



METRO COUNCIL OFFICE

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director and Special Counsel
Hannah Zeitlin, Assistant Legal Counsel
Maria Caulder, Finance Manager
Metropolitan Council Office

COUNCIL MEETING DATE: September 1, 2020

RE: Analysis and Fiscal Notes

Unaudited Fund Balances as of 8/12/20:

4% Reserve Fund	\$52,472,111*
Metro Self Insured Liability Claims	\$1,242,691
Judgments & Losses	\$2,237,600
Schools Self Insured Liability Claims	\$3,309,111
Self-Insured Property Loss Aggregate	\$1,950,342
Employee Blanket Bond Claims	\$707,500
Police Professional Liability Claims	\$2,064,380
Death Benefit	\$1,665,262

*This assumes unrealized estimated revenues in FY21 of \$35,227,133

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

– BILLS ON PUBLIC HEARING AND SECOND READING –

BILL NO. BL2019-7 (O'CONNELL) – This ordinance amends Section 17.16.250.E.1 of the Metropolitan Code pertaining to owner-occupied STRP permits for two-family dwellings. The Code currently requires both dwellings to be under the same ownership in order for a two-family dwelling to have an owner-occupied STRP permit. This ordinance would create a mechanism whereby two separate owner-occupied STRP permits could be issued for two-family dwellings when the units are owned by different persons and each unit is the primary residence of the corresponding owner. No more than two permits could be issued per lot, and only one permit could be issued per dwelling unit.

This ordinance has been approved by the Planning Commission.

BILL NO. BL2019-11 (ALLEN, TOOMBS, & OTHERS) – This ordinance approves amendment three to the ground lease for Rose Park between Metro, acting by and through the Department of Parks and Recreation, and Belmont University, and approves a new ground lease between Metro, acting by and through the Metropolitan Board of Public Education, and Belmont University for the construction and operation of an indoor batting and locker/training facility on the Rose Park Middle School property.

Ordinance No. BL2007-1544, enacted by the Council in August 2007, approved a 40 year lease agreement between Belmont University and the Board of Parks and Recreation for the development and shared use of Rose Park (the “Park Lease”). Under the terms of the original Park Lease, Belmont constructed athletic facilities for its baseball, softball, soccer, and track teams within the 25-acre Rose Park. These facilities are used by Belmont for games and practices, and shared by Belmont, Metro and the Edgehill community. The Park Lease provided that Belmont would construct the athletic facilities on the property, as well as build a concessions building, locker rooms, and improvements to common areas, all at its own expense, at an estimated cost of approximately \$7 million. Belmont estimated that the sports fields would be available for community uses at least 80% of the time during the park’s regular operating hours.

Ordinance No. BL2016-458 approved the first amendment to the Park Lease to specify that 20% of the lease payment would be allocated and evenly distributed to Carter Lawrence and Rose Park public schools, as opposed to the parent teacher organizations of those schools. The Park Lease was amended again by BL2017-662 (Amendment 2) to authorize Belmont to construct an 80’ x 120’ indoor batting facility and related training space, office, and meeting room on the property abutting the northern edge of the Olympic Street parking lot. Construction of this batting facility on the Rose Park property never commenced, and Belmont subsequently negotiated an agreement with MNPS to construct the facility on the Rose Park School property.

First, this ordinance approves Amendment 3 to the existing Park Lease to remove the indoor batting and locker/training facility from the Rose Park property. All of the other provisions of the existing lease remain the same. The Council Office would note that Exhibit B to this ordinance is

just an unsigned, handwritten strikethrough of the indoor batting facility provisions. The Council Office recommends an actual amendment be prepared and executed to delete the batting facility provisions from the Park Lease.

Second, this ordinance approves a new lease for the construction and operation of an indoor batting and locker/training facility on the Rose Park Middle School property (the "School Lease"). Under the School Lease agreement filed as an exhibit to the ordinance, Belmont would be granted a temporary construction right of access to the school property. No construction can commence until the construction plans are approved by MNPS. Belmont will be responsible for all construction costs of the facility, and will be responsible for all ongoing maintenance and operating costs.

Once constructed, Belmont would be responsible for all scheduling for the use of the facility, and is to provide a building supervisor to provide scheduled access to MNPS and RBI Nashville. MNPS and RBI Nashville will have access anytime there isn't a previously scheduled Belmont use, and must have reasonable access during the daytime and evening hours. Belmont is also to build out shared office space on the first floor of the facility. Further, MNPS is to operate an extended learning site at Rose Park. Belmont will be required to pay annual lease payments of \$35,000 to support the extended learning site and to support Edgehill community baseball through RBI Nashville. If Metro decides to fund the operation of one or more community centers on Saturday, then the lease payment would drop to \$20,000 per year. Belmont is required to provide full replacement cost insurance for the facility. The School Lease also includes the standard indemnification provisions protecting Metro.

The term of the School Lease is for 50 years, but either party may terminate for convenience with one year's notice. If Metro terminates the School Lease early, Metro will be required to pay Belmont the appraised fair market value of the improvements to the school property.

The amendment added to this bill on first reading conditions approval of the School Lease upon the agreement being revised to include certain provisions based upon recommendations developed through community conversations with members from the Edgehill community, representatives from MNPS, the Metropolitan Parks Department, Belmont University, members of the Metropolitan Board of Education, and the Council. These conditional changes are as follows:

- Change the initial term of 50 years to 30 years with two 10-year renewal periods. The two renewal periods would be subject to approval by the Board of Education and the Metro Council.
- Add a 3% annual escalation clause for the lease payment, which over the life of the lease will produce an *average* annual lease payment of \$79,000, and total payments to MNPS of \$3.9 million. The Metropolitan Government maintains ownership interest in the building or the property throughout the term of the lease.

