



## METRO COUNCIL OFFICE

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MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Mike Jameson, Director and Special Counsel  
Mike Curl, Finance Manager  
Metropolitan Council Office

COUNCIL MEETING DATE: **August 2, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 7/27/16:

4% Reserve Fund	\$36,594,506*
Metro Self Insured Liability Claims	\$3,560,608
Judgments & Losses	\$148,210
Schools Self Insured Liability Claims	\$2,968,327
Self-Insured Property Loss Aggregate	\$4,693,365
Employee Blanket Bond Claims	\$668,441
Police Professional Liability Claims	\$2,547,733
Death Benefit	\$1,185,973

\*Assumes unrealized estimated revenues in Fiscal Year 2017 of \$29,665,655.

**– BILLS ON PUBLIC HEARING –**

**BILL NO. BL2016-133** (ALLEN, BEDNE, & OTHERS) – Chapter 17.40 of the Metro Code of Laws specify the administration procedures and procedures of the Zoning Code. This ordinance would add Article XVII (Inclusionary Housing) to this chapter. This is in response to the Inclusionary Housing Feasibility and Market Study conducted by Metro. This study found there has been significant cost appreciation and housing turnover in central areas of the city.

The study also found that 24% of homeowners in the city are considered to be cost-burdened. For renters, the number is 46%. The study also found that only 29% of home sales in 2015 were considered to be affordable to a buyer earning 80% AMI (Average Median Income). Much of that affordable housing is outside of the central areas, with less access to jobs, transit, and services.

The new Section 17.40.780 would define the purpose and applicability of the inclusionary housing provisions found in Article XVII. These provisions would not apply to additional residential developments of fewer than five units. The provisions would also not be required if the average unit sale price or rental rate is less than or within 5% above 100% AMI market prices or rental rates and the Inclusionary Housing Plan demonstrates that the census tract market rate prices or rental rates are affordable to a household at 100% AMI.

The new Section 17.40.790 lists the specific requirements for inclusionary housing, listing the percentages of total residential floor area that must be set aside for affordable or workforce housing for various rental or sale rates, expressed as percentages of AMI. Generally, as the development increases in size or decreases in price, a lesser set-aside percentage applies. It is possible for these requirements to be met by construction at these same rates within one mile from the development (if located on a multimodal corridor) or one-quarter mile (if not so located). It is also possible to meet the requirement by making an in lieu contribution to the Metropolitan Housing Trust Fund Commission, based upon a formula set forth in Subsection C.

The new Section 17.40.800 sets new standards for the construction and occupancy of affordable and/or workforce housing. This would require the owner/developer to submit an Inclusionary Housing Plan for their development. In order to ensure livability, the inclusionary housing units would be required to be at least 80% of the average size of market-rate units. Bedroom counts and exteriors must also be similar. Inclusionary Housing units must be maintained as rental for at least 15 years, or as for-sale for at least 30 years; and owners must ensure their occupation by eligible households

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**BILL NO. BL2016-133**, continued

The new Section 17.40.810 requires documentation for the standards in Article XVII to be submitted to the Codes Department prior to the issuance of the Use & Occupancy permit. During the applicable period, compliance reports must be provided to the Metropolitan Housing Trust Fund Commission.

Several timing mechanisms appear in the current Substitute, which proposes a sunset provision after three (3) years, with an impact study scheduled two (2) years after passage. The effective date would occur nine (9) months after passage, and applications filed before this effective date would not be subject to the ordinance.

**BILL NO. BL2016-265** (M. JOHNSON) – Subsection 17.40.120.H.3.a of the Metro Code of Laws (MCL) currently provides for the review of a Planned Unit Development (PUD) in order to determine whether it should be classified as inactive. The Planning Commission is required by this subsection to determine if six (6) or more years have elapsed since the initial enactment, amendment to, or re-approval of the PUD ordinance, whether construction has begun, and whether right-of-way acquisition or construction of off-site improvement has begun.

In addition to the above, however, the Planning Commission is further allowed to consider the “aggregate of actions” taken by a PUD owner to develop the PUD under review within the previous twelve months. The term “aggregate of actions” is not currently defined in the MCL, prompting concerns that the term may be unduly vague. The ordinance under consideration would remove this from the MCL, leaving the other three determinative findings intact.

**BILL NO. BL2016-309** (ALLEN, COLEMAN, & OTHERS) – The U.S. Supreme Court outlined when a sign was based on content and thus receives 1<sup>st</sup> Amendment protections in a case known as *Reed v. Town Gilbert, Ariz.*, 135 S. Ct. 2218 (2015). A review of the Metro Code of Laws has determined that several sections have definitions involving signs that should be clarified to assure they are in compliance with the findings of the Supreme Court in this case.

Section 6.28.030.E concerns signage for short-term rental property (STRP). It currently prohibits any signage on a property to advertise that it is being used as an STRP. Instead, the section would now specify that signage on STRP properties shall be governed by the provisions of MCL Chapter 17.32 (Sign Regulations).

Paragraph 16 under the definition of “sign” in Section 17.04.060 of the MCL defines an on-premises sign within the CC, CF, CS, CS-A, CA, CL, CL-A, SCC, SCR, ORI, and MUI zone districts.

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**BILL NO. BL2016-309**, continued

In these districts (except within an historic overlay district), an “on-premises sign” can advertise an event, activity, etc. in a different location, if the sign is accessory to the principal use. In all other districts, an “on-premises sign” can only advertise such events, activities, etc. that are on the same premises as the sign.

