

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **Tuesday, January 2, 2007**

- BILLS INVOLVING AMENDMENTS TO THE ZONING ORDINANCE -

ORDINANCE NO. BL2006-1177 (CRAFTON) – This zoning text change amends the sidewalk provisions of the code by modifying the basis for calculating a financial contribution in lieu of sidewalk construction. In September 2004, the council approved an ordinance amending the sidewalk provisions to grant relief to developers of property from having to install sidewalks in certain circumstances. One of the provisions of the 2004 ordinance included a payment in lieu of construction of sidewalks. Once funds are paid into the “sidewalk bank”, the ordinance provides that the funds must be expended within 24 months on sidewalk construction within the same “pedestrian benefit zone” as the property for which sidewalks would otherwise be required. The ordinance established eleven pedestrian benefit zones for the county. The amount of the payment in lieu of sidewalk construction is set on an annual basis by the department of public works based upon a review of the cost of sidewalk projects constructed by Metro. In fiscal year 2006, the contribution in lieu of sidewalk construction was set by public works at \$92 per linear foot.

This ordinance would modify the method of calculation for determining the amount required to be paid into the sidewalk bank in lieu of sidewalk construction. Instead of being determined by the department of public works, the amount of contribution would be based upon a graduated scale. The cost would be \$30 per linear foot for the first fifty feet, \$60 per linear foot for fifty-one through one hundred feet, and \$90 for each additional linear foot in excess of one hundred feet.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2006-1178 (NEIGHBORS & TYGARD & OTHERS) – This zoning text change would designate “car wash” as a use permitted with conditions under the zoning code, rather than requiring car washes to be a part of a specific plan (SP) district. In March 2006, the Council enacted Ordinance No. BL2006-972 making most automotive uses no longer permitted in the commercial zoning districts. Rather, such uses have to be approved individually by the council as part of an SP district. The SP district was created by the council in September 2005 to give the council more control over how the property is developed than a straight zone

change to another zoning district. 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. A detailed plan is to be created for each property, which must be followed by the developer.

This ordinance essentially puts car washes back in the same position they were in prior to the enactment of Ordinance No. BL2006-972, which is permitted with conditions. According to statements made by former Councilmember Amanda McClendon, the original sponsor of Ordinance No. BL2006-972, car washes were not intended to be included in the ordinance addressing automotive uses.

This ordinance also specifies certain conditions that must be met before a car wash can be permitted. These conditions are as follows:

1. The car wash would have to be set back at least fifty feet from any residential district.
2. The washing facilities must be located within an enclosed structure.
3. Car washes must be separated from adjacent property by a 6-8 foot tall masonry wall.
4. Hours of operation would be limited to 8:00 a.m. to 10:00 p.m. if the car wash is located within 100 feet of a residential district.
5. No outdoor loud speakers would be permitted.
6. No vehicles for sale may be parked on the premises.

This ordinance has been approved by the planning commission with a recommendation that the council address parking for automatic car washes.

ORDINANCE NO. BL2006-1206 (SUMMERS & JAMESON) – This zoning text change would replace the existing special exception standards for historic home events with new standards. Under the zoning code, “historic home events” must be permitted by the board of zoning appeals (BZA) as a special exception use. The zoning code defines historic home event as “the hosting of events such as, but not limited to, weddings or parties for pay at a private home which has been judged to be historically significant by the historic commission.” The code includes certain criteria that must be met in order for property to be permitted to hold these home events, such as parking standards, limited meal service, and a requirement that the home be owner-occupied. This ordinance expands these standards to limit the impact that such a use has on the surrounding neighborhood.

The proposed new standards for historic home events are as follows:

1. The event must be held at a historically significant home, which is the same as the current standard.
2. All exterior work on the structure must be approved by the historic zoning commission using the neighborhood conservation overlay design guidelines.
3. Historic home events would have to be separated by at least 1,000 feet from another historic home event.
4. If the lot is less than five acres, all aspects of the event must be located indoors. If the lot is more than five acres, events may be held outside at the discretion of the BZA. This restriction would greatly limit the ability of historic home events from being located in urban areas since all activities would have to take place indoors.

