



METRO COUNCIL OFFICE

MEMORANDUM TO: All Members of the Metropolitan Council

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

COUNCIL MEETING DATE: January 3, 2019

RE: Analysis and Fiscal Notes

Unaudited Fund Balances as of 12/26/18:

4% Reserve Fund	\$32,787,425*
Metro Self Insured Liability Claims	\$4,299,900
Judgments & Losses	\$2,646,915
Schools Self Insured Liability Claims	\$4,509,128
Self-Insured Property Loss Aggregate	\$7,092,807
Employee Blanket Bond Claims	\$675,114
Police Professional Liability Claims	\$2,223,880
Death Benefit	\$1,516,947

*This assumes unrealized estimated revenues in FY19 of \$25,237,097.

Note: No fiscal note is included for legislation that poses no significant financial impact.

– ORDINANCES ON PUBLIC HEARING –

BILL NO. BL2018-1403 (SYRACUSE) – This ordinance would amend Metro Code of Laws Sec. 17.28.103 regarding underground utilities. Currently, there is an exemption to the underground utility requirements for “utility equipment utilized for street lighting purposes.” This ordinance would clarify that this exemption applies only to “utility equipment utilized *exclusively* for street lighting purposes.” (Emphasis added.)

This ordinance has been approved by the Planning Commission.

BILL NO. BL2018-1416 (HENDERSON, A. DAVIS, & OTHERS) – This ordinance would amend the Metropolitan Code regarding tree density, removal, and replacement requirements.

The purpose of this ordinance would be to set standards for landscaping, buffering, and tree requirements. Section 17.24.010 of the current Code would be slightly modified to clarify that the chapter includes “tree requirements” and to otherwise add minor grammatical changes. The current provisions in Section 17.24.020 regarding landscape plans would be amended to require that plans and specifications be prepared by, or under the direction of, and bear the seal of a professional landscape architect registered in Tennessee.

Under section 17.24.090 as revised by the ordinance, any tree with a diameter at breast height (DBH) of twenty-four inches (24”) or more would be required to be survey located and depicted on a final site plan.

The current required tree density factor on each property is 14 units per acre, using protected or replacement trees, or a combination of both. This ordinance would increase the required tree density units from 14 to 20 units, although requirements for single and two-family residential would remain unchanged. However, the ordinance would remove a current provision reducing the tree density unit requirement for single- and two-family lots down to 7 units if their width is less than 25% of the average length.

The required tree density units are currently calculated using gross acreage of the property, but certain exceptions apply. The current exception for the portion of the land area currently or proposed to be covered by buildings would be amended to specify that this applies only to buildings that meet sustainable design protocols established in Sec. 16.36.050 of the Metro Code. Further, the exception for semi-trailer and tractor-trailer service areas, drive aisles, and parking and loading areas would be removed.

This proposal has not yet been considered by the Planning Commission. It is therefore anticipated that this ordinance will be deferred to the first meeting in February pursuant to Rule 21 of the Council Rules of Procedure.

BILL NO. BL2018-1417 (O'CONNELL, ALLEN, & MENDES) – This ordinance would amend the Metropolitan Code of Laws to allow public interior spaces to be afforded Historic Landmark protection.

Section 17.36.110 would be amended by creating a new Metro Historic Zoning Commission preservation tool -- Historic Landmark Interior -- which will allow property owners to designate and protect the character of a historic public interior. The ordinance, if approved, would formally add a new subsection designating Historic Landmark Interiors (HI) Districts. This would require that no HI interior feature be constructed, altered, repaired, relocated or demolished in whole or in part within an interior space unless it complies with the specifics laid out in Sec. 17.36.120.

Sec. 17.36.120 would be amended by adding a new subsection for the regulation of Historic Landmark Interiors Districts, defined as the public interior space of a building or structure of high historical, cultural, and architectural value; where alteration, demolition or destruction would constitute an irreplaceable loss to the quality and character of Nashville and Davidson County; and that meets one or more of the following criteria:

1. Associated with an event that made a significant contribution to local, state or national history;
2. Associated with lives of persons significant in local, state or national history;
3. Embodies distinctive characteristics of a type, period, or method of construction;
4. Is a historic landmark; or
5. Is listed or is eligible for listing in the National Register of Historic Places.

Section 17.36.100 would be amended by adding a reference to interior design to the existing purpose of the Historic Overlay District portion of the Metropolitan Code.

This proposal has not yet been considered by the Planning Commission. It is therefore anticipated that this ordinance will be deferred pursuant to Rule 21 of the Council Rules of Procedure.

BILL NO. BL2018-1418 (ALLEN, O'CONNELL, & WITHERS) – This ordinance would amend the Metropolitan Code of Laws to require a preservation permit before taking any action for or with respect to any structure located within any of the historic overlay districts listed in MCL Sec. 17.36.110. “Actions” include exterior alteration, repair, relocation, demolition in whole or in part, or new construction. Within Historic Landmark Interior designations, “actions” would include interior renovations, alterations, repairs, or demolition in whole or in part. Adoption of this Code amendment has been suggested in order to clarify when an action constitutes a violation within historic overlay districts.

