

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **Tuesday, September 6, 2005**

- BILLS INVOLVING AMENDMENTS TO THE ZONING ORDINANCE -

ORDINANCE NO. BL2005-648 (DOZIER) - This zoning text change would allow signs with graphics or electronic displays to be located on any property in Davidson County that is oriented to a four-lane or controlled access highway (Briley Parkway, West End, interstates, etc.). The Zoning Code currently requires that signs with changeable text and graphics remain static for at least two seconds. In 2004, the Council created an exception to this provision to allow graphic and video display signs within the commercial attraction (CA) zoning district, which essentially is limited to the Opryland/Music Valley Drive area.

This ordinance would expand the exception, currently limited to commercial attraction areas, to include all four-lane roads and controlled access highways. According to the planning staff analysis, this would allow video signs on twenty four-lane roads in Davidson County, not including Briley Parkway and the four interstates. The Council Office would point out that the prohibition on video signs was included in the Code for public safety reasons to limit driver distractions.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2005-712 (JAMESON) – This zoning text change amends the bulk standards table to permit an increased impervious surface ratio (ISR) and increased building height at the setback line for properties located within mixed-use zoning districts. This ordinance would also remove the need for a landscape buffer yard when the rear of the property abuts an alley. The bulk standards table in the zoning code establishes standards relating to the size and placement of structures within each of the zoning classifications. This includes height restrictions, floor area ratios, impervious surface ratios, and building setbacks. The code currently limits the maximum height of buildings within mixed-use districts based on linear feet. This zoning text change would amend the table to base the allowable maximum height of these buildings at the setback line on number of stories, instead. Thus, the maximum height would be three stories in the MUN and MUL districts, and five stories in the MUG and MUI districts. This ordinance would also increase the maximum ISR in the MUN district from

sixty percent to eighty percent. The ISR sets the maximum percentage of the property that can be covered with rooftops or pavement.

In addition, this ordinance would remove the authority of the board of zoning appeals (BZA) to grant variances for maximum building heights for property located within a redevelopment district. Instead, such authority would be vested with the MDHA design review committee. The council office would caution the council against approving such change in authority. Before the board of zoning appeals can grant a variance, the variance request is advertised in the paper, signs are posted on the property, the district councilmember and neighborhood groups are notified, and a public hearing is held on the variance. Allowing MDHA to grant variances on building heights would eliminate the public's input as to whether the variance is appropriate.

Finally, this ordinance would eliminate the required rear buffer yard when the property abuts an alley. The code currently exempts property within the urban zoning overlay from the landscape buffer yard requirements when the zoning boundary falls along a public street.

Properties in redevelopment districts are subject to compliance with both the restrictions of the district plan, administered by MDHA, and the zoning regulations, administered by the zoning administrator. Giving MDHA the ability to grant variances of the zoning ordinance is another method to remove power from the council and could allow some developers an advantage over other property owners.

This ordinance has been disapproved by the planning commission in its current form. If the ordinance is amended to incorporate the commission's recommendations, then the bill is to be treated as an approved bill.

SUBSTITUTE ORDINANCE NO. BL2005-713 (WILHOITE) – This zoning text change would require that all delinquent property taxes be paid and all Metro liens on the property be satisfied before the planning department could accept a zoning application. The council rules of procedure already require that delinquent property taxes be paid prior to a zoning bill's consideration on second reading. For the past year, the planning department has been rejecting zoning applications at the time of submittal when delinquent property taxes are owed on the property to be rezoned. This ordinance would essentially codify the council rule and planning department procedure.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-726 (GOTTO & BROWN) – This zoning text change would require that a resolution be adopted by the council prior to the board of zoning appeals granting a special exception for a rural bed and breakfast homestay or a day care facility. The zoning code currently requires that a special exception permit be obtained from the board of zoning appeals for certain land uses that are not permissible under the base zoning district. Some of these special exception uses must first be approved by resolution of the council prior to the board of zoning appeals holding a hearing on the request. The uses that currently must first receive council approval include sanitary landfills, airports, waste transfer stations, hazardous operations, and wastewater treatment facilities. Previous councils determined that it is

appropriate for these intense uses to be approved by the council on a site-by-site basis due to their impact on the community and the frequent incompatibility with surrounding uses. As a departure from this rationale, in 2000 the council added historic bed and breakfast homestays to the list requiring council approval by resolution. This ordinance would further extend the list of special exceptions requiring council approval by resolution to include rural bed and breakfast homestays, day care homes, and day care centers.

