MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: March 5, 2007

RE: **Analysis for Monday, March 5, 2007**
And Tuesday, March 6, 2007

- BILLS INVOLVING AMENDMENTS TO THE ZONING ORDINANCE -

ORDINANCE NOS. BL2006-1088, BL2006-1285 & BL2007-1368 – These three zoning text changes create new definitions and land uses regarding private parks and provide certain standards for these park uses. 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.

The planning commission recommended disapproval of all three of these ordinances.

Ordinance No. BL2006-1088 (Tygard, Dread & Williams) amends the zoning code to make a distinction between "active" parks and "passive" parks. An "active" park would include any outdoor area open to the public that includes permanent structures such as pavilions, playgrounds, pools, and bleachers and/or allows for organized team sports or serves as a cultural place. Active parks would only be permitted as a special exception use, which would require approval of the board of zoning appeals. A "passive" park would be an outdoor facility open to the public for any passive recreational activity such as hiking, biking and camping. Passive parks would be permitted with conditions in all zoning districts.

This ordinance would also add certain conditions that active 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. Second, active parks abutting or across the street from residential districts would have to maintain a minimum of fifty feet between any parking lot, playground or athletic field and the abutting residential area. Third, all lighting glare would have to be directed on-site. Finally, a landscape buffer yard would be required along any district permitting a residential use.

The council office would point out that this ordinance would directly affect schools within Davidson County that seek to expand their athletic facilities, since such facilities would be

considered an "active" park and would be required to obtain a special exception from the board of zoning appeals.

Ordinance No. BL2006-1285 (Williams) would create a new land use 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.

Ordinance No. BL2007-1368 (Tygard) would create private parks as a land use in the zoning code and would provide for a distinction between active private parks and passive private parks. The ordinance defines private park as any facility that is privately owned and open to the public, however, private green space required by a subdivision plat, planned unit development (PUD) plan, specific plan (SP) district plan, or urban design overlay (UDO) would not be considered a private park. Within the category of "private park", the ordinance creates two subcategories based upon the type of activities that take place on the property. The ordinance defines "park, private passive" as a facility (1) with predominately natural features, but may include playgrounds and other open air recreational facilities; (2) that is used primarily for recreational activity; and (3) for which no admission or entry fee is charged. Passive private parks would be permitted by right in all zoning districts. The ordinance defines "park, private active" as a facility that (1) contains predominately permanent recreational structures such as gymnasiums, pavilions, tennis courts, track and field facilities, swimming pools, and museums; (2) contains predominately cultural or historical features; or (3) charges a fee for admission. Active private parks would be permitted in all zoning districts as a special exception (SE) use, requiring approval by the board of zoning appeals (BZA).

The ordinance also includes specific criteria that private active parks would have to meet in order to obtain a special exception use permit from the BZA. The criteria include the following:

- Driveway access must be from a collector street unless the BZA determines another street classification is appropriate based upon the proposed use and/or a determination by the traffic engineer.
- A detailed site plan and maintenance plan must be submitted.
- A detailed landscape plan and lighting plan must be submitted to and approved by the urban forester.
- A standard C landscape buffer yard will be required when a private active park abuts a residential area.

The parking requirements for a private active park would be determined by the traffic engineer.

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. BL2006-1290 (SUMMERS) – This ordinance repeals Ordinance No. BL2006-972, which requires various automotive uses in commercial areas to be approved individually by the council as part of a specific plan (SP) district. In March 2006, the council enacted Ordinance No. BL2006-972 to prohibit automotive uses such as automobile repair, sales and service, wrecker service, and car washes from being permitted by right in commercial areas. Rather, such uses have to be a part of an SP district approved by the council allowing the automotive uses.

This ordinance would repeal the zoning code provisions enacted last year, which would result in automotive uses being permitted in commercial zoning districts without any further council action.

This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2007-1364 (EVANS) – This zoning text change would substitute the regulations pertaining to historic home events and historic bed and breakfast homestays. The purpose of this ordinance is to take the place of Ordinance No. BL2006-1206, which has been deferred indefinitely, that would have added more stringent standards applicable to historic home events. 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. There are currently only three properties permitted as a historic home event use in a residential area: Riverwood, the Demonbreun House, and the Ambrose House.

