



## 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 16, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 8/10/16:

4% Reserve Fund	\$36,704,019*
Metro Self Insured Liability Claims	\$4,281,820
Judgments & Losses	\$1,147,650
Schools Self Insured Liability Claims	\$3,275,216
Self-Insured Property Loss Aggregate	\$5,432,715
Employee Blanket Bond Claims	\$668,401
Police Professional Liability Claims	\$2,547,733
Death Benefit	\$1,185,973

\*Assumes unrealized estimated revenues in Fiscal Year 2017 of \$29,304,656.

**– RESOLUTIONS ON PUBLIC HEARING –**

**RESOLUTION NO. RS2016-338** (S. DAVIS) – This resolution approves an exemption for Mas Tacos Por Favor, LLC, located at 732 McFerrin Avenue, from the minimum distance requirements for obtaining a beer permit.

The Metro Code of Laws 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 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)).

A public hearing must be held by the Council prior to voting on resolutions brought under section 7.08.090(E).

– RESOLUTIONS –

**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.

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. RS2016-339** (PRIDEMORE & GILMORE) – This resolution would approve an amendment to a grant from the Cities for Financial Empowerment (CFE) Fund in the amount of \$435,000 to the Mayor's office to implement a program designed to improve the financial stability of households. These funds, made available through Bloomberg Philanthropies, are used to provide financial counseling services at various locations, including the Levy Place Center, the Casa Azafran Community Center, and the United Way family resources centers, as well as Metro Action Commission and Social Services facilities.

Metro receives \$145,000 per year for this program to cover the costs of a program coordinator and other program expenses.

This resolution would approve an extension of the term of the grant from December 31, 2015 to August 31, 2016. It would also require \$78,975.14 of unspent funds from FY16 to be used towards the implementation of the Financial Empowerment Center (FEC) initiative. In addition, the CFE Fund agrees to award Metro with ten (10) user licenses to use the CFE Fund template of Social Solutions' Efforts to Outcomes (ETO) platform.

**RESOLUTION NO. RS2016-340** (DOWELL, PRIDEMORE, & ALLEN) – This resolution would authorize the Director of Public Property Administration to purchase a portion of real property on Eagleview Boulevard in Antioch for the use and benefit of the Metro Nashville Public Schools.

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**RESOLUTION NO. RS2016-340**, continued

Metro holds an option to purchase this tract of approximately 13 acres for the fee simple price of \$850,000. This property would be used for the Cane Ridge cluster elementary school. Funding was included in the approved FY15 capital spending plan. Capital funding in FY16 was also approved to construct the new school.

This purchase has been approved by the Metro Board of Education. It was also approved by the Planning Commission on July 20, 2016.

**RESOLUTION NO. RS2016-341** (O'CONNELL & HENDERSON) – This resolution would approve a license agreement between the Parks Department and the Department of the Navy, giving the Navy the authority to enter Public Square Park, West Riverfront Park, Riverfront Park and the Walk of Fame Park during Marine Week.

Marine Week is scheduled to be held September 6–12, 2016 and is an annual community outreach and recruiting event during which the Navy exhibits Marine Corps equipment and technologies and performs time-honored traditional demonstrations by the Marine Corps. These events would be free and available for all age groups.

**RESOLUTION NO. RS2016-342** (PRIDEMORE & GILMORE) – This resolution would approve an application for a \$15,000 Adoption Preparation / Heartworm Treatment Grant from the PETCO Foundation. If awarded, this would be used by the Metro Board of Health through Metro Animal Care and Control (MACC) to increase efforts to battle heartworm disease by offering a low-cost treatment for animals with low to moderate heartworms. This would greatly increase their chances for adoption.

MACC began a “Have a Heart” program in 2015 with the Pet Community Center (PCC). PCC received grant funding to provide low-cost heartworm treatment for dogs adopted from MACC. This program was a success, resulting in 40 additional dogs being adopting. The grant now being requested would allow for the continuation of this program.

**RESOLUTION NO. RS2016-343** (HAYWOOD & PRIDEMORE) – This resolution would approve a grant in the amount of \$96,055 in federal pass-through funds with no required local cash match from the Tennessee Department of Labor and Workforce Development to the Nashville Career Advancement Center (NCAC) to provide space and access / applications for One-Stop Partners in the American Job Centers (AJC) for employment and training programs.

