

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND SECTION 25-185 OF THE CODE OF ORDINANCES OF THE  
CITY OF MEMPHIS TO BAN PENSION DOUBLE DIPPING

WHEREAS , employees of the City of Memphis participate in a pension and rightfully expect to receive their pension benefit upon retirement; and

WHEREAS, it is unfair for Memphis taxpayers when retired government employees are rehired by local government and allowed to "double-dip", or receive regular pay and pension benefits at the same time; and

WHEREAS, it is in the City's interest to end the "double-dip" loophole in the future in order to help our pension fund remain solvent and maintain equitable compensation guidelines.

NOW, THEREFORE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that Section 25-185 of the City of Memphis, Code of Ordinances is hereby amended by to read as follows:

Section 25-185

If a participant receiving benefits pursuant to this 1978 plan is reemployed after his annuity commencement date, no further benefit payments shall be made to that participant during his period of reemployment. Subsequent benefits and an appropriate annuity commencement date for that participant shall be determined based on his years of service determined under section 25-1(43) and in accordance with this Article VII, as applicable; provided, however, subsequent benefits shall be reduced by the actuarial equivalent of any amounts distributed between his first annuity commencement and his most recent reemployment commencement date, but not to an amount less than the annual plan benefit he was receiving immediately before his most recent reemployment commencement date.

Any employee that leaves employment at the City of Memphis and is eligible for a pension benefit and is then employed at the MLGW, Shelby County, the Shelby County School system or any other taxpayer supported Primary Government and Discretely Presented Component Units of Memphis or Shelby County shall have his/her pension payment reduced by the amount of the salary received up to the amount of the pension payment during the period of employment. If the pension payment exceeds the salary, then the pension payment shall be reduced by the amount of the gross amount of the salary during the period of employment.

Kemp Conrad  
Council Member



## Memphis City Council Summary Sheet Instructions

Resolution for the Bridge Scour Repairs at various locations ST03135:

1. Project is to repair scour related problems on bridges which are in poor condition.
2. This project is initiated by the Public Works Division in response to the recommendation of the City Engineer.
3. This project is currently in the CIP budget taken from the storm water fund ST03135, and has been approved by the City Council.
4. This project requires a construction contract with Chris-Hill Construction to repair the existing bridges.
5. This project requires an expenditure of storm water funds as shown in the current CIP 2013 fiscal year budget.

This is a resolution appropriating Construction Funds for ST03135 Bridge Scour Repair

**WHEREAS**, the Council of the City of Memphis approved Bride Repair Storm Water, project number ST03083, as part of the Public Works Fiscal Year 2013 Capital Improvement Budget; and

**WHEREAS**, bids were taken on February 15, 2013 for bridge scour repairs at various locations with the lowest complying bid of four bids being \$756,493.00 submitted by Chris Hill Construction; and

**WHEREAS**, it is necessary to transfer an allocation of \$817,012.00 funded by G.O. Bonds – General (Storm Water) from Bridge Repair Storm Water, project number ST03083 to Bridge Scour Repair, project number ST03135 for bridge repairs; and

**WHEREAS**, it is necessary to appropriate \$817,012.00 funded by G.O. Bonds – General (Storm Water) in Bridge Scour Repair, project number ST03135 as follows:

Contract Amount	\$756,493.00
Project Contingencies	<u>60,519.00</u>
	\$817,012.00

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the Fiscal Year 2013 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$817,012.00 funded by G.O. Bonds – General (Storm Water) from Bridge Repair Storm Water, project number ST03083 to Bridge Scour Repair, project number ST03135 for bridge repairs.

**BE IT FURTHER RESOLVED**, that there be and is hereby appropriated the sum of \$817,012.00 funded by G.O. Bonds – General (Storm Water) chargeable to the FY 2013 Capital Improvement Budget and credited as follows:

<b>Project Title</b>	<b>Bridge Scour Repair</b>
<b>Project Number</b>	<b>ST03135</b>
<b>Amount</b>	<b>\$817,012.00</b>



## **Memphis City Council Summary Sheet Instructions**

**Resolution for Construction of a Median in Dellwood Ave. PW04065:**

- 1. This is a Safe Routes To School (SRTS) project for Frayser Elem. School to construct a curbed median and striping in Dellwood Ave.**
- 2. This project is initiated by the Public Works Division in response to a request by the City Engineer. This is a 100% TDOT funded project.**
- 3. No Change in ordinance is required.**
- 4. This project requires a construction contract with Ferrell Paving, Inc. to construct the improvements.**
- 5. Funds to be appropriated are currently in the CIP budget.**

This is a resolution appropriating Construction Funds for PW04065 Safe Route to School Frayser

**WHEREAS**, the Council of the City of Memphis approved Safe Route to School Frayser, project number PW04065, as part of the Public Works Fiscal Year 2013 Capital Improvement Budget; and

**WHEREAS**, bids were taken on February 1, 2013 for installation of raised median at Dellwood Avenue with the lowest complying bid of two bids being \$138,576.25 submitted by Ferrell Paving; and

**WHEREAS**, it is necessary to appropriate \$149,662.00 funded by Federal Grant Funds from the State of Tennessee Department of Transportation in Safe Route to School Frayser, project number PW04065 as follows:

<b>Contract Amount</b>	<b>\$138,576.00</b>
<b>Project Contingencies</b>	<b><u>11,086.00</u></b>
<b>Total Amount</b>	<b>\$149,662.00</b>

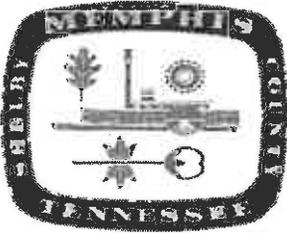
**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that there be and is hereby appropriated the sum of \$149,662.00 funded by Federal Grant Funds from the State of Tennessee Department of Transportation chargeable to the Fiscal Year 2013 Capital Improvement Budget and credited as follows:

<b>Project Title</b>	<b>Safe Route to School Frayser</b>
<b>Project Number</b>	<b>PW04065</b>
<b>Total Amount</b>	<b>\$149,662.00</b>



## **Memphis City Council Summary Sheet**

- 1. This is a resolution to accept funds from the Tennessee Stormwater Association in the amount of twenty-five thousand one-hundred eighty dollars (\$25,180.00) for the installation of rain gardens at three City schools. This project will provide green infrastructure education to school students and the general public and provide a more livable, sustainable area.**
- 2. The City of Memphis Public Works Division Stormwater Program is awarded this grant from the Tennessee Stormwater Association and serves as the fiscal agent for the award.**
- 3. This item does not change an existing ordinance or resolution.**
- 4. This is a new grant award pending Council approval.**
- 5. Acceptance will require an amendment to the FY 2013 Operating Budget to appropriate the funds.**



A resolution to accept an award from the Tennessee Stormwater Association for the installation of rain gardens at three City schools.

**WHEREAS**, the City of Memphis Public Works Division Stormwater Program has been awarded grant funds in the amount of twenty-five thousand, one-hundred, eighty dollars (\$25,180.00) from the Tennessee Stormwater Association for the installation of rain gardens at three City schools;

**WHEREAS**, these funds will be used to support the Stormwater Program's efforts in educating school children and the general public on the benefits of green infrastructure;

**WHEREAS**, it is necessary to accept the grant funding and amend the Fiscal Year 2013 Operating Budget to establish funds for the installation of rain gardens at three City schools;

**WHEREAS**, it is necessary to appropriate the FY 2013 grant funds in the amount of twenty-five thousand, one-hundred, eighty dollars (\$25,180.00) for the installation of rain gardens at three City schools;

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the Tennessee Stormwater Association funds in the amount of twenty-five thousand, one-hundred, eighty dollars (\$25,180.00) for the installation of rain gardens at three City schools be accepted by the City of Memphis.

**BE IT FURTHER RESOLVED**, that the Fiscal Year 2013 Operating Budget be and is hereby amended by appropriating the Expenditures and Revenues for the Tennessee Stormwater Association in the amount of twenty-five thousand, one-hundred, eighty dollars (\$25,180.00) for the installation of rain gardens at three City schools as follows:

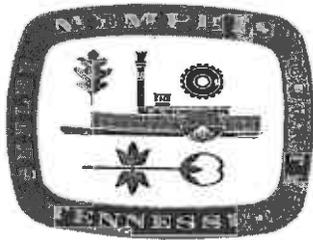
**REVENUES**

Tennessee Stormwater Association	<u>\$25,180.00</u>
Total	\$25,180.00

**EXPENDITURES**

Materials and Supplies	<u>\$25,180.00</u>
Total	\$25,180.00

## Memphis City Council Summary Sheet Template



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

This resolution amends the Fiscal Year 2013 Operating Budget by accepting and appropriating additional Surface Transportation Program (STP) grant funds to the STP Traffic Signal Coordination Project (EN90022).

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

This Project was initiated by the Tennessee Department of Transportation and is being administrated and locally managed by the City of Memphis, Division of Engineering.

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This project does not involve a change to an existing ordinance or resolution.

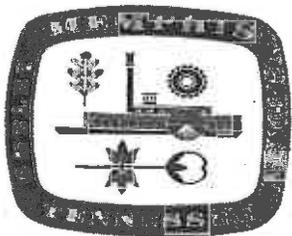
**4. State whether this requires a new contract, or amends an existing contract, if applicable.**

This resolution does not require a new contract or an amendment to an existing contract.

**5. State whether this requires an expenditure of funds/requires a budget amendment.**

The project funds originate from the Federal Highway Administration. The grant funding is funneled to the City of Memphis through the Tennessee Department of Transportation (TDOT). This resolution amends the Fiscal Year 2013 Operating Budget by accepting and appropriating additional grant funding in the amount of \$1,566,415.00.

# City Council Resolution Template



*A Resolution to amend the Fiscal Year 2013 Operating Budget by accepting and appropriating additional Surface Transportation Program (STP) grant funds to the STP Traffic Signal Coordination Project (EN90022)*

**WHEREAS**, the City of Memphis Division of Engineering has received additional grant funds through the State of Tennessee in the amount of One Million, Five Hundred Sixty-Six Thousand, Four Hundred Fifteen Dollars (\$1,566,415.00) in 100% Surface Transportation Program grant funds from the Federal Highway Administration; and

**WHEREAS**, these funds will be used to deploy traffic signal systems along several corridors, including signal improvements to about 26 intersection locations; and

**WHEREAS**, it is necessary to accept the grant funding and amend the Fiscal Year 2013 Operating Budget by adding funds to the STP Traffic Signal Coordination Project (EN90022); and

**WHEREAS**, it is necessary to appropriate the grant funds in the amount of One Million, Five Hundred Sixty-Six Thousand, Four Hundred Fifteen Dollars (\$1,566,415.00) for the STP Traffic Signal Coordination Project (EN90022)

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the Surface Transportation Program grant funds in the amount of One Million, Five Hundred Sixty-Six Thousand, Four Hundred Fifteen Dollars (\$1,566,415.00) be accepted by the City of Memphis.

