METRO COUNCIL OFFICE

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: **September 6, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 8/31/16:

4% Reserve Fund	$36,290,632*
Metro Self Insured Liability Claims	$4,227,222
Judgments & Losses	$1,095,097
Schools Self Insured Liability Claims	$3,261,084
Self-Insured Property Loss Aggregate	$5,319,495
Employee Blanket Bond Claims	$648,450
Police Professional Liability Claims	$2,548,204
Death Benefit	$1,186,192

*Assumes unrealized estimated revenues in Fiscal Year 2017 of $29,304,656, and includes the $1,080,400 appropriation in Resolution No. RS2016-367.

– RESOLUTIONS ON PUBLIC HEARING –

RESOLUTION NO. RS2016-349 (ROBERTS) – This resolution would approve an exemption for Aldi, LP, located at 405 American Road, 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).

– BILLS ON PUBLIC HEARING –

BILL NO. BL2016-265 (M. JOHNSON, DOWELL, & OTHERS) – 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. BL2016-349 (ALLEN & WITHERS) – This ordinance would alter the distance for which written notice must be submitted prior to public hearings regarding design guidelines for the Metropolitan Historic Zoning Commission (MHZC). Prior to a public hearing, Metro Code section 17.40.720 requires that written notification be mailed to owners of the subject properties, as well as to property owners within prescribed distances, at least 21 days in advance. (See, also, section 17.40.410).

The current prescribed distance is within 600 feet of an historic overlay when providing notice of a public hearing regarding existing design guidelines. The MHZC wishes to change this prescribed distance to within 150 feet. The ordinance would amend Section 17.40.720 by adding a new subsection (B) reducing the prescribed distance.

The postage and administrative cost savings from this reduction would depend upon the density of the population living in the area between 150 and 600 feet of an historic overlay that is the subject of a public hearing. Presumably, the number of people who would require notification, and the costs involved, would both be substantially reduced.

Tennessee state law requires that design guidelines be based upon the Secretary of Interior's Standards. These design guidelines have the flexibility to allow the MHZC to make decisions on a property-by-property basis.

– RESOLUTIONS –

RESOLUTION NO. RS2016-338 (S. DAVIS) – This resolution would approve 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 was held for this resolution at the meeting on August 16, 2016. The resolution was then deferred by rule to the 9/6/16 Council meeting.

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. 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. RS2016-350 (COOPER, PRIDEMORE, & PARDUE) – This resolution would approve a ninth amendment to a grant from the Tennessee Emergency Management Agency (TEMA) to the Metropolitan Government for the reimbursement of expenses resulting from the May, 2010 flood. This grant is for the receipt of federal and state funds to reimburse Metro for flood repairs and the replacement of equipment and facilities.

This amendment would decrease the amount of the grant by $294,819.31 for a new total of $66,127,589.61. The required amount of the local cash match is also decreased by $15,516.90 for a new total of $3,480,399.12. The end date of the grant would remain April 29, 2020.

RESOLUTION NO. RS2016-351 (PARDUE, COOPER, & PRIDEMORE) – This resolution would approve an Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of $351,999 from the Tennessee Department of Finance and Administration to the Davidson County Sheriff's Office. No local cash match would be required. This grant would be used to create and fund a Pre-Trial Risk Assessment Coordinator for three years.

This federal grant program allows for funding of a broad range of activities to prevent and control crime based upon local needs. The term of this grant program period is from September 15, 2016 through June 30, 2019.

RESOLUTION NO. RS2016-352 (KINDALL, PRIDEMORE, & OTHERS) – This resolution would approve a grant in the amount of $10,000 from the Nashville Predators Foundation in conjunction with the Nashville Youth Hockey League to the Metropolitan Board of Parks and Recreation to provide funding for two new scoreboards for Rink A at the Centennial Sportsplex. A local cash match of $1,200 would be required.

