



# Metropolitan Nashville and Davidson County, TN

## Legislation Text

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**File #:** RS2023-2385, **Version:** 1

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A resolution authorizing the Metropolitan Department of Law to compromise and settle the claims of April Khoury, Old South Construction LLC, Aspen Construction LLC, and MRB Developers LLC against the Metropolitan Government of Nashville and Davidson County in the amount of \$150,674.47, with \$76,695.67 to be paid from the Judgments and Losses fund, and \$73,978.80 to be paid from the NDOT Sidewalk Fund.

WHEREAS, April Khoury, Old South Construction LLC, Aspen Construction LLC, and MRB Developers LLC filed a lawsuit against the Metropolitan Government alleging an unconstitutional taking under the Fifth Amendment, arising out of the application of Metro. Code § 17.20.120 (the "Sidewalk Ordinance") to their properties;

WHEREAS, after litigation in a related case, *Knight et al. v. Metro Nashville*, in the United States District Court and the United States Court of Appeals for the Sixth Circuit, the dispositive question of law in this lawsuit has been decided against the Metropolitan Government;

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 April Khoury, Old South Construction LLC, Aspen Construction LLC, and MRB Developers LLC related to the Sidewalk Ordinance's application to their properties be settled for \$150,674.47, with \$76,695.67 to be paid from the Judgments and Losses fund, and \$73,978.80 to be paid from 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 April Khoury, Old South Construction LLC, Aspen Construction LLC, and MRB Developers LLC for the sum of \$150,674.47, with \$76,695.67 to be paid from the Judgments and Losses fund, and \$73,978.80 to be paid from 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 2017, the Metropolitan Council amended Section 17.20.120 of the Metropolitan Code of Laws to require property owners to build sidewalks or pay a fee in lieu of sidewalk construction as a condition on certain building permits. The Council amended the section in 2019 to its current form. The Plaintiffs, April Khoury, Old South Construction LLC, Aspen Construction LLC, and MRB Developers LLC, all paid in-lieu fees under the initial version of the sidewalk ordinance. Each Plaintiff filed an appeal with the Board of Zoning Appeals. After their applications were denied, they filed a lawsuit against the Metropolitan Government challenging the sidewalk ordinance as an unconstitutional exaction in violation of the Fifth Amendment's Takings Clause.

The Chancery Court has not yet ruled on the dispositive legal question in this case, however, it is likely to follow the United States Court of Appeals for the Sixth Circuit's decision in a related case, *Knight et al. v. Metro*

*Nashville.* Further litigation is unlikely to yield a positive outcome for Metro and will increase costs to taxpayers.

The Plaintiffs requested reimbursement of their in-lieu of fees plus interest. The breakdown is as follows:

- April Khoury: \$12,524.80 in-lieu payment refund, plus \$23,380.93 interest
- Old South: \$31,920 in-lieu payment refund, plus \$6,067.91 interest
- Aspen: \$9,879 in-lieu payment refund, plus \$1,877.97 interest
- MRB: \$19,655 in-lieu payment refund, plus \$3,736.36 interest

The total is \$73,978.80 for in-lieu fee reimbursements and \$14,063.17 interest for a total of \$88,041.97 in damages.

The Department of Law recommends settlement of this case for \$150,674.47, of which \$76,695.67 (representing attorney's fees, costs, and other interest) is to be paid from the Judgments and Losses fund and \$73,978.80 (representing the in-lieu fees) to be paid from the NDOT Sidewalk Fund.

*Fiscal Note: The total settlement amount is \$150,674.47. The NDOT Sidewalk Fund would pay the amount of \$73,978.80 and the remaining amount of \$76,695.67 would be paid from Judgements and Losses Fund. This \$76,695.67, along with the settlement per Resolution No. RS2023-2386 would be the 1<sup>st</sup> and 2<sup>nd</sup> payment from the Judgment and Losses Fund in FY24 for a cumulative total of \$292,156. The fund balance would be \$14,566,681 after this payment.*