This ordinance would create two separate categories of historic home events. The standard historic home event use would only be permitted in residential areas as part of a neighborhood landmark overlay district. The use would be permitted by right in all other zoning districts. The second category of historic home event uses would be called a "limited historic home event". A limited historic home event would be permitted by special exception (SE) in residential districts, requiring approval of the board of zoning appeals (BZA). The ordinance establishes new standards for the BZA to consider in determining whether the grant a SE use for a limited historic home event. These new standards are as follows:

1. The home would be limited to 26 events per year with a maximum of 50 guests per event.
2. All activity would be required to take place inside the home.
3. The BZA is to consider past codes and zoning enforcement actions taken against the property owner.
4. The SE use must be compatible with the general plan, and the planning commission is to make a recommendation to the BZA regarding its plan compatibility.
5. The limited historic home events must take place inside the historic structure.
6. All interior and exterior work must be done in accordance with the U.S. Secretary of the interior standards for the treatment of historic properties. The applicant may utilize the Metro historic zoning commission staff to ensure compliance with these standards.
7. All guest parking must either be on-premises or a shuttle service must be used for off-premises parking.
8. All signs on the property must be no larger than four square feet.
9. Meal and beverage service is limited to those guests invited by the host.
10. 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.

There may be a proposed substitute offered for this ordinance that would delete the limited historic home event use and make all historic home events permitted as a SE use. The substitute would also provide restrictions on the hours of operation of the events, limit the use to one event per day, prohibit amplified music, and impose a five year permit limit.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2007-1365 (HUNT) - This zoning text change would require developers electing to use the cluster lot option for subdivisions to provide recreational facilities for use by the residents. The cluster lot option allows developers to build on smaller lots if at least 15% of the gross land area within the development is designated as open space. The code does not require that the open spaces be improved with recreational facilities.

This ordinance would require developers utilizing the cluster lot option to provide active recreational facilities on a portion of the designated open space at a rate of one facility per 25 residential lots. The ordinance defines "recreational facilities" to include tennis courts, basketball courts, playgrounds, baseball/softball diamonds, or volleyball courts.

The planning commission recommended approval of this ordinance if the following amendments are added to the bill by the council:

1. An amendment that states that the recreation facilities required under this bill shall be located within usable open space areas and prohibited from being located in natural areas with slope greater than 15%, floodplain, sinkholes, or areas that would impact cultural resources.
2. An amendment to add that the requirement for recreation facilities also applies to cluster-lot subdivisions within a PUD.
3. Flexibility in the type of recreational facilities for developments that serve more diverse or limited age groups.
4. Use of a sliding scale as to the number of facilities within larger developments.

ORDINANCE NO. BL2007-1366 (BROWN) – This zoning text change would allow signs with changeable text, graphics or displays to be erected in the commercial limited (CL) zoning district. These signs are currently permitted in the more intense commercial and industrial districts, but are prohibited in the office, mixed-use, commercial neighborhood and commercial limited districts. This ordinance would allow signs with changing graphics but would not allow video signs.

This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2007-1367 (SUMMERS & TYGARD) – This zoning text change would provide a mechanism for the planning commission to classify a planned unit development (PUD) as inactive when no construction has taken place on the property within six years. This ordinance is designed to be a compromise to two competing PUD review bills (BL2005-629 & BL2006-1259), both of which have been deferred indefinitely.

This ordinance provides that the planning commission may review any PUD on its own initiative or at the request of a member of council or property owner within the PUD area to determine whether development activity has occurred within six years from the date of enactment of the PUD or the most recent amendment to the PUD by the council. If it is determined that no development activity has occurred in the past six years, the planning commission is to recommend legislation to the council to either renew the PUD, cancel the PUD, or amend the PUD along with necessary changes to the base zoning. The planning commission would have 90 days after the review process commences in which to hold a public hearing and make a recommendation to the council. If the planning commission fails to act within 90 days, the commission shall be deemed to have made a recommendation to renew the PUD without alteration.

In order for a PUD to be classified as inactive, the following three criteria must be satisfied:

1. Six or more years have elapsed, as described above.
2. Construction has not begun on the site. The ordinance provides that "construction" includes physical improvements such as water/sewer line installation and/or the pouring of foundations. Site clearing, temporary construction material storage, and the placing of temporary structures on the property would not be considered construction.

3. No right-of-way acquisition or construction has begun on off-site improvements required by the council as a condition of the PUD.

