

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: November 1, 2011

RE: **Analysis of Proposed Amendments  
to the Zoning Code**

**ORDINANCE NO. BL2011-26** (CLAIBORNE) – This ordinance amends the zoning code to make a couple of technical changes regarding the procedures used to measure setbacks on local streets in all zoning districts and on collector and arterial streets in the Urban Design Overlay district. This ordinance is a follow-up to Ordinance No. BL2011-897 approved in May 2011. BL2011-897 was primarily enacted for the purpose of amending the street designations in the zoning code to be consistent with the terminology used in the new Major Street and Collector Plan. The new plan is designed to implement the “Complete Streets” approach to street design pursuant to a 2010 executive order of the mayor for the purpose of facilitating and accommodating multiple modes of transportation.

Ordinance No. BL2011-897 also modified the method for measuring street setbacks. Prior to the enactment of BL2011-897, the zoning code provided that street setbacks, which vary based on the zoning district, were measured from the center of the street. BL2011-897 changed the method so that major and collector streets would be measured from the standard right-of-way line. This ordinance provides that this updated method will also be used for calculating the setbacks for local streets. The ordinance further establishes a standard right-of-way width for local streets of 60 feet, which is the same setback previously required.

This ordinance also changes the method of calculating “build-to lines” for properties within Urban Design Overlays. These “build-to lines” are currently measured from the property line. Under this ordinance, the lines will be measured from the standard right-of-way line, similar to the way setbacks are measured. The planning department staff report states that this change in measurement method will not change the actual setback measurements as they currently exist.

Finally, this ordinance deletes a reference to the standard right-of-way width table included in the bulk standard table for alternative zoning districts. The deletion of this reference is intended to capture streets that have an individually designed standard right-of-way which does not show up in the table but is accessible through the on-line mapping Major and Collector Street Plan.

The ordinance contains a typographical error in the recitals referencing BL2077-897 rather than BL2011-897. The error could be corrected with a housekeeping amendment, but it would not affect the validity of the bill.

The planning commission deferred this text change indefinitely. Since the planning commission has yet to make a recommendation on this ordinance, no public hearing can be held pursuant to the council rules of procedure. Thus, the rules would need to be suspended in order to proceed with the public hearing on November 1.

**ORDINANCE NO. BL2011-27** (CLAIBORNE) – This ordinance amends the zoning code to change how a minimum lot size is determined when a right-of-way dedication is required. The zoning code includes bulk standards that establish minimum lot sizes for the various zoning districts. As noted above, the mayor established a Complete Streets Policy in 2010 to support and encourage multiple modes of transportation. Accordingly, the planning commission adopted the 2011 update to the Main and Collector Street Plan (MCSP), which in part established right-of-way dedication requirements when property is subdivided. Since the right-of-way dedication area is subtracted from the lot size, subdivision of the lot could result in the property falling below the minimum lot size requirement. This ordinance would allow the lot area prior to the dedication of right-of-way to be used to meet the minimum lot standards. The newly created lots would still be required to meet all of the other applicable bulk standards in the zoning code.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2011-29** (CLAIBORNE) – This ordinance amends the Metropolitan zoning code provisions applicable to nonconforming signs and electronic billboards. The state nonconforming use grandfather statute allows certain existing nonconforming businesses to remain when a change in local zoning regulations makes the business no longer technically in compliance with the law. The purpose of the grandfathering statute is to prevent a hardship to existing property owners and businesses that were in compliance with the applicable laws at the time a new zoning restriction was enacted. Tennessee courts have interpreted the nonconforming use statute to be applicable to advertising signs. The statute allows nonconforming billboards to be destroyed and reconstructed if the sign is a business necessity. However, neither the grandfather statute nor the Metro zoning code specify what constitutes a destruction of the sign. Further, the law does not specify whether a nonconforming static billboard protected by the state grandfather law may be converted to an electronic billboard without triggering the restrictions in the zoning code enacted after the billboard was erected.

First, the ordinance attempts to clarify the protections afforded by state law and the zoning code to nonconforming signs. The zoning code currently provides that a nonconforming sign must be brought into compliance with current zoning regulations if the sign is altered, repaired, restored or rebuilt (other than as a result of involuntary damage or casualty) to the extent that the cost exceeds fifty percent of the estimated replacement cost of the sign. This ordinance provides that a sign will be deemed destroyed if more than fifty percent of the display surface area is altered or repaired. All sign permits within one year are to be aggregated for purposes of measuring the fifty percent alteration standard. The board of zoning appeals has on several occasions had to make a determination regarding whether a nonconforming sign is the sign

structure itself or the face of the sign. This ordinance would take that issue off the table by specifying that destruction of the sign means changing more than half of the sign surface area.

The sign industry has evolved in recent years to include more and more electronic and digital technology, and Metro's sign ordinance does not adequately address some of this technology. The zoning code prohibits any type of sign (including billboards) that change messages by electronic or mechanical means where the copy, graphics, or digital display does not remain static for a period of eight seconds with all copy changes occurring instantaneously. While the term "digital billboard" is not defined in the code, as long as the billboard image remains static for at least eight seconds (i.e. no video images), it is permitted in the limited areas where other billboards are permitted, provided it is not located within 2,000 feet of another digital display billboard.

This ordinance first provides a specific definition for "digital display billboard". The term would be defined to include a billboard that displays electronic images, graphics, or pictures, with or without text, operating on a fixed display screen composed of a series of lights such as light emitting diodes (LED). Digital display billboards would not be permitted to have animated images or graphics, audio components, scrolling messages, or video moving images. Each message or image displayed is to remain static for a minimum of eight seconds, and the change sequence must be accomplished instantaneously.

In addition to providing a definition for digital display billboards, the ordinance would prohibit an existing nonconforming static billboard from being converted to or replaced with a digital billboard. The ordinance expressly provides that billboards and digital display billboards are to be considered separate structures. It is important to point out that the majority of the static billboards currently located in Metropolitan Nashville-Davidson County are nonconforming, which means that this ordinance would basically have the effect of prohibiting any new digital billboards in the city.

The public hearing for this ordinance cannot be held at the November 1 meeting since the planning commission has not made a recommendation and it has been less than thirty days since the date of referral to the planning commission.

**ORDINANCE NO. BL2011-30** (JOHNSON) – This ordinance amends the Metropolitan zoning code to prohibit the conversion of nonconforming billboards to tri-face billboards. This ordinance is of the same subject matter as Ordinance No. BL2011-29, but is applicable to tri-face billboards as opposed to digital billboards. Tri-face billboards consist of triangular louvers that automatically rotate to allow three different sign messages to be shown on the same sign. In January 2011, the council enacted Ordinance No. BL2010-798 to exempt tri-face billboards from the distance requirements applicable to electronic signs, which essentially resulted in tri-face billboards being treated the same as static billboards. This ordinance would treat static billboards and tri-face billboards as separate structures and would prohibit a nonconforming static billboard from being replaced with a tri-face.

The public hearing for this ordinance cannot be held at the November 1 meeting since the planning commission has not made a recommendation and it has been less than thirty days since the date of referral to the planning commission.