

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: December 30, 2008

**RE: Analysis for Bills Amending the Zoning Code on the
January 6, 2009 Council Public Hearing Agenda**

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 deferred by the planning commission until its February 12, 2009 meeting.

ORDINANCE NO. BL2008-333 (GOTTO) – This zoning text change adds provisions to the code to ensure that the Metropolitan Government is providing adequate accommodations for persons with disabilities through the enforcement of the zoning code. This ordinance stems from the U.S. Department of Justice (DOJ) investigation and lawsuit regarding alleged discriminatory actions by the Metropolitan Government through amendments to and application of Metro’s zoning laws. Upon completing its investigation, the DOJ filed a lawsuit against the Metropolitan Government to enforce the federal Fair Housing Act (FHA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The FHA prohibits discrimination against persons seeking to obtain housing on the basis of race, disability, religion, or other protected status, and requires local governments to make reasonable accommodations for disabled persons to ensure they have adequate housing opportunities. The RLUIPA prohibits the enforcement of land use regulations that are discriminatory on the basis of religion or substantially burden the exercise of religion. The Metropolitan department of law and the DOJ remain in settlement negotiations regarding this matter.

The zoning code currently provides that the zoning administrator is responsible for the interpretation and administration of the zoning code. Although this language gives the zoning administrator a great deal of latitude in enforcing the code, there is nothing in the zoning code that specifically allows the zoning administrator to ignore the application of local laws that he deems to be a violation of the FHA, RLUIPA or ADA.

This ordinance, which has been recommended by the department of law, adds provisions to the zoning code to give the zoning administrator the authority to waive zoning ordinances that are inconsistent with federal law. The ordinance provides that all zoning laws are to be construed and enforced in a manner that is consistent with federal law. The ordinance will require the zoning administrator to make reasonable accommodations in the "rules, policies, and practices of his office" to ensure that persons with disabilities are not being discriminated against. Further, the ordinance sets out a procedure in which disabled persons can submit a request in writing for a reasonable accommodation. The zoning administrator's decision regarding the reasonable accommodation will be appealable to the board of zoning appeals.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-365 (JERNIGAN & HODGE) – This zoning text change would increase the number of days a repaired vehicle can remain on the premises of an automobile repair establishment from twenty-one days to forty-five days. 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 council added a condition through an amendment to Ordinance No. BL2006-972 prior to its adoption on third reading prohibiting vehicles to be repaired or serviced from remaining on the premises of the repair establishment for more than twenty-one days. However, this provision is inconsistent with a state law provision requiring automobile repair establishments and towing firms to hold a vehicle for at least thirty days before taking steps to sell the vehicle to recoup the unpaid repair charges.

This ordinance extends the time a vehicle can remain on the premises to forty-five days, which will provide the repair establishment up to fifteen days to sell the unclaimed vehicle.

This ordinance has been approved by the planning commission.