The revision to this paragraph would remove CS-A and CL-A zoning districts from the list where an “on-premises sign” can advertise an event, activity, etc. in a different location if the sign is accessory to the principal use

Section 17.16.250.D.3 of the MCL currently prohibits any signs advertising a home occupation is being performed within a residence. Instead, the section would now specify that signage on properties where a home occupation is being performed shall be governed by the provisions of MCL Chapter 17.32 (Sign Regulations).

Section 17.36.120.C.2.d of the MCL currently prohibits any signs for advertising an historic bed and breakfast homestay, although an accessory residential sign, not to exceed one square foot of area, displaying the name and/or address of the owner may be permitted. Instead, the section would now specify that signage on STRP properties shall be governed by the provisions of MCL Chapter 17.32 (Sign Regulations). The additional accessory residential sign would still be permitted.

**BILL NO. BL2016-327** (SYRACUSE) – Section 17.08.030 of the Metro Code’s zoning regulations lists the range of land uses permitted as of right, permitted subject to specific conditions, permitted subject to special exceptions standards, permitted as accessory to a principal use on the same lot, or permitted only within a special overlay district are established in the specified district land use tables. Under the terms of this section, “artesian distilleries” are permitted in the Core Frame (CF), Downtown Code (DTC), Industrial Warehousing /Distribution (IWD), Industrial Restrictive (IR), and Industrial General (IG) zoning districts.

The ordinance under consideration would amend this list to make artesian distilleries a Permitted With Conditions (PC) use under the Commercial Amusement (CA) zoning districts.

Section 17.16.090 of the Metro Code’s zoning regulations lists allowed industrial uses. The ordinance under consideration would add “Artesian Distilleries” to this list to specify the amount of alcohol that may be distilled or stored on site. It would also specifically prohibit the milling of grain on site.

This is on the agenda of the Metro Planning Commission for their meeting on July 28, 2016.

**– RESOLUTIONS –**

**RESOLUTION NO. RS2016-321** (PRIDEMORE & PARDUE) – This resolution would approve the annual agreement for services performed by the Metropolitan Government for the Emergency Communications District (ECD) relative to operation of the Enhanced-911 service for Fiscal Year 2017. The contract specifies the services to be provided by the Metro Emergency Communications Center, the Department of Public Works, and the Department of General Services.

The department of Public Works would maintain an updated Master Street Address Guide, and the Department of General Services would provide five fleet vehicles and the associated maintenance. Metro would also agree to handle the procurement of goods and services upon request by the ECD, and will be responsible for training the Metro employees who will operate the system. Metro would further agree to provide a facility to serve as a backup center for the primary Emergency Communications Center.

ECD is to reimburse the Metropolitan Government in the amount of \$4,900 for the services provided by the Department of Public Works and to reimburse the Department of General Services for the use of the five fleet vehicles, plus the reimbursement of certain training costs, rental costs for the backup facility, telephone expenses, and equipment costs.

**RESOLUTION NO. RS2016-322** (PRIDEMORE & PARDUE) – This resolution would approve an agreement between the United States Government and the Metropolitan Government to allow the Fire Department to bill Medicare for ambulance services. This agreement, which is in the form of a binding online application and certification, is required in order for Medicare to reimburse Metro for providing ambulance services to Medicare patients. The resolution also includes an attachment letter in which Metro agrees to pay back any money that is overpaid by Medicare.

This agreement is updated annually. The last agreement was approved per Resolution No. RS2015-1547 on July 7, 2015.

**RESOLUTION NO. RS2016-323** (PRIDEMORE & PARDUE) – This resolution would approve a contract between the State Department of Mental Health and Substance Abuse Services and the Metro Nashville Fire Department for the payment of emergency transportation services for patients at the Middle Tennessee Mental Health Institute (MTMHI). The state will pay Metro for

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**RESOLUTION NO. RS2016-323**, continued

uninsured patients transported from the facility at the rates established by the Medicare Part B fee schedule. If a service is not covered by this schedule, it is to be provided at the lowest negotiated rate, not to exceed \$1,200.

This agreement is simply to enable the state to be able to continue paying Metro for the services provided. The amount to be paid under the contract is not to exceed \$36,000 for Fiscal Year 2017. This is a renewal of the contract approved last year per Resolution No. RS2015-41.

**RESOLUTION NO. RS2016-324** (PRIDEMORE & PARDUE) – This resolution would approve an application for an annual grant in the amount of \$154,600 from the Tennessee Department of Transportation (TDOT) to the Davidson County Sheriff's Office for litter pick-up along roads and highways as well as providing litter prevention education. These grant funds would be used to fund a program that has been in place for many years that uses misdemeanor offenders under the custody of the Sheriff's Office to pick up roadside litter.

The grant budget provides that \$46,300 of the funds will be used for litter prevention and recycling education programs. The term of the grant is from July 1, 2016 through June 30, 2017.

**RESOLUTION NO. RS2016-325** (PRIDEMORE & PARDUE) – This resolution would approve a renewal of an intergovernmental agreement between Tennessee State University (TSU) and the Metropolitan Nashville Police Department for the use of off-duty police officers during various campus events. All officers will be assigned exclusively through the Metro Police Secondary Employment Unit and will be compensated at the standard extra-duty hourly rates. TSU is responsible for paying for the officers' time in advance, unless prior arrangements are made. The term of the agreement is from June 1, 2016 through June 30, 2017.

State law allows the Metropolitan Government to enter into intergovernmental agreements with other government entities with approval of the Council by resolution.

