



# Metropolitan Nashville and Davidson County, TN

## Legislation Text

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**File #:** RS2023-136, **Version:** 1

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A resolution authorizing the Metropolitan Department of Law to compromise and settle the claims of the Nashville Rescue Mission, Erin Tolbert, Province Builders, Progressive Development, DY Construction, KP2 LLC, and New Day Homes LLC against the Metropolitan Government of Nashville and Davidson County in the amount of \$213,966.13, to be paid out of the NDOT Sidewalk Fund.

WHEREAS, on May 10, 2023, the United States Court of Appeals for the Sixth Circuit found that § 17.20.120 of the Metropolitan Code (“the Sidewalk Ordinance”) was unconstitutional; and,

WHEREAS, immediately thereafter, the Metropolitan Government established a claims process by which property owners who incurred costs under the Sidewalk Ordinance could submit claims for reimbursement; and,

WHEREAS, the Nashville Rescue Mission, Erin Tolbert, Province Builders, Progressive Development, DY Construction, KP2 LLC, and New Day Homes LLC submitted claims through this process; and

WHEREAS, the Metropolitan Department of Law believes that the settlement terms listed in Section 1 are fair and reasonable and in the best interest of the Metropolitan Government and recommends that any and all claims or causes of action brought or that could have been brought by Nashville Rescue Mission, Erin Tolbert, Province Builders, Progressive Development, DY Construction, KP2 LLC, and New Day Homes LLC related to the Sidewalk Ordinance’s application to their properties that are the subject of these claims be settled for \$213,966.13, to be paid out of the NDOT Sidewalk Fund.

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

Section 1: The Metropolitan Department of Law is authorized to compromise and settle the claims of the Nashville Rescue Mission (\$80,134.06), Erin Tolbert (\$26,077.00), Province Builders (\$52,639.35), Progressive Development (\$9,870.90), DY Construction (\$12,381.73), KP2 LLC (\$11,880.33), and New Day Homes LLC (\$20,982.76) totaling \$213,966.13, to be paid out of the NDOT Sidewalk Fund.

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

### Analysis

In May 2023, the United States Court of Appeals for the Sixth Circuit ruled that Metro’s sidewalk ordinance, Section 17.20.120 of the Metropolitan Code of Laws, was an unconstitutional exaction in violation of the Fifth Amendment’s Takings Clause. Soon after this ruling, Metro established a claims process by which property owners and others who had incurred costs under the sidewalk ordinance in the year prior to the Sixth Circuit’s ruling could submit claims for reimbursement. Reimbursement of permit projects for which use and occupancy letters had not yet been issued at the time of claim were processed beginning in August of 2023 and will not require Council approval.

The claims subject to this resolution are for permit projects where the projects were complete and use and occupancy letters had been issued, as well as claims where sidewalks had been constructed. This resolution is the second of what may be multiple batches of claims for Council approval.

The claims comprising this batch are as follows:

Nashville Rescue Mission -- \$80,134.06

Erin Tolbert -- \$26,077

Province Builders -- \$52,639.35

Progressive Development -- \$9,870.90

DY Construction -- \$12,381.73

KP2 LLC -- \$11,880.33

New Day Homes, LLC -- \$20,982.76

The Department of Law recommends settlement of these claims by reimbursing these claimants for a total of \$213,966.13, to be paid from the NDOT Sidewalk Fund.

*Fiscal Note: The total settlement amount of \$213,966.13 for the seven claimants would be paid from the NDOT Sidewalk Fund.*