



Metropolitan Nashville and Davidson County, TN

Legislation Details (With Text)

File #: RS2021-794

Type: Resolution **Status:** Passed

File created: 2/19/2021 **In control:** Metropolitan Council

On agenda: 4/6/2021 **Final action:** 4/6/2021

Title: A resolution approving a Memorandum of Understanding to transfer solid waste disposal responsibilities from the Department of Public Works to the Department of Water and Sewerage Services along with the related operational activities, personnel, and equipment.

Sponsors: John Rutherford, Bob Nash, Burkley Allen

Indexes:

Code sections:

Attachments: 1. RS2021-794 MOU Exhibit, 2. RS2021-794 MOU Exhibit Amended, 3. RS2021-794 Amendment No.pdf, 4. RS2021-794 Amendment No.pdf

| Date | Ver. | Action By | Action | Result |
|-----------|------|------------------------------------------------------------------------|----------------------------|--------|
| 4/7/2021 | 1 | Mayor | approved | |
| 4/6/2021 | 1 | Metropolitan Council | adopted | |
| 4/6/2021 | 1 | Metropolitan Council | amended | |
| 4/6/2021 | 1 | Public Works Committee | approved with amendments | |
| 4/6/2021 | 1 | Personnel, Public Information, Human Relations, and Veterans Committee | approved with amendments | |
| 4/5/2021 | 1 | Budget and Finance Committee | approved with an amendment | |
| 3/16/2021 | 1 | Metropolitan Council | deferred | |
| 3/2/2021 | 1 | Metropolitan Council | deferred | |

A resolution approving a Memorandum of Understanding to transfer solid waste disposal responsibilities from the Department of Public Works to the Department of Water and Sewerage Services along with the related operational activities, personnel, and equipment.

WHEREAS, it is desirable to create a Department of Transportation (DOT) within the Metropolitan Government, as growth has occurred in the Metropolitan area, and there needs to be a consolidation and alignment of efforts and investment that support building our future on the foundation of our history, as described throughout the Metro Nashville Transportation Plan, recently endorsed per Resolution No. RS2020-656; and,

WHEREAS, an experienced review of the organization to better align structures, processes, skills, roles, systems and tools was undertaken with our continued commitment to get the most from every tax dollar; and,

WHEREAS, currently, transportation activities are housed in multiple departments across the Metropolitan Government, and we require consistent organization and priority of effort essential to the performance of transportation infrastructure; and,

WHEREAS, a DOT would align the key functions of a modern transportation organization with development, delivery, operations, and asset management portfolios so that the key functions create the structure needed to

provide best value to the residents and businesses of the Metropolitan Government; and,

WHEREAS, a DOT would create a structure for coordination, with partner departments and organizations such as WeGo and Parks, which would be well-suited to critical measurements of departmental performance that supports superior management and accountability; and,

WHEREAS, clear roles and responsibilities would enhance the DOT's position in recruitment and development of existing talent; and,

WHEREAS, the transportation activities of the Metropolitan Government need an organizational framework and refreshed culture to support, encourage, align and continue the skill development of our existing talent, as well as to send a message to our vendors that the Metropolitan Government requires the sharpest minds and sharpest pencils (best solutions, best price) which will be achieved through a new DOT; and,

WHEREAS, since the majority of functions performed by the Department of Public Works are in some way transportation-related and appropriate for a DOT, transferring functions currently performed by the Department of Public Works that are not related to transportation away from that department would, in essence, leave a streamlined department that could function as a new DOT; and,

WHEREAS, pursuant to Metropolitan Charter § 8.402, MPW is responsible for "the collection and disposal of garbage and other refuse, and maintenance and operation of facilities for the disposal of same," which has been interpreted to include all operations and services related to the disposal of solid waste and recycling provided by the Metropolitan Government, including refuse collections in the urban services district and refuse disposal in the general services district as contemplated in Section 1.05 of the Metropolitan Charter (the "Solid Waste Disposal Responsibilities"); and,

WHEREAS, there would be many advantages to transferring Solid Waste Disposal Responsibilities to MWS, particularly in terms of sustainability, since MWS has a demonstrated focus on sustainability efforts that include stormwater initiatives; supporting the Soil and Water Conservation District; and Water/Sewer energy savings programs such as the reuse of biosolids gases and the installation of large-scale photovoltaic solar facilities; and,

WHEREAS, the current Division of Solid Waste's sustainability efforts for composting and recycling could gain from MWS' experience with anaerobic digestion and solids reduction, and thus could be better leveraged in a combined department; and,

WHEREAS, MWS could additionally provide the umbrella to explore creation of a Solid Waste enterprise fund since MWS is a long-standing enterprise fund for water and sewer service and has demonstrated experience in providing both to the individual customer as well as the community as a whole; and,

