Metropolitan Nashville and Davidson County, TN

Legislation Details (With Text)

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Type:	Resolution	**Status:**	Passed
File created:	8/2/2022	**In control:**	Metropolitan Council
On agenda:	8/16/2022	**Final action:**	8/16/2022
Title:	A resolution authorizing LMC Towne Property Owner, LLC to construct and install an aerial encroachment at 808 Garfield St (Proposal No.2022M-017EN-001).		
Sponsors:	Freddie OConnell, Brett Withers, Zach Young		
Indexes:			
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Attachments:	1. Exhibit		

Date	Ver.	Action By	Action	Result
8/17/2022	1	Mayor	approved	
8/16/2022	1	Metropolitan Council	adopted	
8/16/2022	1	Transportation and Infrastructure Committee	approved	
8/15/2022	1	Planning and Zoning Committee	approved	
8/9/2022	1	Metropolitan Council	filed	
6/30/2022	1	Planning Commission	approved	

A resolution authorizing LMC Towne Property Owner, LLC to construct and install an aerial encroachment at 808 Garfield St (Proposal No.2022M-017EN-001).

WHEREAS LMC Towne Property Owner, LLC, plans to construct, install and maintain an aerial encroachment, under Proposal No. 2022M-017EN-001, at 808 Garfield Street; and,

WHEREAS, Proposal No. 2022M-017EN-001 is comprised of an aerial encroachment to include (1) projecting sign (East Elevation), encroaching the public right-of-way on property located at 808 Garfield Street; and,

WHEREAS, LMC Towne Property Owner, LLC has agreed to indemnify and hold The Metropolitan Government of Nashville and Davidson County harmless of any and all claims for damages of every nature and kind resulting from or arising from the installation of said aerial encroachment; and,

WHEREAS, Metropolitan Code of Laws §13.16.030(A) allows the Council of The Metropolitan Government of Nashville and Davidson County to grant encroachments, permits, or privileges to construct, maintain and/or operate aerial cables, canopies, etc., over and/or across sidewalks and public rights-of-way by Resolution adopted by twenty-one (21) affirmative votes.

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

Section 1. That subject to the requirements, limitations and conditions contained herein, LMC Towne Property Owner, LLC is hereby granted the privilege to construct and maintain said aerial encroachment in accordance with the plans which are on file in the office of the Director of the Nashville Department of Transportation and Multimodal Infrastructure (“NDOT”), and which are more particularly described by lines,

words and figures on the attached sketches which are attached to and made a part of this Resolution.

Section 2. That the authority granted hereby for the construction, installation, operation, and maintenance of said aerial encroachment shall not be construed as a surrender by the Metropolitan Government of its rights or power to pass resolutions or ordinances regulating the use of its streets, or the right of the Metropolitan Government through its legislative body, in the interest of public necessity and convenience to order the relocation of said facilities at the expense of LMC Towne Property Owner, LLC.

Section 3. That plans and specifications for said aerial encroachment shall be submitted to the Director of NDOT for approval before any work is begun; and all work, material, and other details of said installation shall be approved by the Director of NDOT prior to its use by LMC Towne Property Owner, LLC.

Section 4. That construction and maintenance of said aerial encroachment shall be under the direction, supervision, and control of the Director of NDOT, and its installation, when completed, must be approved by said Director.

Section 5. That this Resolution confers upon LMC Towne Property Owner, LLC, a privilege and not a franchise, and the Mayor and the Metropolitan Council herein expressly reserve the right to repeal this Resolution, whenever, in their judgment, a repeal may be demanded by public welfare, and such repeal shall confer no liability on The Metropolitan Government of Nashville and Davidson County, its successors and assigns, by reason of said repeal. In the event of such repeal by said Metropolitan Government, LMC Towne Property Owner, LLC, its successors and assigns, shall remove said aerial encroach at their own expense.

Section 6. LMC Towne Property Owner, LLC, shall pay all cost incident to the construction, installation, operation and maintenance of said aerial encroachment and shall save and hold The Metropolitan Government of Nashville and Davidson County harmless from all suits, costs, claims, damages or judgments in any way connected with said construction, installation, operation and maintenance of said aerial encroachment and shall not claim, set up or plead, as a defense, in the event of joint liability, with or without suit, that it and the Metropolitan Government were joint wrongdoers. LMC Towne Property Owner, LLC shall be responsible for the expense, if any, of repairing and returning the right-of-way to the condition which it was in prior to the installation of said aerial encroachment, and for any street closure.

Section 7. LMC Towne Property Owner, LLC, as herein described, shall not in any way interfere with the rights of the Metropolitan Government, its agents, servants, and/or contractors and utility companies, operating under franchise from the Metropolitan Government to enter, construct, operate, maintain, repair, rebuild, enlarge, and patrol its now existing or future utilities, including drainage facilities, together with their appurtenances, and to do any and all things necessary and incidental thereto.

Section 8. LMC Towne Property Owner, LLC, shall and is hereby required to furnish The Metropolitan Government of Nashville and Davidson County a certificate of public liability insurance, naming The Metropolitan Government as an insured party, of at least four million ($4,000,000) dollars aggregate, for the payment of any judgment had on any claim, of whatever nature, made for actions or causes of action arising out of, or connected with, the construction or installation of said aerial encroachment. Said certificate of insurance shall be filed with the Metropolitan Clerk and NDOT prior to the granting of a permit, and the insurance required herein shall not be canceled without the insurance company or companies first giving thirty (30) days written notice to The Metropolitan Government of Nashville and Davidson County.

Section 9. That said construction shall be carefully guarded and protected, and shall be completed promptly, so as to cause the least inconvenience to the public. The acceptance by LMC Towne Property Owner, LLC of all provisions of this Resolution shall be determined by the beginning of work.

Section 10. The authority granted pursuant to this Resolution shall not become effective until the certificate of insurance, as required in Section 8, has been posted with the Metropolitan Clerk and NDOT.

Section 11. This Resolution shall take effect from and after its adoption, the welfare of The Metropolitan

Government of Nashville and Davidson County requiring it.

Analysis

This resolution authorizes LMC Towne Property Owner, LLC to construct, install, and maintain an aerial encroachment at 808 Garfield Street. The encroachment comprises one projecting sign encroaching the public right of way. The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the signs. Prior to receiving a permit, the applicant must file a certificate of public liability insurance in the amount of $4,000,000 with the Metropolitan Clerk and NDOT naming the Metropolitan Government as an insured party.

This resolution has been approved by the Planning Commission.

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