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**RESOLUTION NO. RS2016-343**, continued

The purpose of this program is to bring together a series of partner programs and entities responsible for workforce development, educational, and other human resource programs to collaborate in the creation of a seamless customer-focused service delivery network that enhances access to the programs' services. Partners, programs, and providers will co-locate, coordinate, and integrate activities so that individuals seeking assistance will have access to information and services that lead to positive employment outcomes for individuals seeking services.

The term of the grant would be from July 1, 2016, through June 30, 2017.

**RESOLUTION NO. RS2016-344** (O'CONNELL, ALLEN & ELROD – This resolution would authorize Albany Road Real Estate Partners, LLC to construct, install, and maintain an aerial encroachment at 201 4<sup>th</sup> Avenue North. The encroachment consists of a double-faced illuminated projecting sign.

The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the sign, and is required to post a certificate of public liability insurance with the Metropolitan Clerk naming the Metropolitan Government as an insured party.

This proposal was approved by the Planning Commission on July 20, 2016.

**RESOLUTION NO. RS2016-345** (O'CONNELL, ALLEN & ELROD) – This resolution would authorize Hard Rock Cafe International (USA) Inc. to construct, install, and maintain an aerial encroachment at 108 2<sup>nd</sup> Avenue North. The encroachment consists of a double-faced illuminated projecting sign.

The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the sign, and is required to post a certificate of public liability insurance with the Metropolitan Clerk naming the Metropolitan Government as an insured party.

This proposal was approved by the Planning Commission on July 20, 2016.

**RESOLUTION NO. RS2016-346** (PRIDEMORE) – This resolution would authorize the Department of Law to compromise and settle an inverse condemnation claim of Ms. Sybil Spaulding against Metro in the amount of \$265,000. This settlement would be paid from the Metro Water Services (MWS) GSD Stormwater S/F FY13-B Capital Fund (#41113).

The Department of Water and Sewerage Services obtained a “Right-of-Entry Agreement” from Ms. Spaulding on July 14, 2014 to construct a concrete channel on her property at 1000 Gale Lane. This was to be part of the “Stormwater System Improvements for Clayton Avenue” project. MWS did not obtain an easement or pay any compensation for the land being taken. However, the agreement expressly reserved Ms. Spaulding’s rights to assert a claim for the value of any land taken or damages to her property.

The project consisted of the construction of a 12’ wide by 4’ deep rectangular open concrete channel along the natural streambed on her property. Construction began in January, 2015. Ms. Spaulding demanded that all construction work on her property stop on February 10, 2015, claiming that she did not agree with the magnitude of the work being performed.

Ms. Spaulding filed a lawsuit on April 9, 2015 for inverse condemnation and compensation for the value of the land taken and damages to the fair market value of her property. Metro responded with a countersuit for \$57,346 for breach of contract, detrimental reliance, and construction delay damages.

The amount being sought is based upon three factors -- the value of the land area actually taken, damages to the value of the remainder of her property, and fees paid for her attorney, appraisal, and engineering work.

Appraisals were performed by a real estate appraiser hired by Ms. Spaulding and a second appraiser hired by Metro. Spaulding’s appraiser estimated a value of \$82,000 for the land taken and \$317,700 in damages to the value of the remainder of her property, for a total of \$399,700. In addition, she claimed \$118,000 in fees, resulting in a total claim of \$517,700.

Metro’s appraiser determined a value of \$30,500 for the land taken and \$97,000 for the reduction in value of her remaining property, for a total of \$127,500. Ms. Spaulding’s appraiser based the estimate of lost value upon an assumption of lost potential for redevelopment as four single-family housing units.

Under Tennessee law, determining the fair market value of a property for condemnation purposes requires consideration of all capabilities of the property and all legitimate uses for which it is available and reasonably adaptable. The capability of the property to be developed for one or more particular uses may also be shown. The Spaulding property is zoned R8 and is

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**RESOLUTION NO. RS2016-346**, continued

also in an Urban Zoning Overlay District. Spaulding's experts opined that in its previous condition, her property size, road frontage, and zoning would have allowed subdividing into two lots with two residential dwellings on each lot – a measure similarly permitted under the UZO overlay. This development would also have required relocation of the stream or ditch on the property which they also assumed could be done. In its current condition, however, because of the construction of the concrete channel, Spaulding's experts opined that it is no longer feasible to develop the existing property into two lots with two residential units each. Thus, they argue, the project decreased the property value and marketability.