The zoning code contains certain criteria for these uses that must be satisfied in order to obtain a special exception. Rural bed and breakfast homestays must be located on an agriculturally zoned lot containing at least five acres, be owner-occupied, and cannot contain any advertising signs. Day care homes and day care centers must meet minimum lot size requirements, street standards, landscaping/buffering requirements, and provide adequate parking spaces. The difference between a day care home and day care center is based on the number of children that can be cared for at the facility. Day care homes are for 5-12 children. Day care centers are for 13 or more children, and are broken down into the following four subcategories based on the number of children: class I is for 13-25 children; class II is for 26-50 children, class III is for 51-75 children; and class IV is for 75 or more children. Class IV day care centers are not permitted in any residential zoning districts.

This ordinance would require that before these facilities can obtain a special exception permit to operate, the council would have to approve each individual site by resolution. Once a special exception application is filed with the board of zoning appeals, the council would have sixty days to approve or disapprove the site. If the council disapproved a particular site, no special exception use could be granted by the board of zoning appeals and the facility would not be allowed to operate on the property. Failure by the council to take action within sixty days would result in the resolution being deemed approved by the council.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2005-761 (LORING, WILLIAMS & OTHERS) – This zoning text change amends various provisions of the code regarding the eligibility, placement, lot size, and design standards of two-family structures (duplexes). This ordinance is a modified draft of Ordinance No. BL2004-408, which was deferred indefinitely in November 2004. Under the current zoning code, duplexes are permitted by right in the RM (multi-family) zoning districts, the mixed-use districts, and the OR (office and residential) districts. Duplexes are permitted with conditions in the AR2a and R (one and two-family) districts. The code currently does not limit the concentration of duplexes and does not require any particular design standards applicable only to duplexes.

This ordinance would substantially alter the permitted location, placement and design of duplexes in Davidson County. First, this ordinance would require that the minimum lot size for duplexes in the R districts be at least 120 percent of the minimum lot size for single-family homes. Second, the ordinance would restrict the number of duplexes on a given block. A maximum of four duplexes would be permitted on any one block, and in no event would more than two duplexes be allowed to be constructed next to each other. Third, the ordinance places some standards on the design of duplexes. If more than one entrance is proposed, one must face the street and the other must be located to "compliment and enhance the neighborhood's

development character.” In addition, garages must be recessed at least five feet from the front façade and be designed to compliment the neighborhood’s character. No driveway access would be allowed if the lot is served by an alley unless at least fifty percent of the lots on the same block face have driveways. Fourth, this ordinance would allow two detached dwelling units on those lots where duplexes are permitted. The zoning code currently requires that all duplexes be attached. This provision would essentially allow two single-family homes on one lot without going through the subdivision process.

Finally, a development plan would have to be submitted to and approved by the planning director for duplexes that would be the lesser of 5,000 square feet or 30% of the total lot area. No site work could begin, nor could any building or grading permit be issued, until the planning director approves this plan. The standards for reviewing the development plan are based on comparable structures in the neighborhood. “Comparable structures” include structures across the street, next door, or located to the rear of the lot. The proposed duplex would be required to have similar height, roof pitch, massing, building placement, and building materials as the comparable structures. In addition, the development plan for any structure eligible for listing on the national register of historic places would first have to be approved by the Metropolitan historic zoning commission before being considered by the planning department. Further, the ordinance would expressly prohibit the board of zoning appeals from being able to grant a variance on a duplex development plan.