**RESOLUTION NO. RS2016-326** (PRIDEMORE & PARDUE) – This resolution would approve a routine agreement between the U.S. Drug Enforcement Administration (DEA) and the Metropolitan Nashville Police Department for assistance with the Middle Tennessee Drug

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**RESOLUTION NO. RS2016-326**, continued

Enforcement Task Force. The purpose of this Task Force is to gather intelligence data and conduct undercover operations related to illegal drug trafficking.

The DEA will assign three special agents to the Task Force, and provides the necessary funds and equipment to support their activities. The Police Department would assign one officer to the Task Force.

The DEA agrees to reimburse the Police Department for overtime costs paid by Metro up to \$17,753 per officer participating in the Task Force, subject to availability of funds. The term of this agreement is from October 1, 2016 through September 30, 2017.

**RESOLUTION NO. RS2016-327** (PRIDEMORE & PARDUE) – This resolution would approve an application for the Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$504,412 from the U.S. Department of Justice to the Metropolitan Nashville Police Department (MNPD) for equipment and supplies for direct support for basic police, in-service, and specialized training.

These funds would be used to ensure MNPD personnel maintain needed skills and certifications by attending professional and mandatory specialized training, enhance Community Policing initiatives and service accountability and response to community concerns, and continue MNPD's success in overall crime reduction and community satisfaction with MNPD services.

**RESOLUTION NO. RS2016-328** (PRIDEMORE & PARDUE) – Resolution No. RS2015-1543 accepted a grant from the Tennessee Department of Finance and Administration to the Metro Nashville Police Department on June 16, 2015. The purpose of this grant was to support the provision of mental health services and criminal justice system advocacy to victims of violent crime.

The original grant proceeds were not to exceed \$626,220. A local cash match of \$156,555 was also required. The resolution under consideration would amend this grant by increasing the amount of the award by \$30,025 for a new total of \$656,245. The local cash match requirement would increase by \$7,506 for a new total of \$164,061.

The term of the grant is from July 1, 2015 through June 30, 2018. The revised amounts to be awarded during each of these three fiscal years would be \$208,740 in FY16, \$221,702 in FY17, and \$225,803 in FY18.

**RESOLUTION NO. RS2016-329** (PRIDEMORE & HENDERSON) – This resolution would approve a grant in the amount of \$51,900 from the Tennessee State Library and Archives to the Nashville Public Library to target library materials to persons having difficulty using a library and to provide special services to children and young people.

This is an annual grant used for general library services and for materials for the disadvantaged. The term of this grant is from July 1, 2016, through May 30, 2017.

**RESOLUTION NO. RS2016-330** (PRIDEMORE & HENDERSON) – This resolution would approve a grant in the amount of \$7,040 from the Tennessee State Library and Archives to the Nashville Public Library to purchase Chromebooks and peripherals. These purchases would be used for digital literacy training for library customers who lack technology tools.

There would be a required local cash match of \$7,040.

**RESOLUTION NO. RS2016-331** (PRIDEMORE & GILMORE) – This resolution would approve an annual grant in the amount of \$101,700 from the Tennessee Department of Health to the Metro Health Department for food safety services. These federal pass-through funds are to be used to pay the salary and fringes of an Environmental Health Specialist in the Food Safety Division of the Health Department, plus travel expenses and indirect costs.

The term of the grant is from October 1, 2016, through September 30, 2017.

**RESOLUTION NO. RS2016-332** (GILMORE) – This resolution would approve a clinical/practicum affiliation agreement between the Metropolitan Board of Health and the Tennessee Board of Regents (TBR) to provide clinical/practicum experiences for students enrolled in the TN eCampus Masters of Science in Nursing (MSN) Program. Students will not receive any compensation and there is no cost to the Metropolitan Government for participating in this program.

The term of the agreement is for five years, from April 14, 2016 through April 13, 2021. However, the agreement may be terminated by either party upon 30 days written notice. The TBR is required to provide assurance that the students are covered by professional liability insurance with a minimum coverage of \$1,000,000/\$6,000,000. The TBR agrees to assume responsibility for all students participating in the program.



**RESOLUTION NO. RS2016-333** (GILMORE) – This resolution would extend the term of a contract with United Neighborhood Health Services, Inc. (UNHS) from June 30, 2016 to June 30, 2017. This contract is for UNHS to provide medical services to homeless clients of the Health Department.

A contract with UNHS has been in place since 2005 to provide a portion of the medical services, including examinations, diagnosis, and treatment of medical conditions of homeless persons seen at the downtown clinic. UNHS is to provide primary medical services to at least 3,500 individuals, which is to include a 24 hour on-call system for emergencies. This contract also includes the provision of dental care for at least 500 patient visits and mental health services to at least 600 homeless clients. UNHS will be responsible for making transportation available to its homeless patients.

UNHS was compensated in the amount of \$355,200 for Fiscal Year 2016. This will remain unchanged for Fiscal Year 2017. There are no changes being made to the terms and conditions of the contract other than the extension of the termination date.

**RESOLUTION NO. RS2016-334** (SWOPE & ELROD) – This resolution would approve an interlocal agreement with the City of Brentwood to cooperate in regional traffic signal management in the area bordered by southern Davidson County and northern Williamson County. The affected streets would be Old Hickory Boulevard, Franklin Road, and East Church Street in Davidson County and Franklin Road, Maryland Way, and East Church Street in Williamson County.

This agreement recognizes the fact that an integrated corridor management system and master planning of traffic signal operations in the region would be mutually beneficial. Each county would be responsible to pay their own costs for this project to coordinate regional traffic signals.

State law allows intergovernmental/interlocal agreements between governmental entities to be approved by resolution.