- Remove the clause that would reduce the lease payment to MNPS in the event that Metro Parks starts funding Saturday operations at any of the other community centers within Metro Parks.
- Remove references to specific groups named as beneficiaries of the lease payments.
- Belmont must provide annual usage statistics of the new facility to MNPS for the MNPS report that will be incorporated into the Parks Annual report on the Rose Park Facilities. Statistics will include names of groups utilizing the batting facility and hours used annually.
- MNPS must similarly report annually regarding the utilization of the lease payments to ensure the payments are being used to best serve the Edgehill Community and MNPS students. This information is to include specific programs, persons served, and the usage hours.
- Nothing in the agreement may restrict public access to the second floor of the building. Belmont agrees to coordinate use of the second floor in agreement directly with MNPS.
- Metro Parks and MNPS shall convene an advisory group representing a broad cross section of Edgehill community perspectives to review all aspects of the partnerships between Belmont, MNPS, and Metro Parks to ensure that the benefits to all parties are being realized. The amendment specifies the composition of the advisory group, which is to include representatives for MNPS, Parks, and Belmont, as well as community representatives appointed by the district 17, 18, and 19 councilmembers.

The Council Office has been informed that there will be a substitute to this ordinance to incorporate a new lease agreement, which was approved by the Board of Education on August 25, containing the aforementioned conditions.

Fiscal Note: Belmont would pay for the entire cost of the construction and will be responsible for the maintenance and repair costs. In addition, Belmont would pay for the utilities and janitorial costs. MNPS will receive \$35,000 annual lease payments to support the MNPS's Extended Learning Site at Rose Park including the Saturday operating hours at the Easley Center and to support Edgehill community baseball programs through RBI Nashville. The amendment removed the payment reduction and added a 3% annual escalation after the first-year payment for a total payment of \$3.9 million to MNPS over the life of the lease agreement.

BILL NO. BL2019-79 (O'CONNELL) – This ordinance implements certain requirements for a Short Term Rental Property - Owner Occupied.

This ordinance prohibits an owner-occupied STRP from advertising the availability of all bedrooms within the unit for rent, except for a two-family residential unit under common ownership with a two-family unit on the same lot, which is permitted in accordance with MCL 17.16.250.E.1.f. Also, this ordinance would make clear that an owner must reside onsite at an owner-occupied STRP at all times the property is being used as an STRP. Further, the owner could not be absent from the dwelling unit for longer than 15 consecutive hours within any 24 hour period while the property is being used as an STRP.

A proposed substitute has been submitted by the Planning Department. It would remove the prohibition against the owner being absent from the property for more than 15 consecutive hours within any 24 hour period. It would further exempt legally permitted detached accessory dwelling units and legally permitted accessory apartments from the prohibition and change the language to prohibit advertising the availability of an owner-occupied STRP to “entire/whole home”, instead of the current language regarding advertising the availability of all bedrooms. It would also relocate the provisions from Title 17 to Title 6, consistent with Substitute Ordinance No. BL2020-187, as amended, which moved the STRP regulations to Title 6.

This ordinance has been approved by the planning commission.

SUBSTITUTE BILL NO. BL2020-197 (VERCHER) – This ordinance declares a 120-day moratorium upon the issuance of building and grading permits for multi-family developments on property within portions of the Antioch area of Nashville and Davidson County.

The moratorium on building and grading permits is to allow the Planning Department to conduct a study of the Antioch area to determine whether existing and planned infrastructure and public facilities are sufficient to meet the projected density resulting from multi-family development. This study is to include an assessment of the capacity to deliver public services to the area, including but not limited to, public safety facilities, roadways, sidewalks, stormwater, and school capacity. It will also make recommendations to the Council regarding modifications to the community plans and policies to address any deficiencies noted and any necessary zoning changes.

This ordinance does not yet identify the specific areas where the moratorium would be imposed.

The planning commission is scheduled to consider this proposal at its August 27 meeting.

– RESOLUTIONS –

RESOLUTION NO. RS2020-450 (DRUFFEL, MENDES, & OTHERS) – This resolution approves an intergovernmental agreement between the Tennessee Department of Transportation and the Metropolitan Department of Public Works for the reimbursement of railroad crossing safety improvements at Post Road. This work would involve new signal poles, mast arms, signal heads, traffic signs, and railroad crossing signage.

The total cost of the project is estimated to be \$62,786.06. Metro will be responsible for 10% of the cost, or \$6,278.61, and TDOT will be responsible for 90%, or \$56,507.45.

Fiscal Note: TDOT would pay 90% of the project costs (\$56,507.45) and Metro would pay 10% (\$6,278.61).

RESOLUTION NO. RS2020-480 (GLOVER & SWOPE) – This resolution proposes four amendments to the Metropolitan Charter. This resolution would set a special election to approve the Charter amendments on December 5, 2020.

Pursuant to Section 19.01 of the Metropolitan Charter, the Council may only adopt two resolutions during the term that submit Charter amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the Council and the resolution itself must be adopted by 27 affirmative votes to become effective. No Charter amendment resolution has been adopted in the current Council term.

The proposed Charter amendments are as follows:

- The first amendment would amend Section 6.07 to prohibit the property tax rate adopted by the Council from increasing more than six percent over the prior year's property tax rate. The Council Office would note that the Department of Law issued the attached [legal opinion](#) in 2006 opining that property tax limitations in the Charter violate state law since the county legislative body has the exclusive responsibility for setting the tax levy and there is no provision in state law authorizing a limitation to the taxing authority of the Metropolitan Council.
- The second amendment would amend Section 6.06 to allow the Metropolitan Council to alter estimates of revenues or other fund availability included in the budget document. In such event, a full explanation must be included in the minutes of the Council. The Charter currently grants the Director of Finance the exclusive authority for setting revenue estimates.
- The third amendment would provide that an executive order issued by the mayor expires after 30 days unless extended by the mayor and approved by a resolution of the Metropolitan Council.
- The fourth amendment would require each Council committee chair to be elected from the Council body by a majority vote as opposed to being appointed by the Vice Mayor. A Council committee chair could not serve for more than one year. The amendment would

also provide that the Council's representative on the Metropolitan Planning Commission would no longer be required to be the chairperson of the Council Planning and Zoning committee.

