metro's system for system management and control. Goodlettsville agrees to pay a monthly usage and access fee as determined annually by the department of general services and the finance department. The term of this agreement begins upon approval by the council and extends through June 30, 2032, but may be terminated by either party with 30 days written notice.

The council approved a similar agreement with the City of Mt. Juliet in December 2012.

RESOLUTION NO. RS2013-831 (STEINE & HUNT) – This resolution approves an agreement between the planning department and the U.S. department of interior – geological survey to acquire an imagery upgrade for Nashville and Davidson County. The planning department will be upgrading its imagery at a cost of \$109,960.43 to cover all of Davidson County and some surrounding areas totaling 836 square miles. Through this agreement, the planning department will be receiving new high quality color aerial photos of the entire county. The planning department has been purchasing this imagery every other year in order to show details such as building footprints, pavement, and sidewalks on the Metro GIS maps. The term of the agreement is from July 1, 2013 through October 1, 2014.

RESOLUTION NO. RS2013-832 (STEINE & DOMINY) – This resolution approves amendments to three agreements with the state department of environment and conservation (TDEC) regarding the maintenance of closed solid waste facilities. State law requires that all owners of closed landfills either put up a performance bond or execute a contract agreeing to pay a penalty if the site is not adequately maintained. The Metropolitan Government has entered into contracts with TDEC in lieu of a performance bond as assurance of financial responsibility for our solid waste facility maintenance duties. This resolution approves a decrease of the financial responsibility amounts, as follows:

- Bordeaux sanitary landfill – decrease from \$4,772,411 to \$4,515,724;
- Thermal ash monofill – decrease from \$1,093,805 to \$1,071,719;
- Due West dump site – decrease from \$1,287,609 to \$1,252,433.

These amounts would only be paid if Metro failed to adequately maintain the sites.

Ordinance No. BL2010-719 allows amendments to these financial responsibility agreements to be approved by resolution.

RESOLUTION NO. RS2013-833 (STEINE, DOMINY & OTHERS) – This resolution approves a utility relocation contract between the department of water and sewerage services and the state department of transportation (TDOT) to relocate certain water/sewer facilities necessary for the construction of a state bridge over Otter Creek. Metro will be responsible for 100% of the cost of the utility relocation project, which is estimated to be \$68,900. This amount is to be funded from existing balances on deposit in the local government investment pool account with the state. TDOT will be responsible for having its contractor perform the utility work in accordance with Metro's specifications. Metro agrees to indemnify TDOT for any damages or claims arising out of the acts or omissions of the TDOT contractor.

RESOLUTION NO. RS2013-834 (STEINE & GLOVER) – This resolution approves an amendment to a grant in the amount of \$20,800 from the Tennessee Literacy Coalition to the community education commission. The purpose of this grant is to enable a full-time AmeriCorps program participant to work with the community education commission for one year to help grow the volunteer program. This amendment extends the term of the grant through August 1, 2014 since the position was not filled during the initial grant term.

RESOLUTION NO. RS2013-835 (STEINE, TYGARD & LANGSTER) – This resolution approves an application for a grant in the amount of \$28,000 from the National Endowment for the Arts to the Metropolitan board of parks and recreation to support the Music City Ballroom Kids and Friends program. This program provides a year-long series of tuition-free ballroom dances for middle school children and senior citizens. The parks department will partner with Friends of Metro Dance to implement the program. There would be a required local in-kind match of \$26,650.54 to be provided by the parks department.

RESOLUTION NO. RS2013-836 (STEINE, TYGARD & LANGSTER) – This resolution approves a grant in the amount of \$2,240 from the state arts commission to the Metropolitan arts commission to partner with the Nashville public library to conduct four hands-on "Art of the Word" creative workshops. There is a required local cash match of \$1,568 to be provided by the Metro arts commission.

RESOLUTION NO. RS2013-837 (STEINE, TYGARD & LANGSTER) – This resolution approves a grant in the amount of \$5,200 from the state arts commission to the Metropolitan board of parks and recreation to supplement the Big Band dance program in Centennial Park. This program provides twelve free big band dances to the public. The parks department will use this funding for the purpose of continuing the dance program. There is a required local cash match of \$5,200 to be provided by the parks department.

RESOLUTION NO. RS2013-838 (STEINE, TYGARD, & A. DAVIS) – This resolution approves an application for a grant in the amount of \$10,534 from the state department of environment and conservation to the Metropolitan board of parks and recreation for the planting of native prairie plants and grasses at South Inglewood Park. The plans for the community center at the park included a bio-detention area designed to provide on-site stormwater treatment. However, the bio-detention area plant materials have since been eliminated and standard turf grass has grown up in the area. These new plantings would require minimal long-term maintenance that would reduce mowing costs for the parks department. There would be an in-kind local match of \$35,187.68 if the grant is awarded.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2013-523 (GILMORE) – This ordinance amends the Metro code to establish a community benefits agreement policy for the Metropolitan Government. Community benefits agreements (CBAs), in their truest form, are agreements signed by community groups and a developer outlining a range of benefits for the community the developer agrees to provide as part of a development project. CBAs are typically project-specific, and are negotiated before a development agreement is executed by the developer and the government. CBAs have been used on projects such as the Pittsburgh Penguins arena, the Atlanta Beltline, Candlestick Park in San Francisco, and the Staples Center in Los Angeles.