The Council Office is of the opinion that the design limitations on two-family structures contained in this ordinance violate state law. The Tennessee Code Annotated, as part of the granting of zoning power to county and municipal governments, limits zoning ordinances to the regulation of the following: (1) the location, height and size of buildings and other structures; (2) the percentage of lots which can be occupied; (3) the size of yards and open spaces; (4) the density and distribution of population; and (5) the uses of property. A separate statute provides for design standards as part of historic zoning districts, however, this statute does not extend to design restrictions as part of other zoning ordinances. Although the zoning code currently includes various design-related provisions, this ordinance, as well as the “specific plan” ordinance (BL2005-762) discussed below, extend the design standards and design review process into uncharted territory.

Adoption of this ordinance would create hundreds of nonconforming uses that could result in a loss of value for existing properties and also a loss of revenue to Metro. Enforcement and necessary due process of law issues make such a district subject to abuse. This ordinance allows the executive director of the planning commission great latitude and allows appeals to the planning commission.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-762 (LORING, COLEMAN & JAMESON) – This zoning text change creates a new zoning district called the specific plan (SP) district. The zoning code currently contains various base zoning districts, which are essentially categories of zoning based on the size of the property and permissible land uses. This ordinance would create a new zoning district that would be applicable to any property in Davidson County, regardless of the proposed use of the property and the surrounding area. The SP district is designed to be an alternative

zoning process to address the unique characteristics of an individual property through a site specific plan. This would provide some flexibility for developers seeking to deviate from the set design and use standards for the other base zoning districts. In exchange for this flexibility, the developer would be required to abide by a strict site plan, which would give the neighborhood and council members some guarantee as to how the property will be developed. For some time, district council members have used the planned unit development (PUD) overlay in an effort to add conditions to developments. However, many of the conditions that have been added to PUDs are simply not enforceable.

Prior to submitting a rezoning application for the SP district, the developer would be required to meet with the planning director for guidance on the proposed development plan. The development plan, which must be submitted at the time of the zoning application, would be required to show the purpose and intent of the site specific plan, the plan's consistency with the general plan, a list of allowable land uses, illustrations of allowable building types, and a construction schedule. Any proposed SP district within a historic overlay or eligible for listing on the national registry of historic places would first have to be reviewed by the historic zoning commission before being considered by the planning commission. The ordinance provides that after reviewing a proposed SP district, the planning commission can approve, disapprove, or "approve with conditions." If the planning commission makes a conditional approval, the ordinance provides that the application would not be deemed approved until the applicant provides all prescribed amendments to the application. The Council Office is of the opinion that under the Metropolitan charter and applicable state zoning laws, any conditional approval by the planning commission would be treated as an approved bill, regardless of whether the conditions had been satisfied.

Once the planning commission makes a recommendation on an SP district, the bill would move through the council in the same manner as other zoning bills. After an SP district is approved, minor modifications to the plan could be approved by the planning director, much as minor modifications to PUDs are handled. Major modifications, such as a change in design standards or land uses, would require council approval. The ordinance expressly provides that the board of zoning appeals would not have the authority to grant variances within an SP district. The ordinance also provides that the planning commission is to review each SP development plan every four years and make a recommendation to the council as to whether the SP district should remain on the property or whether the property should be rezoned to another base zoning district.

The Council Office would point out that this ordinance is a major departure from the rest of the zoning code, whose foundation consists of various base zoning districts that provide some consistency in land use patterns throughout the county. Although the council would have the final vote in approving an SP district, this ordinance would give the planning department even greater authority in determining the appropriate use of property in the county, which has traditionally been in the purview of the council. In addition, these "specific plans" would be very difficult to enforce by the zoning administrator, as each property would essentially have its own zoning code that would only apply to that particular property. The process could be deemed "spot zoning" if not enforced over large areas.