**BE IT FURTHER RESOLVED**, that the fiscal year 2013 Operating Budget be and is hereby amended by appropriating the Expenditures and Revenues for the STP Traffic Signal Coordination project grant in the amount of One Million, Five Hundred Sixty-Six Thousand, Four Hundred Fifteen Dollars (\$1,566,415.00) as follows:

**Revenue**

Federal Highway Administration (STP Grant)	\$1,566,415.00
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**Expenditure**

Contract Construction	\$1,566,415.00
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## RESOLUTION

**WHEREAS**, the City's Charter and the City's Master Water Bond Resolution requires MLGW to pay to the City's general fund a sum equal in amount to what would be the city taxes on the properties of the Water Division of MLGW within the limits of the City of Memphis if said properties were privately owned ; and

**WHEREAS**, privately owned water utilities are required to pay property taxes to the City on all operating and non-operating property, real and personal, tangible and intangible, at fifty-five percent (55%) of its fair market value determined by an appraisal of the property as a whole without geographical or functional division of the whole, rather than on depreciated original cost of gas system properties and book value of materials;

**WHEREAS**, the Tennessee Municipal Bond Law also permits MLGW to pay to the City's general fund a sum equal in amount to what would be the city taxes on the properties of the Water Division of MLGW within the limits of the City of Memphis if said properties were privately owned; and

**WHEREAS**, the Tennessee Municipal Bond Law permits the City to contract, stipulate and covenant with holders of the City's water bonds as to such terms and conditions as the City's governing body may deem appropriate with regard to, *inter alia*, the manner of disposition of the revenues of the Water Division;

**WHEREAS**, a 1983 resolution of the Council that supplemented and amended the 1958 Master Water Bond Resolution of the City provided for a dividend payment to the City from water revenues not exceeding the lesser of (i) three percent (3%) per annum of the retained earnings of the Water Division, or (ii) one-half of the net revenue of the Water System;

**WHEREAS**, MLGW did not pay any Water System payments in lieu of taxes or dividends to

the City from calendar years 1984 through and including 2001;

**WHEREAS**, to the extent that payments in lieu of taxes and dividends from calendar years 1984 through and including 2012 were not paid to the City as required by the Water Bond Resolutions, such underpayments represent equity of the City contributed to the Water System;

**WHEREAS**, City believes that the current Water PILOT Agreement dated July 1, 2001 (“Water PILOT Agreement”) is inequitable and in derogation of the Charter and the Water Bond Resolutions to the extent that the current Water PILOT Agreement does not reflect and compensate the taxpayers of the City for the equity contributed by the City to the Water System since 1983;

**WHEREAS**, the Council hereby establishes and determines that the annual payments in lieu of taxes, dividends and payments on equity from the Water System for 2013 and subsequent calendar years shall be determined as set forth in this resolution.

**NOW, THEREFORE BE IT RESOLVED**, by the Council of the City of Memphis, that the cumulative sum of dividends payable under the 1983 Resolution from 1984 through 2012 less the aggregate amounts payable under the Water PILOT Agreement shall represent net equity invested by the City in the Water System (“Net Equity Investment”). The City is entitled to receive a cumulative return on its net equity investment not exceeding six percent (6%) per annum under Section 693 of the City’s Charter and under the Revenue Bond Law.

**BE IT FURTHER RESOLVED** that the annual PILOT Payment in the amount of \$2,500,000 pledged to the payment of the Bonds for the Arena (“Pledged PILOT Payments”) is hereby confirmed, ratified and continued as set forth in the Water PILOT Agreement and MLGW is authorized and directed to continue to make that payment in the same manner as it has made since 2002 until the completion of the 2028 fiscal year.

**BE IT FURTHER RESOLVED BE IT FURTHER RESOLVED** that MLGW is authorized and directed to make a payment on the City’s Net Equity Investment in an amount not exceeding six

percent of the City's Net Equity Investment in the Water System as directed by resolution of the Council from time to time.

**JIM STRICKLAND**  
Chairman, Budget Committee

**EDMUND FORD, JR.**  
COUNCIL CHAIRMAN



## Memphis City Council Summary Sheet

1. Item is a resolution to appropriate entitlement funds from the U.S. Department of Housing and Urban Development.
2. The initiating party is the Division of Housing and Community Development.
3. A change to an existing ordinance or resolution is not applicable.
4. A new contract or an amendment to an existing contract is not applicable.
5. An expenditure of funds/requires a budget amendment is not required.



**RESOLUTION APPROVING PROPOSED CONSOLIDATED PLAN  
FY 2014 ANNUAL ACTION PLAN  
AND APPROPRIATING FEDERAL ENTITLEMENT FUNDS TO THE FY 2014  
HOUSING AND COMMUNITY DEVELOPMENT BUDGET**

**WHEREAS**, the purpose of the City of Memphis' Consolidated Plan for Housing and Community Development is to foster the development of viable urban neighborhoods which include decent housing for everyone, a suitable living environment, and expanded economic opportunities, especially for low and moderate income citizens; and

**WHEREAS**, specific projects and activities within the Consolidated Plan/FY 2014 Annual Action Plan address the needs of low and moderate income persons through goals, objectives, priorities, and strategies for housing, community and public services, assistance for the homeless and special needs populations, neighborhood, economic and community development; and

**WHEREAS**, projects and activities proposed to be implemented in the Consolidated Plan/FY 2014 Annual Action Plan will draw upon and augment the resources of the public, private, and nonprofit sectors to meet low and moderate income needs in the community; and

**WHEREAS**, the plan contains a description of anticipated federal, state, and local housing resources for FY 2014, including Community Development Block Grant (CDBG) funds received under Title I of the Housing and Community Development Act of 1974, HOME funds received under Title II of the National Affordable Housing Act of 1990, Emergency Shelter Grant (ESG) funds authorized under the Stewart B. McKinney Assistance Act of 1987, and Housing Opportunities for Person With AIDS (HOPWA) funds, as shown in the following tables:

**Estimated FY 2014 Funds to be received from HUD**

<b>Program Name</b>	<b>Estimated Funds</b>	<b>Percent of Total</b>
CDBG Program	\$6,260,032.62	44%
Projected CDBG Program Income	\$3,075,838.60	22%
HOME Program	\$2,660,809.40	18.9%
Projected HOME Program Income	\$17,100.00	.1%
ESG Program	\$602,228.75	4%
HOPWA Program	\$1,620,183.39	11%
<b>TOTAL</b>	<b>\$14,236,192.78</b>	<b>100%</b>

;and

**WHEREAS**, the plan identifies and describes the following priority areas of projects and activities to be implemented in FY 2014 by the federal entitlement funds received from the U.S Department of Housing and Urban Development (HUD):

<b>FY 2013 Priority Areas</b>		
<b>Priority Area</b>	<b>FY 2013 Funds</b>	<b>Percent of FY 2013 Total</b>
Housing	\$3,469,014.62	24%
Homeless	\$917,653.23	7%
Special Needs	\$1,915,094.50	14%
Non-Housing Community Development	\$1,101,960.03	8%
Administration, Program Delivery & Planning	\$6,832,470.40	47%
<b>TOTAL PRIORITY AREAS</b>	<b>\$14,236,192.78</b>	<b>100%%</b>

and,

**WHEREAS**, the Consolidated Plan/FY 2014 Annual Action Plan includes and was developed within a framework of a citizen participation plan, requiring consultation with citizens and other social service and housing agencies; and

**WHEREAS**, the Consolidated Plan/FY 2014 Annual Action Plan is available for a 30-day public review and comment period ending May 10, 2013, and must be submitted to HUD on or before May 15, 2013, for approval; and

**WHEREAS**, the CDBG entitlement, estimated program income, the HOME, ESG, and HOPWA entitlement grants must be appropriated in the FY 2014 Operating Budget for HCD.

**NOW, THEREFORE, BE IT RESOLVED** that the Council and the City of Memphis hereby adopts and approves the proposed Consolidated Plan/FY 2014 Annual Action Plan.

**BE IT FURTHER RESOLVED** that there be and is hereby appropriated the sum of **\$14,236,192.78** funded by federal resources for FY 2014, including Community Development Block Grant (CDBG) funds, Projected Program Income from CDBG and HOME, HOME Program funds, Emergency Shelter Grant (ESG) funds, and Housing Opportunities for Person With AIDS (HOPWA) chargeable to the FY 2014 Operating Budget and credited as follows:

<b>Program Name</b>	<b>Estimated Funds</b>
CDBG Program	\$6,260,032.62
Projected CDBG Program Income	\$3,075,838.60
HOME Program	\$2,660,809.40
Projected HOME Program Income	\$17,100.00
ESG Program	\$602,228.75
HOPWA Program	\$1,620,183.39
<b>TOTAL</b>	<b>\$14,236,192.78</b>

**BE IT FURTHER RESOLVED** that the Mayor and the Director of HCD are authorized to prepare and execute the necessary documents in connection with the proposed FY 2014 Consolidated Plan Annual Action Plan to apply for and accept funding which the City is entitled to receive from HUD.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND TITLE 11 – VEHICLES AND TRAFFIC, CHAPTER 11-8 ADMINISTRATION AND ENFORCEMENT – OF THE CODE OF ORDINANCES, CITY OF MEMPHIS

WHEREAS, it is in the best interest of the City of Memphis and Shelby County to encourage and promote the safety of pedestrians, bicyclists and motor vehicle drivers within the boundaries of the City and County;

WHEREAS, the Memphis City Council strives to keep our laws current and relevant to best serve our citizens;

WHEREAS, Livable Memphis worked with the Memphis Center for Independent Living, Healthy Memphis Common Table, and numerous other community partners and stakeholders on a comprehensive multi-faceted strategy to make our streets safer for all users including updating bicycle and pedestrian related traffic violations; and outreach and education of law enforcement and the general public;

WHEREAS, according to a Livable Memphis report comparing 21 peer metropolitan cities, the City of Memphis often has the lowest fees associated with bicycle and pedestrian related traffic violations;

WHEREAS, City of Memphis has historically ranked as one of the most dangerous cities for pedestrians and child pedestrians;

WHEREAS, in order to make our community more attractive, competitive and safer for all residents, the City of Memphis has recently invested in bicycle and pedestrian safety infrastructure and is experiencing new levels of users of active transportation (walking and biking), there is a strong need to encourage safe and appropriate behavior and adherence to the “rules of the road” for all users;

NOW THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS,

That Title 11, Vehicles and Traffic, Chapter 11-8 Administration and Enforcement, of the Code of Ordinances, is hereby amended to read as follows:

Sec. 11-8-5 Violation Forfeitures.