5. If the minimum parking standards require additional parking on the property, the parking must meet the perimeter parking lot landscaping requirements and the parking must be located on the property "so as not to impact the continuity of the existing neighborhood context."
6. All lighting must be shielded from adjacent properties.
7. Meals and beverages are limited to patrons of the event only.
8. The home must be owner-occupied, and a site plan must be submitted detailing the personal living space, event preparation areas, and event location areas.
9. The BZA may limit the number and frequency of the events and may limit the number of attendees per event to minimize disturbance to surrounding properties.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1259 (TYGARD) – This zoning text change would require any planned unit development (PUD) determined to be inactive for a period of six years to be submitted to the council for approval or to officially classify the PUD as inactive. This ordinance is a counter-proposal to Ordinance No. BL2005-629, which was deferred by the council on December 5, 2006. Ordinance No. BL2005-629 would require PUDs that are inactive for more than six years to be approved by the council prior to the issuance of any building or grading permits. Under the deferred ordinance, PUDs would be classified as "inactive" if (1) no building permit has been issued and substantial construction (not including site grading) has not begun; (2) less than sixty percent of the non-residential floor area allowed by the PUD has been constructed and six years have elapsed since the most recent building was completed; or (3) fewer than seventy-five percent of the residential units allowed by the PUD have been constructed and six years have elapsed since the most recent building was completed. The only exception would be for PUDs with phasing schedules exceeding six years.

This ordinance would provide that the planning commission could classify a PUD as inactive if all of the following apply: (1) no building permit has been issued within six years from the latter of the review commencement date, the date of enactment, or the last amendment to the PUD approved by the council; (2) the owner of the property subject to the PUD has not incurred significant expenses for the planning or construction of any off-site improvements; and (3) the base zoning of the properties surrounding the PUD and/or the subarea plan for the area that includes the PUD have been significantly altered in such a manner so that the PUD is no longer appropriate for the area. Pursuant to the ordinance, the earliest date for review commencement would be 180 days after the effective date of Ordinance No. BL2005-629. The council office assumes that this is in error, and that the drafters meant for the review commencement date to be 180 days after the enactment of this ordinance. The review commencement date would essentially start the clock running on the six year period.

This ordinance would further require the Metropolitan Clerk to mail a copy of the ordinance to all owners of properties encumbered by a PUD. This would result in a considerable expense to the Clerk, as there are currently 37,790 active PUDs in Davidson County.

The planning department staff is currently working on a consensus ordinance that seeks to balance the need for review of inactive PUDs with the concerns expressed by the development community.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2006-1260 (RYMAN & HUNT) – This zoning text change would delete “rehabilitation services” as a permitted use in the agricultural (AG and AR2a) zoning districts. The zoning code defines rehabilitation services as the treatment for addictive, mental or physical disabilities on either a twenty-four hours a day or an outpatient basis. Rehabilitation services are currently permitted in the AG and AR2a districts, as well as in the mixed-use and commercial districts. The use is not permitted in any residentially zoned districts, with the exception of the AG and AR2a districts. There are only a few rehabilitation services facilities located in the agricultural zoning districts, including Cumberland Heights on River Road. If this ordinance is adopted, these existing facilities could continue to operate as nonconforming uses under the zoning code.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2006-1283 (CRADDOCK, GOTTO & OTHERS) – This zoning text change amends the code provisions pertaining to mobile vendors. In August 2006, the council enacted Ordinance No. BL2006-1087, which added various setback and parking requirements for mobile vendors on private property. As a result of the enactment of Ordinance No. BL2006-1087, the code now requires mobile vendors to maintain a 20-foot setback from the right-of-way and prohibits mobile vendors from being located within 100 feet of a major intersection or within 1,500 feet of another mobile vendor. Further, mobile vendors must include six parking spaces for up to 1,200 feet of retail space, plus one space for each additional 200 square feet.

This ordinance would essentially delete the substantive provisions of the prior ordinance and, instead, prohibit mobile vendors from being located outdoors. Mobile vendors within the commercial zoning districts would be required to be located within a permanent, enclosed structure. The parking requirements for mobile vendors would remain as they currently exist in the code. This ordinance would apply to mobile vendors selling goods, wares or merchandise at a temporary location and/or on a temporary basis, but would not apply to street vendors licensed by the county clerk. The ordinance further would specifically not apply to mobile vendors selling food items only.