Less common are community benefits programs enacted by ordinance. These are policies adopted by local governments through legislation to compel developers to implement community benefits established by the government. This legislation is more of a community benefits program that would operate as a directive for certain government project contractors as opposed to a negotiated agreement.

This ordinance would first add two members to the composition of the procurement standards board, increasing the size of the board to seven members. The procurement standards board is responsible for promulgating regulations necessary to govern the procurement of Metro goods and services. The standards board has the responsibility for deciding matters of policy involving the procurement code, and has the power to audit and monitor the implementation of its regulations and the requirements of the code. This ordinance would add one member representing a labor union in Davidson County and one member having "at least five years of experience working with employment initiatives that address disadvantaged communities provided by a nonprofit community organization having an annual operating budget of \$150,000 or less."

The bulk of this ordinance sets forth hiring requirements that contractors on government projects in excess of \$2.5 million would have to satisfy. Under the heading "Local Hiring Requirements", the ordinance would require that 10% of the labor on such projects be allocated to individuals with barriers to employment. The phrase "barriers to employment" is not specifically defined in the ordinance. The ordinance would also require 30% of the project work to be allocated to individuals with employment barriers who live in zip codes where the median household income is below \$40,000. Further the contractor would be required to allocate 20% of the non-construction work to individuals who live in such zip codes. The purchasing agent would be responsible for monitoring the hiring requirements and enforcing the ordinance.

Under the heading of "Apprenticeship Hiring Requirements", the ordinance provides that the Metro purchasing agent is to work with contractors to provide significant opportunities for local residents. The contractor would be required to submit hiring plans on the front end as part of their bid on the project, and must detail targeted hiring and training efforts with "specific qualified training partners". The ordinance does not indicate how the qualified training partners are to be selected, nor does it specify who is to determine which partners are deemed qualified. The contractor would have to obtain approval of the local hiring plan by the purchasing agent within 60 days after the contract is awarded. Contractors would be required to state the reasons given by apprenticeship programs if they do not accept a referral from the contractor.

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ORDINANCE NO. BL2013-523 (continued)

The ordinance also requires the contractor on the project to designate a jobs coordinator to be the point of contact regarding job opportunities, conduct outreach activities, maintain a list of qualified residents eligible for employment, and facilitate relationships among apprenticeship programs and labor unions. The jobs coordinator would work with community-based organizations to obtain certified listings of disadvantaged populations. The ordinance defines "disadvantaged populations" as residents that fall into at least one of the following categories:

- a. veterans of the Armed Forces of the United States
- b. custodial single parents
- c. persons having a criminal record that cannot legally be expunged under Tennessee law
- d. suffering from chronic unemployment or underemployment
- e. homeless or transitional housing resident
- f. receiving public assistance
- g. lacking a GED or high school diploma
- h. emancipated from the foster care system
- i. an apprentice with less than 15% of the required graduating apprenticeship hours in a program

The purchasing agent would be required to include the terms of this community benefits agreement ordinance in all construction and development contracts, though the hiring component would only apply to projects in excess of \$2.5 million. Failure to comply with the terms of the ordinance could result in a suspension of the contractor or an ineligibility to bid on future projects.

The council office is of the opinion that the local hiring provisions of this ordinance, if challenged, would likely be found to be unconstitutional under the Privileges and Immunities Clause (Art. IV, sec. 2 of the U.S. Constitution). The Privileges and Immunities Clause provides that the citizens of each state shall be entitled to all privileges and immunities of citizens of the other states. The courts have said the purpose of this provision is to prevent states (and local governments) from enacting laws that discriminate against nonresidents for reasons of economic protectionism. In order to survive a Privileges and Immunities Clause challenge to a local hiring ordinance, the government must show that there are substantial reasons for favoring local workers and that the degree of discrimination is closely related to these reasons. The courts have held that if reasons such as high unemployment, low wages, and lack of job training are used as the justification for the discrimination, then the city must show that these reasons are caused by the presence of nonresidents. This would require specific results from a study of the Nashville area showing that the economic problems in certain areas of Nashville are the result of workers from out of state getting the available jobs.

The council office recommends that this ordinance be amended to remove the local hiring provisions, as well as to address a number of technical issues, prior to being approved on second reading.

ORDINANCE NO. BL2013-524 (CLAIBORNE & MATTHEWS) - This ordinance adopts the property identification maps for the Metropolitan Government identifying property as of January 1, 2013, as the official maps for the identification of real estate for tax assessment purposes. These maps are adopted on an annual basis.