<b>Section #</b>	<b>Description (see appendix for full description)</b>	<b>New Amnt.</b>	<b>Prev Amnt.</b>
11-4-9	Obedience to Safety Patrols	\$50.00	\$15.00
11-12-8	Pedestrian-control signal	\$20.00	\$15.00
11-12-13	Obedience to Devices	\$50.00	\$15.00
11-16-18	Driving within a sidewalk area	\$50.00	\$25.00
11-16-19	Obstructing intersection or crosswalk	\$50.00	\$25.00
11-24-4	Equipment – Lights and Reflectors	\$50.00	\$15.00
11-24-5	Equipment – Break	\$20.00	Unknown

11-24-7	Riding on Roadways	\$20.00	Unknown
11-24-8	Obedience to Traffic Control Devices	\$50.00	Unknown
11-24-9	Bike Lanes	\$20.00	\$15.00
11-24-12	Right-of-way to Pedestrians; passing pedestrians	\$50.00	Unknown
11-24-13	Clinging to moving vehicles	\$50.00	Unknown
11-24-15	Racing and endurance contests	\$20.00	Unknown
11-24-16	Carrying articles on bicycles	\$20.00	Unknown
11-24-17	Child Bicycle Safety	\$20.00	Unknown
11-28-1	Pedestrians – Applicability	\$20.00	\$5.00
11-28-3	Right-of-Way in Crosswalks	\$50.00	\$5.00
11-28-4	Crossing At Other Than Crosswalks	\$40.00	\$5.00
11-28-5	Pedestrians – Walking on Roadways	\$20.00	\$5.00
11-28-8	Pedestrian right-of-way on sidewalks	\$30.00	Unknown

SECTION 2, BE IT FURTHER ORDAINED, that the funds generated by these forfeitures be directed to the City of Memphis Department of Engineers to be used for bicycle and pedestrian safety programming under the guidance of the City of Memphis Bicycle and Pedestrian Coordinator.

SECTION 3, BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 4, BE IT FURTHER ORDAINED, that this Ordinance shall take effect from and after the date it shall have been approved by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

Lee Harris  
Council Member

Dr. Edmund Ford, Jr.  
Chairman

Attest:  
Patrice Thomas, Comptroller

## Appendix

### **Sec. 11-4-9. - Obedience to school safety patrols.**

All motorists and pedestrians shall obey the directions or signals of the school safety patrols, when such patrols are assigned under the authority of the director of police, and when acting in accordance with instructions; provided that such persons giving any order, signal or directions shall, at the time, be wearing some insignia and using authorized flags for giving signals.

*(Code 1967, § 23-9; Code 1985, § 21-9)*

### **Sec. 11-12-8. - Pedestrian-control signal.**

Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" are in place, such signals shall indicate require obedience as follows:

- A. Walk. Pedestrians facing such a signal may proceed across the roadway in the direction of the signal, within a marked crosswalk, if one exists, and shall be given the right-of-way by the drivers of all vehicles.
- B. Flashing or "Don't Walk." No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has begun his or her crossing on the walk signal may proceed to a sidewalk or designated pedestrian refuge area.
- C. Steady "Don't Walk." No pedestrian shall leave the curb or start crossing the roadway in the direction of such signal.

*(Code 1967, § 23-206; Code 1985, § 21-373)*

*State law reference— Similar provisions, T.C.A. § 55-8-111*

### **Sec. 11-12-12. - Controlled-access roadways.**

The director of public works may, with respect to any controlled-access roadway under his or her jurisdiction, prohibit the use of any such roadway by pedestrians, bicycles or other nonmotorized traffic or by any person operating a motor-driven cycle. Such prohibition shall be indicated by appropriate signs erected by the director of public works and, when so erected, no person shall disobey the restrictions stated on such signs.

*(Code 1967, § 23-201; Code 1985, § 21-377)*

### **Sec. 11-12-13. - Obedience to devices.**

The driver of any vehicle, or any pedestrian, shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with this title and other traffic ordinances of the city, unless otherwise directed by a police officer, subject to any specific exceptions granted by this title or other ordinances.

*(Code 1967, § 23-202; Code 1985, § 21-378)*

*State law reference— Similar provisions, T.C.A. § 55-8-109*

### **Sec. 11-16-7. - Emerging from or entering alley, private driveway or building.**

The driver of a vehicle entering into a street, either from an alley or from a private road, driveway or building, shall yield the right-of-way to all pedestrians on a sidewalk crossing such alley or driveway and to all vehicles approaching on such street, and it shall be the duty of the driver of every vehicle so entering a street to bring his or her vehicle to a stop and not enter therein until same may be done with safety and without danger to others using the street, and he or she shall proceed with caution. The driver of any vehicle leaving a street to

enter an alley, private driveway or building, shall likewise yield the right-of-way to all pedestrians in any sidewalk crossing such alley or driveway, and when such driver is making a left turn into an alley, private driveway or building, such driver shall yield the right-of-way to all vehicles approaching from the opposite direction.

*(Code 1967, § 23-173; Code 1985, § 21-92)*

**Sec. 11-16-18. - Driving within sidewalk area.**

The operator of a motor vehicle shall not drive within any sidewalk area except in crossing such in a traverse manner at a permanent or temporary driveway.

*(Code 1967, § 23-149; Code 1985, § 21-103)*

**Sec. 11-16-19. - Obstructing intersection or crosswalk.**

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he or she is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal to proceed.

*(Code 1967, § 23-150; Code 1985, § 21-104)*

**Sec. 11-16-53. - Overtaking and passing bicycles.**

A. The operator of a motor vehicle, when overtaking and passing a bicycle proceeding in the same direction on the roadway, shall leave a safe distance between the motor vehicle and the bicycle of not less than three feet and shall maintain the clearance until safely past the overtaken bicycle.

B. A violation of this section is a Class C misdemeanor, subject to a \$50.00 fine.

*(Ord. No. 5305, § 1(21-134.3), 5-19-2009)*

**Sec. 11-24-2. - Traffic laws apply to persons riding bicycles.**

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application.

*(Code 1967, § 10-3; ; Code 1985, § 21-197; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-197), 5-11-2010)*

*State law reference— Similar provisions, T.C.A. § 55-8-172*

**Sec. 11-24-4. - Equipment—Lights and reflectors.**

Every bicycle, operated upon streets in the city during hours of darkness, shall be equipped with the following:

1. A forward-facing lamp mounted on the front of the bicycle and shall emit a white light visible from a distance of at least 500 feet to the front; and
2. Either a rearward-facing red reflector or rearward-facing lamp emitting a red light that shall be visible from a distance of at least 500 feet when directly in front of lawful upper beams of headlight or headlamps on a motor vehicle.

*(Code 1967, § 10-5; Code 1985, § 21-199; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-199), 5-11-2010)*

*State law reference— Similar provisions, T.C.A. § 55-8-177.*

**Sec. 11-24-5. - Equipment—Brake.**

Every bicycle operated upon streets in the city shall be equipped with a brake or brakes which will enable its driver to stop the bicycle within 25 feet from a speed of ten miles per hour on dry, level, clean pavement. Such brake shall be maintained in good working order at all times. For purposes of this section, the drivetrain of a fixed gear bike is considered a brake, provided the rider can demonstrate compliance with the braking requirement stated herein.

*(Code 1967, § 10-6; Code 1985, § 21-200; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-200), 5-11-2010)*

*State law reference— Similar provisions, T.C.A. § 55-8-177.*

**Sec. 11-24-6. - Use of permanent seat required; carrying excess persons forbidden.**

A. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto, except for a certified police cyclist who is performing duties that require riding in a side dismounting position.

B. No bicycle shall be used at any time to carry more persons than the number for which it has been equipped per person in terms of seats and handlebars, with the exception of properly installed child carriers with hand and foot protection.

*(Code 1967, § 10-7; Code 1985, § 21-201; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-201), 5-11-2010)*

*State law reference— Similar provisions, T.C.A. § 55-8-173.*

**Sec. 11-24-7. - Riding on roadways.**

A. Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the same direction as other vehicular traffic as close as practicable to the right-hand curb or edge of the roadway, except under any of the following situations:

1. When overtaking and passing another vehicle proceeding in the same direction;
2. When preparing for a left turn at an intersection or into a private road or driveway; or
3. When reasonably necessary to avoid conditions including, but not limited to, fixed or moving objects, parked or moving vehicles, pedestrians, animals, surface hazards, or when traveling in a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

This section shall not apply to a certified police cyclist engaged in the lawful performance of duty relating to traffic control or in pursuit of an actual or suspected violator of the law.

B. No person shall operate a bicycle on any part of any roadway where official signs have been erected and are in place indicating the prohibition of such activity.

C. Hand signals for stopping, turning and changing lanes shall be given at least one time but are not required to be continuous if the bicycle is in a designated turn lane or if the operator's hands are needed for the safe operation of the bicycle. A person operating a bicycle shall either give a right turn signal by extending the left hand and arm upward and to the left side of the bicycle; or by extending the right hand and arm horizontally and to the right side of the bicycle.

D. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding two abreast shall not impede the normal

and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane. This section shall not apply to a certified police cyclist engaged in the lawful performance of duty relating to traffic control or in pursuit of an actual or suspected violator of the law.

*(Code 1967, § 10-8; Code 1985, § 21-202; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-202), 5-11-2010)*

**Sec. 11-24-8. - Obedience to traffic control devices.**

Any person operating a bicycle shall obey the instructions of all official traffic signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer; except that a bicyclist who is faced with a red traffic-control signal or device may, after coming to a complete stop at the intersection and waiting a reasonable time to determine the signal or device will not change to green, proceed after yielding the right-of-way to all traffic lawfully proceeding through the intersection.

*(Code 1967, § 10-9; Code 1985, § 21-203; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-203), 5-11-2010)*

**Sec. 11-24-9. - Bike lanes.**

A. The creation of one or more bicycle lanes does not inhibit a bicycle operator's ability to operate a bicycle upon a roadway in accordance with this chapter.

B. Every person operating a motor vehicle shall yield the right-of-way to a person operating a bicycle within a bicycle lane. A person operating a motor vehicle may cross a bicycle lane when making a turn or when entering or leaving the roadway, but a bicycle lane shall not be used as a turning lane or passing lane.

C. Motor vehicles shall not be parked, stopped or left standing in a bicycle lane unless the city has determined that parking within the bicycle lane in specific locations is appropriate during certain hours and official signs have been erected in the designated areas to that effect or the city engineer has issued written special permission parking for a specific event during certain hours.

D. A person operating a bicycle within a bicycle lane shall give an audible signal before overtaking and passing another person operating a bicycle proceeding in the same direction and shall further pass on the left. The audible signal shall be given verbally or via a bell, and shall not be given via a whistle or siren.