It is anticipated that the sponsor will defer this resolution. These amendments will be referred to the Metro Charter Revision Commission to make a recommendation to the Council regarding the amendments pursuant to Section 19.03 of the Charter, in addition to review by the Council Charter Revision Committee. The Charter Revision Commission is scheduled to meet at 3:00 p.m. on September 11 to consider these amendments.

RESOLUTION NO. RS2020-502 (WITHERS & TOOMBS) – This resolution extends the time period for the waiver of certain building permit fees for the repair or rebuilding of property damaged as a result of the March 3, 2020 tornado. BL2020-234, as amended, was approved May 5, 2020, to waive building permit fees for property owners (or their authorized agents) who met the following conditions:

- The permits are obtained to repair damage to the owner's property caused by the March 3, 2020 tornado.
- The permits are obtained on or before June 3, 2020.
- The permits are issued to construct, alter, repair, enlarge, move or demolish any building or structure or part thereof or any appurtenances connected or attached thereto.
- The owner must provide evidence satisfactory to the Director of Codes Administration, or his designee, that the work is being performed as a result of damage sustained as a result of the March 3, 2020 tornado.
- Property owners who paid building permit fees prior to the adoption of the ordinance will be entitled to a refund if they provide evidence satisfactory to the Director of Codes Administration, or his designee, that the work is being performed as a result of damage sustained as a result of the March 3, 2020 tornado.
- Property owners or their agents had to sign an affidavit that the permit fees will not be reimbursed by insurance or other funding sources in order to receive the fee waiver.

Ordinance No. BL2020-377, as amended, extended the deadline for permits to be obtained to September 30, 2020, provided that permits obtained after July 1, 2020 must be for which there has been no change in ownership. It also provided that future amendments to BL2020-234 could be made by a resolution receiving twenty-one affirmative votes. This resolution would extend the deadline from September 30, 2020 to December 31, 2020.

Fiscal Note: As of August 26, 2020, the total permit fee amount that has been waived is \$83,454.26. This is down from the previously reported figure due to two permits being cancelled. The amount of fees that has been paid on storm-damaged properties is \$386,954.74. Codes is working to identify which permits will be eligible to be refunded in accordance with the legislation.

RESOLUTION NO. RS2020-503 (TOOMBS, TAYLOR, & OTHERS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2020-504 (TOOMBS, VANREECE, & OTHERS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2020-505 (TOOMBS, GAMBLE, & WELSCH) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2020-506 (TOOMBS & GAMBLE) – This resolution approves a sole source contract between the Metropolitan Government and JusticeTrax, Inc. to provide maintenance and support for the LIMS-plus software utilized by the Metropolitan Nashville Police Department forensic crime lab. Sole source contracts may be awarded under the Metro procurement code when it is determined that there is only one source for the supply or services rendered. Section 4.12.060 of the Metro Code requires all sole source contracts having a total value in excess of \$250,000 to be approved by the Council by resolution.

This resolution approves a three year contract with JusticeTrax, with the option to extend the contract for an additional two year term. The estimated value of the contract is \$286,700.

Fiscal Note: MNPD's total annual payment for the first year is \$60,260, with \$54,960 for the license fee and \$6,860 for the escrow fee. The total annual payment for the years two to five of the contract is \$56,610 due to the change in the escrow fee to \$3,150. This will be paid from Fund #10101 and Business Unit #31160110.

RESOLUTION NO. RS2020-507 (TAYLOR & WELSCH) – This resolution approves an agreement between the Metro Board of Health and Vanderbilt University Medical Center (VUMC) to provide training opportunities to VUMC residents and clinical fellows through the Health Department's tuberculosis elimination program. The Health Department would provide clinical training experiences to VUMC residents ½ day per week. The participants will obtain experience providing care to tuberculosis patients and managing their treatment. Students would receive no compensation and would not be considered employees of Metro. There would be no cost to Metro for participating in this program.

VUMC is required to provide assurances that the students are covered by health and professional liability insurance, and the school has agreed to assume responsibility for its students participating in the program. The term of the agreement is through June 30, 2024, but may be terminated by either party upon 30 days' written notice.

RESOLUTION NO. RS2020-508 (TOOMBS, TAYLOR, & OTHERS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2020-509 (TOOMBS, TAYLOR, & OTHERS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2020-510 (TOOMBS, HAGAR, & OTHERS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2020-511 (TOOMBS) – This resolution approves the settlement of a property damage claim brought by Patricia Ostrowski against the Metropolitan Government for the amount of \$40,185.10. On June 17, 2020, a Metro Public Works employee was traveling northbound on Lone Oak Road when he attempted to turn onto Warfield Drive striking Ms. Ostrowski's 2018 Tesla in her lane of travel. Although there were no personal injuries, the accident did result in property damage to the Tesla totaling \$40,185.10.

The Department of Law recommends settling this claim for \$40,185.10 to be paid out of the self-insured liability fund since the Metro employee was clearly at fault. The employee received disciplinary action consisting of a one day suspension.

Fiscal Note: This \$40,185.10 settlement would be the 11th payment from the Self-Insured Liability Fund in FY21 for a cumulative total of \$679,785. The fund balance would be \$1,242,691 after this payment.