**RESOLUTION NO. RS2016-335** (PRIDEMORE, ALLEN, & WITHERS) – This resolution would approve a continuation of a grant in the amount of \$20,000 from the Metropolitan Development and Housing Agency (MDHA) to the Metropolitan Historical Commission to perform the environmental review required by federal law for development proposals using federal funds to determine potential adverse effects to historic properties.

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**RESOLUTION NO. RS2016-335**, continued

MDHA is responsible for administering certain federal grant programs that require compliance with the National Environmental Policy Act, part of which requires a review under the National Historic Preservation Act to identify historic properties potentially affected by developments using the federal funds. MDHA has contracted with the Metro Historical Commission for a number of years to review MDHA proposals and identify historic properties potentially affected by each proposal.

The term of this grant would be from April 1, 2016, through March 31, 2017.

**RESOLUTION NO. RS2016-336** (PRIDEMORE) – This resolution would authorize the Department of Law to compromise and settle the claims of Mr. Courtney Akridge against Metropolitan Government and Metro Police Officer Ryan Martin Finnegan for the amount of \$52,947,75. This lawsuit stems from a traffic stop on July 24, 2012.

Officer Finnegan initiated a routine traffic stop after observing a car driven by Mr. Akridge running a stop sign, as well as for having windows tinted too darkly – a violation of Tenn. Code Ann. §55-9-107. During the stop, Mr. Akridge was unable to produce a valid driver's license, which was an additional traffic offense.

The traffic stop occurred in The Nations area of west Nashville -- an area known for drug and gang activity. A computer search of the tag number traced the vehicle to the Cayce Homes development in East Nashville. Mr. Akridge was found by Office Finnegan not to have any known gang affiliation or a record of prior drug offenses. However, Officer Finnegan became suspicious of the four young men in the car for several reasons. He thought a passenger in the rear seat was attempting to conceal something by virtue of furtive movements. He also believed Mr. Akridge was unable to provide a credible reason for being in the area. (Mr. Akridge stated that he was looking for an apartment, having recently graduated from high school; but he did not have an appointment to view any apartment in the area. None of the vehicle occupants were able to provide written identification. Mr. Akridge was also wearing a security guard uniform which didn't appear to fit, leading to suspicion that the uniform was intended as a disguise. (Mr. Akridge is employed by a security company.)

Mr. Akridge and the passengers were given pat-down searches. Originally, the lawsuit alleged invasive body cavity searches – a claim that was disputed and ultimately withdrawn. Officer Finnegan asked for permission to search the vehicle, and that request was denied. Officer Finnegan thereupon called for a K-9 unit which arrived in approximately 15 minutes. The dog did not alert during the subsequent search of the vehicle. Officer Finnegan then gave the

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**RESOLUTION NO. RS2016-336**, continued

citation for the traffic citations to Mr. Akridge and allowed him to leave with his passengers after a period of approximately 34 to 38 minutes. No physical altercation occurred during the traffic stop.

In the subsequently filed lawsuit, Mr. Akridge alleges that the 15 to 20 minute period -- extended to the end of the lawful traffic stop -- constitutes a violation of his Fourth Amendment right to be free from an unreasonable search or seizure. Mr. Akridge's efforts to dismiss the traffic citation were unsuccessful.

Efforts by the defense to dismiss the lawsuit by motion to dismiss and summary judgment were denied by the U.S. District Court. The U.S. Supreme Court has held that probable cause for a traffic stop does not allow the stop to be unreasonably extended unless separate probable cause for some other offense exists. A search by a drug-detection dog during a traffic stop is allowed if one is immediately available. However, a traffic stop may not be prolonged beyond the time necessary to write a ticket for the purpose of waiting for a K-9 dog to arrive unless an independent, articulable, reasonable suspicion exists to justify use of a dog. The stop also cannot be further extended while a dog searches, in the absence of this additional suspicion.

Even if only one dollar was awarded to Mr. Akridge as nominal damages, his attorney's fees and costs could also be added to any compensatory award. These fees currently total approximately \$170,000 and Officer Finnegan could also face exposure to punitive damages.

The Metro Code allows the Department of Law to indemnify employees for judgments against them, but only up to \$50,000. Any verdict in excess of this amount -- including attorney's fees and costs -- would be the sole responsibility of the officer. Settling the case removes the possibility of a judgment against Officer Finnegan individually.

In order to protect the officer from the potential financial hardship of such an award in this case, the Department of Law recommends settling the pending lawsuit for a total of \$52,947.75 to be paid out of the Judgments and Losses Fund.

Because Officer Finnegan was deemed to have complied with protocol, no disciplinary action has been recommended.

**RESOLUTION NO. RS2016-337** (SHULMAN) -- This resolution approves the election of 187 Notaries Public in accordance with state law.

– **BILLS ON SECOND READING** –

**BILL NO. BL2016-239** (HURT) – This bill would change Chapter 12.44 of the Metro Code to enable drivers who are 65 years old or older to purchase a sticker for \$50 from the Davidson County Clerk. This sticker would give those drivers the right to park for free at any meter or within any public parking facility within the Central Business Improvement District.

This program would become effective on January 1, 2017 and, pursuant to a sunset provision, would expire on January 1, 2018 unless extended by resolution of the Council. It is anticipated that the decision to extend the program would depend on the number of vehicle owner-operators eligible for this free parking, the number of stickers issued during calendar 2017, the measurable impact on the quality of life for elderly individuals from this program, and the cost of enforcement and administration. This ordinance has been submitted to the Traffic & Parking Commission for review.