E. A person operating a bicycle entering a bicycle lane shall yield the right-of-way to all bicycles in the bicycle lane. A person operating a bicycle leaving the bicycle lane shall yield the right-of-way to all vehicles and pedestrians. No person operating a bicycle within a bicycle lane shall leave the bicycle lane until the movement can be made with reasonable safety and, if any vehicle would be affected by the movement, by giving an appropriate signal before the movement is made.

F. A person operating a bicycle within a bicycle lane shall travel in the same direction as vehicles traveling in the adjacent traffic lane.

*(Code 1967, § 10-10; Code 1985, § 21-204; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-204), 5-11-2010)*

**Sec. 11-24-10. - Riding on sidewalks.**

A. Any person may operate a bicycle on a sidewalk except where official signs have been erected and are in place indicating the prohibition of such activity.

B. When operating a bicycle on a sidewalk, such person shall yield the right-of-way to any operator of sidewalk-type vehicles and give an audible signal before overtaking and passing any such operator. The

audible signal shall be given verbally or via a bell, and shall not be given via a whistle or siren. For purposes of this subsection, sidewalk-type vehicles shall include coasters, sleds, non-motorized scooters, roller skates, or any similar vehicle, toy or article on wheels.

*(Code 1967, § 10-11; Code 1985, § 21-205; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-205), 5-11-2010)*

**Sec. 11-24-11. - Parking on sidewalks.**

No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

*(Code 1967, § 10-12; Code 1985, § 21-206; Ord. No. 2155, § 1, 5-20-1975)*

**Sec. 11-24-12. - Right-of-way to pedestrians; passing pedestrians.**

A. Any person operating a bicycle, on a sidewalk or otherwise, shall yield the right-of-way to any pedestrian.

B. Any operator of a bicycle shall give an audible signal before overtaking and passing any pedestrian. The audible signal shall be given verbally or via a bell, and shall not be given via a whistle or siren.

*(Code 1967, § 10-13; Code 1985, § 21-207; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-207), 5-11-2010)*

**Sec. 11-24-13. - Clinging to moving vehicles.**

It shall be unlawful for any person riding upon a bicycle to cling or attach himself or herself or his or her bicycle to any other moving vehicle upon a street in the city.

*(Code 1967, § 10-14; Code 1985, § 21-208; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-208), 5-11-2010)*

**Sec. 11-24-14. - Towing other vehicles.**

The operator of a bicycle shall not tow or draw any coaster, sled, person on roller skates, toy vehicles or other similar vehicle. The provisions of this section shall not be construed to prohibit the attachment of a bicycle trailer or bicycle semitrailer to a bicycle if the trailer or semitrailer is designed specifically for that purpose.

*(Code 1967, § 10-15; Code 1985, § 21-209; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-209), 5-11-2010)*

**Sec. 11-24-15. - Racing and endurance contests.**

No person operating a bicycle upon a street in the city shall participate in any race of speed or endurance, or contest with any vehicle unless such activity is specifically authorized by the police director or his or her designee and is supervised.

*(Code 1967, § 10-16; Code 1985, § 21-210; Ord. No. 2155 § 1, 5-20-1975; Ord. No. 5352, § 1(21-210), 5-11-2010)*

**Sec. 11-24-16. - Carrying articles on bicycles.**

No person operating a bicycle shall carry any package, bundle or article that prevents the driver from keeping at least one hand upon the handlebars.

*(Code 1967, § 10-17; Code 1985, § 21-211; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-211), 5-11-2010)*

**Sec. 11-24-17. - Child bicycle safety.**

A. No person who is under 16 years of age shall operate a bicycle or ride as a passenger on a bicycle or a bicycle trailer on a roadway, bikeway, sidewalk, bike lane or bike path unless he or she is wearing a protective helmet of good fit fastened securely upon his or her head with the straps of the helmet and which meets or exceeds the standards set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation, or that is otherwise approved by the commissioner of safety for the state.

B. No person who weighs less than 40 pounds or is less than 40 inches in height shall be a passenger on a bicycle unless such person can be and is properly seated in and adequately secured to a restraining seat. For purposes of this section, a restraining seat means a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle and is adequately equipped to restrain the passenger in the seat and protect the passenger from the moving parts of the bicycle.

*(Code 1967, § 10-18; Code 1985, § 21-212; Ord. No. 2155, § 1, 5-20-1975; Ord. No. 5352, § 1(21-212), 5-11-2010)*

**Sec. 11-28-1. - Applicability.**

A. Pedestrians shall be subject to traffic-control signals at intersections as provided for in this title, and at all other places pedestrians shall be accorded the privileges, and shall be subject to restrictions as hereinafter stated.

B. Notwithstanding the provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

*(Code 1967, § 23-259; Code 1985, § 21-226; Ord. No. 5401, § 1(11-28-1), 7-5-2011)*

*State law reference— Similar provisions, T.C.A. § 55-8-133.*

**Sec. 11-28-2. - Use of crosswalks generally.**

Whenever there is a marked crosswalk, all pedestrians crossing in such crosswalk shall stay within the markings or lines, and whenever practicable such pedestrian shall walk on the right half of the crosswalk.

*(Code 1967, § 23-260; Code 1985, § 21-227; Ord. No. 5401, § 1(11-28-2), 7-5-2011)*

*State law reference— Similar provisions, T.C.A. § 55-8-137.*

**Sec. 11-28-3. - Right-of-way in crosswalks.**

A. When traffic signals are not in place or not in operation, the driver of the vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway within a crosswalk upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle, which is so close that it is impossible for the driver to yield.

C. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

*(Code 1967, § 23-262; Code 1985, § 21-229; Ord. No. 5401, § 1(11-28-3), 7-5-2011)*

*State law reference— Similar provisions, T.C.A. § 55-8-134.*

**Sec. 11-28-4. - Crossing at other than crosswalks.**

A. Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

B. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

C. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

*(Code 1967, §§ 23-261, 23-263, 23-264; Code 1985, §§ 21-228, 21-230, 21-231; Ord. No. 5401, § 1(11-28-4), 7-5-2011)*

*State law reference— Similar provisions, T.C.A. § 55-8-135.*

**Sec. 11-28-5. - Walking on roadways.**

A. Except as provided in this section, where sidewalks are provided, it is unlawful for any pedestrian to walk or use a wheelchair along and upon an adjacent roadway.

B. Where sidewalks are not provided or are obstructed, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic that may approach from the opposite direction.

C. Where sidewalks are not provided, are obstructed or are not wheelchair accessible, any person using a wheelchair along and upon a highway shall, when practicable, use the wheelchair on the left side of the roadway or its shoulder facing traffic that may approach from the opposite direction; provided that a person using a wheelchair along and upon a highway may use the wheelchair on the right side of the roadway or its shoulder if it is convenient or reasonably necessary for travel by the person.

*(Code 1967, § 23-265; Code 1985, § 21-232; Ord. No. 5401, § 1(11-28-5), 7-5-2011)*

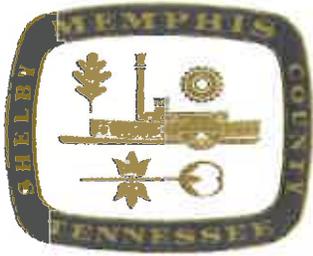
*State law reference— Similar provisions, T.C.A. § 55-8-138.*

**Sec. 11-28-8. - Pedestrian right-of-way on sidewalks.**

The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk that extends across any alley, building entrance, road or driveway.

*(Ord. No. 5401, § 1(11-28-8), 7-5-2011)*

*State law reference— Similar provisions, T.C.A. § 55-8-134.*



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

The item amends the joint city/county alarm ordinance by instituting a \$25 fine after the second false alarm, instead of after the fourth false alarm. It increase the annual alarm permit fee from \$5 to \$15. Divides any annual surpluses of the office on a pro rata basis between the MPD and SCSO.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Executive Division.

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This is a change to an existing ordinance.

**4. State whether this requires a new contract, or amends an existing contract, if applicable.**

N/A

**5. State whether this requires an expenditure of funds/requires a budget amendment.**

This requires no expenditure of funds or budget amendment.



## **An Ordinance to Amend Chapter 9-16 of the Code of Ordinances of the City of Memphis Relative to Alarm Services.**

**WHEREAS**, the City of Memphis and Shelby County Governments have jointly operated an alarm services office since 1987;

**WHEREAS**, the purpose of the office was to operate void of taxpayer funding and to be self-sustaining with a primary purpose of reducing the number of false alarms throughout the City and County;

**WHEREAS**, the office has been very successful in reducing the number of false alarms through penalties, enforcement and education, yet there are still 48,000 false alarms annually;

**WHEREAS**, the cost of the Memphis Police Department to respond to a false alarm is a minimum of \$90 per call and the recent PERF report recommended taking action to address false alarms;

**WHEREAS**, the Alarm Service Office is self-sustaining and has amassed a surplus of more than \$1.9 million that could benefit local law enforcement;

**WHEREAS**, fines, fees and costs associated with enforcing the alarm ordinance are lower than other major cities;

**NOW, THEREFORE, BE IT ORDAINED** That the Memphis City Council amends chapter 9-16 of the Code of Ordinances of the City of Memphis as follows:

1. 9-16-3 C. 1. a is amended by deleting \$5.00 and substituting \$15.00.
2. 9-16-3 D.3 a. is amended by deleting \$5.00 and substituting \$15.00.
3. 9-16-5 A. is amended by requiring a written citation for the first false alarm violation; a \$25 fine following the second, third, fourth and fifth violations and revocation of the owner's alarm permit following the sixth violation.
4. 9-16-12 A. is amended by deleting the paragraph a substituting the following:

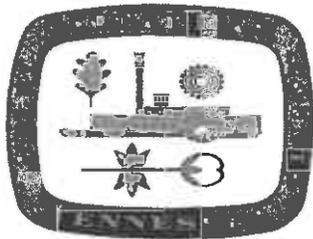
"There is established the office of alarm administrator, under the supervision of the city treasurer, to oversee the installation, service, maintenance and use of alarm security systems in the city and unincorporated areas of the County of Shelby, who shall be in charge of operations.

The office shall be operated as a self-funding unit and revenues received by such office to be used exclusively for the continued operation of the office, except that any surplus funds at the end of each fiscal year shall be divided on a pro rata basis between the Memphis Police Department and the Shelby County Sheriff's Office to off-set the costs of responding to false alarms. This provision shall include any surplus funds that currently existing in the accounts of the office at the time of adoption of this amendment. For purposes of this section, the term pro rata shall mean the percentage of false alarms answered by the Memphis Police Department in the City limits of Memphis versus the percentage of false alarms answered by the Shelby County Sheriff's Office outside the Memphis City Limits.

