

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: October 30, 2008

**RE: Analysis for Bills Amending the Zoning Code on the
November 6, 2008 Council Public Hearing Agenda**

ORDINANCE NOS. BL2008-299 & BL2008-327 (PAGE) – These two ordinances amend the Metro zoning code to create a new land use for after hours establishments, and to add locational standards and parking requirements for this use. There is currently no specific use in the zoning code for after hours clubs. The operation of these establishments is regulated by the department of codes administration pursuant to another chapter in the Metro code, but these regulations do not pertain to the location of the establishments. Since there is no specific use in the zoning code, the zoning administrator considers an after hours establishment to be a “bar/nightclub”, which is allowed in the CS, CA, CF and CC zoning districts.

Ordinance No. BL2008-299 creates a new use for after hours establishments, which would be permitted with conditions in the CS, CA, CF, CC, IR and IG zoning districts. The ordinance defines after hours establishment as “a commercial establishment open to the general public after the hour of 3:00 a.m. that allows patrons to bring alcoholic beverages onto the premises (BYOB).” This definition is consistent with the definition in the regulations pertaining to the operation of these establishments.

As stated above, this use would be permitted with conditions, meaning no such establishments would be permitted by right anywhere in Davidson County. The applicable conditions pertain to the location of the business. At a minimum, after hours clubs would be required to have driveway access on an arterial street. Further, such clubs could not be located within 500 feet from the property line of any residential property. The 500 feet setback from residential property is the same setback the zoning code requires for airports, and is greater than the setback for sanitary landfills.

According to information provided by the planning department, there are currently fourteen after hours clubs in Nashville, ten of which are in the downtown area. None of the downtown clubs appear to meet the standards set forth in this ordinance, meaning they would become legally nonconforming uses. The planning commission recommended approval of this ordinance with an amendment to prohibit after hours clubs in the CS, IR and IG districts, and to delete the 500 foot minimum setback.

Ordinance No. BL2008-327 is a companion bill to Ordinance No. BL2008-299 that would add parking requirements for after hours clubs. Such establishments would be required to have one parking space per 75 square feet of the building. The ordinance would also disqualify after hours establishments from the ten percent parking reduction available to businesses located within 660 feet of a MTA bus stop. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-325 (MURRAY) – This zoning text change amends the code provisions pertaining to mobile vendors to exempt vending activity along Cleveland Street. In January 2007, the council enacted Ordinance No. BL2006-1087, as amended, to designate mobile vending as a use permitted with conditions in the commercial zoning districts. The conditions require mobile vendors to be located within a permanent, enclosed structure. The ordinance exempted street vendors licensed by the county clerk, as well as mobile vendors selling only food items, living plants or agricultural products.

This ordinance would amend the definition of “mobile vendor” to exclude mobile vendors on Cleveland Street. This is a one mile street running between Dickerson Pike and McFerrin Avenue that is located solely within the 5th council district. There are currently six commercially-zoned properties on this street to which this ordinance would apply.

This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2008-326 (PAGE) – This zoning text change would require various automotive uses in industrial areas to be approved individually by the council as part of a specific plan (SP) district rather than permitted by right. In 2006, the Council enacted Ordinance No. BL2006-972 to require most automotive uses in commercial areas to be part of a SP district. The SP district was created by the council several years ago 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 would expand the 2006 ordinance to remove the following automotive uses as permitted by right in the industrial zoning districts (IWD, IR and IG districts): used car sales; automobile repair; vehicular rental/leasing; vehicular sales and service, limited; wrecker service; and heavy equipment sales and service.

The Council Office would point out that there are approximately 165 automobile repair establishments in the industrial-zoned areas of Davidson County, which would become nonconforming uses under this ordinance. When the current zoning code was adopted in 1997, a conscientious effort was made to avoid creating a large number of nonconforming uses. While nonconforming uses have protection under state law to continue operation, it is often difficult for such businesses to sell their property or obtain financing for improvements. Thus, such businesses would need to rezone their property to become compliant with the zoning code. Applicants seeking a SP rezoning must pay a \$6,195 fee to the planning commission to process and review the application, which obviously poses a barrier to many small businesses.

This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2008-328 (BARRY & JAMESON) – This ordinance extends the tree density requirements contained in the zoning code to certain residential development. The zoning code clearly includes tree density provisions for new commercial development of fourteen units per acre. A tree density unit (TDU) is based upon the size of the tree using a caliper measurement for replacement trees and tree diameter at breast height for protected trees. For example, one tree density unit equals two 2-inch caliper trees.

The zoning code currently includes an exemption from the tree ordinance for certain kinds of residential property. The code provides that the tree protection and replacement requirements do not apply to a platted lot zoned for single-family or two-family dwellings for which a valid building permit has been issued. This clearly means that individual homeowners are not required to meet the tree density provisions. The code provides that this exception for single and two-family lots does not apply to “residential developments that require final site plan or special exception approval”, which technically would include new planned unit developments (PUDs) and specific plan districts (SPs). However, the code has been interpreted by the department of codes administration to exempt all residential development.

First, this ordinance would amend the code to clarify that only individual lots not part of a new subdivision for which a valid building permit has been issued would be exempt from the tree density requirements. Second, this ordinance would establish a sliding scale for tree density in residential subdivisions. As stated above, all commercial development must attain a tree density factor of fourteen units per acre. This ordinance would require that all new single and two-family residential subdivisions attain a tree density factor based upon the following incremental sliding scale using protected or replacement trees, or both:

<u>Number of single or two-family units:</u>	<u>Tree density factor:</u>
Between 2 and 25	at least 14 units per acre
Between 26 and 50	at least 12 units per acre
Between 51 and 75	at least 10 units per acre
76 or more units	at least 7 units per acre

This ordinance has been approved by the planning commission. The planning commission staff recommends an amendment to this ordinance to include a definition of “new subdivision”, and to make several housekeeping technical changes to the existing tree provisions in the zoning code.