In addition to compensation for the value of the taken property and reduction in value of her remaining property, Ms. Spaulding would be entitled to reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees. She is willing to settle all claims for \$265,000 and the dismissal of Metro's counter-claim.

**RESOLUTION NO. RS2016-347** (SHULMAN) – This resolution would approve the election of three Notaries Public in accordance with state law.

– **BILLS ON SECOND READING** –

**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.

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 by the sponsor is anticipated to remedy this inconsistency.)

**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.

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

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 further include the Metro Planning Department in authorizing PILOT projects and would revise the program to determine qualifications and eligibility for such payments. Under these revised terms, MDHA would further 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.

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.

**BILL NO. BL2016-342** (PRIDEMORE, ALLEN, & OTHERS) – This ordinance would create a new grant program to assist the funding of new affordable housing developments. A new chapter would be added to the Metro Code of Laws (MCL) to enable these grants. This new Chapter 2.213 would be titled “Affordable and Workforce Housing Incentive Grants”.

“Affordable housing” is defined as housing that costs thirty percent (30%) or less than the estimated median household income for households earning sixty percent (60%) or less than the median household income in Davidson County. “Workforce housing” is defined as housing that costs thirty percent (30%) or less than the estimated median household income for households earning more than sixty percent (60%) and not in excess of one hundred twenty percent (120%) of the median household income in Davidson County.

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**BILL NO. BL2016-342**, continued

For rental developments, the amount of the incentive grant will be the difference between the average rent for an occupied unrestricted rental housing unit and the average rent for an occupied affordable or workforce house unit, multiplied by the number of units. The maximum term for an incentive grant for rental units would be fifteen (15) years.

For owner-occupied units, the amount of the grant would be a one-time payment of \$10,000 per unit for properties outside of the UZO and \$20,000 per unit for properties within the UZO or along a multimodal corridor designated in the Major and Collector Street Plan, excluding Expressways, Freeways, and Ramps. These units would be required to be maintained as for-sale affordable/workforce housing for thirty (30) years from the date of initial occupancy.

The amount of a grant to any one developer shall not exceed fifty percent (50%) of the difference between the annual post-development and pre-development real property ad valorem tax assessment for the calendar year for which the incentive grant is applicable.

Owners of existing rental housing developments would also be eligible for a grant if they convert current market-based units within the UZO to affordable or workforce housing units. Owners of existing affordable and/or workforce rental housing units would also be eligible for a grant if they agree to continue to maintain such units as affordable and/or workforce housing units. In no event would the amount of the annual grant be greater than twenty percent (20%) of the real property ad valorem tax assessment for the calendar year for which an incentive grant is applicable.

All grants awarded per this program would be on a reimbursement basis. Reimbursement requests would be submitted to the Department of Finance and the Mayor's Office of Economic Opportunity and Empowerment (OEOE).

Beginning with FY18, the annual amount of all current and previous grants awarded in this program would be capped at two million dollars (\$2,000,000). Any future adjustments to the amount of this cap would require Council approval by resolution.

The provisions of this new chapter would expire on October 1, 2018 unless extended by Council resolution. If this extension is not granted, no new incentive grants would be awarded after that date. However, no existing grant agreement in effect on that date would be terminated, except for lack of available funds.

An amendment is anticipated to address various minor corrections (*e.g.*, changing the reference in the first line of Section 2.213.060.A from "grantor" to "grantee"; *etc.*)

**BILL NO. BL2016-343** (A. DAVIS, ELROD, & OTHERS) – This ordinance would add a new chapter to the Metro Code of Laws (MCL). This new Chapter 13.18 would be titled “Management of Public Rights-of-Way for Make Ready Work” and would apply a so-called “One Touch Make Ready” (OTMR) approach for connections to utility poles.

As defined in the proposed ordinance, “Make Ready” means the transfer, relocation, rearrangement, or alteration of communications equipment, antenna, line, or facility to provide space to install new attachments. An “owner” is the person, corporation, or other entity who owns a utility pole or similar structure in the public rights-of-way on which facilities for the transmission of electricity or communications are located. A “pre-existing third party user” is the owner of pre-existing attachments to poles.

