



Date: February 18, 2020

To: Thomas J. Bonfield, City Manager
Through: Wanda Page, Deputy City Manager
From: Bertha T. Johnson, Director of Budget and Management Services
Subject: Durham Expunction and Restoration (DEAR) Program to Legal Aid of NC

Executive Summary

This memo provides an update on the transition plan for the Durham Expunction and Restoration (DEAR) Program and recommends that the City enter a contract with the Legal Aid of North Carolina, Inc. in the amount of \$180,000 for Legal Aid to assume responsibility for the DEAR program. The Durham Expunction and Restoration (DEAR) Program started in November 2018. DEAR has dismissed over 50,000 charges and waived over 8,500 old traffic tickets that were preventing 35,000 people from restoring their driver's license. In total, DEAR has filed over 600 petitions for expungement. In May 2019, City Council approved funding to support the program through June 2020. DEAR arose out of research conducted by the Innovation Team (I-team) in direct response to unmet needs of Durham residents. The I-team spearheaded a partnership with multiple government and community agencies to develop and pilot the program. The I-team is not designed to serve as the long-term owner of initiatives and programs that develop out of its research, but rather to incubate promising ideas and, after offering a proof of concept, to transition ownership to other departments or organizations.

Recommendation

Budget & Management Services (BMS) recommends that Council authorize the City Manager to execute a contract with the Legal Aid of North Carolina, Inc. in the amount of \$180,000 in order to transition the DEAR program from the City of Durham to Legal Aid. This contract supports the current level of operations for one year (through the end of February 2021). This funding will support two attorneys and one paralegal, as well as the basic operational costs required to run the program. The City will also continue support to the North Carolina Justice Center in the amount of \$50,000 to complete the mass relief license restoration work, which should be completed by December 2020. Only the contract with Legal Aid requires Council approval.

Background

The City of Durham's Office of Performance and Innovation (OPI) is concluding a yearlong pilot phase for the DEAR program. The pilot was launched and incubated as part of the City's Bloomberg Philanthropies-funded I-team. The DEAR program provides free legal services to help residents expunge criminal charges and convictions and restore driving privileges for non-DWI-related traffic offenses. These services are provided by a small, dedicated team of attorneys and a paralegal who work out of an office space located in the courthouse. The office space is provided at no cost to the program by the Criminal Justice Resource Center (CJRC). Funding for the DEAR program primarily supports the salaries of three attorneys and one paralegal who meet with residents Monday – Friday, 9:00AM – 3:30PM at the courthouse. DEAR attorneys also support the District Attorney's Office in conducting an ongoing mass relief

license restoration program. The DEAR team is running at full-capacity with large caseloads and a waiting list of residents seeking their assistance.

During the first year, legal services have been provided by three organizations. The City hired a paralegal and Spanish-speaking attorney. The City also contracted both with Legal Aid to provide one attorney to focus on expunctions, and also with NC Justice Center to provide several part time attorneys to focus on license restoration. Additionally, during the first six months of DEAR, the City Attorney's Office loaned Senior Attorney Arnetta Herring to the program, who returned to the City Attorney's Office on July 1 and retired at the end of October 2019.

This program is tied to and advances two of the City's goals in the FY2019-2021 Strategic Plan:

- **Building a talented, competitive workforce** by re-designing employment programs for justice-involved residents and understanding and addressing the barriers to employment facing Durham residents.
- **Advancing a more inclusive, equitable Durham** by identifying and lowering barriers for justice-involved residents to access programs and services.

As the City develops its racial equity plan, DEAR also serves as a clear example of the commitment the City has already illustrated in creating programming to further racial equity. The Government Alliance for Racial Equity (GARE) has recognized DEAR as a model for municipal programming that works towards racial equity through providing funding and a platform to highlight this work at regional and national conferences.

The pilot phase has demonstrated the value of and need for this program. Over the first 11 months of the pilot phase, the DEAR program dismissed over 50,000 charges and waived over 8,500 old traffic tickets that were preventing 35,000 people from restoring their driver's license, and filed over 600 petitions for expungement. Other District Attorneys and City Attorney Offices across the state are reaching out to Durham and expressing interest in following our lead. This summer, Mecklenburg County began replicating the DEAR model, waiving more than 5,000 old traffic tickets.

The program is increasingly viewed as a model for our state and nation. In May, DEAR was awarded the Pro Bono Project of the Year by the NC Bar Association. In November, DEAR leaders won the national Route Fifty Navigator Award. Finally, What Works Cities selected DEAR as the first program to support replicating through its City Solutions Accelerator. In January, 17 cities from across the country began a 10-week online accelerator led by What Works Cities, the City's Office of Performance and Innovation, and the Fines and Fees Justice Center in NYC to learn about and replicate DEAR in their own communities.