Design and demolition review of the Historic Zoning Commission would be memorialized in the preservation permit. The preservation permit would be required to be followed from commencement through completion of the work.

This proposal has not yet been considered by the Planning Commission. It is therefore anticipated that this ordinance will be deferred pursuant to Rule 21 of the Council Rules of Procedure.

– RESOLUTIONS –

RESOLUTION NO. RS2019-1531 (VERCHER & BEDNE) – This resolution would declare surplus certain parcels of real property and approve the disposition of those parcels.

Metro Code of Laws Sec. 2.24.050.G authorizes the Director of Public Property, following approval by the Metro Council, to sell parcels acquired by Metro through a delinquent tax-sale process established by Tennessee Code Annotated § 67-5-2501. The sales price must be no less than the most current appraised listed by the Assessor of Property, or to the adjacent tract owner offering the highest price if no adjacent owner is willing to pay the appraised value. The Council can authorize disposition of more than one property as part of the same resolution.

This resolution would declare the following 23 parcels surplus:

- 0 Old Hydes Ferry Pike
- 0 W Trinity Lane
- 1504 Jewel Street
- 0 Olga Avenue
- 0 Litton Avenue
- 0 Big Horn Drive
- 85 Glenrose Avenue
- 36 Shepard Street
- 42 Shepard Street
- 0 Dr. D B Todd Jr Blvd
- 1603 Scovel Street
- 0 Green Street
- 1225 11th Avenue N
- 1403 B 9th Avenue N
- 0 American Road
- 2703 Morena Street
- 2703 Albion Street
- 0 25th Avenue N
- 2941 Torbett Street
- 0 Delaware Avenue
- 284 Ash Grove Road
- 0 Hillshire Drive
- 0 Mark Drive

Pursuant to section 2.24.250(C)(1) of the Code, the proceeds from the sale of these parcels would be credited to the General Fund of the district from whose operating budget the last department, commission, board or agency using the property is financed.

These proposals have been approved by the Planning Commission.

Fiscal Note: The price for the sale of these properties has not yet been determined. However, per Section 2.24.250.G of the Metro Code of Laws (MCL), the price must be no less than the Property Assessor's appraised value, or the highest offer from an adjacent tract owner if no adjacent owner will offer the appraised value.

RESOLUTION NO. RS2019-1532 (VERCHER) – This resolution would authorize the Department of Law to settle the civil rights claim of Mr. Timothy Warren against the Metropolitan Government in the amount of \$160,000.

At 1:32 a.m. on January 1, 2014, Timothy Warren was in the intake lobby of the booking area of the former Criminal Justice Center (“CJC”). Mr. Warren was in for intake and submitted to a pat-down from a corrections officer employed by the Davidson County Sheriff’s Office (DCSO). Based upon video footage, it appeared Mr. Warren spoke with another corrections officer standing nearby during the pat down. Mr. Warren was directed to sit down and did not readily comply. As he walked toward the chair, Mr. Warren turned back to the corrections officer. The corrections officer then punched Mr. Warren in the face, knocking him to the ground. Mr. Warren was subdued by both corrections officers and a third corrections officer grabbed Mr. Warren’s legs. The third officer repeatedly slammed Mr. Warren’s legs to the ground. A fourth corrections officer sprayed Mr. Warren with pepper spray. As a result of the altercation, Mr. Warren suffered a right ankle fracture and dislocation.

Mr. Warren sought treatment and initial medical care related to his broken ankle was paid by Metro while he was incarcerated, valued at \$9,500. Mr. Warren has agreed to accept a total of \$160,000 in full settlement of this case, based upon \$110,000 for reimbursement of his medical expenses, future medical expenses, pain & suffering, and emotional distress, plus \$50,000 for his attorney’s fees.

Mr. Warren brought claims against Metro for deliberate indifference to the use of force by the corrections officers and a claim of inadequate training of these officers. The Department of Law recommends settlement of this claim for \$110,000 to Mr. Warren and attorney’s fees of \$50,000, for a total of \$160,000.

After an investigation, two of the corrections officers were issued charge letters for improper use of force and appeared before a disciplinary board. During the disciplinary hearing, the corrections officer who initially punched Mr. Warren acknowledged that he was trained to not strike in the face, that what he did was wrong, and that he overreacted. That officer was given a five-day suspension. However, a copy of the disciplinary finding letter was not given to the employee within 10 days of its entry as required by Civil Service Rule 6.6. As a result, the suspension never went into effect. (The DCSO has made internal practice changes to ensure that disciplined corrections officers are served properly in the future.) The other officer was found not guilty of excessive use

of force by the disciplinary board. The two other officers involved were voluntarily dismissed from the lawsuit and did not receive any disciplinary action.

There are pending charges against two of the officers involved for aggravated assault. This settlement does not encompass the claims against them.

Fiscal Note: This \$160,000 settlement would be the third payment from the Judgments and Losses Fund in FY19 for a cumulative total of \$405,000. The fund balance would be \$2,646,915 after this payment.