When an owner receives an application for a new attachment to one of their poles, this new MCL chapter would allow contractors approved by the owner (if required) to perform the make ready work. This would include transferring, relocating, rearranging, or altering the existing attachments of any pre-existing third party user to the extent necessary or appropriate to accommodate the new attachment.

However, if complex make ready work would be involved that could cause a customer outage, the party attaching new equipment to the poles (the “attacher”) would be required to provide at least 30 days’ prior written notice to the pre-existing third-party user. If the pre-existing third party user fails to transfer, relocate, rearrange, or alter any of its attachments within this 30 day period, the new attacher may perform the make ready work using contractors approved by the pole owner.

Nothing in this chapter would authorize an attacher to perform acts requiring an electric supply outage. Also, no attacher would be allowed to perform work on attachments located above the “Communication Worker Safety Zone” as defined in the national Electrical Safety Code, or on any electric supply facilities.

Within 30 days after completion of the make ready work, the attacher would be required to send written notice of the transfer, relocation, rearrangement, or alteration and an “As-Built Report” -- detailing the changes made to attachments -- to the applicable pre-existing third party and pole owner if requested. Upon receipt of these reports, the pre-existing third party user and pole owner may conduct a field inspection within 30 days, at the expense of the attacher.

If a transfer, relocation, rearrangement, or alteration fails to conform to the pole owner’s standards for clearance, separation, or other standards, the attacher would be notified in writing within this 30-day inspection window. The pre-existing third party user could elect to

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**BILL NO. BL2016-343**, continued

perform correction work itself and bill the attacher, or instruct the attacher to perform the needed corrections using a contractor approved by the pole owner if so required. Corrections by the attacher would be required to be completed within thirty 30 days of receipt of the written notice.

A variety of federal, state and local legislation applies to pole attachments and right-of-way regulation, as set forth in more detail below. Generally, it appears that a local ordinance can apply OTMR requirements to municipally-owned utility poles. Whether these same requirements can be applied to poles owned by other entities is unclear and is at the heart of litigation currently pending in Louisville, Kentucky filed by Bellsouth Telecommunications, LLC (AT&T). Additionally, adoption of OTMR may pose conflicts with existing contracts between the Nashville Electric Service, AT&T and others.

The Metropolitan Government of Nashville & Davidson County has broad authority to regulate use of its rights-of-way. Under state law, Metro Government is allowed to enact and enforce legislation governing the rules of access to its rights-of-way, which Metro has asserted in its Charter and Code. (*See, e.g.,* Metro Charter, section 2.01; and Metro Code of Laws, chapter 6.26). That authority extends to regulation of utility poles within the right-of-way.

But regulating the attachments to utility poles *within* those rights-of way is the subject of extensive federal and state regulation which, at least in some instances, preempts local legislation. The Federal Communications Commission (FCC) has the authority under federal legislation to regulate access to poles and has developed extensive regulations. Although states may “opt out” and assume individual responsibility for their own poles by certifying with the FCC that it does so, Tennessee has yet to submit any such certification.

However, even if a state does not “opt out” of federal regulation, the FCC has further stated that state and local governments may still regulate pole attachments, unless the regulation poses “a direct conflict with federal policy.” Proponents of BL2016-343 will likely maintain that the ordinance does not conflict with federal policies, but instead furthers these policies by facilitating efficient broadband development. Opponents will note the potential conflict with federal policy -- at least for privately-owned poles.

In its application to *municipally*-owned utility poles, the OTMR provisions of BL2016-343 do not appear to conflict with federal policy, namely because federal pole attachment regulations by their own terms don't apply to municipally-owned entities like NES. But FCC regulations *are* applicable to privately-owned poles, including poles owned by AT&T. (In Nashville, approximately 80% of poles are municipally-owned through NES.)

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**BILL NO. BL2016-343**, continued

Accordingly, to the extent BL2016-343 applies to privately-owned poles, it must be consistent with FCC regulations; and in at least two regards, BL2016-343 appears inconsistent. First, when rearrangements to pole attachments are necessary, FCC regulations allow pre-existing attachment users to make changes themselves, defaulting to outside contractors only if no action is taken for 60 days. But BL2016-343 would allow outside contractors to make such changes at the outset. Second, FCC regulations further require pole owners to provide 60 days' notice to telecommunications carriers *before* any modifications (such as attachment rearrangements) can occur. But BL2016-343 requires notice only within 30 days *after* the work is completed.