RESOLUTION NO. RS2020-512 (SYRACUSE, TOOMBS, & OTHERS) – This resolution amends an agreement between the Metropolitan Department of Public Works and the Tennessee Department of Transportation (TDOT), originally approved by Resolution No. RS2015-1535, which accepts work in connection with the construction of a sidewalk on Lebanon Pike from McGavock Pike to Old Lebanon Pike. The amendment replaces the agreement in its entirety to add language referencing applicable law and policy to allow Metro to use TDOT's Local Programs procured On-Call Consultants for the provision of engineering and design related service or right-of-way acquisition services, which will expedite the procurement of needed consultants, expedite the overall project timeline, and streamline payment of the local match to TDOT. This amendment also extends the completion date of the original agreement from May 30, 2020 to May 31, 2022. Exhibit A would also be updated to adjust the categories of estimated costs to reflect a total project decrease of \$300,000, for a new project cost of \$3,800,000, of which Metro pays 20%.

RESOLUTION NO. RS2020-513 (JOHNSTON, TOOMBS, & OTHERS) – This resolution amends an agreement between the Metropolitan Department of Public Works and the Tennessee Department of Transportation (TDOT), originally approved by Resolution No. RS2015-1534,

which accepts work in connection with the construction of sidewalks along the south side of Harding Place from Danby Drive to Nolensville Pike. The amendment replaces the agreement in its entirety to add language referencing applicable law and policy to allow Metro to use TDOT's Local Programs procured On-Call Consultants for the provision of engineering and design related service or right-of-way acquisition services, which will expedite the procurement of needed consultants, expedite the overall project timeline, and streamline payment of the local match to TDOT. This amendment also extends the completion date of the original agreement from March 1, 2020 to March 1, 2022. Exhibit A would also be updated to adjust the categories of estimated costs to reflect a total project cost decrease of \$140,000, for a new project cost of \$5,760,000, of which Metro pays 20%.

RESOLUTION NO. RS2020-514 (JOHNSTON) – This resolution approves the election of five hundred and thirty-eight Notaries Public in accordance with state law. Per Rule 20 of the Metropolitan Council Rules of Procedure, the Davidson County Clerk has advised that each of the applicants meet the qualifications for the office.

– ORDINANCES ON SECOND READING –

SUBSTITUTE BILL NO. BL2020-224 (TAYLOR & HAUSSER) – This ordinance, as substituted, amends Chapter 11.22 of the Metropolitan Code to require landlords to provide notice to tenants prior to a sale of the property. The ordinance would create a new requirement that landlords provide a minimum of 90 days’ written notice to tenants prior to closing on a sale of the leased premises. The landlord would also be required to notify tenants within five days of a binding sale agreement of the closing date and the anticipated date by which a tenant would need to vacate, which would be no less than 30 days from the date of notice of the closing date.

This is similar to Bill No. BL2020-149, adopted at the April 21 meeting, which requires landlords to provide at least 90 days’ written notice to tenants before increasing the tenant’s rent.

BILL NO. BL2020-386 (ALLEN, HANCOCK, & BRADFORD) – This ordinance, as amended, amends Sections 2.24.225 and 2.24.230 of the Metropolitan Code regarding the selection of appraisers for the sale, purchase, lease, sublease, or other disposition of real property owned by the Metropolitan Government, and to require a community meeting prior to the consideration of lease agreements by the Council.

Ordinance No. BL2018-1282, approved in August of 2018, amended Section 2.24.225 to establish a requirement that all legislation pertaining to the sale, purchase, lease, sublease, or other disposition of Metropolitan Government real property (other than through the flood-prone property home buy-out program) be accompanied by an appraisal report to include both a current value and a prospective value reflecting any anticipated changes in entitlements upon the property, including changes in zoning classification, use restrictions, and/or deed restrictions. This was amended in December of 2019 by Ordinance No. BL2019-42 to do away with the prospective value appraisal requirement when Metro is acquiring property.

Section 2.24.230 currently requires a copy of the lease or sublease agreement, including all terms and conditions thereof, to be filed as a public record with the metropolitan clerk whenever the Metropolitan Government or any agency thereof leases or subleases real estate to a private individual, partnership, corporation or other private agency.

This ordinance would further amend these provisions to require all appraisal reports to be prepared by an independent state certified real estate appraiser, as defined in state law, and selected by the Department of Finance in accordance with applicable procurement regulations. This ordinance would also require all legislation approving the lease of Metropolitan Government-owned property valued in excess of \$1 million to a private entity for a lease term of more than five years, including permitted extensions, to have a publicly noticed community meeting before the Council can consider the legislation. Notice of the community meeting must be provided on the Metro website and by U.S. mail or email at least one week prior to the meeting to neighborhood associations and community organizations registered with the Mayor’s Office of Neighborhoods that are located within a one mile radius of the property to be leased.

An amendment from the sponsor is anticipated that would further clarify the community meeting and notice requirements.

BILL NO. BL2020-388 (SLEDGE) – This ordinance amends Section 16.24.330 of the Metropolitan Code of Laws regarding parking on private property. Section 16.24.330.K. 3 currently provides that every motor vehicle located on private property must either be stored inside a fully enclosed structure, or parked or stored in a safe manner on a paved or graveled area, other than a sidewalk. Such paved or graveled parking area for private residential property shall not exceed twenty-five percent of the total lot area.

This ordinance makes the following two minor changes to this provision:

Such paved or graveled ~~parking~~ area for private residential property shall not exceed 25% of the ~~total~~ unimproved lot area.

BILL NO. BL2020-390 (MENDES, MURPHY, & HENDERSON) – This ordinance grants a franchise to Google Fiber Tennessee, LLC to construct, operate, and maintain a fiber optic communications system within Metropolitan Nashville and Davidson County under the provisions of Chapter 6.26 of the Metro Code applicable to franchises for Fiber Optic Communications Services.