**BILL NO. BL2016-257** (SLEDGE & ALLEN) – This ordinance would make changes to two sections of the Metro Code concerning stop work orders and short-term rental property (STRP) restrictions.

Section 16.04.110 addresses “Noncompliance – Stop work order”. This section currently describes the procedure for issuing a stop-work order where work is being performed contrary to the provision of this chapter or in a dangerous or unsafe manner. This ordinance would add instances in which the operation of any building or structure contrary to the provisions of Chapter 6.28.030(C) as being subject to a stop-work order. (This section restricts any person or entity from operating a STRP without a permit.)

Additionally, section 6.28.030 addresses “Short term rental property (STRP)”. Paragraph R.6.b currently requires a one-year waiting period before any STRP found to have operated without a permit can become eligible for a permit. This ordinance would change the one-year waiting period to three years.

**BILL NO. BL2016-302** (PRIDEMORE, ALLEN, & ELROD) – This ordinance would grant a telecommunications franchise to TN Backhaul Networks, LLC in accordance with the Metro Code. TN Backhaul Networks, LLC would have a fifteen (15) year franchise and would be required to pay a fee of 5% of gross revenues each year as a reasonable estimate of Metro’s costs associated with owning, maintaining, and managing the public right-of-way being used by the company.

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**BILL NO. BL2016-302**, continued

Section 6.26.030.B.5 of the Metro Code of Laws (MCL) provides a unique process for approving fiber optic communications services franchises, including a “full public proceeding” in which the grantee’s “legal, character, financial, technical and other qualifications” are reviewed. Revisions to that process are currently pending by the sponsors in separate legislation, pursuant to ordinance No. BL2016-310. Current Code provisions, however, will apply to this franchise review.

Section 6.26.240 of the MCL currently defines 5% of gross revenues as the required amount of compensation that is to be paid to Metro for fiber optic communications service franchises.

However, the franchise agreement under consideration recognizes that this requirement may be changed in the future. If that happens, TN Backhaul Networks, LLC agrees they shall thereafter pay the new fee so specified.

The company has posted the required bond in the amount of \$500,000 guaranteeing the company’s performance of its obligations under the franchise, as well as a certificate of liability insurance naming the Metropolitan Government as additional insured in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for general liability.

The application for this franchise has been submitted, but not yet approved, by the Planning Commission. It is now on the agenda for their meeting on August 10, 2016.

**BILL NO. BL2016-308** (HASTINGS) –Tennessee Code Annotated § 66-28-401 requires tenants to comply with certain maintenance and conduct standards and to refrain from any illegal conduct on the premises of the dwelling being rented.

This ordinance would create a mechanism for informing tenants of these obligations by requiring residential rental properties receiving Barnes Fund grants to include a “tenant conduct clause” within their rental agreements.

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**BILL NO. BL2016-308**, continued

The clause would repeat the conduct requirements of state law as follows:

- Tenants must not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so;
- Tenants must not engage in any illegal conduct on the premises; and
- Tenants must act, and require other persons on the premises with the tenant's consent, to act in a manner that will not disturb the neighbors' peaceful enjoyment of the premises.

By comparison, the Metropolitan Development & Housing Authority (MDHA) adopts HUD model lease agreements which generally prohibit criminal conduct though without enumerating specific prohibited conduct.

Under the proposed ordinance, if a tenant fails to comply with these restrictions, the landlord is required to remedy this noncompliance pursuant to TCA 66-28-505(a) – although this particular statute actually affords discretion to the landlord to give written notice to the tenant and to require any breach to be remedied within fourteen (14) days. An amendment from the sponsor is anticipated.

**BILL NO. BL2016-328** (PRIDEMORE & MURPHY) – The purpose of this ordinance is to amend Metro's retirement plans, qualified under Section 401(a) of the Internal Revenue Code, to be consistent with the revision to TCA Section 26-2-105 addressing claims under qualified domestic relations orders (QDROs).

A "domestic relations order" is a judgment, decree, or order (including the approval of a property settlement) made pursuant to state domestic relations law (including community property law) which relate to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a participant.

A state authority -- generally a court -- must actually issue a judgment, order, or decree or otherwise formally approve a property settlement agreement before it can be a domestic relations order under ERISA. The mere fact that a property settlement is agreed to and signed by the parties will not, in and of itself, cause the agreement to be a domestic relations order.

A "qualified domestic relations order" (QDRO) is a domestic relations order that creates or recognizes an alternate payee's right to receive, or assigns to an alternate payee the right to

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**BILL NO. BL2016-328**, continued

receive, all or a portion of the benefits payable with respect to a participant under a retirement plan, and which includes certain information and meets certain other requirements.

As of July 1, 2015, the state of Tennessee required Metro's qualified retirement plans to honor claims under QDROs if the order relates only to the provision of marital property rights for the benefit of the former spouse of a plan participant. The state passed two additional changes to these requirements, effective July 1, 2016.

Pension benefits that a member earned under one of Metro's pension plans were allowed to be assigned to an alternate payee (a former spouse) under a QDRO per Metro Code Section 3-08-180. The state law restricted such orders only to situations involving the "provision of marital property rights". In April of this year, state law was changed again (SB 1587) to clarify that such orders could include reasons beyond the provision of marital property rights, as listed in T.C.A. 36-5-501. As such, the proposed ordinance would remove the restriction that such orders pertain only to the provision of marital property rights.