The Tennessee Valley Power Authority also exerts regulatory control over poles owned by NES, since NES is a TVA power distributor. But the Tennessee Attorney General has opined that the TVA's regulatory power does not preempt individual state's regulations "provided that the specific form of regulation adopted by the state does not affect either the distributor's rates for electric power or their ability to comply with their agreements with the TVA." The TVA has adopted cost regulations for pole attachments. But assuming the provisions of BL2016-343 incur no increased costs for the distributor (because the attaching party is required to pay all expenses), it would likely not be preempted by TVA regulatory authority.

A final area of conflict yet to be resolved stems from current contractual agreements between NES and private entities. If those contracts establish terms regarding pole access, attachment rearrangements, the entities authorized to do such work and/or the timing thereof – the parties to such contracts may assert that BL2016-343 violates the terms of their contracts. However, in most instances, use agreement contracts provide that the contracting parties must comply with all state and local regulations including, at least by implication, amended versions thereof. And the possibility of prompting contractual breach is generally not an impediment to a local government's authority to enact legislation. But to the extent BL2016-343 would apply to *private* pole owners such as AT&T, if abrogation of their contracts creates a conflict with FCC regulations (which, as set forth above, apply to privately-owned poles), the ordinance may not be enforceable.

Legislation that breaches, or results in the breach, of a contractual right can also prompt constitutional challenges pursuant to Fifth Amendment prohibitions against the taking of private property for public benefit without adequate compensation. But it is unlikely such constitutional claims would exist in this instance, for at least three reasons. First, the terms of BL2016-343 require the pole owner to be compensated and further require the attaching party to pay all make-ready costs. Second, no permanent deprivation of property appears to be envisioned under the OTMR approach -- merely temporary make-ready access (which is already contemplated under existing regulations). Finally, pre-existing attaching parties aren't necessarily guaranteed particular places upon poles to be claimed as "property" in such claims.

**BILL NO. BL2016-344** (O'CONNELL & HENDERSON) – This ordinance would approve a permit from the Parks Department to the Department of the Navy, giving them authority to land and take off aircraft on The Green during Marine Week.

Marine Week will be held September 6 – 12, 2016 and is an annual community outreach and recruiting event during which the Navy exhibits Marine Corps equipment and technologies and performs time-honored traditional demonstrations by the Marine Corps. These events would be free and available for all age groups.

**BILL NO. BL2016-345** (O'CONNELL, ALLEN, & ELROD) – This ordinance would abandon an existing water main and one fire hydrant and accept new water mains and four fire hydrants and any associated easements for property located at 1100 Charlotte Avenue.

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

**BILL NO. BL2016-346** (HAGAR, ALLEN, & ELROD) – This ordinance would abandon an existing sewer main and easement and accept new sewer main and easement for property located at 1104 Safety Harbor Cove.

This was approved by the Planning Commission on June 28, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-347** (SLEDGE, ALLEN, & ELROD) – This ordinance would abandon an existing sewer main and manholes and accept new sewer mains, manholes, water mains, fire hydrant assemblies and easements for properties located at 512, 514, 518, 520 Southgate Avenue and 1608 Pillow Street.

This was approved by the Planning Commission on July 6, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-348** (S. DAVIS, ALLEN, & ELROD) – This ordinance would abandon a portion of Alley No. 330 right-of-way from Cleveland Street northwardly to Alley #333, between Meridian Street and North 3<sup>rd</sup> Street. This closure has been requested by Barge Cauthen & Associates.

The easements for the right to enter, construct, operate, maintain, repair, rebuild, enlarge, and patrol existing or future utilities, including drainage facilities, together with their appurtenances, are being retained.

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

**– BILLS ON THIRD READING –**

**BILL NO. BL2016-309** (ALLEN, COLEMAN, & OTHERS) – The U.S. Supreme Court outlined when a sign regulation was based upon content and thus prompted 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 compliance with the Supreme Court’s decision.

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.

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 that a home occupation is being performed within a residence. As revised, the section would 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 in area, displaying the name and/or address of the owner -- may be permitted. As revised, 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, “artisan 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 [*sic*] 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 [*sic*] 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. An amendment by the sponsor correcting the reference to “artesian” distilleries 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.

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

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 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.

As amended, 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.

(continued on next page)

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

In addition, 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.

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. BL2016-337** (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.