**BE IT FURTHER ORDAINED,** That these amendments shall be in effect July 1, 2013.

**BE IT FURTHER ORDAINED,** That the terms and provisions of this Ordinance are severable, and that any portion declared unlawful shall be elided and shall not affect the remaining portions.

## Memphis City Council Summary Sheet Template 8-28-12



### Memphis City Council Summary Sheet

Resolution seeking to accept sub-award grant funds in the amount of \$48,899.00 from the Shelby County Sheriff's Office through the U. S. Office of National Drug Control Policy for the F Y 2013 High Intensity Drug Trafficking Areas program, (HIDTA).

**1. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

The City of Memphis Police Department at the request of Shelby County Sheriff's through the U. S. Office of National Drug Control Policy.

**2. State whether this is a change to an existing ordinance or resolution, if applicable.**

This is not a change to an existing ordinance or Resolution.

**3. State whether this requires a new contract, or amends an existing contract, if applicable.**

This resolution requires a new contract between the Shelby County Sheriff's Office and the City of Memphis.

**4. State whether this requires an expenditure of funds/requires a budget amendment.**

This Resolution requires an expenditure of funds and it also requires a budget amendment.



**A Resolution to accept grant funds in the amount of Forty Eight Thousand, Eight Hundred and Ninety Nine Dollars (\$48,899.00) from the Shelby County Sheriff's Office through the U. S. Office of National Drug Control Policy.**

**WHEREAS**, the City of Memphis Division of Police Services has been awarded grant funds in the amount of Forty Eight Thousand, Eight Hundred and Ninety Nine Dollars (\$48,899.00) from the Shelby County Sheriff's Office through the U. S. Office of National Drug Control Policy for the FY 2013 High Intensity Drug Trafficking Areas Program (HIDTA); and

**WHEREAS**, these funds will be used to support the Memphis Police Department in disrupting and dismantling drug trafficking and money laundering organizations in Shelby County by facilitating cooperation among federal, state and local law enforcement agencies in coordinated activities; and

**WHEREAS**, it is necessary to accept the grant funding and amend the FY 2013 Operating Budget to establish funds for the FY 2013 High Intensity Drug Trafficking Areas Program; and

**WHEREAS**, it is necessary to appropriate the FY 2013 grant funds in the amount of Forty Eight Thousand, Eight Hundred and Ninety Nine Dollars (\$48,899.00.) for the FY 2013 High Intensity Drug Trafficking Areas Program.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the FY 2013 High Intensity Drug Trafficking Areas Program in the amount of Forty Eight Thousand, Eight Hundred and Ninety Nine Dollars (\$48,899.00) be accepted by the City of Memphis.

**BE IT FURTHER RESOLVED**, that the Fiscal Year 2013 Operating Budget be and is hereby amended by appropriating the Expenditures and Revenues for the High Intensity Drug Trafficking Areas Program in the amount of Forty Eight Thousand, Eight Hundred and Ninety Nine Dollars(\$48,899.00.) as follows:

**REVENUES**

Shelby County Government \$48,899.00

**Total** **\$48,899.00**

**EXPENDITURES**

Personnel Costs \$ 48,899.00

**Total** **\$48,899.00**



**Memphis and Shelby County**  
**Office of Planning and Development**

CITY HALL - 125 N. MAIN STREET, SUITE 468 - MEMPHIS, TENNESSEE 38103

April 16, 2013

TO: Councilman Harold Collins, Chairman  
Planning and Zoning Committee  
FROM: Josh Whitehead, Planning Director *JW*  
RE: ZTA 13-001CC, Amendments to the UDC

Mr. Chairman:

Since the Land Use Control Board's (LUCB) approval of this Zoning Text Amendment, several items have come to my attention. I respectfully request that the following changes be made to this case. Upon a similar request made to the Shelby County Board of Commissioners, these changes have also been incorporated into that body's approval of this Zoning Text Amendment.

1. **Return Vehicle Service and Vehicle Repair as "uses by right" in the CBD District.** This will involve changing the hollow square "□" to a solid square "■" in Section 2.5.2, the Use Chart, of the UDC (see attached chart labeled "2.5.2" at the top of the page). Under the old Zoning Code which was effective until the adoption of the UDC (Jan. 1, 2011), Vehicle Service and Vehicle Repair were both permitted as a matter of right in the CBD District. The UDC inexplicably changed the use chart for these two uses and now requires the issuance of a Special Use Permit by the Memphis and Shelby County Land Use Control Board and Memphis City Council.
2. **Return the building setbacks of the old Zoning Code of the CBD District to the UDC.** This will involve inserting the word "none" for all of the required building setbacks provided in the table in Sub-Section 3.10.2B for the CBD District (see attached table labeled "3.10.2B" at the top with yellow highlighted suggested changes). The parking setbacks of the CMU-3 District will be used for the parking setbacks in the CBD District. Finally, a note will be added that states that a property owner may opt into the more restrictive regulations of Sub-Section 3.10.2E. Again, the UDC adopted very restrictive building regulations for the entire CBD District without proper justification (see attached table labeled "3.10.2E" at the top). Nearly every building downtown fails to meet the new restrictions of the CBD District, including the Vasco A. Smith, Jr. Administration Building, the Memphis City Hall and most buildings surrounding these two structures (the Shelby County Courthouse, Calvary Church, the Clifford Davis-Odell Horton Federal Building, the Federal Reserve Bank, 201 Poplar, First Presbyterian, St. Peter's Church, etc.). All of these structures would need approval by the Memphis and Shelby County Board of Adjustment under the current UDC. See attached letter from Brenda Solomito that demonstrates the effects of these regulations on property owners within the CBD zoning district.
3. **Remove the definition of "Used Goods."** The proposed definition of "used goods" approved by the LUCB would have the unforeseen result of permitted the sales of used vehicles in areas of the City and County not otherwise permitted (see attached memo from John T. Moses).



(3.10.2 B)

**B. Apartment and Nonresidential**

	RW*	OG	CMU-1	CMU-2	CMU-3	CBD
<b>Tract or Lot (min)</b>						
Area (sq. ft.)	5,000	-	10,000	20,000	-	-
Width (ft.)	50	100	25	50	50	-
<b>Building</b>						
Height (max ft.) see also 3.2.6	50	125	48	75	75	-
Ground floor area (max sq. ft.)**	-	-	15,000	80,000	-	-
<b>Setback (min ft.)</b>						
Front	20	20	20	20	20	None***
Side (street)	20	20	20	20	20	None***
Side/rear abutting single-family	10	10	10	10	10	None***
Side/rear abutting multifamily, nonresidential	5	5	5	5	5	None***
Side/rear abutting alley	5	5	5	5	5	None***
<b>Parking setback (min ft.)</b>						
On street (parallel parking)	0	0	0	0	0	0
From street (no parallel parking)	8	8	8	8	8	8
Abutting single-family	10	10	10	10	10	10
Abutting multifamily, nonresidential, alley	5	5	5	5	5	5
		CMP-1	CMP-2	EMP	WD	IH
<b>Tract or Lot (min)</b>						
Area (sq. ft.)		10,000	20,000	20,000	20,000	20,000
Width (ft.)		25	50	50	50	50
<b>Building</b>						
Height (max ft.) see also 3.2.6		125	75	60	60	60
Height (max ft.) more than 100 ft from a residential district		125	75	60	60	100
<b>Setback (min ft.)</b>						
Front		20	20	30	30	30
Side (street)		20	20	20	20	20
Side/rear abutting single-family		10	25	10	10	10
Side/rear abutting multifamily, nonresidential		5	5	5	5	5
Side/rear abutting alley		5	5	5	5	5
<b>Parking setback (min ft.)</b>						
On street (parallel parking)		0	0	0	0	0
From street (no parallel parking)		8	8	8	8	8
Abutting single-family		10	10	10	10	10
Abutting multifamily, nonresidential, alley		5	5	5	5	5

\*Residential compatibility standards may apply see D

\*\*Maximum ground floor area shall not apply to sites that were developed prior to Jan. 1, 2011. Buildings on sites developed prior to Jan. 1, 2011, may be expanded, modified or rebuilt and exceed the maximum ground floor area standards.

\*\*\*A property owner may also choose to opt into the CBD District Form Standards of Sub-Section 3.10.2E in lieu of these standards.

**1. Reduced Front Setbacks**

The minimum front and side street setbacks of 20 feet as specified in Sub-Section 3.10.1A above may be reduced to zero feet provided the following provisions are met for any portion of the building façade that comes within 20 feet of the front or side property line:

**a. Blank Wall Area**

Blank lengths of wall exceeding 30 linear ft. are prohibited.

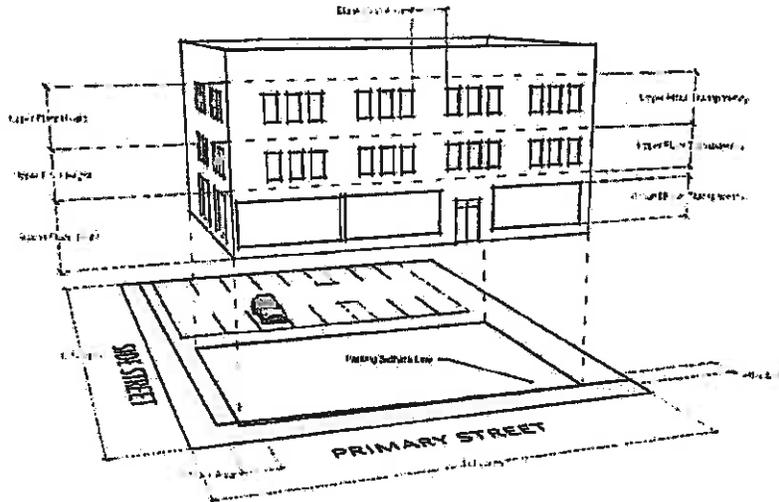
**b. Transparency**

1. Ground floor facades for nonresidential uses must provide a minimum transparency of 40%; however, the transparency requirement may be reduced to 30% if no façade plane of the building facing a public street exceeds a length to height ratio of 4:1. The offset between planes must be a minimum of 12 inches.
2. Ground floor facades for residential uses must provide a minimum transparency of 20%.

(3.10.2E)

**E. CBD District Form Standards**

The following building form standards apply in the CBD District.



**PLACEMENT**

**ELEMENTS**

**HEIGHT**

**SETBACK AREA**

2ft min. (7 ft. if ground floor use is a restaurant with outdoor seating) to 15 ft. max. behind ROW line.

**CONTEXTUAL INFILL**

For any infill project in the CBD with less than 75 feet of frontage, and upon approval of the Planning Director, structures may be located closer to the ROW line than the minimum setback permits provided that the structure is located within the range of front setbacks on the street. This range of setbacks is measured on the basis of the four structures surrounding the project site (the two closest lots in either direction along the street). The new structure shall be located within the range of established setbacks (no closer than the narrowest setback, no further than the deepest setback). Where a setback in these four lots is significantly out of the range of setbacks along the street, it may be eliminated from the range.