DEAR is overseen by an advisory board chaired by District Court Judge Amanda Maris and Superior Court Judge Josephine Kerr Davis. The role of the board is to provide general direction and guidance to the DEAR Program while holding the program accountable to its goals within a race equity framework. The board provides these duties at bi-monthly meetings. The board is also composed of smaller workgroups designed to provide input on specific components of the program. The DEAR Advisory Board is an informal body comprised of representatives from each partner to the DEAR Program, including the City of Durham's Office of Performance and Innovation, Legal Aid of NC, NC Justice Center, NC Equal Access to Justice Commission, NC Pro Bono Resource Center, CJRC, The District Attorney's Office, The Public Defender's Office, The Durham County Clerk of Court's Office, N.C. Central University School of Law, Duke

University School of Law, Forward Justice, Durham County Bar Association, George H. White Bar Association, and the DEAR staff attorneys.

Transition Planning

While the program has accomplished much in its first year, nearly 10,000 old traffic tickets still remain to motion the courts to remit, and tens of thousands more expunction petitions are left to file in order to work through the backlog of individuals who need but have not been able to afford this type of legal relief. If additional funding is not secured, thousands of residents eligible for this program will not benefit from the free legal services that are recognized as one important and proven piece of an effective workforce development strategy.

Looking out beyond FY20, we believe the size of the backlog in expungements and long-term suspended drivers' licenses that DEAR is uniquely positioned to address will require funding at a similar level for at least one more fiscal year (FY21). After that point in time, DEAR may have completed its initial goals. However, the program is not only addressing the backlog, but, through the new court referral program now in operation, is also a key part of a longer-term strategy to prevent similar backlogs from forming again. Under the court referral program, the District Attorney's Office, Public Defender's Office and CJRC programs are able to refer people to the DEAR office while they are already at the courthouse to receive free legal services to expunge criminal records and address barriers to license restoration. By the end of FY21, DEAR will be better positioned to continue support of this work without relying solely on support from the City. The program will have a long enough track record of success by the end of FY21 to position itself to be competitive for larger philanthropic grants, relieving the City of the need to serve as the sole or primary funder.

Over the past seven months, BMS staff have worked closely with the City Attorney's Office and key program partners – NC Justice Center and Legal Aid of NC – to explore options for moving DEAR outside the City and sustaining the program's operations for at least two more years. In October 2019, City Attorney Kim Rehberg and OPI's Innovation and Performance Manager Ryan Smith met with key representatives from Legal Aid of NC and the NC Justice Center to discuss potential plans for transitioning the DEAR program, including two City staff positions, outside the City. They also met with the entire DEAR Advisory Board to brief them on potential transition options for DEAR.

Issues and Analysis

Based on the above conversations with key community, court, and City stakeholders, BMS recommends the City transition the DEAR program ownership and the two remaining DEAR positions employed by the City to Legal Aid effective March 6, 2020. The NC Justice Center would remain involved with the program until the completion of the mass relief license restoration cases, which they plan to complete by December 2020. After completion of the mass relief program, Legal Aid would take over full operation of the DEAR program. The two current City staff members working for DEAR would have to reapply for the positions under Legal Aid's hiring policies. The staff members were hired with an understanding that the City was only making a one-year commitment to the positions. These staff have been notified of the plans to transition DEAR and the likely scenario that they will need to reapply for their jobs. The DEAR Advisory Board would continue to play the same role it has played under the pilot year, and OPI's Innovation and Performance Manager would continue to serve on the board.

Transferring DEAR's operations to Legal Aid provides the least complicated, most stable transition plan for the program. The organization is prepared to take over the administration of the program immediately. Legal Aid has expertise in expunction, and has recently made driver's license restoration a statewide priority. Legal Aid's presence across the state is a major asset to DEAR as the organization often must assist residents with issues in other NC counties. Legal Aid has been a key partner in DEAR since its inception, and its leadership has expressed strong support maintaining the role of the program's advisory board. The DEAR Advisory Board has been briefed on this option and supports it.

Based on previous conversations with the City Manager, City Attorney, Kim Rehberg has prepared contracts for Legal Aid of NC and the NC Justice Center. The former contract is included as an attachment. Additionally, Legal Aid of NC has submitted a letter to the City stating their willingness to assume responsibility for the DEAR program, and clarifying that funding for DEAR will *add to* the level of legal services they provided in Durham before DEAR, and not be used to subsidize their operations as they existed before DEAR. This letter is included as an attachment.

Alternatives

The City could choose not to approve the contract to Legal Aid of North Carolina, Inc. If this were to happen, the DEAR office would immediately close the walk-in process and focus on resolving all opened cases for the remaining four months. The DEAR Advisory Board would attempt to secure additional funding from other sources to keep the program operating. If no additional funds are secured and Legal Aid is unable to take on the added costs without some bridge funding from the City, then the program would close at the end of June 2020.

Financial Impact

The total cost of the contract is \$180,000.00 and funds are budgeted to pay for the contract.

Equal Business Opportunity Summary

This is not applicable as Legal Aid of NC is a non-profit organization.

Attachments

The following 2 attachments are included:

- DEAR contract for Legal Aid, which includes three contract attachments:
 - Contract Attachment A: Scope of Work
 - Contract Attachment B: Budgeted City Funds
 - Contract Attachment C: Sample Reporting Dashboard
- Letter of support from Legal Aid of NC