RESOLUTION NO. RS2019-1533 (VERCHER & FREEMAN) – This resolution would accept a donation of two (2) Polaris all-terrain vehicles from Music City, Inc. for the use and benefit of the Nashville Fire Department. Music City, Inc. is the charitable foundation of the Nashville Convention Center & Visitors Corporation. This is the third donation of an all-terrain vehicle from Music City, Inc. to the Nashville Fire Department in as many years. (See, Resolutions No. RS2017-894 and RS2018-1102).

Pursuant to Metro Code of Laws § 5.04.120.B, donations exceeding \$5,000 may be accepted and appropriated pursuant to resolution.

Fiscal Note: The vehicles are valued at \$59,714.

RESOLUTION NO. RS2019-1534 (O'CONNELL, VERCHER, & SYRACUSE) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2019-1535 (VERCHER, O'CONNELL, & OTHERS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2019-1536 (VERCHER, O'CONNELL, & HASTINGS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2019-1537 (O'CONNELL & BEDNE) –

RESOLUTION NO. RS2019-1538 (O'CONNELL & BEDNE) –

RESOLUTION NO. RS2019-1539 (O'CONNELL & BEDNE) –

RESOLUTION NO. RS2019-1540 (O'CONNELL & BEDNE) –

RESOLUTION NO. RS2019-1541 (O'CONNELL & BEDNE) –

These resolutions would authorize the construction, installation, and maintenance of aerial encroachments – each consisting of blade signs – at five separate locations:

- 1) RS2019-1537 authorizes Restaurant Investment Properties, Inc. dba Corner Catering, Inc., to install a blade sign measuring 4 feet, 4 ½ inches by 20 feet at 151 5th Avenue North. The attached sketch depicts a sign with text stating: “Corner Pub”;
- 2) RS2019-1538 authorizes Rise Biscuits 5th Ave, LLC dba Freddie Bagodonuts, LLC to install a blade sign measuring 2.5 feet by 4 feet at 153 5th Avenue North. The attached sketch depicts a sign with text stating: “Biscuits & Donuts - RISE - Righteous Chicken”;
- 3) RS2019-1539 authorizes Nite Vibes, LLC to install a blade sign measuring 5 feet by 2½ feet at 207 3rd Avenue North. The attached sketch depicts a sign with text stating: “Ms. Kelli’s Karaoke”;
- 4) RS2019-1540 authorizes Losers, LLC, dba Losers Most Wanted Bar to install a one blade sign measuring 172 inches tall at 111 4th Avenue South. The attached sketch depicts a sign with text stating: “Loser’s Bar & Grill”; and
- 5) RS2019-1541 authorizes Harry O’s Steakhouse, LLC, dba Kid Rock’s Big Ass Honky Tonk to install a blade sign measuring 5 feet by 20 feet at 217 Broadway. The attached sketch depicts a sign with text stating: “Kid Rock’s Big Ass Honky Tonk Rock & Roll Steakhouse.”

In each instance, the resolution requires the applicants to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the sign, and is required to provide a \$2 million certificate of public liability insurance with the Metropolitan Clerk naming the Metropolitan Government as an insured party. The applicants must also hold the Metropolitan Government harmless from all claims connected with the installation.

In each case, the Metropolitan Government retains the right to pass resolutions or ordinances regulating the use of surrounding streets, including the right to construct and maintain utilities, and to order the relocation of facilities at the expense of the applicant. Metro further retains the right to repeal approval of the encroachments without liability.

The plans for each encroachment must be submitted to the Director of Public Works for approval, along with all work and materials; and the installation, when completed, must be approved by the Director.

Construction of the signs must be carefully guarded and must be completed promptly, so as to cause the least inconvenience to the public.

These proposals have been approved by the Planning Commission.

RESOLUTION NO. RS2019-1542 (LEE) – This resolution would approve the election of four hundred eighteen (418) Notaries Public in accordance with state law. Per Rule 27 of the Metro Council Rules of Procedure, the Davidson County Clerk has advised that each of the applicants meets the qualifications for the office.

– ORDINANCES ON SECOND READING –

BILL NO. BL2018-1439 (SLEDGE) – This ordinance would amend the Metropolitan Code to authorize the Metropolitan Housing Trust Fund Commission to rescind grant contracts and collect or “claw back” funds that were previously allocated if grant recipients fail to execute contractual obligations.

The Metropolitan Housing Trust Fund Commission oversees the management and operation of the Barnes Fund for Affordable Housing. The Commission enters into grant contracts with eligible nonprofit or civic organizations to renovate or construct affordable housing and rental opportunities and otherwise supports efforts to encourage affordability. Commission members report that in certain instances, previously funded projects have remained dormant or inactive for months, if not years, limiting the availability of grants funding for other projects.

This ordinance would authorize the Metropolitan Housing Trust Fund to rescind grant contracts and collect previous allocated grant funds if the recipient organization fails to complete its obligations under the grant contract within twenty-four (24) months from execution. This would be subject to the terms and conditions contained in the grant contract.

Fiscal Note: As in the case of all grants with “clawback” provisions, if the grant terms are not met, the money would be returned to the pool of available grant dollars. When (and if) this occurs, the money would then be available for a subsequent award to other potential grantees.