Section 6.26.020 defines "fiber optic communications" or "fiber optic services" as a network of cables, wires, lines, towers, wave guides, optic fiber, microwave, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing audio, video or other forms of electronic signals to or from subscribers or locations within Metropolitan Nashville and Davidson County, but not including the offering to the public cable television services. The current holders of these franchises under Chapter 6.26 are:

- Tennessee Backhaul (Mobilitie)
- Extenet
- Crown Castle
- XO Communications (acquired by Verizon)
- TCG/Teleport
- Zayo
- Windstream KDL

In accordance with Chapter 6.26, Google Fiber would have a 15 year franchise for the operation of its fiberoptic network, which will include aerial and underground cables and electronic equipment. Google Fiber will be required to pay \$15,198 per year as a reasonable estimate of Metro's costs associated with owning, maintaining, and managing the public rights-of-way used

by the company. This amount will increase if Google Fiber decides to use additional rights-of-way. Further, the fee will be subject to renegotiation if Metro conducts a new cost study or revises Chapter 6.26 of the Metropolitan Code prior to the expiration of the franchise term.

Section 6.26.240 provides that fiber optic providers are to pay a franchise fee in an amount equal to 5% of gross revenues. However, Tennessee courts have held that the 5% gross revenue amount applicable to telecommunications/fiber optic providers is not allowed. Rather, the franchise fee must be based upon the reasonable cost to Metro associated with maintaining the public rights-of-way used by the company. In Metro's version of the famous fictional Charles Dickens seemingly endless *Jarndyce v. Jarndyce* lawsuit, Metro reached a settlement with XO Communications Services, LLC in 2012 to settle over a decade of litigation regarding the franchise fee dispute. Metro agreed to a franchise fee payment of \$60,000 per year for XO's use of the Metro rights-of-way. In calculating the amount to be paid by Google Fiber under this franchise agreement, Metro and Google Fiber agreed that the company is using approximately one quarter of the volume of space in the rights-of-way used by XO. Thus, the franchise fee was set at \$15,198 per year.

It is important to note that the amount of the franchise fee that can be charged for cable and video service providers (i.e., Comcast) differs from what can be legally charged for telecommunications/fiber optic providers. 47 U.S.C.A. § 542 allows a franchise fees paid by a cable operator to be 5% of such cable operator's gross revenues derived in a 12 month period from the operation of the cable system. Comcast's franchise is pursuant to Metro Code Chapter 6.08, which governs Cable Communications Franchises, and charges a franchise fee of 5% of gross revenues in that context, consistent with 47 U.S.C.A. § 542, rather than Chapter 6.26. Since Google Fiber is ceasing to offer cable television equivalent services, the company is not subject to the 5% franchise fee paid by Comcast.

Google Fiber has provided a \$6 million certificate of insurance naming Metro as an insured party.

This ordinance has been approved by the Planning Commission.

Fiscal Note: Metro will receive \$15,198 per year as a reasonable estimate costs associated with owning, managing and maintaining the public right-of-way until the expiration of this agreement or until a new study is performed to determine the cost.

BILL NO. BL2020-401 (MENDES, TOOMBS, & OTHERS) – This ordinance authorizes the future authorization of subpoenas issued on behalf of the Metropolitan Community Oversight Board (COB) to be approved by resolution of the Metro Council. The Charter amendment that established the COB provided that the board would be endowed with subpoena powers afforded to other Metropolitan agencies, boards, and entities identified in Section 18.10 of the Metro Charter. However, subsequent to its approval by the voters, the Tennessee General Assembly enacted T.C.A. § 38-8-352 to remove the subpoena power from the COB. As an alternative, the state law provides that subpoenas can be issued for documents or to compel witness testimony

on behalf of the COB upon approval of the Metro Council. Such subpoena authorization must be approved by a majority of the Council and cannot be approved in the form of a blanket authorization. Rather, the legislative approval but must specify each document to be produced or witness to testify. The state law further provides that subpoenas cannot be issued for documents that are confidential under the Tennessee Public Records Act.

This ordinance allows such future COB subpoenas to be approved by resolution. Section 3.05 of the Metro Charter provides that the Council shall exercise its legislative authority only by ordinance, except as otherwise specifically provided by this Charter or by general law. Since there is no other provision in the Charter or general law that would allow the issuance of COB subpoenas by resolution, an ordinance approved on three separate readings would be required for each subpoena absent this legislation.

This ordinance doesn't authorize the issuance of any specific subpoenas. It just creates the mechanism to allow future COB subpoenas, if any, to be approved by resolution.

BILL NO. BL2020-402 (MURPHY, GAMBLE, & OTHERS) – This ordinance amends Chapter 2.196 of the Metropolitan Code regarding lobbyist registration. On August 4, 2020, the Council adopted Second Substitute Ordinance No. BL2020-147, which made various updates to the lobbyist registration and disclosure requirements of the Metropolitan Code of Laws. This ordinance makes various amendments and clarifications to that ordinance. The definition of “lobbying” would be amended to take out redundant language regarding “consideration”, which is addressed instead by the definition of “lobbyist”. Section 2.196.030.A.7 would be amended to reference the correct source for charges for copies in the public records policy. The date by which the Clerk must send a reminder letter to lobbyists who have not filed their required reports would be extended from February 1st of each year to February 5th, to give the Clerk’s Office more time to review documents. The violation for filing a false complaint would be removed, which was requested by the Board of Ethical Conduct. The cooling off period for department heads, employees of the mayor’s office, and elected officials would be reduced from 12 months to 6 months.

Fiscal Note: There will be an additional fee of \$50 due to the Metro Clerk’s Office if the required report is not filed by the February 5 due date. This fee was added by Second Substitute Ordinance No. BL2020-147.

BILL NO. BL2020-403 (PARKER, TOOMBS, & OTHERS) – This ordinance amends Chapter 13.32 of the Metropolitan Code relative to sidewalk cafes and Chapter 7.08 of the Metropolitan Code relative to retail sales and storage of beer. Section 13.32.165 of the Code currently includes provisions allowing for sidewalk cafés in the downtown area upon obtaining a permit from Metro Public Works. A minimum of four feet of sidewalk must be left clear for pedestrian traffic, and the placement of tables must not obstruct ingress or egress from vehicles parked at the curb.