A quote from the Electro-Mech Scoreboard Company to build these two scoreboards for $11,207 attached to the resolution was good only through August 26, 2016. The Parks Department has since received an updated quote for the same price s good through November 26, 2016.

The Metro Parks Board approved acceptance of the grant on August 8, 2016.

RESOLUTION NO. RS2016-353 (COOPER, PRIDEMORE, & HENDERSON) – This resolution would approve a grant in the amount of $42,500 from the Nashville Public Library Foundation to the Nashville Public Library to fund a part-time Volunteer Services staff position to initiate partnerships with local colleges, universities, and the community to recruit and place volunteers throughout the library system.

The purpose of this position is to help offset staff reductions in the library system through the use of college students as volunteers. In FY2016, 599 individuals provided 27,040 volunteer hours in the libraries. The term of this new grant would be from July 1, 2016 through June 30, 2017.

RESOLUTION NO. RS2016-354 (COOPER, PRIDEMORE, & HENDERSON) – This resolution would approve Amendment #9 to a grant from Vanderbilt University to the Board of Parks and Recreation to collaborate on the Growing Right Onto Wellness (GROW) program. This initiative is a behavioral intervention program to prevent obesity in preschoolers. The grant funds are used to provide personnel to participate on the study steering committee and to run the intervention, as well as to cover transportation costs and materials.

This amendment would increase the amount of the grant by $17,359 for year seven, for a new total of $883,556.67. No local cash match would be required.

RESOLUTION NO. RS2016-355 (COOPER, PRIDEMORE, & OTHERS) – This resolution would approve a grant in the amount of $375,887 from the Tennessee Department of Labor and Workforce Development to the Nashville Career Advancement Center (NCAC) to provide education, training and support services to eligible adults, youth, and dislocated workers with barriers to employment. This federal pass-through grant would provide operating funding for the NCAC.

The grant consists of $338,299 in program funds and $37,588 in administrative funds. The term of the grant would be from July 1, 2016, through June 30, 2018.

RESOLUTION NO. RS2016-356 (COOPER, PRIDEMORE, & OTHERS) – This resolution would approve a federal pass-through grant in the amount of $217,784 from the Tennessee Department of Labor and Workforce Development to the Nashville Career Advancement Center (NCAC) to establish programs meant to prepare eligible adult recipients for employment. The grant consists of $196,006 in program funds and $21,778 in administrative funds.

The term of the grant would be from July 1, 2016, through June 30, 2018. There would be no required local cash match for this grant.

RESOLUTION NO. RS2016-357 (COOPER, PRIDEMORE & MURPHY) – This resolution would approve a federal pass-through grant in the amount of $30,000 from the Tennessee Department of Labor and Workforce Development to the Nashville Career Advancement Center (NCAC) to use incentive funds to establish programs meant to prepare eligible service recipients for employment. The grant would consist of $27,000 in program funds and $3,000 in administrative funds.

The term of the grant would be from July 15, 2016, through June 30, 2017. There would be no required local cash match for this grant.

RESOLUTION NO. RS2016-358 (COOPER, PRIDEMORE, & MURPHY) – This resolution would approve a grant in the amount of $25,000 from the Tennessee Department of Labor and Workforce Development to the Nashville Career Advancement Center (NCAC) for the classroom training of 17 apprentices by Heat & Frost Insulators.

No local cash match would be required. The term of the grant is from May 27, 2016 through January 31, 2017.

RESOLUTION NO. RS2016-359 (GILMORE, PRIDEMORE, & COOPER) – This resolution would approve the fourth amendment to a grant from the U.S. Environmental Protection Agency (EPA) to the Metropolitan Board of Health to fund Metro's air quality protection program to achieve established ambient air quality standards. Under Chapter 10.56 of the Metro Code, the Metro Health Department is responsible for air quality monitoring within Nashville and Davidson County on behalf of the EPA.