BILL NO. BL2018-1440 (O’CONNELL) – This ordinance would amend the Metropolitan Code pertaining to dance permits and the permitted hours of beer sales and delivery.

Section 7.08.140.N of the Metropolitan Code of Laws currently provides that it is unlawful for any beer permit holder, or his agent or employee, to “allow any dancing on his premises without a dance permit.” But the Metropolitan government no longer issues or enforces dance permits. The Metro Code section regulating dances and dance halls was entirely eliminated in 2016 by Ordinance No. BL2016-221. The current ordinance would therefore delete this subsection.

In 2014, Ordinance no. BL2014-654 created a new subsection 7.08.140.O of the Metropolitan Code of Laws to prohibit the sale, delivery, or vehicular carrying of beer between the hours of 11 pm and 3:00 a.m. Upon subsequent review, however, the Metro Nashville Beer Permit Board has determined that no particular benefit was derived from this provision. This ordinance would therefore also delete this subsection from Section 7.08.140.

BILL NO. BL2018-1441 (ELROD) – This ordinance would amend the Metropolitan Code regarding shared urban mobility devices (SUMDs).

On August 21, 2018, the Metropolitan Council adopted Ordinance No. BL2018-1202 which amended Title 12 of the Metro Code to regulate shared urban mobility devices or SUMDs (e.g., scooters, bicycles, etc.) The regulatory provisions established therein created a permitting system for SUMD operators overseen by the Metro Transportation Licensing Commission (MTLC). These same regulations provide that “[t]he number of permitted operators shall not be limited by the metropolitan government.” (See, Section 12.62.020.D of the Metro Code).

Under the proposed ordinance, the number of permitted SUMD operators would now be limited to four (4), although the Metropolitan Traffic and Licensing Commission could approve additional operators after conducting hearings to review applications. If more than four (4) operators held a certificate of public convenience and necessity as of the effective date of the proposed ordinance, the MTLC would be required to revoke the certificate of any operator that received its certificate after four were already issued.

According to the Metropolitan Transportation Licensing Commission, three (3) companies currently possess SUMD certificates (Lime, Bird, and Lyft); two additional companies have established their qualification and are expected to obtain certificates soon (Jump, an Uber-affiliated company; and Spin); and an application from a sixth company (Gotcha) is expected.

The ordinance sets forth the parameters for the hearings to be conducted by the MTLC, including the frequency thereof, notice provisions, filing allowances, and fees.

The ordinance would also require SUMDs to be operated only by individuals over the age of 18, setting out penalties related to this requirement.

The Council Office would note potential legal concerns with this proposed ordinance. The provisions limiting the number of SUMD operators to four may run afoul of Article I, Section 22 of the Tennessee Constitution, which prohibits monopolies. In 2017, the Tennessee Attorney General issued an opinion in a matter regarding the ability of municipalities to establish exclusive contracts and franchises. The AG noted the Tennessee constitutional prohibitions against monopolies, stating:

The Tennessee Constitution, article I, section 22, provides "[t]hat perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed." For purposes of this constitutional prohibition, a "monopoly" is "an exclusive right granted to a few, which was previously a common right." If there is no common right in existence prior to the granting of the privilege for franchise, the grant is not a monopoly. " (Citations omitted).

To illustrate the perils of municipalities limiting business opportunities to a limited few, the Tennessee Attorney General cited to a Tennessee Supreme Court decision -- *Checker Cab v. City of Johnson City* -- which held that a municipality did not have authority to establish a virtual monopoly among a handful of taxi cab businesses. The facts in *Checker Cab* bear some resemblance to the current ordinance. A local private act established a new system for operation of taxicabs in Johnson City. The process required issuance of a certificate of public convenience and necessity, but only after (1) a public hearing, (2) a finding of need for additional taxi services,

and (3) upon such finding of need, allowance of a “reasonable time” for current taxicab operators to provide the additional service. The act thereby effectively limited the number of taxicab operators in Johnson City to three. The Supreme Court observed: “The monopoly of the taxi business in Johnson City granted to the appellants...is just about as exclusive and complete as may be conceived.” In declaring the local act to be in violation of anti-monopoly provisions, the Court stated: "All persons inclined to pursue such an occupation should have an opportunity of conforming to such regulations."

The Court did note that “the anti-monopoly clause of [the Tennessee] constitution does not prohibit the legislature from granting a monopoly, in so far as such monopoly has a reasonable tendency to aid in the promotion of the health, safety, morals and well-being of the people”. However, the Court concluded that no legitimate relationship existed between the public purpose sought by the private act and preserving a monopoly for those in business at the time of enactment.

As the Tennessee Attorney General has observed, the anti-monopoly clause in article I, section 22 of the Tennessee Constitution prevents the legislature from granting a monopoly when a common right exists, unless the monopoly "has a reasonable tendency to aid in the promotion of the health, safety, morals and well-being of the people." The test is whether the grant of a monopoly "has any real tendency to carry into effect the purposes designed -- that is, the protection of public safety, the public health, or the public morals -- and whether that is really the end had in view." Sections 1 and 2 of the proposed ordinance, as currently drafted, seemingly serve only to limit the number of companies eligible for certificates – with no protective purposes identified.

