

SUBSTITUTE ORDINANCE NO. BL2024-254

An ordinance to amend Title 15 of the Metropolitan Code of Laws relative to infrastructure investment for offsite construction.

WHEREAS, the increasing cost of housing construction is not slowing; and

WHEREAS, Section 2.01 of the Charter of The Metropolitan Government of Nashville and Davidson County grants to such government the power to provide for the creation, maintenance, building, purchase and operation of a public water system, and Chapter 5 of Article 8 of the Charter of the Metropolitan Government designates the Department of Water and Sewerage Services as the department responsible for the construction, operation, and maintenance of all water and sanitary sewer facilities; and

WHEREAS, infrastructure repair, replacement, and improvement are needed throughout Nashville and Davidson County; and

WHEREAS, the Metropolitan Government of Nashville & Davidson County lacks a clear, reasonable, and objective policy relative to infrastructure investment agreements between developers and the Metropolitan Government of Nashville & Davidson County for offsite construction; and

WHEREAS, in *Knight v. Metropolitan Government of Nashville and Davidson County*, the Sixth Circuit Court of Appeals held that there must be a nexus and a rough proportionality of the conditions imposed for the issuance of permits; and

WHEREAS, it is beneficial for developers to contribute to the infrastructure installation of the community sewer and water system in Metro Nashville and Davidson County_to improve quality of life for residents; and

WHEREAS, it is necessary for offsite construction to be subject to clear, reasonable, and objective policies for infrastructure investment agreements and for ratepayers to share in the burden the cost of infrastructure installation, improvements, and maintenance as reflected in Chapter 5, Article 8 of the Charter of the Metropolitan Government of Nashville and Davidson County.

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

Section 1. That Section 15.52.010.A of the Metropolitan Code of Laws, ~~Subsection A.5~~, is deleted in its entirety and replaced with the following:

~~That the entire cost of the construction and inspection of a water main extension and a sewer extension shall be borne by the developer. To the extent the department requires improvements or extensions to the system, for the benefit of future users of the improvements or extensions, an infrastructure investment agreement between the department and the developer may be negotiated.~~

Applications for water main extensions or improvements or sewer extensions or improvements to the water and sewerage system of the metropolitan government shall be made on a standard form of application prescribed by the director. The director of the

department of water and sewerage services shall be empowered to authorize extensions to the water and sewerage system, provided the following conditions are met:

1. That said extension or improvement is in conformance with state law and with the master plan for the respective system as promulgated by the director and approved by the council;

2. That the plans and specifications for any such extension or improvements shall be in full conformance with the current standards of the metropolitan department of water and sewerage services as determined by the director, and shall bear the approval of all required local, state, and federal reviewing agencies;

3. That if the director determines that any offsite utility improvements are necessary to provide the requested extension or improvement and maintain the current level of service and capacity to serve existing customers, the property owner shall construct or pay for the construction of the extension or improvement, but in no event shall offsite utility improvements or access to service be a condition of permit issuance;

4. That the department shall enter a cost-sharing arrangement with the property owner for any offsite improvements that are required by the director to increase the system's capacity to serve current or future customers;

5. That the director shall determine whether offsite utility improvements are required within 60 days from the date a building permit application is filed with the metropolitan government; and

6. That all construction work shall be subject to the inspection of the department of water and sewerage services or his authorized agent, and that the facility will not be accepted for operation and maintenance until it is fully complete and in full conformance with the department's standards.

For purposes of this section, "offsite utility improvement" means any water main or sewer main improvement or extension beyond the boundary of the real property being developed by the owner.

~~Section 2. That a new subsection B of 15.52.010 is hereby created and the existing subsections shall be renumbered accordingly:~~

~~B. Infrastructure investment agreements.~~

- ~~1. The department may negotiate an infrastructure investment agreement between the metropolitan government and the developer or responsible party for connecting a development to the water main or extensions when it is determined that the extension will benefit future users unrelated to the development and the system as a whole. An infrastructure investment agreement is not authorized for a project or development that requires only connection to the existing main, and notwithstanding any provision in this Chapter to the contrary, no metropolitan government funds will be utilized for the construction of the connection to the existing main.~~

- ~~2. Upon acceptance of an application for a water main or sewer extension, the department may negotiate the terms of an infrastructure investment agreement to include but not be limited to the following:~~
- ~~a. The developer or responsible party shall be responsible for all construction costs related to the water main extension or sewer extension.~~
 - ~~b. If the project or development is isolated or remotely located from the nearest accessible water main or sewer main and the extension is to be constructed in such a way as to benefit future users unrelated to the development and the system as a whole, the developer shall be able, over time but in no event over term of 15 years, to recover the costs of construction of the portion that will benefit future users and the system.~~
 - ~~c. Any reimbursement from the department to the developer or responsible party of surcharges imposed by the department for new customers unrelated to the development tapping into and served by the extension of the system. Such reimbursement shall be made in accordance with Section 15.20.100.~~
 - ~~d. The acquisition and cost thereof of any necessary easement or right of way will be the responsibility of the developer or responsible party. In no event will the metropolitan government be responsible for acquiring rights of way or easements for water main extensions or sewer extensions to service the developer's or responsible party's project.~~

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

INTRODUCED BY:

Tonya Hancock
Member of Council