In order to address the impact COVID-19 is having on restaurants and the resulting social distancing requirements, this ordinance would temporarily allow sidewalk café dining facilities within the public right-of-way throughout the jurisdiction of the Metropolitan Government, not just downtown. A permit would still be required from Public Works, and the sidewalk café dining facilities must comply with all other provisions of Section 13.32.165. This would remain in effect until January 1, 2021, unless extended by a resolution adopted by the Metro Council. Any fees associated with a sidewalk café permit would be waived while this ordinance is in effect.

This ordinance also amends Section 7.08.190 pertaining to the location of beer sales to allow permit holders operating a permitted sidewalk café to sell beer on the sidewalk, parking area, or other rights-of-way adjacent to the property, or as otherwise authorized by the Metro Beer Board.

Fiscal Note: The sidewalk café permit fee is \$100 according to the Metro Public Works Department.

BILL NO. BL2020-404 (PORTERFIELD, BENEDICT, & PULLEY) – This ordinance amends Section 7.24.040 of the Metropolitan Code of Laws regarding alcoholic beverages in open containers. In what is commonly referred to as the “Solo Cup Law,” Section 7.24.040 currently prohibits persons from possessing any alcoholic beverage in an opened glass, aluminum, or metal container in an area generally open to the public unless the premises is licensed for on-premises consumption. However, alcoholic beverages are permitted in a plastic or paper cup.

This ordinance would prohibit alcoholic beverages in open containers, regardless of the type of container.

BILL NO. BL2020-406 (MENDES) – This ordinance approves Amendment 2 to the contract for staff augmentation services between CBRE Heery, Inc. and the Metropolitan Government to extend the contract term for twelve months and make certain changes to the scope of services. Metro entered into this five year contract with CBRE Heery in 2015 to provide staff augmentation for General Services and other Metro departments regarding capital projects.

Section 4.12.160(A) of the Metropolitan Code limits the term of contracts for services to 60 months, unless otherwise authorized by the Council. The ordinance notes that given the involvement of CRBE Heery in a number of ongoing capital projects, replacing the firm would likely result in additional costs to the Metropolitan Government and potential project delays, thus warranting the twelve month extension. The scope of work in the contract includes project management, facility assessments, cost estimating, construction management, and other related services.

This amendment also modifies the scope or services to limit the work to the ongoing capital projects for which the firm is involved for General Services, Public Library, and Metro Water Services.

BILL NO. BL2020-407 (MENDES) – This ordinance amends Section 4.48.080 of the Metropolitan Procurement Code to address procedures for the procurement of real estate brokerage services. Section 4.48.080 current provides that it is a breach of ethical standards for a person to be retained to solicit or secure a Metro contract upon a contingency or brokerage fee except for “bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.” This language acts as a limitation on Metro retaining commercial real estate agents to assist with leasing Metro property since many such agents are compensated based upon a percentage of the sales price. The recitals in the ordinance note that Metro has the need for the services of licensed real estate brokers to assist Metro in identifying available properties for lease that are suitable for Metro departments, boards, and commissions.

This ordinance revises this language to allow the Purchasing Agent, upon approval of the Director of Finance and the Director of Law, to procure the services of licensed real estate brokers to assist Metro in real property lease transactions. Such real estate brokers may be compensated on a commercially reasonable commission basis, including options for payment of brokerage fees by Metro or the lessor of the property.

ORDINANCE NO. BL2020-408 (SYRACUSE, HAGAR, & OTHERS) – This ordinance authorizes the director of public property administration to accept a greenway conservation easement for property located at 2841 Lebanon Pike for use in the development of Metro’s greenway system. The easement will be 12 feet wide, resulting in a total easement area of 0.12 acre. There is no cost to Metro to acquire the easement. Further amendments to this easement agreement may be approved by resolution.

This ordinance has been approved by the planning commission.

Fiscal Note: This ordinance has no cost to Metro. Donated easements have no market value according to Metro Parks and Recreation.

ORDINANCE NO. BL2020-409 (YOUNG, HAGAR, & OTHERS) – This ordinance authorizes the director of public property administration to accept a greenway conservation easement for property located at North Graycroft Avenue, unnumbered. The property is located along Dry Creek, and the total easement area is 22 acres. Further amendments to this easement agreement may be approved by resolution.

This ordinance has been approved by the planning commission.

Fiscal Note: This ordinance has no cost to Metro. Donated easements have no market value according to Metro Parks and Recreation.

ORDINANCE NO. BL2020-410 (VANREECE, MENDES, & MURPHY) This ordinance declares property located at W. Due West Avenue, unnumbered to be surplus and authorizes the sale of the property to Goodpasture Christian School. This 0.78 acre parcel is unused by Metro Public Works and is bordered on both sides by Goodpasture. The school is paying \$14,400 to acquire the property, which is the appraised value for tax purposes.

This ordinance has been approved by the planning commission.

Fiscal Note: Metro will receive the appraised value of \$14,400 for the sale of the property.

ORDINANCE NO. BL2020-411 (HANCOCK, MENDES, & MURPHY) This ordinance authorizes the Director of Public Property Administration to transfer any remaining interest Metro may still have in property located at 310 Myatt Drive, excluding the present Myatt Drive right-of-way. Ordinance No. O68-75 authorized the acquisition of the property by negotiation or condemnation for the construction of Myatt Drive. A portion of the frontage of Mr. Fielding Brown Williams and Mrs. Betty Williams Jones' property was condemned in 1971 by Metro Public Works for the Myatt Drive roadway project and the owners were compensated \$400. However, due to an error in the final court order, the entirety of the Williams' parcel was granted to Metro, while the Williams' family continued to reside at the property. Metro has been asked by the Estate of Betty Williams Jones to execute the quitclaim deed authorized by this ordinance for the purpose of clarifying ownership of the parcel.