ORDINANCE NO. BL2013-525 (POTTS) – This ordinance authorizes the Metropolitan Government to enter into an agreement with Avondale Residential, Inc., and CSX Transportation, Inc. for the construction and acceptance of a new bridge over the CSX railroad tracks in the Bellevue area. Pursuant to the agreement, Avondale agrees to construct the bridge at its own expense and to reimburse CSX for any costs it incurs as a result of the bridge project, such as preliminary engineering, inspection, and flagging services. These costs are estimated to be \$326,367. Avondale will be required to furnish CSX with a letter of credit in the amount of \$485,376 guaranteeing the bridge work. Avondale and its contractor will be required to maintain adequate liability insurance to comply with CSX's requirements. Upon completion of the new bridge, CSX agrees to remove the existing at-grade railroad crossing.

Work on the bridge is to commence within one year after the execution of this agreement, and be completed no later than 1 ½ years from the execution date. Once the bridge is completed and is deemed to be in compliance with the plans and specifications, the agreement provides that Metro will accept title to the bridge from Avondale and will assume all maintenance obligations for the bridge.

This ordinance has been approved by the planning commission.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2013-517 (MAYNARD, MATTHEWS & OTHERS) – This ordinance codifies the Metro workforce development program and requires recipients of economic development incentives to establish goals for diversified business participation. The workforce development program was established at the time construction on the Music City Center began for the purpose of assisting with the hiring and training of workers on the site. Subsequently, Omni Hotels began utilizing the workforce development program to satisfy the provisions in their agreement with the convention center authority pertaining to the use of diversified business enterprises (DBEs) in the construction of the convention center headquarters hotel, and a preference for local business participation and hiring. The workforce development program has been operated by Jefferson United Merchants Partnership (JUMP). In June 2013, the council appropriated \$500,000 in the substitute operating budget to fund the workforce development program. The \$500,000 grant to JUMP is to be administered by the mayor’s office of economic and community development (ECD).

As a follow up to the budgetary appropriation, this ordinance officially establishes the workforce development program as part of the ECD office. The purpose of the program will be to provide job training and recruitment to Nashville residents for construction projects that have received local economic development incentives in the form of tax increment financing or payments-in-lieu-of-tax agreements. The ordinance also requires private businesses receiving such economic development incentives to establish a goal of spending at least 20% of the project’s costs with small, minority-owned, and women-owned business enterprises known as DBEs. The businesses receiving the economic development incentives would be required to utilize Metro’s workforce development program to ensure that reasonable efforts are being made to hire Davidson County residents for the project.

ORDINANCE NO. BL2013-518 (MATTHEWS, DOWELL & CLAIBORNE) – This ordinance approves a lease agreement between Metro and the sports authority for the property upon which the new hockey facility is to be constructed at Global Mall (formerly Hickory Hollow Mall). On August 6, 2013, the council approved an ordinance authorizing a property swap with the mall’s ownership in order to gain title to the 2.62-acre site. Metro will be leasing this property to the sports authority, who will oversee the operation of the hockey facility once it is constructed. The term of this lease is for 50 years, with an option of two additional extensions of 25 years and 15 years, respectively. The lease provides for nominal rent in the amount of \$10 per year.

Amendments to this lease agreement may be approved by resolution.

ORDINANCE NO. BL2013-519 (GILMORE & MATTHEWS) – This ordinance approves a construction agreement between the Metropolitan Government and CSX Transportation, Inc., related to the repair of a bridge carrying the Richland Creek greenway over the CSX railroad tracks. Metro will be repairing the bottom of the concrete slab bridge decking and the bridge piers adjacent to the railroad right-of-way. This contract will allow Metro to perform the work over the railroad tracks and will provide for the reimbursement of CSX’s expenses. Metro agrees to reimburse CSX for its flagging and engineering costs, estimated to be approximately \$34,000.

ORDINANCE NOS. BL2013-520 AND BL2013-521 – These two ordinances authorize the director of public property administration to accept easements for use in the Metro greenway system. These easements are being granted at no cost to Metro by the property owners. These are perpetual easements that can only be terminated through judicial action. These ordinances have been approved by the planning commission and the board of parks and recreation.

Ordinance No. BL2013-520 (Dowell, Gilmore & Claiborne) accepts an easement for three parcels of property located on Hickory Park Drive for use in connection with the Mill Creek greenway. The easement is being donated by Rivendell, LLC. The total easement area comprises approximately 30 acres.

Ordinance No. BL2013-521 (Matthews, Gilmore & Claiborne) accepts an easement from Genieve T. Graham for a 0.365-acre parcel of property located on West Hamilton Road for use in connection with the Whites Creek greenway.

ORDINANCE NO. BL2013-522 (CLAIBORNE & POTTS) – This ordinance authorizes the acquisition of three easements for the Windmere Drive stormwater project. Permanent easements are to be acquired for properties located at 2740, 2744, and 2748 Windmere Drive. The ordinance provides that future amendments to the ordinance may be approved by resolution. This ordinance has been approved by the planning commission.