Additionally, the ordinance poses potential due process concerns associated with the revocation of existing certificates of public convenience and necessity that have previously been, or will soon be, issued by the Metropolitan Government.

BILL NO. BL2018-1442 (VERCHER & O’CONNELL) – This ordinance would approve the acquisition of interests in a parcel of real property from four parties and approve a participation agreement, license agreement, and easement agreement between the Metropolitan Government and Uptown Property Holdings, LLC (UPH) connected to the development of the Nashville Yards project.

The participation agreement reflects UPH’s public infrastructure improvements including (i) environmental clean-up in the public right-of-way; (ii) traffic signalization; (iii) street and sidewalk work at 10th Avenue, 9th Avenue, Church Street, 8th Avenue and Commerce Street; and (iv) separation of certain water and sewer utilities and related utility infrastructure and upgrades – all identified in Exhibit A to the participation agreement and totaling an estimated \$79,470,000. Of those improvements, the Metropolitan Government would agree to reimburse UPH for certain infrastructure, identified in Exhibit B to the agreement, presumably requiring the completion of these projects. The estimated expense of these reimbursable infrastructure items totals \$16,693,699, but the participation agreement caps Metro’s reimbursement payment at \$15,250,000 – the equivalent of 19.2% of the total infrastructure costs.

With respect to proposed street and sidewalk work at 10th Avenue, the capital spending plan adopted in October, 2018 under Resolution No. RS2018-1454 designated a total of \$15,000,000 for “Roads” projects by the Public Works Department, identified as project no. 02PW020. The FY19 Capital Improvements Budget designated \$10,000,000 for “10th Avenue North / Broadway area – Traffic signalization, sidewalks and road improvements”, identified as project no. 19PW0003. The Metro Public Works Department has previously advised that, of the \$15,000,000 designated for “roads” in the Capital Spending Plan, \$3,000,000 would be earmarked for “10th Ave N & Broadway Infrastructure Improvements.” According to the Mayor’s Office of Economic and Community Development, Metro Water Services will fund an additional \$3,250,000, leaving \$9,000,000 to be funded in future capital spending plans.

The license agreement, attached to the ordinance as Exhibit 2, would grant a license from Metro to UPH to enter upon the property located under Broadway at 10th Avenue. This area is designated on Exhibit A to the license agreement. The term of the license would be twenty (20) years and would renew automatically for five (5) years unless written notice is given by Metro at least 180 days prior to the expiration of the term. UPH would be given access and use of the property and could make improvements to the property with the permission of Metro.

Metro would also acquire interests in real property by quitclaim deeds from four parties, as shown in Exhibit 3 attached to the ordinance. UPH, the Young Men’s Christian Association of Middle Tennessee (YMCA), the State of Tennessee, and the Nashville Electric Service would each grant Metro any interest they have in the separate properties that encompass the proposed 10th Avenue North. Each property is described on Exhibits A and B, attached to each quitclaim deed.

The ordinance would also approve an irrevocable easement and maintenance agreement between Metro and UPH, attached as Exhibit 4 to the ordinance. This agreement would include (1) a temporary, non-exclusive construction easement; (2) a permanent, exclusive, irrevocable right-of-way and easement for the placement, ownership, use and maintenance of the roadway improvements, as well as an exclusive and irrevocable right and easement in the airspace directly above the area for the construction of a pedestrian bridge over, above and spanning Tenth Avenue; (3) a permanent, exclusive, irrevocable easement for the purpose of constructing vehicular turnaround related improvements. The agreement lays out conditions precedent, including delivery plans and specifications for the roadway and turnout improvements and copies of all permits, approvals, ordinances, resolutions and licenses required to commence construction of the improvements to Metro, which would be required to be completed before the easements would become effective. The easements could be terminated if the required conditions precedent do not occur within five (5) years from the date of the agreement. UPH would be permitted to transfer or assign its rights under this agreement. UPH would further agree to maintain and operate the improvements in a safe, clean and secure condition.

Fiscal Note: Upon completion of these infrastructure projects, UPH would convey ownership of the signalization, streets, sidewalks and water utilities to Metro at no cost; although Metro would be responsible for the ongoing operation and maintenance.

Metro would reimburse UPH for (i) construction; (ii) design and project management costs; and (iii) inspection expenses and other miscellaneous costs associated with the work. Metro would compensate UPH up to \$15,250,000 for infrastructure projects, listed on Exhibit B attached to the participation agreement. UPH estimates the total cost of this work to be \$16,693,699.

Metro would make payments annually over a multi-year period not to exceed four years. Payments would not exceed \$6,000,000 in any one fiscal year. This agreement could be amended by resolution of Council. Infrastructure projects for the Nashville Yards project to be undertaken by UPH are also listed on Exhibit A to the participation agreement and total an estimated \$79,470,000.

BILL NO. BL2018-1443 (WITHERS & O'CONNELL) – This ordinance would approve a license agreement between the Metropolitan Government and Verizon Wireless (Verizon) to install in-building radio-distribution devices (IBRDs) to enhance wireless reception on or within the Richard Fulton Main Office Building and the Howard Office Building. The IBRDs would amplify Verizon's wireless signal within these buildings, creating better reception for the wireless users in these buildings.