This ordinance has been approved by the planning commission.

BILL NO. BL2020-412 (SLEDGE, MENDES, & OTHERS) – This ordinance authorizes the acquisition of various right-of-way easements, drainage easements, temporary construction easements and other property rights by negotiation or condemnation for fifteen properties for the Vaulx Lane sidewalk improvement project between Inverness Avenue and Kirkwood Avenue.

This ordinance has been approved by the planning commission.

BILL NO. BL2020-413 (NASH, MENDES, & OTHERS) – This ordinance authorizes the acquisition of various right-of-way easements and temporary construction easements for eight properties for the Brewer Drive sidewalk improvement project between McMurray Drive and Green Leaf Drive.

This ordinance has been approved by the planning commission.

BILL NO. BL2020-414 (HAGAR, MURPHY, & OTHERS) – This ordinance amends the Geographic Information Systems Street and Alley Centerline Layer for the Metropolitan

Government of Nashville and Davidson County by abandoning a portion of an unnumbered alley right-of-way and easement from Center Street northeastward approximately 125 feet along the southeast property line of Parcel No. 06405003300. The abandonment has been requested by Margie Russell, property owner/applicant.

This ordinance has been approved by the planning commission. Further amendments to this ordinance may be approved by resolution.

BILL NO. BL2020-415 (O'CONNELL, MURPHY, & HENDERSON) – This ordinance amends the Geographic Information Systems Street and Alley Centerline Layer for the Metropolitan Government of Nashville and Davidson County by abandoning a 78 square-foot portion of right-of-way and easement at the southeast corner of Union Street and Rosa L. Parks Avenue. The abandonment has been requested by Barge Cauthen and Associates, applicant.

This ordinance has been approved by the planning commission. Further amendments to this ordinance may be approved by resolution.

BILL NO. BL2020-416 (VANREECE, MURPHY, & HENDERSON) – This ordinance abandons 541 linear feet of existing eight inch sanitary sewer main, one sanitary sewer manhole and easements, and accepts approximately 516 linear feet of new eight inch sanitary sewer main, 131 linear feet of new eight inch sanitary sewer main, five sanitary sewer manholes and easements, for property located at 514 Madison Station Boulevard.

This ordinance has been approved by the planning commission. Future amendments to this ordinance may be approved by resolution.

Fiscal Note: This ordinance has no cost to Metro. Abandoned and donated easements have no market value according to the Department of Water Services.

BILL NO. BL2020-421 (MENDES, PULLEY, & OTHERS) – This ordinance amends Title 10, Title 13, Title 15, and Title 16 of the Metro Code to permit the Fire Marshal's Office, Metro Public Works, Metro Water Services, and the Department of Codes Administration to enforce emergency health orders. T.C.A. § 68-2-609, Metropolitan Charter Section 10.103, and Metropolitan Code Section 2.36.020 authorize the Medical Director of the Metropolitan Department of Health to close public establishments, facilities, or buildings if the county health officer finds unsanitary conditions of such a nature and extent to significantly threaten the public health.

The Fire Marshal's Office, Codes, Metro Water Services, and Metro Public Works all issue permits for projects and activities within their respective purviews. This ordinance would make it a condition of any permit or work authorization issued by these departments, including those issued prior to the effective date of this ordinance, that the permittee and its employees abide by

applicable laws, rules, regulations and orders, including those emergency orders issued by the Chief Medical Director in connection with a declared state of emergency. Employees of a department that has authorized work or issued a permit would be granted the authority to issue stop work orders or suspend a permit, on any work site operating under such permit for a violation of an emergency order. Any violation of the stop work order would be assessed as a civil penalty at the rate of fifty dollars per day. In addition, where a violation exists, the director of the department or the director's agent may request that utility service be cut off until the violation is corrected or abated. Appeals from the stop work order may be made to the relevant board or commission that oversees the authorization of the work or issuance of the permit.

BILL NO. BL2020-422 (MENDES, PULLEY, & OTHERS) – This ordinance amends Section 1.24.030 of the Metro Code to permit the Mayor to enlist Metro employees outside of the Health Department and MNPd to issue citations to enforce emergency health orders. T.C.A. § 68-2-609, Metropolitan Charter Section 10.103, and Metropolitan Code Section 2.36.020 authorize the Medical Director of the Metropolitan Department of Health to take such action as may become necessary to assure the maintenance of public health and the prevention of disease. Section 1.24.030 of the Metro Code permits employees of specific departments, boards, and commissions to issue citations related to code violations within those departments, boards, and commissions. This ordinance expands these provisions to provide that after a state of emergency declaration, the Mayor is authorized by written order to appoint the employees of any Metropolitan Government department to assist in the enforcement of orders issued by the Chief Medical Director, including without limitation the issuance of citations for violations of such orders.

– ORDINANCES ON THIRD READING –

BILL NO. BL2020-380 (O’CONNELL) – This ordinance amends Chapter 12.48 of the Metropolitan Code to allow the Traffic and Parking Commission to make rules establishing a curb loading zone management program, governing the use of certain designated curb loading zones, and allowing the Commission to set the amounts of related fees.

This is a companion ordinance to Resolution No. RS2020-401, which approved an in-kind grant from Flow, Inc., d/b/a Coord, to Metro Public Works to allow Metro to use Coord’s technology tools and technical support at no charge in order to enable Metro to conduct a smart loading zone pilot program.

BILL NO. BL2020-391 (O’CONNELL, MENDES, & MURPHY) – This ordinance declares a 0.01 acre parcel of property located at Spence Lane, unnumbered (Map/Parcel No.10607003300) to be surplus and authorizes the conveyance of the property to JMJ Enterprises, Inc. The property will be sold to JMJ Enterprises for \$2,090, which is the appraised tax value. The Director of Finance has determined that an additional appraisal is not needed for the property since it only consists of 0.01 acre and is only bordered by one property that is owned by JMJ Enterprises.