**REQUIRED BUILDING FRONTAGE**

1. Primary street. Building façade must be located within the setback area for a minimum of 90% of the site width. The required building frontage may be reduced to accommodate no more than a single 20-ft. access drive for a rear parking area.
2. Side street. The building façade must be located within the setback area for a minimum of 60% of the site depth.

**SIDE/REAR SETBACKS**

Abutting single-family: 10 ft min. Abutting multifamily, nonresidential: no minimum.

**PARKING SETBACK**

Primary street setback. Min 30 ft. behind ROW line.  
Side street setback. Min 10 ft. behind ROW line.

Parking shall be located behind the parking setback line. No parking is permitted between the street and the building. This requirement shall not restrict on-street parking.

**TRANSPARENCY (WINDOWS & DOORS)**

1. Ground floor. Primary Street, Nonresidential Use: 50% min, Residential Use: 20% min. Side Street, Nonresidential Use: 30% min, Residential Use: 20%. Ground floor transparency is measured between 2 and 10 ft. above the adjacent sidewalk. Ground floor residential, office and industrial uses may provide translucent windows to meet all transparency requirements.
2. Upper floor. Min 20% (floor to floor).
3. Retail sales and service uses. A minimum of 60% of the window pane surface area shall allow views into the ground floor for a depth of at least 8 ft. Windows shall not be made opaque by window treatments (excepting operable sunscreen devices within the conditioned space).

**BUILDING ENTRANCE**

1. A functioning entrance, operable during normal business hours, is required facing the primary street. An angled entrance may be provided at either corner of the building along the primary street to meet this requirement.
2. A building located on two primary streets shall have either one entrance per frontage or provide one angled entrance at the corner of the building at the intersection. Buildings located on corner lots shall meet all applicable intersection sight distance requirements. Additional entrances off another street, pedestrian area or internal parking area are permitted.
3. For nonresidential uses, a minimum of 50% of the required entrance shall be transparent.
4. Recessed entrances shall not exceed 3 ft. in depth and one floor in height.

**BLANK WALL AREA**

Blank lengths of wall exceeding 30 linear ft. are prohibited on all primary street and side street building façades.

**GROUND FLOOR ELEVATION**

For ground floor uses, the ground floor finished elevation shall be a minimum of 18 inches above the adjacent sidewalk. There is no minimum for ground floor nonresidential uses.

**FLOOR HEIGHT**

1. Nonresidential Use: Ground floors shall have a floor to floor height of at least 14 ft.
2. Residential Use: Ground floors shall have a floor to floor height of at least 11 ft.
3. Each upper floor shall have a floor to floor height of at least 9 ft.

*Brenda P. Solomito*  
Land Planner

Zoning  
Master Planning  
Final Alignment  
Project Management  
Subdivision Control

March 27, 2013

TO: Commissioner Terry Roland, Chairman  
Land Use, Planning, Transportation and Codes Committee

FROM: Brenda P. Solomito - Solomito Land Planning  
Consultant to Mr. Don Carson *JAF*

RE: ZTA 13-001CC, Amendments to the UDC  
Automotive Service and Repair in CBD

Mr. Chairman:

Thank you for the opportunity to present this case to you and to express my support for the proposed Zoning amendments being discussed today. I am working with Mr. Don Carson, owner of Carson Frame and Alignment Services, located at 620 and 630 Marshall Avenue and is zoned Central Business District (CBD) Zoning District.

Mr. Carson has been operating as an alignment operation on this site for 40 years and wishes to expand his services to include automotive repair and to construct a new building on the site. Up until the adoption of the Unified Development Code, Mr. Carson's business was a use permitted by right.

Although this project is located within the City of Memphis and will never come before the Shelby County Board of Commissioners for review or approval, I hope to shed some light on the issues that are truly problematic for small business owners. Unfortunately, attempting to gain these approvals and permissions is truly process driven and indiscriminate to size or value.

Please note that I am donating my services and the services of my team members to Mr. Carson because his case is so severe and truly unjust. Ultimate Financial Cost for this Economic Expansion - A minimum of \$18,000 plus the actual cost to Mr. Carson for his new building, plus any landscaping and any actual physical site improvements that may be imposed by city engineering and OPD.

Ultimate request is to grant Mr. Carson permission to be able to continue the business he has been operating or 40 years and to be able to add services to his business that will benefit the community.

Special Use Permit

Minimum 90 Day process, 120 DAYS IF A "Hold" is enacted.  
Required neighborhood notice of all property owners within 500'.  
Required neighborhood notice of all tenants/renters within 500'  
Required notice to all neighborhood associations within 1,500'.  
Required neighborhood meeting within 10 days of the LUCB meeting and must be coordinated with at least two associations on the time and place of the meeting.  
Public posting of signs at the property.  
Public Hearing at the LUCB  
Public Hearing at the Memphis City Council.

Board of Adjustment

The requested variances in this instance will be long and varied. There is no way that the existing building or proposed building can be brought into conformance or be constructed to function efficiently.

The burden of proof is on the applicant to prove practical difficulty or physical hardship and the threshold is very high. The majority of the buildings in most of the older neighborhoods are currently non-conforming, a huge deterrent to business development and expansion.

Thank you for the opportunity to discuss this issue with you. I hope you will support the proposed amendments and take into consideration other small business owners and property owners like Mr. Carson.

**MEMORANDUM**

TO: Josh Whitehead, Esq., AICP  
Planning Director, Office of Planning & Development

FROM: John T. Moses, Esq.  
General Counsel, American Car Center, LLC

RE: Proposed Creation of New Definition of "USED GOOD" in the UDC

DATE: 3.14.13

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Josh:

This memorandum concerns the proposed creation of a new definition for the term "used good" (hereinafter referred to as "the Amendment") as said term may be used in the Memphis and Shelby County Unified Development Code ("UDC") and within the text of existing planned developments. At the outset I want to say that my research into this matter has just begun because I was just made aware of the existence of this proposed Amendment and its current status of proceeding through public readings before the Memphis City Council and the Shelby County Commission (though the Amendment has now been withdrawn from the Commission). I think there are many interested citizens, stakeholders and city and county government planners who are not fully aware of this proposed Amendment, or the significant and potentially detrimental effects it could have on pre-existing property rights, as well as to the soundness, uniformity and effectiveness of the UDC itself. The first part of this memorandum deals with the problems that this proposed Amendment could cause to the UDC itself (that I have discovered to date); the second part deals with how this Amendment could potentially unlawfully affect ACC's property rights and undermine the reasonable reliance it exercised upon previous determinations by the Office of Planning and Development ("OPD").

It is important to note that this proposed Amendment does not appear to serve any of the purposes of the approval criteria for UDC text amendments found at UDC 9.4.6, as 1) it is not consistent with the "remainder of the development code" (9.4.6.A.1); 2) it does not represent a "new idea" or a "revision necessitated by changing circumstances over time" (9.4.6.A.2); 3) it does not correct an error in the development code (9.4.6.A.3); and 4) it is not an attempt to comply with state or federal law (9.4.6.A.4). For the reasons that follow, we would respectfully request that you withdraw the proposed creation of a new definition for the term "used good" from the current proposed UDC amendments being read by the Memphis City Council and the Shelby County Commission.

**I. Unintended and Detrimental Effects of this Amendment on the UDC**

The most obvious reason for withdrawing this proposed Amendment is the conflicting, confusing and detrimental effect it will have upon the UDC. Upon a search of the UDC, the term "used goods" is only used expressly three times, all in the special purpose district sections of the UDC.

In those sections, "used goods, or second hand sales" are expressly permitted in the special purpose districts. To the contrary, the use category "All Vehicle Sales..." is **not** on the permissive uses list. Thus, if the Amendment passed and "used goods" included "vehicles", you would be faced with the detrimental and unintentional situation of used vehicle sales being permitted in the special purpose districts.

Even more potentially confusing and detrimental, because "used goods" is not included as a specific use category in the formal, color coded use chart in the UDC, it would fall under the catch-all category "All retail sales and service . . .", the first horizontal column on page 2-13 of the UDC within the section Retail Sales and Service. This catch-all category would include "used goods", and if the Amendment passed, would allow used vehicle sales by right in almost all of the zoning districts, including CMU-1 and CMU-2. This liberalization of where used vehicle sales could occur turns the UDC on its head, because the specific use category "All Vehicle Sales, Rental, Leasing" (on page 2-14 of the UDC) was obviously intended to limit vehicle sales by right to CMU-3, EMP, WD, and IH. This point clearly demonstrates how the Amendment, if passed, would result in nonsensical and detrimental effects on the uniformity and soundness of the UDC.

## **II. The Amendment's Attempt to Affect American Car Center, LLC's Property Rights**

It is American Car Center, LLC's ("ACC") position that, even if passed in 2013, the Amendment would not and could not affect its property rights in 1561 Germantown Parkway or the undeveloped lot directly behind it, i.e., the Lot 4 Chickering Cove property. Both properties are part of the Commons at Dexter Lake Planned Development ("Dexter Lake PD"). The Amendment appears to be an attempt to prevent ACC from developing a small, reasonable parking lot on the Lot 4 Chickering Cove property, for which site plan approval is set for hearing before the Land Use Board on April 11, 2013. However, ACC's uses of these properties are permitted by right by the PD, and the UDC itself respects the integrity of the Dexter Lake PD as it was passed in 1996.

At the outset, it is important to note that ACC had no idea that it was stepping into heated zoning issues in Cordova. ACC had no knowledge whatsoever of any past dealings regarding auto dealerships in Cordova. All ACC did was research the requirements of the Dexter Lake PD and proceed as lawfully required by the procedures of the OPD. ACC currently is and in the future plans on being excellent neighbors and responsible landscapers. ACC intends on abiding by all of its landscaping, signage and other requirements. We are **not** a mom-and-pop car lot; we have a dealership company and finance company, employ 75 plus people in the Memphis area, generate significant sales tax revenue, and are the primary client for several small business vendors in the community who also employ others.