The term for the agreement is five (5) years, but may be extended for an additional five (5) year term.

Amendments to this legislation could be passed by resolution.

Fiscal Note: There will be no cost to Metro for the installation or operation of these devices.

BILL NO. BL2018-1444 (O'CONNELL & BEDNE) – This ordinance would adopt the Geographic Information Systems Street and Alley Centerline Layer, with the changes as reflected on the Centerline Layer to date, as the official Street and Alley Acceptance and Maintenance Record for Metro. The updated Centerline Layer shows the dedicated streets and alleys that were either accepted or abandoned for public maintenance by Metro since it was last adopted per Ordinance Number BL2018-1060, as amended, on February 20, 2018.

This has been approved by the Planning Commission.

BILL NO. BL2018-1445 (GLOVER, O'CONNELL, & BEDNE) – This ordinance would abandon an existing sanitary sewer main and easement and accept a new sanitary sewer main, sanitary sewer manholes, and easements for property located at 5502 Old Hickory Boulevard.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2018-1446 (ELROD, O'CONNELL, & BEDNE) – This ordinance would authorize the acquisition of certain permanent and temporary easements for the Blackman Road Stormwater Improvement Project for four properties located on Blackman Road and Overcrest Drive.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

Fiscal Note: The final price for these easements has not yet been determined.

BILL NO. BL2018-1447 (SWOPE & O'CONNELL) – This ordinance would abandon existing sanitary sewer main, sanitary sewer manholes, and easements and accept new sanitary sewer mains, sanitary sewer manholes, water mains, fire hydrants and easements for property located at 1203 Pineview Lane.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2018-1448 (O'CONNELL) – This ordinance would abandon existing sanitary sewer mains, sanitary sewer manholes, and easements and accept new water and sanitary sewer mains, sanitary sewer manholes, a fire hydrant, and easements for property located at 1430 Bell Road.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2018-1449 (O'CONNELL) – This ordinance would authorize Broadstone Stockyard Flats, LLC to install, construct, and maintain aerial and underground encroachments in the right-of-way located at 901 2nd Avenue North. These would consist of an awning, an elevated bridge, and steps to the historic stockyard building encroaching the right-of-way.

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

This proposal has been approved by the Planning Commission.

BILL NO. BL2018-1450 (O'CONNELL) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning a portion of Alley Number 120 right-of-way and easement, located south of Palmer Place in Council District 19.

The abandonment has been requested by OHM Advisors, applicant.

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

BILL NO. BL2018-1451 (O'CONNELL) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning a portion of Alley Number 938 right-of-way and easement, located off of Clifton Avenue in Council District 19.

The abandonment has been requested by Catalyst Design Group, applicant.

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

– ORDINANCES ON THIRD READING –

BILL NO. BL2018-1406 (O'CONNELL) – This ordinance, as amended, would modify Section 10.20.110.A of the Metropolitan Code regarding placement of garbage containers.

Currently, Sec. 10.20.110.A. of the Metropolitan Code requires that garbage containers “be stored at a location at the rear or side of the premises or at a location approved by the Director so as to not be visible from a public street.” This ordinance would require containers to be stored at the rear or side of premises so as not to be “on” (as opposed to “visible from”) public streets. Additionally, it would adjust time restrictions which currently restrict containers from being placed for collection only between the hours of 7:00 a.m. and 7:00 p.m. on the scheduled collection day. Instead, containers could be placed out beginning at 7:00 p.m. on the night before the scheduled collection.

This ordinance was prompted by the increasing difficulty of requiring trash carts to be hidden in increasingly dense residential areas, including zero lot line developments and corner lots. This ordinance would not offset screening and location requirements under Section 17.24.060 for dumpsters and other trash receptacles for structures other than single- and two-family residences.

BILL NO. BL2018-1419 (VERCHER, HURT, & S. DAVIS) – This ordinance, as amended, would modify the Metropolitan Government’s existing procurement nondiscrimination program. The current procurement nondiscrimination program was enacted in 2008 by Ordinance No. BL2008-161. Griffin & Strong, P.C., an Atlanta-based law and public policy consulting firm, conducted a Disparity Study in 2004 which provided a basis for the 2008 program. The study found that the Metropolitan Government had become a passive participant in unlawful discrimination against minorities and women in some procurements. The 2008 program sought to remedy the underutilization of minorities and women in a narrowly tailored way.

Recently, the Metropolitan Government engaged Griffin & Strong to update the 2004 Disparity Study and to design programs to reduce race, gender, and ethnicity discrimination. The resulting 2018 Disparity Study, presented to the Metropolitan Council on September 17, 2018, concluded that firms owned by women and minorities – particularly African-American firms – were significantly underutilized; that there are statistically significant disparities in Metro prime contracting and subcontracting; and that Metro remains a passive participant in unlawful discrimination against minority and women business enterprises (MWBE) in its procurements. For example, the 2018 study found less than 3.5% of local public funding spent on prime contracts went to African-American-owned firms. The study recommended ten (10) program changes, including use of race- and gender- conscious tools, establishment of annual procurement goals with race and gender targets, establishment of a Small Business Reserve program, and improved communications and outreach to the minority and women-owned business communities.