The second change relates to the types of order that Metro will honor. Information from the state indicates that the state plan, Tennessee Consolidated Retirement System (TCRS), will honor only shared interest QDROs. Shared interest orders allowed both the member and alternate payee to receive a portion of the benefit otherwise payable to the member. The original ordinance passed by Metro per BL2015-68 alluded to the availability of separate interest orders where the participant and alternate payee may elect different forms of payment at different times. Shared interest orders are easier to administer and less costly to Metro, as separate actuarial calculations are not required for these types of orders. The proposed ordinance would clarify that separate interest orders are not permitted.

**BILL NO. BL2016-329** (PRIDEMORE & ELROD) –This ordinance would amend Chapter 6.72 of the Metro Code of Laws (MCL). This would bring this section concerning taxicabs into uniformity with MCL sections concerning other passenger vehicles for hire.

Sixty primarily housekeeping changes to the MCL would be made. The Metropolitan Transportation Licensing Commission staff and the Metro Legal Department have prepared a short summary of these changes. A copy of the summary is attached to this analysis.

**BILL NO. BL2016-330** (O'CONNELL) – The Metro Code of Laws (MCL) currently prevents a beer permit from being issued to an establishment located within 100 feet of a church, school, park, daycare, or one or two family residence. However, several exceptions exist to the distance requirements.

Facilities within the USD separated by state or federal four-lane highways from the protected establishments are currently exempt, as are retailer on-sale beer permit holders in the MUL and events catered by holders of caterers' permits. (*See*, Code section 7.08.090(A)). Additionally, the code provides a mechanism to exempt (*a*) restaurants that already have a state on-premises liquor consumption license or (*b*) any retail food store, from Metro's minimum distance requirements, allowing each to obtain a beer permit upon the adoption of a resolution by the Council. (*See*, Code Section 7.08.090(E)).

The proposed ordinance would make two changes to location restrictions per Section 7.08.090 of the Metro Code of Laws (MCL). The 100-foot distance restriction to a dwelling for one or two families removes the phrase "from a dwelling for one or two families" from the sentence specifying the restriction does not apply to house trailers. It also removes the modifier "unless said location is adjacent to a lot in a residential zone district" from the provision that the distance restriction are not applicable to any location in the DTC or CF zone district.

Subsection F of MCL Section 7.08.090 currently exempts a restaurant bounded by Sixth Avenue North, Union Street, Fifth Avenue North, and Church Street from the minimum distance requirement set forth in Subsection A. The second change that would be made by this ordinance would be to delete this subsection, removing the exemption.

**BILL NO. BL2016-331** (GLOVER) –This ordinance would revise Section 15.34.030 of the Metro Code of Laws (MCL) concerning installation of residential sanitary sewerage pumping (RSSP) systems.

The one-time nonrefundable maintenance fee for installing an RSSP is currently set at \$2,500. The ordinance under consideration would give the Wastewater Hearing Authority the ability to revise this fee in order to keep it in line with the actual costs to the Metro Department of Water and Sewerage Service to maintain the RSSP. This fee would not apply to department installations nor for homeowner installations.

The ordinance would also require homeowner and developer installation costs to be paid by the respective homeowner/developer. These installations would be required to have an odor control system that is designed by a licensed engineer and approved by the Department. In addition,

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**BILL NO. BL2016-331**, continued

the installer of an RSSP would be required to use resistant pipe materials or liners and apply manhole sealers, upstream and downstream from the discharge point to protect the public sanitary sewer system from any corrosive gases that may be generated.

An amendment is anticipated to clarify that the maintenance fee applies “per residential connection”. Future amendments to this legislation may be approved by resolution.

**BILL NO. BL2016-332** (HENDERSON) –Metro currently owns Steam Locomotive Number 576, located in Centennial Park. The ordinance under consideration would approve a lease agreement between Metro and the Nashville Steam Preservation Society (NSPS). If the lease is approved, NSPS intends to restore the locomotive and make it operational, allowing visitors to ride on runs of the locomotive.

The proposed lease would require NSPS to provide proof that they have the \$500,000 in initial funds required for the restoration. NSPS must also provide acknowledgment from the Nashville & Eastern Railroad (N&E) stating that Locomotive Number 576 would be allowed to operate over the rail line and operate under the Tennessee Central Railway Museum’s (TCRM) operating agreement.

The term of the proposed lease would be for twenty-three (23) years. NSPS may renew the lease for an additional seventeen (17) year period with approval of the Park Board, Mayor, and Council. The annual lease payment by NSPS will be the nominal amount of one dollar (\$1).

NSPS would be required to finish restoration and have the locomotive operational within seven (7) years after commencement of the lease. NSPS may terminate the lease by giving Metro thirty (30) days written notice. If the lease is terminated, NSPS agrees to return the locomotive to Metro in the same or better condition as it was received at the commencement of the lease.

NSPS further agrees to provide the use of 100 tickets annually to community center children and seniors with a minimum of 90 days’ written notice before any regular excursion of the locomotive. NSPS also agrees to provide two private cars capable of seating 80 people on any regular excursion of the locomotive one time within each 12-month period.

**BILL NO. BL2016-333** (PRIDEMORE, ELROD, & HAGAR) –This ordinance would accept a donation of \$50,000 from Mapco Express, Inc. for the purpose of modifying traffic signals at the intersection of Robinson Road and Merritt Street. This would be to facilitate final approval of the Final Specific Plan for Mapco (2015SP-036-002). In addition to the \$50,000, Mapco would provide the engineering design study for the modification of the traffic signals.

The total project costs for these signal upgrades are expected to be approximately \$200,000. Mapco’s donation would represent 25% of this amount.