As discussed in the analysis of Ordinance No. BL2005-761 above, the Council Office is of the opinion that requiring a design plan as part of a rezoning bill and imposing conditions are a violation of state law. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-763 (LORING, JAMESON & MCCLENDON) – This zoning text change makes various modifications to the tree and landscaping provisions of the zoning code. The tree ordinance is a set of regulations and standards for landscaping, buffering, and tree placement for developments. The provisions of the existing tree ordinance only apply to commercial and multi-family developments, not single or two-family homes. This ordinance has been brought forth at the recommendation of the urban forester and the tree advisory committee. The modifications to the existing tree ordinance include the following:

1. This ordinance would make it unlawful to “top” a tree within Davidson County. Topping a tree is defined by the ordinance as a severe cutting back of the limbs to stubs so as to remove the canopy and disfigure the tree. The code currently prohibits the topping of trees only on public property, which is consistent with the purpose of the chapter. This ordinance would attempt to extend this prohibition to all trees, both on public and private property. This provision would not apply to trees damaged by storms or trees located under utility wires where other pruning practices are impracticable, as determined by the urban forester.

The Council Office is of the opinion that this provision should not be part of this ordinance. As stated above, the tree provisions in the zoning code do not apply to single and two-family dwellings. However, this provision would amend Chapter 2.104 of the Metro code, not the zoning code. Chapter 2.104 of the code establishes the duties of the urban forester, and provides a permit process for arborists performing tree work and for the removal of public trees. The code gives the urban forester authority for the general oversight and maintenance of public trees. If the council wishes to ban the topping of all trees, this ordinance is not the best mechanism to do so. The Council Office recommends including such provisions in a separate ordinance for that specific purpose.

2. The ordinance would allow the urban forester to require a developer to post a performance bond to cover the cost of implementing the landscape plan. The department of codes administration already requires permit bonds in order to obtain a building permit. Performance bonds are typically used for road and infrastructure construction requirements to ensure that roads are built to Metro standards, since Metro usually accepts the roads for maintenance once they are constructed.

The Council Office is of the opinion that requiring a performance bond for landscaping plans adds an unnecessary provision to the code. The permit bond that is already required is sufficient to address the concerns regarding the completion of landscaping plans.

3. This ordinance would require that no more than fifty percent of the trees in any one planting area be of the same tree species.

4. This ordinance would delete the interior planting exemption for service loading areas or tractor-trailer loading, staging or parking areas. Instead, the interior planting requirements for tractor-trailer loading and parking areas could be adjusted to combine multiple smaller tree islands into larger, but fewer, tree islands.
5. The ordinance would require that watering for landscaping be accomplished by fully automatic underground irrigation systems. The code currently requires watering to be via an underground sprinkler or an outside hose attachment.

The Council Office would point out that adding a requirement for automatic sprinklers would substantially increase the construction costs for developments, including public schools. The Council Office recommends amending this ordinance to delete the words "fully automatic", which would still require underground irrigation systems, but such systems could be operated manually.

6. The ordinance would prohibit the staking or guying of trees unless absolutely necessary.
7. The ordinance would prohibit undeveloped property of a given parcel from being counted toward the tree density requirement. The urban forester would have the authority to permit additional credit to be applied to a required landscape area when a landmark or specimen tree located on the property is protected.
8. The ordinance would increase the width of the required perimeter landscape strips from five feet to eight feet whenever the strip is adjacent to a public street or used to separate a driveway or parking area from adjacent property.
9. The ordinance would add a minimum height of eighteen inches for evergreen shrubs required to be planted within perimeter landscaping strips that front a street right-of-way. The code currently does not set a minimum height for such shrubs.
10. Prior to the urban forester making a landscaping inspection, the design professional who prepared the landscape plan would be required to certify in writing that he/she has inspected the landscaping and that it has been installed in accordance with the plan. This essentially codifies a practice already in place within the codes department.

A housekeeping amendment should be offered for this ordinance prior to its adoption on third reading to make some technical corrections. In addition, the planning department staff has recommended an amendment to the buffering table.

This ordinance was referred to the planning commission on August 2, 2005. Since more than thirty days have elapsed since the referral of this ordinance to the planning commission, the council can proceed with the public hearing and adopt the ordinance on second reading.