Per these recommendations, the ordinance under consideration would update and expand the existing procurement nondiscrimination program into a more comprehensive Equal Business

Opportunity (EBO) program. The objective of the EBO program would be to promote open competition in Metro's procurement process and to protect Metro from becoming a passive participant in any private scheme of discrimination. This would be accomplished through the use of the Office of Minority and Women Business Assistance ("Business Assistance Office" or "BAO") within the finance department, which was previously established pursuant to the 2008 nondiscrimination program.

The BAO would assume primary responsibility for administration and enforcement of the EBO program, including current duties such as preparing written rules, regulations, and procedures to be submitted to the procurement standards board; verifying certification of minority and women owned business enterprises (MWBES); and maintaining a current database of certified and available MWBEs. New duties of the BAO would include recruiting businesses to apply for certification as an MWBE and distributing annual "forecasting" reports.

The EBO program would cover Metro contracts within the categories of construction, non-professional services, and professional services, as currently encompassed, while the category of goods would be added to the scope.

The updated EBO program would allow for an Annual Aspirational goal -- a non-mandatory benchmark for categories of contracts by which Metro could gauge the successfulness of the EBO program. The Annual Aspirational goals would be based upon the most current disparity study. It would also allow for the creation of percentage goals for Minority Business Enterprises and Women Business Enterprises set for specific projects or contracts, with approval of the Purchasing Agent.

Bids submitted to Metro within the scope of the EBO program would be required to contain (1) a Covenant of Non-Discrimination, (2) a Statement of MWBE Utilization, (3) a Statement of Interested Subcontractors/Vendors, and (4) a Statement of Bid Proposals/Price Quotations. Additional documents could be requested post-bid.

All Bidders would also be required to submit proof of Good Faith Efforts to comply with the EBO program. Submission of proof is only required if the Annual Aspirational Goal or applicable project or contract goal has not been achieved. A Bidder would deliver written notice to at least three available certified MWBEs for work as a subcontractor. In addition, the Bidder could demonstrate Good Faith Efforts by, for instance, keeping in contact with potential subcontractors, or advertising in trade publications.

A Bid submitted by a First Ranked Bidder would be submitted to the BAO if the Bid included the required documents and any necessary Good Faith Efforts documentation required. The BAO would then evaluate whether the Bid is in compliance with the program. Upon a recommendation of compliance, the BAO would notify the Purchasing Agent who would then award the contract upon concurrence with the BAO's recommendation.

If the BAO's analysis of the Bid suggests the First Ranked Bidder has failed to comply with the requirements of the EBO program, the BAO would notify the Bidder of the particular reasons for the non-compliance determination. A conference would be scheduled with the Bidder where issues with the Bid could be reviewed and the Bidder would be permitted to present additional materials relevant to the question of non-compliance. If determined the Bidder did in fact comply with the EBO program, the Bid would be sent to the Purchasing Agent for award upon concurrence with the BAO's recommendation. If the BAO concludes the Bidder is non-compliant, the BAO would notify the Purchasing Agent who, upon concurrence with the non-compliance determination and notification to the Department of Law, would reject the Bidder's Bid as nonresponsive and identify a new First Ranked Bidder. The new First Ranked Bidder's Bid would then be evaluated through the same process.

The BAO would also be authorized to impose sanctions upon Bidders or Participants who do not comply with EBO provisions. Participants would have the opportunity to demonstrate good faith efforts to achieve compliance and be able to appeal any sanctions.

No later than August 1, 2021, and every five years afterward, the Division of Purchases would be required to issue a Request for Proposals to update the disparity study. Once updated, the Metropolitan Government would conduct an official review and public comment period to consider amendments or a "sunset" of the EBO program.

Because the EBO program is a government sponsored program that takes into account race and gender, the United States Supreme Court has required that these programs meet a standard of strict scrutiny. The strict scrutiny standard requires that there be a compelling interest that is addressed by a "narrowly tailored" response. Here, Metro's compelling interest is to assure that public funds collected from citizens and allocated to government contracting do not serve to finance private prejudice on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination. Metro has considered a full range of narrowly tailored race- and gender-neutral and race- and gender-conscious remedial policies presented by Griffin & Strong. Because of the strong basis in evidence, and upon careful deliberation, the updated remedial program for MWBEs based upon the 2018 Disparity Study should be deemed consistent with the constitutional standard. Moreover, the EBO program contained in this ordinance, based upon policy approaches recommended by Griffin & Strong, have been favorably commented upon by the United States Supreme Court in *City of Richmond v. J.A. Croson*, 488 U.S. 469, 509-510 (1989) and other federal decisions. It will be important, for purposes of any proposed amendments, that the legislation adhere as closely as possible to these specific findings and recommendations of the disparity study.