**BILL NO. BL2016-334** (MENDES) – On August 4, 2015, Ordinance No. BL2015-1281 was enacted to authorize the Metropolitan Development and Housing Agency (MDHA) to negotiate and accept payments in lieu of taxes (PILOT) from operators of low income housing tax credit (LIHTC) properties. PILOT agreements essentially provide tax abatements for real and/or personal property taxes that would otherwise be owed to the Metropolitan Government. PILOTs have been utilized by Metro to provide incentives through the Industrial Development Board (IDB) to large employers to create more job opportunities. MDHA now has the authority to enter into PILOTs to create affordable rental housing.

MDHA developed this PILOT program to provide an additional financial incentive to developers considering construction or rehabilitation of affordable housing units through a federally funded LIHTC program. Subsidized low income housing tax credit developments serve those at or below 60% of the average median income (AMI) for the Nashville area, which translates to an income cap of \$28,140 for an individual and \$40,140 for a family of four. Once negotiated by MDHA, each PILOT agreement must be approved by the Council by resolution.

The maximum term for a PILOT lease under this program is 10 years, and the current cap is \$2 million per year. These PILOTs would only be available for additional tax liability over and above the pre-development assessed value of the property. The PILOT program would be available for both existing and new developments based on financial need. The PILOT lease will be terminated if the property sits vacant for two years.

The ordinance under consideration would revise the program to determine qualifications and eligibility for such payments. Under these revised terms, MDHA would be authorized to negotiate up to \$2,500,000 in additional PILOTs per calendar year. These agreements would continue to be required to be approved by Council resolution.

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**BILL NO. BL2016-334**, continued

MDHA would still be required to file an annual report with the Council, Assessor of Property, and State Board of Equalization identifying the values of the properties subject to PILOTs, the date and term for each PILOT, the amount of PILOT payments made, the date each listed property is scheduled to return to the regular tax rolls, and a calculation of the taxes that would otherwise be owed if the properties were privately owned or otherwise subject to taxation.

It is anticipated that the sponsor will defer for one meeting.

**BILL NO. BL2016-336** (GLOVER) –This ordinance would revise the Metro purchasing process by requiring contracts to be awarded to a business from Davidson County in cases where they have submitted a low tie bid against one or more other companies from outside of Davidson County. It would also allow any bidder in their competitive sealed bid to indicate a willingness to meet the lowest responsible bid if that bidder is not the low respondent.

Low tie bids are defined in the ordinance as “low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation to Bid”. Historically, the Tennessee Supreme Court and Courts of Appeals have strongly disfavored local bidder preferences, citing the negative impact such preferences can have on competitive market forces. Tennessee law provides that bidders should be placed on equal footing so that they are bidding on the same proposition and on the same terms as all others. Conditions imposed on bids must not unduly restrict competition, and bidders should be allowed to compete freely without unreasonable restrictions. Consistent with these opinions, the Metro Legal Department has in previous years opined that local bidder preferences are inconsistent with competitive bidding requirements set forth in the Metro Charter (section 8.111) and state law, citing Tenn. Code Ann. § 12-3-1204.

Former Tenn. Code Ann. §12-4-111 previously prohibited bid preferences that permit local companies to match the lowest bid. But in July 2013, the Tennessee legislature adopted extensive amendments to Title 12, wholly eliminating prior § 12-4-111 and adding new provision § 12-3-302. The current text of Tenn. Code Ann. §12-3-302 prohibits only “state agencies” from offering bid preferences that allow local companies to match the lowest bid, omitting reference to local governments.

The Tennessee Attorney General subsequently opined in November 2013 that municipalities subject to the Municipal Purchasing Law of 1983 should not implement policies that grant a preference to local businesses on municipal contracts. Per the terms of Tenn. Code Ann. 6-56-302, however, the Metropolitan Government of Nashville & Davidson County would be exempt.

**BILL NO. BL2016-337** (O'CONNELL, ELROD, & ALLEN) –This ordinance would abandon an existing sewer main and accept new sewer main and two new manhole assemblies for property located at 1200 Jo Johnston Avenue.

This was approved by the Planning Commission on June 15, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-338** (O'CONNELL, ELROD, & ALLEN) –This ordinance would abandon an existing sewer main and manholes and accept new sewer main, manholes, and new water main and fire hydrant for property located at 501 5<sup>th</sup> Avenue South.

This was approved by the Planning Commission on June 27, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-339** (ELROD & ALLEN) –This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning a portion of Alley #328 right-of-way.

This ordinance has been approved by the Traffic and Parking Commission and the Planning Commission.

**– BILLS ON THIRD READING –**

**BILL NO. BL2016-250** (RHOTEN, PRIDEMORE, & OTHERS) – This ordinance would approve a new sublease of property at 3055 Lebanon Pike to provide additional office space for the Metropolitan Police Department. The ordinance includes the necessary “Consent by Lessor to Sublease Agreement” that was negotiated between Metro, Donelson Corporate Centre, L.P., and Active Network, LLC. The sublease agreement between Metro and Active Network, LLC is attached to the ordinance as Exhibit 1.

The property consists of approximately 32,546 rentable square feet, located in the building commonly known as Donelson Corporate Centre II. The term of the new sublease begin on the date the Master Landlord Consent is executed and expire on May 31, 2018.

The base rental is defined as \$40,682.50 per month, calculated based on an annual rental rate of \$15 per rentable square foot. This rate shall increase by 3% on June 1, 2017, making the new monthly rate \$41,902.98 per month.

**BILL NO. BL2016-267** (HUEZO & SWOPE) – This ordinance would modify Title 17 of the Metro Code of Laws (MCL) concerning “boat storage”.