ACC first became aware of the available lease at 1561 Germantown Parkway in early 2012. As required by the TN Motor Vehicle Commission, ACC submitted a zoning request letter to the OPD. On March 14, 2012, Mr. Burk Renner issued a zoning approval letter on behalf of the OPD which first quoted the text of the Dexter Lake PD:

I. Uses Permitted

- A. Commercial Area – Any use permitted by right, permitted by administrative site plan approval, or permitted by special use permit in the Planned Commercial (C-P) District, including dry cleaning and photo-finishing establishments and excluding:
1. Amusements, commercial outdoor
  2. Airport
  3. Heliport
  4. Pawn Shop
  5. used goods, second hand sales

(See 3.14.12 B. Renner Letter, pp. 1-2, attached hereto as **Exhibit A** (excuse the markings I no longer have a clean copy)). Mr. Renner then pointed out that while the relevant C-P (pre-UDC) and CMU-2 (post-UDC) zoning districts normally require a special use permit for vehicle sales, rental and leasing, “the above planned development outline plan conditions permit such special use permits as a use by right.” *Id.*, p. 2. (emphasis added). Thus, Mr. Renner concluded that “[s]uch zoning is proper for the rental or sale of new or used cars and trucks, motorcycles, at the above-referenced location . . . .” *Id.*, p. 3. Having obtained the zoning approval letter, ACC proceeded to negotiate a long-term lease agreement during the latter half of 2012, re-record the final plat pursuant to Mr. Renner’s instructions, and obtain a Certificate of Occupancy, which was issued by the Office of Construction Code Enforcement on January 15, 2013. Further, based upon its reasonable reliance upon Mr. Renner’s conclusions and its approval for use and occupancy for vehicle sales, rental and leasing within the Dexter Lake PD, ACC negotiated the purchase of the Lot 4 Chickering Cove property, which is a small, undeveloped lot directly behind 1561 Germantown Parkway. ACC closed upon the sale of this lot on January 29, 2013. Again, ACC’s proposed site plan approval for the Lot 4 Chickering Cove Property for a small landscaped parking lot is set for hearing before the Land Use Board on April 11, 2013.

While ACC became aware that certain persons inquired about the legality of ACC’s use and occupancy of these properties in February 2013, ACC did not become aware of the proposed Amendment until Monday, March 11, 2013, after the proposed Amendment had already been read once before the Memphis City Council. While the Amendment appears to try to thwart ACC’s intended use of the Lot 4 Chickering Cove property, even if it passed (which it should not for reasons cited above), it is ACC’s position that the Amendment could have no retroactive effect upon the definition of a term used in a PD passed in 1996. The provisions of the UDC itself prevent such a result, as detailed below.

Even though not specifically defined under the former code or the UDC, it is generally accepted that the phrase “used goods, second hand sales” has always meant thrift stores or the equivalent thereof. “Used goods” has never referred to vehicle sales, rental and leasing because this activity has always had its own, specific use category. Thus, the Dexter Lake PD expressly excluded thrift stores, but did not exclude vehicle sales, rental and leasing. In fact, it expressly permitted it by right as noted above. The supporters of the Amendment, in a misguided attempt that would wreak havoc on the uniformity and soundness of the UDC, are attempting to create a new definition for “used goods” that would include vehicle sales, and then somehow have it retroactively apply to the 1996 Dexter Lake PD and thus exclude vehicle sales on the Lot 4 Chickering Cove Property. The UDC itself rejects such an attempt:

bodies. Also look at 1.13.3.A.4 that I attached which I think clearly states we have to honor the uses permitted by the approved PD.

Concerning Condition VII (Site Plan Review), I was told by Ralph Smith at ETI (who I worked on with this in terms of the attached plat that was re-recorded recently) that no changes would be made to the site (no building addition, landscaping changes, etc.,) so therefore there was no need for site plan approval.

Chip

(See 1.22.13 N. Saliba E-mail, attached hereto as **Exhibit B**)(emphasis added). Mr. Saliba correctly points out that UDC 1.13.3.A.4 “clearly states that we have to honor the uses permitted by the approved PD.” *Id.*

Thus, as Mr. Saliba emphasizes in his e-mail, retroactive application of the UDC (or any 2013 amendments thereto) to PDs passed prior to the effective date of the UDC would be improper. Furthermore, it would make no logical sense in this case, because “motor vehicle sales” had its own use category and was a use approved by the Dexter Lake PD (in the same way that the Amendment does not make any logical sense *now* because the UDC already has an express, specific category for “All Vehicle Sales, rental, leasing”). When the Dexter Lake PD used the phrase “used goods, second hand sales” it obviously meant thrift stores and not vehicle sales because vehicle sales had its own use category. If the PD intended to exclude vehicle sales, it would have included that use category in the list of exclusions in the way that it included the thrift store category. As Mr. Saliba points out, “[t]his is not unclear or ambiguous.” Thus, pursuant to the above-referenced UDC provisions and the correct and lawful reasoning contained in Mr. Renner’s letter and Mr. Saliba’s e-mail, there can be no retroactive application of a new proposed definition of “used goods” to the Dexter Lake PD to somehow intentionally and adversely affect ACC’s property rights that have already been lawfully confirmed by the OPD.

### Conclusion

In sum, it is ACC’s position that this proposed Amendment, even if passed, could not affect ACC’s current and intended uses for the 1561 Germantown Parkway location or the Lot 4 Chickering Cove property. Further, the Amendment could have significant detrimental effects upon the soundness, consistency and uniformity of the UDC, both known and unknown. As of the writing of this memorandum, the Amendment has already been withdrawn from consideration by the Shelby County Commission; ACC encourages that it be withdrawn from consideration by the Memphis City Council.

ACC wants to emphasize that it has no desire to be adversarial with its neighbors or concerned citizens on Germantown Parkway. As will be outlined at the April 11, 2013 meeting of the Land Use Board, all ACC intends to do with the Lot 4 Chickering Cove property is build a small, quiet landscaped parking lot to park additional vehicles. There will be little vehicle traffic on this lot and frankly very little daily activity except a few customers a day meandering through the lot looking at vehicles. Clearly, there are numerous other permitted uses for this lot that would be much more concerning and disruptive than a quiet parking lot for available vehicles.

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT  
STAFF REPORT REFLECTING AN AMENDMENT APPROVED BY L.U.C.B.**

**Agenda Item: 8**

**CASE NUMBER:** ZTA 13-001                      **L.U.C.B. MEETING:** February 14, 2013

**APPLICANT:**                      **Memphis and Shelby County Office of Planning and Development**

**REPRESENTATIVE:**              **Josh Whitehead, Planning Director**

**REQUEST:**                      **Adopt Amendment to Sections of the Memphis and Shelby County Unified Development Code that Concern Conditional Use and Special Use Permits, Consumer Vehicles Parked on Residential Lots, Preexisting Apartments, the Tree Ordinance, Standard Improvement Contracts, Dedication of Right-of-Way, Zoning Code Definitions and Other Provisions of the Code**

***Executive Summary:***

1. This set of amendments to the Unified Development Code (the "UDC") continues the semi-annual update to the Code that was begun with Case ZTA 12-001, approved in August 2012 and continued with Case ZTA 12-002, approved in January 2013.
2. Items 1 and 2 deal with modifications of Special Use Permits approved by the governing bodies and transferring one use eligible for a Special Use Permit (mobile homes) to a use eligible for a Conditional Use Permit.
3. Item 3 deals with large consumer vehicles, including those known as "duallies," that are parked on residential lots. A definition of a "daully" is required as part of this proposal. Item 9 proposes the addition of two other new terms: "platted residential lot" and "used good," as well as restoring many definitions that were in the old Zoning Code but inadvertently omitted from the UDC.
4. Item 4 corrects issues that have arisen with apartments that pre-exist the UDC.
5. Item 5 deals with exempting site plans that have already been reviewed by OPD, LUCB, the governing bodies or the Board of Adjustment from the Tree Ordinance.
6. Item 6 deals with incorporating lawsuits to the 18-mo. prohibition of filing the same zoning request.
7. Items 7 and 8 clarify which plans require Standard Improvement Contracts and when the abandonment of right-of-way requires action by the governing bodies.
8. These amendments can be read in greater context by downloading the entire UDC. It is available on this website: <http://www.shelbycountyn.gov/Blog.aspx?CID=7> or by googling the terms "UDC," "amendments" and "Memphis." The itemized changes in this staff report are the substantive amendments to the UDC. Pagination, table of contents, indexing and cross-referencing corrections to the Code are found in the full UDC online.

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:**

***Approval***

Proposed language is indicated in **bold, underline**; deleted language is indicated in ~~strike through~~.

1. 2.5.1B(2): Modifications to approved special use permits

This section currently contradicts language found in Sub-Section 9.6.1D and Paragraph 9.22.6B(5), which requires that any modification of a use variance approved by either governing body as a special use permit must be approved by said governing body or bodies.

For properties that have been granted a use variation by the ~~Memphis and Shelby County Board of Adjustment or the Memphis City Council~~ **governing bodies** prior to the adoption of this development code, any expansion, modification or amendment to said use variation, its permitted uses or conditions placed on its permitted uses shall be processed as a Special Use Permit as outlined in Chapter 9.6.

2. 2.5.2 (Use Table): Conditional use permits for mobile homes

Currently, mobile homes require the approval of a Special Use Permit (SUP) from the Land Use Control Board and either the Memphis City Council or the Shelby County Board of Commissioners. Since most mobile homes are located in the 5-mile zone outside of the City of Memphis, all three boards must approve an SUP for a mobile home. The proposal below would transfer mobile homes to a use eligible for a Conditional Use Permit (CUP). The CUP process is a much nimbler process, taking only one month as opposed to 4-5 months for an SUP. This change will involve replacing the symbol for SUPs (a hollow box, "□") in the Use Table with the symbol for mobile homes in the CA (Conservation Agriculture) and R-MP (Manufactured Home Park) zoning districts to the symbol for CUPs (a "C"). This change will also involve changing language in Sub-Section 2.6.1D from "special use" to "**conditional use**" and language in Paragraph 2.6.1D(3) from "special use permit" to "**conditional use permit**."

3. 2.7.10B: Duallies

This section of the Code prohibits any vehicle of more than 8000 lbs. to be parked or stored on residential properties. The purpose of this section is to prevent heavy trucks and machinery from being parked on residential lots. However, the arbitrary threshold of 8000 lbs. prevents some consumer vehicles, such as duallies, from being parked at homes. The following language will carve out an exception to this provision for consumer vehicles.

2.7.10B. The parking of trucks, heavy equipment or tractor trailers shall not be allowed. This requirement shall not prohibit commercial vehicles from making deliveries in a residential district. For the purposes of this Sub-Section, the terms "trucks" and "heavy equipment" includes any vehicles or equipment in excess of 8,000 lbs. **with the exception of consumer vehicles such as duallies.**

This amendment will also involve adding a definition to Section 12.3.1:

12.3.1. (Definitions) **DUALLY: A pickup truck, specifically one with four wheels on the rear axle.**

4. 3.7.2A, 10.8 and 10.9: Preexisting apartments.