Fiscal Note: Quantifying the amount of the financial impact of the proposed ordinance would be speculative. By expanding the number of companies that would be considered for the award of contracts with Metro, the increased competition could theoretically result in lower overall costs. However, the potential amount of these lower costs is unknown.

BILL NO. BL2018-1420 (BEDNE & O'CONNELL) – This ordinance, as substituted would authorize the acquisition of temporary and permanent easements through negotiation, condemnation and acceptance for the Clean Water Nashville Hurricane Creek Pipe Improvement Project for 18 properties in Davidson County and 10 properties in Rutherford County. The properties in Davidson County are as follows:

- 4234 Murfreesboro Rd
- 4235 Murfreesboro Rd
- 4251 Hurricane Creek Blvd
- 4357 Hurricane Creek Blvd
- 0000 Hurricane Creek Blvd
- 1798 J P Hennessy Dr
- 1740 J P Hennessy Dr
- 1720 J P Hennessy Dr
- 0000 J P Hennessy Dr
- 1718 J P Hennessy Dr
- 0000 J P Hennessy Dr
- 1640 J P Hennessy Dr
- 1602 J P Hennessy Dr
- 1405 Heil Quaker Blvd
- 0000 J P Hennessy Dr
- 1554 J P Hennessy Dr
- 1255 Bridgestone Parkway
- 0000 Firestone Parkway

This has been approved by the Planning Commission. Future amendments to this legislation may be approved by resolution.

Fiscal Note: The price to be paid for the easements and property rights has not yet been determined.

BILL NO. BL2018-1421 (DOWELL, VERCHER, & OTHERS) – This ordinance would authorize the acquisition of certain right-of-way easements and property rights by negotiation or condemnation for use in public projects of the Metropolitan Government, initially for purposes of Public Works Department Project Number 2018-R-7, construction of a roundabout at Blue Hole Road and Pettus Road. The addresses for the eight parcels are as follows:

- 5585 Pettus Road
- 5595 Pettus Road
- 5601 Pettus Road

- 5611 Pettus Road
- 5588 Pettus Road
- 5565 Blue Hole Road
- 5546 Blue Hole Road
- 5610 Pettus Road

Section 2.24.240 of the Metropolitan Code of Laws authorizes the Director of Public Property Administration to acquire interests in real property for use for public purposes.

This has been approved by the Planning Commission. Amendments to this legislation may be approved by resolution.

Fiscal Note: The price to be paid for the easements and property rights has not yet been determined. This would be paid from the FY18 Capital Projects Fund.

BILL NO. BL2018-1422 (HENDERSON, BEDNE, & O'CONNELL) – This ordinance would authorize the acquisition of certain permanent and temporary easements by negotiation or condemnation for the Clydelan Court Stormwater Improvement Project for 15 properties. These properties are as follows:

- 101 Clydelan Court
- 105 Clydelan Court
- 106 Clydelan Court
- 108 Clydelan Court
- 109 Clydelan Court
- 111 Clydelan Court
- 112 Clydelan Court
- 113 Clydelan Court
- 116 Clydelan Court
- 117 Clydelan Court
- 153 Cheek Road
- 157 Cheek Road
- 161 Cheek Road
- 165 Cheek Road
- 120 Meadow Wood Drive

Section 2.24.240 of the Metropolitan Code of Laws authorizes the Director of Public Property Administration to acquire interests in real property for use for public purposes.

This has been approved by the Planning Commission. Amendments to this legislation may be approved by resolution.

Fiscal Note: The price to be paid for the easements and property rights has not yet been determined.

BILL NO. BL2018-1423 (SLEDGE, BEDNE, & O'CONNELL) – This ordinance would authorize LVH, LLC to install, construct, and maintain underground and aerial encroachments in the right-of-way located at 1234 Martin Street. These would consist of a patio and trellis structure measuring 8 feet deep by 54 feet long and 3.5 feet tall encroaching the right-of-way.

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

This proposal has been approved by the Planning Commission.

GRANTS LEGISLATION – JANUARY 3, 2019

Legislative Number	Parties	Amount	Local Cash Match	Term	Purpose
RS2019-1534	<p>From: Tennessee Department of Environment and Conservation</p> <p>To: Metropolitan Board of Parks and Recreation</p>	\$100,000	\$100,000	N/A	<p>This would approve an application for a Local Parks and Recreation Fund Grant.</p> <p>If approved, the grant proceeds would be used to develop Capitol View Park.</p>
RS2019-1535	<p>From: Tennessee Emergency Management Agency</p> <p>To: Metro Water Services Department</p>	\$1,256,530.50	\$139,614.50	N/A	<p>This would approve an application for a Flood Mitigation Assistance grant.</p> <p>If approved, the grant proceeds would be used to fund the acquisition and demolition of seven properties in the Whites Creek and North Fork Ewing Creek floodplains.</p>
RS2019-1536	<p>From: Tennessee Emergency Management Agency</p> <p>To: Metro Water Services Department</p>	\$483,577.50	\$69,082.50	N/A	<p>This would approve an application for a Hazard Mitigation grant.</p> <p>If approved, the grant proceeds would be used to fund the acquisition and demolition of three properties in the Metropolitan Nashville and Davidson County area.</p>