The District Land Use Tables would be amended to allow boat storage as a use permitted with conditions (PC) in the CS zoning district and as a permitted use (P) within the IWD, IR, and IG zoning districts.

Subsection I of Section 17.16.070 currently defines the restrictions for commercial use boat storage. The ordinance under consideration would modify these restrictions so that they only apply in the CL zoning district. Within the CS zoning district, restrictions would be added to specify that a boat storage use is not permitted within the Urban Zoning Overlay (UZO) and must be located on a lot that does not exceed four acres in size. Also, no more than one hundred boat slips shall be permitted in the CS zoning district.

This proposal was approved by the Planning Commission on April 28, 2016.

**BILL NO. BL2016-310** (PRIDEMORE, ALLEN, & ELROD) – Section 6.26.030.B.5 of the Metro Code of Laws (MCL) currently requires a full “public proceeding” before granting a fiber optic communications services franchise. During such proceeding, the applicant’s “legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements” are reviewed and approved by either the full Council or a committee composed

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**BILL NO. BL2016-310**, continued

solely of Council members. In practice, the proceeding is addressed through a joint meeting of three Council committees: Budget & Finance; Planning, Zoning & Historical; and Public Works.

This ordinance would revise this process by allowing the applicant to provide a detailed report, certified under oath, of the same information requirements. A member of the Council would retain the authority to file a resolution to call for a full public proceeding instead of accepting the report. A public proceeding so called would either be conducted by the full council or a committee composed of Council members.

If any material representation of the certified report is determined to be false, this would be grounds for revocation of the franchise granted under this chapter. These grounds would be in addition to those itemized in Section 6.26.310 of the MCL. A revocation for any reason would require a full public proceeding with due process, conducted either by the full Council or a committee composed of Council members. The processes described in Section 6.26.300 of the MCL must be followed prior to such a revocation proceeding.

Currently, one (1) ordinance granting a fiber optic franchise is pending before the Metro Council: Ordinance No. BL2016-302 which passed first reading July 5, 2016, is slated for second reading August 2, 2016, and was referred to the Metro Planning Commission.

**BILL NO. BL2016-311** (PRIDEMORE) – This ordinance would enable the Criminal Justice Planning Unit and/or the Office of Family Safety to join Justice Integration Services (JIS) to provide their management information system needs. These services are presently being provided for these departments by Information Technology Services (ITS).

These two departments did not exist and were not included when JIS was first created by Ordinance No. O92-415 on October 20, 1992.

**BILL NO. BL2016-312** (DOWELL, MENDES, & OTHERS) – The FY17 Capital Spending Plan approved by Resolution No. RS2016-245 includes a line-item for a “Sheriff – New Administrative Offices Facility” for \$20 million. As is customary for building projects of this magnitude, it has been assigned to the Department of General Services.

This ordinance would maintain the appropriated amount and assignment to General Services for the project. However, it would restrict spending any capital dollars until the specific location for

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**BILL NO. BL2016-312**, continued

the new facility has been reviewed and approved by a separate Council resolution. However, as amended, this ordinance would allow the expenditure of funds for "planning, design, or community engagement" without further action by the Council.

As an aside, state law provides that county legislative bodies may purchase and hold sites for county offices. It is in fact the "duty" of the county legislative body to erect a jail. (Tenn. Code Ann. §§ 5-7-103 and -104). State law further prescribes the locations of jails (§ 5-7-105) and provides that a 2/3 majority of the county legislative body may order sale of a jail site, and purchase of a new location, if the site is deemed "unhealthy, insecure or inconvenient in its location." (§ 5-7-111)

**BILL NO. BL2016-313** (PRIDEMORE, ALLEN, & HENDERSON) – This ordinance would approve a license agreement with the Tennessee Department of Transportation (TDOT) to allow Metro to construct a multi-use pedestrian greenway. This would connect Elmington Park to Centennial Park and the Parks Office.

This would be the pilot phase to connect Centennial Park to Elmington Park using existing Metro greenway funds. This was funded before the application was made for the Four-Forty Greenway TIGER VIII Grant that was approved by Resolution No. RS2016-259. The Parks Department intends to bid the pedestrian greenway out this summer following Council approval of this ordinance.

A map showing the proposed route of this pedestrian greenway is attached to this analysis.

**BILL NO. BL2016-314 THROUGH BL2016-316** – These ordinances would abandon a portion of certain streets, alley, rights-of way, and easements. All have been approved by the Planning Commission and the Traffic and Parking Commission. Metro has no future need for any of these streets, alley, rights-of- way, or easements.

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**BILL NO. BL2016-314 THROUGH BL2016-316**, continued

The details are as follows:

- **BL2016-314 (Sledge, Allen, & Elrod)** – Wade Avenue and Alley No. 649 right-of-way and easement, requested by Metro Public Property, Applicant and MDHA, Owner;
- **BL2016-315 (Kindall, Allen, & Elrod)** – Alley No. 588 right-of-way and easement, requested by John H. Otey, Jr., Applicant and Owner; and
- **BL2016-316 (Pulley, Allen, & Elrod)** – Rosemont Avenue right-of-way, requested by Barge Waggoner Sumner & Cannon, Inc., Applicant and Lipscomb University, Owner.

**BILL NO. BL2016-317** (O'CONNELL, ALLEN, & ELROD) – This ordinance would abandon an existing sewer main, water main and appurtenances and easements and to accept new sewer main, water mains, manhole assemblies and easements for property located at 900 Rosa L. Parks Boulevard.

This has been approved by the Planning Commission on June 6, 2016. Future amendments to this ordinance may be approved by resolution.