Fiscal Note: Metro will receive \$2,090 for the conveyance of the property to JMJ Enterprises.

BILL NO. BL2020-392 (O’CONNELL, MENDES, & OTHERS) – This ordinance authorizes the acquisition of an interest in property located at 119 and 127 Rosa L. Parks Boulevard, and grants easements for those same parcels in connection with the development of a hotel project by Urban Music City Owner, LLC (UMC). The property is owned by the Wardens and Vestry of Christ Episcopal Church (Cathedral) and leased to UMC, who plans to build a hotel on the properties. The two parcels are separated by an alley, and UMC intends to construct improvements 17’6” above the alley.

This ordinance first accepts a quitclaim deed for the property underlying the alley. Second, the ordinance grants UMC a permanent air rights easement and a temporary construction easement for the improvements to be built above the alley and for the widening of the alley by 20 feet. The plans for construction must be approved by the Director of Metro Public Works prior to any construction. Metro will have the right to terminate the easements if construction does not commence within five years. Finally, the ordinance accepts a payment of \$30,000 as consideration for these transactions.

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

Fiscal Note: Metro will receive \$30,000 as consideration for the permanent air rights easement and the temporary construction easement for property located at 119 and 127 Rosa L. Parks

Boulevard.

BILL NO. BL2020-393 (TAYLOR, MURPHY, & HENDERSON) – This ordinance abandons 192 linear feet of existing eight inch sanitary sewer main and one sanitary sewer manhole and easements, and accepts 218 linear feet of new eight inch sanitary sewer main and two sanitary sewer manholes and easements for four properties located at 3837 Dr. Walter S. Davis Boulevard.

This ordinance has been approved by the planning commission. Future amendments to this ordinance may be approved by resolution.

Fiscal Note: This ordinance has no cost to Metro. Abandoned and donated easements have no market value according to the Department of Water Services.

BILL NO. BL2020-394 (CASH, MURPHY, & HENDERSON) – This ordinance authorizes the acceptance of temporary and permanent easements for properties located at 2005 and 2007 Cedar Lane for a stormwater improvement project. Future amendments to this ordinance may be approved by resolution. This ordinance has been approved by the planning commission.

Fiscal Note: This ordinance has no cost to Metro. Abandoned and donated easements have no market value according to the Department of Water Services.

– RULE 8 REINSTATEMENT –

BILL NO. BL2020-387 (HANCOCK, EVANS, & OTHERS) – This ordinance amends Section 3.24.010 of the Metropolitan Code pertaining to health insurance benefits for Councilmembers after they leave office. This ordinance was deferred indefinitely at the recommendation of the Personnel, Public Information, and Human Relations Committee at its August 18 meeting over the objection of the sponsor.

Pursuant to Rule 8 of the Council Rules of Procedure, this ordinance has been placed onto the agenda at the request of the sponsor for the purpose of requesting an override of the indefinite deferral. Debate of the requested override is limited to (a) the sponsor of the deferred legislation and (b) the chair(s) of the committee(s) requesting indefinite deferral, or a designee thereof. Each speaker is limited to four minutes each. An override of a committee recommendation of indefinite deferral requires a majority of the Council members voting. If the request for an override is approved, the ordinance will be placed on the agenda for the next regular Council meeting. If the request for an override is disapproved, the Clerk will permanently remove the item from the Council agenda.

GRANTS LEGISLATION – SEPTEMBER 1, 2020

Legislative Number	Parties	Amount	Local Cash Match	Term	Purpose
RS2020-503	From: United Way of Middle Tennessee To: Metro Action Commission	Not to exceed \$135,544	\$135,544	June 1, 2020 through September 30, 2020	The proceeds from this grant will be used to provide assistance to support delivery of Supplemental Nutrition Assistance Program (SNAP) employment and training related services.
RS2020-504	From: National Endowment for the Arts To: Metropolitan Arts Commission	Not to exceed \$50,000	\$0	July 1, 2020 through June 30, 2021	The proceeds from this CARES Act grant will be used to help arts programs and their employees endure the economic hardships caused by forced closure due to COVID-19.
RS2020-505	From: U.S. Department of Homeland Security To: Metropolitan Nashville Fire Department	Not to exceed \$903,301.04	\$90,330.10	August 6, 2020 through August 5, 2021	The proceeds from this Assistance to Firefighters Grant will be used to provide funds for the purchase of personal protective equipment (PPE) and related supplies, to prevent, prepare for, and respond to the coronavirus.

<p>RS2020-508</p>	<p>From: Tennessee Department of Health</p> <p>To: Metropolitan Board of Health</p>	<p>Not to exceed \$86,400</p>	<p>\$0</p>	<p>March 16, 2020 through March 15, 2021</p>	<p>The grant proceeds will be used to prepare for, respond to, and recover from public health threats, including, but not limited to, response and recovery from COVID-19.</p>
<p>RS2020-509</p>	<p>From: Tennessee Department of Health</p> <p>To: Metropolitan Board of Health</p>	<p>Not to exceed \$725,200</p>	<p>\$0</p>	<p>July 1, 2020 through June 30, 2021</p>	<p>The proceeds from this grant will be used to provide an array of programs and direct patient care services to meet the public health needs of Tennessee's citizens.</p>
<p>RS2020-510</p>	<p>From: Tennessee Emergency Management Agency</p> <p>To: Metropolitan Department of Water and Sewerage Services</p>	<p>\$483,577.50</p>	<p>\$69,082.50</p>	<p>May 27, 2020 through March 3, 2021</p>	<p>This approves a Hazard Mitigation Grant and authorizes the acquisition and demolition of three houses located at 3843 Crouch Drive, 3867 Crouch Drive, and 4937 Shadowlawn Drive.</p>