Unlike Ordinance No. BL2006-1087, this ordinance would not grandfather in mobile vendors that currently have a valid use and occupancy permit to operate as a mobile vendor at a particular location. Thus, all existing vendors selling merchandise outdoors within commercial zoning districts would be prohibited under this ordinance.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1284 (WALLACE) – This zoning text change would require that a copy of the development plans for specific plan (SP) zoning districts be filed with the Metropolitan Clerk. The code currently requires that the development plan be filed with the

planning commission. The plan, and any revisions thereto prior to being adopted by the council, are retained by the planning commission, and the SP ordinance considered by the council references that the plan is on file with the planning commission. This ordinance would provide that no SP ordinance could be considered by the council unless a copy of the development plan has been filed with the Clerk.

The Metropolitan Clerk has indicated that her office does not have adequate storage space for these SP plans if they were required to be filed in her office. These plans are usually on large pieces of paper and the clerk would be required to retain a copy indefinitely since they would become a part of the legislation.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2006-1285 (WILLIAMS) – This zoning text change modifies the definition of various park uses and makes passive parks permitted as a special exception. This ordinance is of the same subject matter as Ordinance No. BL2006-1088, which was deferred indefinitely in August 2006.

The zoning code currently defines “park” as being one of the three following uses:

1. An area open to the public for recreational uses;
2. An area predominantly kept in a natural state; or
3. Governmental property specifically designated as a park, natural area or recreation area, provided that greenways are not to be considered parks under the zoning code.

This ordinance amends the zoning code to add a new definition for “passive” parks. A “passive” park would be an outdoor facility open to the public for any passive recreational activity such as pedestrian activities, hiking and jogging, or that serves as a historical, cultural or archeological attraction. Passive parks would have to be maintained in a natural state. Further, organized team sports would be prohibited in passive parks. Passive parks would be permitted as a special exception use in all residential districts, requiring approval by the board of zoning appeals, but would be permitted by right in all other zoning districts.

This ordinance would also add certain conditions that passive parks would have to meet in order to be eligible for a special exception. First, the driveway access would have to be from a collector street unless a traffic study indicates that traffic can be safely and efficiently accommodated by the existing local street network without negatively impacting the surrounding neighborhood. Second, a landscape plan would be required to be submitted along with a recommendation from the urban forester. Third, only the least amount of lighting necessary to ensure the safety of visitors would be permitted. Finally, approval of a passive park would be contingent upon the park owner’s commitment to maintain the property in a safe, clean and functional manner.

This ordinance has been referred to the planning commission. Since more than thirty days have elapsed since its date of referral to the commission, the ordinance can proceed on public hearing and second reading.

ORDINANCE NO. BL2006-1290 (SUMMERS) – This zoning text change would repeal the provisions of Ordinance No. BL2006-972, adopted by the council in March 2006. Ordinance No. BL2006-972 amended the zoning code to require various automotive uses in commercial areas to be approved individually by the council as part of a specific plan (SP) district. By repealing Ordinance No. BL2006-972, this ordinance would essentially place automotive uses back in the position they were in prior to March 2006. Most automotive uses were permitted by right in the commercial and industrial zoning districts, with the exception of car washes which were permitted with conditions.

This ordinance has been referred to the planning commission. Since less than thirty days have elapsed from the date of referral to the planning commission, this ordinance must be deferred to the March 2007 public hearing.

- BILLS THAT MUST BE DEFERRED DUE TO A LACK OF PUBLIC NOTICE -

The following bills on tonight's agenda must be deferred until the March public hearing due to the applicant's failure to deliver signs to be posted by the Department of Codes Administration and failure to return written notices to the Planning Department for mailing:

Ordinance No. BL2006-1297 (Tygard)

Ordinance No. BL2006-1301 (Whitmore)

Ordinance No. BL2006-1302 (Loring)

Ordinance No. BL2006-1153 (Tygard)

Ordinance No. BL2006-1198 (Alexander & Ryman)