WHEREAS, since MWS recently went through the process of creating an enterprise fund for the management of Stormwater, which involved evaluating cost of service, engaging stakeholders, and studying long-term organizational implications; and,

WHEREAS, from a practical standpoint, MWS has a support system in place that aligns with the Solid Waste Disposal Responsibilities such as a call center, a fleet management program (working with the Office of Fleet Management), external daily customer interactions, and administrative support (Human Resources/Finance/Information Technology); and,

WHEREAS, section 5.04.065 of the Metropolitan Code provides in pertinent part:

Any department, board, commission or agency of the metropolitan government allocating funds, services, property, or equipment valued in excess of five hundred thousand dollars to another department, board, commission, or agency of the metropolitan government shall enter a formal memorandum of understanding, to be submitted to the department of finance, which must be approved by resolution adopted by the metropolitan council by twenty-one affirmative votes.

WHEREAS, pursuant to the terms of the attached Memorandum of Understanding (MOU), the parties involved

have proposed that the public interest will best be served by placing the personnel and operational activities relating to solid waste disposal and recycling within the Metropolitan Department of Water and Sewerage Services (MWS); and,

WHEREAS, it is proposed that certain related funding and equipment be transferred from MPW to MWS in accordance with the attached MOU, and that funding and equipment would be valued in excess of five hundred thousand dollars.

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

Section 1. That the Memorandum of Understanding attached as Exhibit A hereto is hereby approved and the Metropolitan Mayor is hereby authorized to execute same.

Section 2. That this resolution shall go into effect from and after its adoption, the public welfare requiring it.

Analysis

This resolution approves a memorandum of understanding (MOU) between Metro Public Works (PW) and Metro Water Services (MWS) to transfer the personnel and operational activities related to solid waste disposal from PW to MWS. Section 8.402 of the Metro Charter provides that PW is responsible for “the collection and disposal of garbage and other refuse, and maintenance and operation of facilities for the disposal of same.” Thus, all operations related to the collection and disposal of solid waste and recycling have always resided with PW.

The administration is proposing the transfer of the operations to MWS as an initial step toward the creation of a Metro Department of Transportation to consolidate various transportation functions from other departments into one department. Since most transportation-related functions are currently part of PW, the MOU notes that it is appropriate that non-transportation functions be transferred out of the department. The resolution and MOU recitals identify the advantages for transferring the solid waste functions to MWS in terms of sustainability efforts and to facilitate the possible creation of a solid waste enterprise fund, though it is unclear how such an enterprise fund would function since, unlike the stormwater division of MWS, the solid waste division operates primarily on general fund tax dollars, not customer/user fees. The MOU also notes that MWS already has a support system, such as a call center, a fleet management program, and administrative support.

Pursuant to this MOU, after July 1, 2021, all PW solid waste disposal employees and equipment would be transferred under the administration of MWS. The agreement also provides for the transfer of all funds associated with this function. MWS would be required to keep separate accounting records pertaining to the solid waste disposal responsibilities. MWS would take over the enforcement of all federal, state, and local solid waste disposal and recycling rules and regulations that PW is currently responsible for enforcing. The MOU provides that MWS would also be required to comply with all regulatory requirements associated with solid waste disposal, such as reporting requirements and maintaining closed landfills. MWS would be required to submit an annual report to PW about the solid waste disposal activities and funds expended, as well as planned future capital projects.

Section 5.04.065 of the Metropolitan Code provides that the transfer of any funds, equipment, services, or property valued in exceed of \$500,000 from one department to another must be pursuant to an MOU approved by resolution adopted by the Council with 21 affirmative votes.

The Council Office would note that it is questionable whether a permanent transfer of the solid waste functions from PW to MWS through an MOU is consistent with the Metro Charter. As noted above, Section 8.402 of the Charter provides that PW shall be responsible for “the collection and disposal of garbage and other refuse, and maintenance and operation of facilities for the disposal of same.” Section 2.01(36) of the Metro Charter provides that “when any power is vested by this Charter in a specific officer, board, commission or other agency, the same shall be deemed to have exclusive jurisdiction within the particular field.” Finally, while Section 1.05 of the Charter provides that the Council can declare certain services prescribed by the Charter to be obsolete by ordinance, there is nothing pertaining to the transfer of functions to other departments.

That being said, the transfer of functions between these two departments is not unprecedented. In 2002, the stormwater division was transferred from PW to MWS by MOU. But there was a subsequent ordinance and eventually a Charter amendment to officially make the transfer. The Council Office recommends that the transfer of the solid waste functions from PW to MWS be included as part of a future Charter amendment resolution considered by the Council.