During the first set of UDC amendments (case ZTA 12-001), language was added to the Code that stipulated that certain requirements of the UDC did not apply to preexisting apartment complexes so

these complexes would not be considered nonconforming structures. As nonconforming structures, banks were expressing their unwillingness to refinance these structures and buyers expressed their unwillingness to purchase these structures. The language added during case no. ZTA 12-001 in August 2012 that exempts these preexisting structures, however, contains a phrase that stipulates that the structures must nevertheless be conforming. This presents the following problem: for an apartment complex that was built under the 1981 Zoning Code with a 30-foot front yard setback (which adheres to the UDC), but a 10-foot rear yard (which adhered to the 1981 Code, but not the UDC), then the maximum front building setback, the required building frontages and the required percentage of housing types (the three onerous provisions of the UDC which were to explicitly not apply to existing apartments) *would* apply since the building is not otherwise "deemed to be conforming." The proposal below is to delete this phrase, which would relieve properties of this problem.

### 3.7.2 Building Regulations for Permitted Housing Types

A. ... The maximum front building setbacks, required building frontages and required percentage of housing types established in this Section shall not apply to buildings in existence prior to January 1, 2011, ~~provided that said buildings would otherwise be deemed conforming structures.~~ See Chapters 10.8 and 10.9.

10.8. The maximum setback and building frontage requirements that apply to townhouses and multi-family buildings, as established in Section 3.7.2 and to permitted nonresidential uses, as established in Section 3.7.3, shall not apply to buildings in existence prior to January 1, 2011, ~~provided that said buildings would otherwise be deemed conforming structures...~~

10.9. The required percentage of housing types, as established in Section 3.7.2, shall not apply to buildings in existence prior to January 1, 2011, ~~provided that said buildings would otherwise be deemed conforming structures.~~

## 5. 6.1: Tree ordinance

The tree ordinance was designed to prevent clear-cutting of trees in both approved and contemplated subdivisions and PD outline plans. In fact, Section 6.1.1 and Paragraph 6.1.2A(5) of the tree ordinance state that it does not apply to subdivisions and PD outline plans approved prior to the date of the passage of the ordinance (February 26, 2001). The tree ordinance was never intended to apply to site plans approved pursuant to the Zoning Code, such as those approved by the Board of Adjustment, the Land Use Control Board, the Memphis City Council or the Shelby County Board of Commissioners. Those site plans had already been through a review process, and the additional time and expense of a tree permit and/or notice of intent is unnecessary. The proposed language below will address this problem.

**6.1.2A(9)** (new section) The provisions of this Chapter shall apply to all tree removal in the unincorporated areas of Shelby County and the City of Memphis except in the following cases, which do not require a notice of intent, a tree survey or a tree permit:

**Where the tree removal is affiliated with any site plan approved pursuant to this Code.**

## 6. 9.5.11A, 9.6.13A and 9.14.8A: Elapsed time between applications

Three sections of the Code stipulate that a certain time must elapse between the time an application is filed at the same location for the same request. The 18-month period is intended to give all parties a period of resolution following a denial, and prevents undue and repetitive consumption of city and county resources spent dealing with a particular application. Further, a second application assumes

that there has been some change in the locale or in the proposal itself that makes the second application more appealing and beneficial than the first application. The 18 months provides the applicant with a period in which to improve upon the original application. Indeed, the opposition to a previously-denied application may even have a legal right to bar a hearing on the exact same application again ("res judicata"). Three forms of applications contain this clause: rezonings, Special Use Permits and Planned Developments and special exceptions. Each are contained in different sections of the Code:

9.5.11B Time Lapse between Applications (for rezonings)

When the governing bodies have voted on a rezoning application and the proposed rezoning has either been denied or has failed to be approved by the vote required in the event of a valid protest petition, then the application shall be deemed to have expired, **effective upon the date of the decision of the governing body, or any appeal thereof, becomes final, whichever is later.**

9.6.13A Effect of Special Use and Planned Development Decisions

If the governing bodies votes to deny an application, there may be no subsequent application for the same or similar use submitted by any party for any part of the subject property until 18 months have elapsed from the date of denial, **or from the date any appeal thereof becomes final, whichever is later.** The governing bodies may waive the time-lapse requirements of this section where it is in the public interest to do so.

9.14.8A Effect of Decision (for special exceptions)

If special exception is denied, there may be no subsequent application for the same or similar exception submitted by any party for that portion of the subject property until 18 months have elapsed from the date of denial, **or from the date any appeal thereof becomes final, whichever is later.**

7. 9.7.8C(3), 9.7.8D(1), 9.7.8F(1) and 9.9.4C: Approval of Standard Improvement Contracts

These sections contradict each other; for instance Paragraphs 9.7.8C(3) and 9.7.8F(2) conflict with Paragraph 9.7.8D(1), which states that only those plats that involve the construction of public improvements require approval by the governing bodies. In addition, Sub-Section 9.7.4C explicitly states that dedication of ROW that requires no physical improvements can be done administratively. This is based on enabling legislation and case law.

9.7.8C(3)

If the final plat contains ~~dedication of streets, public easements, public or private drainage easements, or construction of public improvements~~ requiring a Standard Improvement Contract (see Section 5.5.5), the Planning Director shall forward copies of the final plat to the appropriate City or County Engineer requesting preparation of any required contracts and approval resolutions for the governing bodies. The Planning Director shall complete the review of the final plat and notify the applicant of nonconformities, omissions, or corrections required before the final plan is forwarded for governing bodies' action.

9.7.8D(1)

If the final plat **contains** ~~requires the construction of~~ public improvements **requiring a Standard Improvement Contract**, then the governing bodies shall approve the final plat before such plat is recorded.

9.7.8F(1)

After a final plat is approved by the governing bodies, the Planning Director shall record such plat in the Shelby County Register's Office after receipt of the resolution approving the final plat and any necessary contracts to provide improvements required by Article 5, Infrastructure and Public Improvements, and the required signatures for recordation have been secured. If the final plan contains no ~~dedication of streets or easements~~ or construction of public improvements, then the Planning Director shall record such plan without action of the governing bodies.

In addition to the three sections cited above, the following language currently found in Sub-Sections 9.7.4C, 9.12.4A and 9.13.7A is proposed to be added to a fourth section of the Code, as it is the section of the Code (Chapter 9.9) that describes the right-of-way dedication process:

9.9.4C (new section)

**The Planning Director, as Secretary of the Land Use Control Board, is authorized to accept, upon review by the City or County Engineer, public dedication of streets and alleys (Priv. Acts 1921, ch. 162, Section 8) if a Standard Improvement Contract is not required (see Section 5.5.5).**

8. 9.8: Right-of-Way Vacation

The City of Memphis Code of Ordinances contains a provision for the vacation (or closure) of right-of-way in special circumstances that is less time-consuming than the procedure outlined in the UDC. This section of the City Code deals with right-of-way that is no longer needed due to the realignment or relocation of a city street. The following note is proposed to be added that will cross-reference this section of the City Code:

9.8 Right of way vacations shall be classified in the following **four** ~~three~~ categories:

**D. Excess right-of-way: City of Memphis right-of-way that meets the provisions of Section 2-16-1D of the City of Memphis Code of Ordinances. Such excess right-of-way shall be vacated utilizing the procedure outlined in Section 2-16-1D of the City of Memphis Code of Ordinances and not this Code.**

Also, the end of Section 9.8.2 includes a redundant phrase "The application shall include." This is to be removed.

9. 12.3.1: Definitions

The term "platted residential lot" is found in Paragraph 2.6.2C(4), which requires this issuance of a Special Use Permit for schools expanding into residential areas, but this term is not defined. The proposal below would define this term.

**PLATTED RESIDENTIAL LOT: A parcel that is part of a recorded subdivision that is located in a residential zoning district or a parcel that is part of a residential portion of a planned development.**

**RESIDENTIAL LOT, PLATTED: See platted residential lot.**

There are several approved Planned Developments throughout the City that exclude used goods, but this term is not defined. Since "vehicle sales" is a separate use category under Section 2.5, the Use Chart, used vehicles are not customarily considered used goods. However, many citizens were under the expectation that used vehicle sales would be excluded from these planned development. To cure this situation, the following definition of "used good" is offered which will include used vehicles.

**USED GOOD: Any article of trade that is being offered for resale, including vehicles.**

The following definitions were in the old Zoning Code but inadvertently omitted from the UDC. They are to be inserted with the approval of this Zoning Text Amendment.

**BEVERAGE CONTAINER COLLECTION CENTER: A building or portion of a building used for the incidental storage of beverage containers.**

**BEVERAGE CONTAINER RECYCLING CENTER: A building or portion of a building used for the crushing of beverage containers commonly used by the general public and the incidental storage of such containers.**

**BUILDING LINE: The line established by this Code beyond which a building shall not extend.**

**BULK: The minimum or maximum lot area, yard area, height or land use intensity ratios permitted or required in any zoning district.**

**BUS BARN: See Bus Terminal.**

**BUS TERMINAL: Any building where intercity or intracity bus trips begin or terminate or the building or land where buses used in such trips are parked, serviced or repaired.**

**CONTRACTOR: A person who contracts to erect structures or buildings, construct streets, lay pipe, move earth or otherwise do land development. A contractor includes a person who contracts to perform all or part of another's contract as defined above.**

**CONTRACTORS STORAGE: The use of land or buildings for the storage or parking of materials, equipment, vehicles or supplies used by a contractor off the premises on which such storage is located.**

**HOMEOWNERS ASSOCIATION: A group of owners of property in a development, which group is responsible for the enforcement of rules and regulations governing the common elements of such development.**

**LEGISLATIVE BODY: The City Council of the City of Memphis, Tennessee, and/or the Board of Commissioners of Shelby County, Tennessee.**

**LODGING HOUSE: See Rooming House.**

**RESIDENTIAL BUILDING: A building the principal use of which is a residential use.**

**RETAIL SHOP:** An establishment engaged primarily in the sale of goods for personal use or consumption rather than for resale to the ultimate consumer.

**ROOMING HOUSE:** A building where lodging is provided for compensation for five or more persons, who are not transients, by prearrangement for definite periods, provided that no convalescent or chronic care is provided.

**SCRAP METAL PROCESSOR:** Any persons or parties having facilities for processing and storing iron, steel or nonferrous scrap and whose principal product is scrap iron and steel or nonferrous scrap for sale or remelting purposes.

**SCRAP PROCESSING YARD:** Any place having the necessary machinery, equipment and other facilities to process, refine, manufacture or prepare and store scrap iron, scrap steel or nonferrous materials for resale or for remelting purposes.

**SCREENING:** The use of vegetation, fencing or berms to limit the view of one premises from another.

**SECONDARY MATERIAL DEALERS:** Any person who shall engage in the business of buying, storing and selling secondary materials consisting of old or scrap copper, brass, rope, rags, batteries, paper, rubber, iron, steel and other old scrap, ferrous or nonferrous.

**WHOLESALE DISPLAY:** A display of commodities of a wholesale establishment.

**WHOLESALE ESTABLISHMENT:** A business engaged in the sale of commodities in quantity, usually for resale or business use, chiefly to retailers, other businesses, industries and institutions.