If, after reviewing the PUD, the planning commission determines that the PUD is not inactive, a re-review shall not be initiated for at least one year. Once the council receives a recommendation from the planning commission regarding an inactive PUD, the council will have six months in which to re-approve, amend, or cancel the PUD. Failure by the council to enact legislation within the six month period will result in the developer being able to develop the property in accordance with the existing PUD plan. This would not prohibit the council from enacting another ordinance during the six month time period to cancel or modify the PUD.

The effective date clause in this ordinance states "this ordinance shall take effect 270 days after its passage ..." The Charter provides that no ordinance shall take effect for twenty days after its passage, unless the ordinance states that the welfare of the Metropolitan Government requires that it take effect *sooner*. If the council desires to include a 270 day window of opportunity in which developers can begin development of PUDs before the planning commission initiates a review to determine whether they are inactive, the ordinance should be amended to (1) expressly provide that no review shall take place for 270 days after the ordinance is enacted, and (2) include the standard effective date clause used in zoning bills.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2007-1369 (JAMESON, NEIGHBORS & OTHERS) - This zoning text change would permit owners of property within any downtown historic preservation district to transfer, through sale or donation, their development rights to other properties in the downtown area. In 2001, the Tennessee general assembly enacted a law enabling counties and municipalities to permit the transfer of development rights. According to the planning commission staff report, no other city or county in Tennessee has taken advantage of the transfer of development rights enabling legislation.

The planning staff was requested to prepare this ordinance as a result of the pending Westin Hotel specific plan (SP) rezoning and the historic preservation district ordinance for the lower Broadway area. The transfer of development rights is a method of protecting specific properties from development by enabling the property owners to "transfer" (through sale or donation) their unused development rights to another site. This ordinance would allow owners of property located within historic preservation districts adopted by the council to transfer their unused development rights based upon the undeveloped square footage as determined by the permissible floor area ratio (FAR) under the base zoning district. The property from which the development rights are transferred is referred to in the ordinance as a "sending site", while the property to which the rights are transferred to is referred to as a "receiving site". The receiving site can be any property within a designated portion of downtown that is not within a historic overlay intended for higher-intensity development. Maps showing the permissible sending and receiving sites are included in the analysis provided by the planning department staff.

The ordinance, which closely follows the language in the state law, provides that once development rights are transferred, the sending site is no longer eligible to receive additional development rights through rezoning the property. A statement to this effect must be included on the deed to the property. Outside of the transferred permissible square footage, all other

development standards such as building heights and building setbacks will continue to apply to both the sending site and the receiving site. The maximum building height at the setback for properties within the core frame (CF) zoning district, which is the base zoning district for the downtown area, is 65 feet. Buildings may be taller than 65 feet if they are setback further from the street. Thus, just because the owner of a receiving site pays for the transfer of development rights to obtain a square footage bonus does not mean the property owner will be able to construct a building that is taller than what the base zoning would allow. It would depend on the size of the lot, and the ability to set the building back further from the street.

In keeping with state law, the ordinance provides that development rights between private parties must be accomplished through negotiations in the free marketplace. If the government or a nonprofit organization is the receiving site, then the development rights may only be transferred via donation. The ordinance provides that an application for the transfer of development rights must be filed with the planning commission by both the owner/developer of the sending site and the receiving site. The development rights may only be transferred between parties by a written document, which must be recorded with the register of deeds after approval by the planning department.

The ordinance expressly states that the planning department may assess an application fee. The council office would point out that the zoning code provides that planning commission fee schedules must be approved by resolution of the council.

The council office has several concerns regarding this ordinance as drafted. As stated above, no transfer of developments rights can take place unless the planning department consents to it. While state law requires that the instrument transferring the development rights be signed by both parties and recorded with the register of deeds, there is no requirement that the transfer first be approved by the planning department. The council office recommends that this ordinance be amended to state that the application is to be submitted to the planning department for review, but that the department must sign off on the application if all of the requirements of this ordinance have been satisfied. If this ordinance is to be another incentive to developers to increase their FAR, similar to the affordable housing bonus, then the permission to transfer the development rights should be automatically granted if the criteria set forth in this ordinance are met. In addition, it is unclear from the text of the ordinance as to how the transfer of development rights will be tracked and monitored. This could make enforcement of the ordinance very difficult for the zoning administrator and department of codes administration.

This ordinance has been approved by the planning commission.

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