This amendment would increase the amount of the funds awarded by $257,231 for a new grant total of $843,006. There would be no change to the originally required local cash match of $588,119.

RESOLUTION NO. RS2016-360 (COOPER, PRIDEMORE, & OTHERS) – This resolution would apply for a State Industrial Access Program grant on behalf of Centurion Products, Inc. The grant would be used to develop a state industrial access road for Centurion, relocating from 50 Van Buren Street to the Cockrill Bend Subdivision.

The Tennessee Department of Transportation (TDOT) would design, bid, and build the roadway at no cost to Metro. Metro would only accept improvements. This roadway would be built primarily within the existing Tufting Court easement within the Subdivision. However, it would require up to an additional 20 feet of proposed right-of-way east of the easement to accommodate a shift of the new road.

This road would consist of two 12-foot lanes and two four-foot gravel shoulders with limits running for approximately 1,000 feet from Cockrill Bend Boulevard, terminating with a cul-de-sac.

If approved, the grant proceeds would be $953,000 with no required local cash match. Centurion has agreed to participate in the cost of the additional right-of-way. They would also be making a capital investment of $12 million at this location, bringing their workforce of 200 with an expected increase of 50 new jobs by September 1, 2017.

RESOLUTION NO. RS2016-361 (COOPER, PRIDEMORE, & OTHERS) – This resolution would approve an intergovernmental agreement between the Tennessee Department of Transportation (TDOT) and the Metro Department of Public Works. TDOT has mandated Metro to construct the Railroad Crossing Approaches Project at Hermitage Avenue.

The estimated cost for the construction and installation of this signal equipment is $143,209. TDOT will reimburse 100% of Metro's costs for this project from their programmed safety funds for the improvement of various railroad crossings throughout Davidson County.

RESOLUTION NO. RS2016-362 THROUGH RS2016-365 – These four resolutions would authorize applicants to construct, install, and maintain aerial encroachments.

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

The details are as follows:

- **RS2016-362 (O'CONNELL, ALLEN, & ELROD)** – Pappas Properties, LLC for individual apartment unit balconies and awnings for property located at 600 11th Avenue North. This proposal was approved by the Planning Commission on August 11, 2016.

- **RS2016-363 (O'CONNELL, ALLEN, & ELROD)** – Angry Husk Holdings, LLC for a 32" high x 60" wide double faced illuminated projecting sign for property located at 115 2nd Avenue North. This proposal was approved by the Planning Commission on July 29, 2016.

- **RS2016-364 (O'CONNELL, ALLEN, & ELROD)** – Good Times, LLC for a 11.5' high x 4' wide double faced illuminated projecting sign for property located at 421 Broadway. This proposal was approved by the Planning Commission on August 5, 2016.

- **RS2016-365 (O'CONNELL, ALLEN, & ELROD)** – Sky House Nashville, LLC for a marquis sign at 17', 11" above finished grade encroaching approximately 4' into the public right-of-way at 111 17th Avenue South. This proposal was approved by the Planning Commission on August 19, 2016.

RESOLUTION NO. RS2016-366 (COOPER & PRIDEMORE) – This resolution would authorize the Department of Law to compromise and settle the property damage claim of Lee Dodson and Daniel Cartier against the Metropolitan Government for the amount of $30,535.42. A sewer backup occurred inside their home on July 7, 2016. An investigation of the incident revealed that it had been almost ten years since the sewer line had last been inspected. The Metropolitan Government shares responsibilities with owners for sewer service line maintenance, though only inside the public right of way or easement. Metro Code §15.40.050.

Hannan Restoration, LLC provided an estimate of $15,573.31 for clean-up and restoration inside the home. In addition, the total damage to the furnishings, appliances and other personalty inside the residence has been determined to be $14,962.11. This gives a total value for the property damage resulting from the sewer backup of $30,535.42.

The Department of Law recommends settling this claim for the full amount. This settlement would be paid out of the Self-Insured Liability Fund.

RESOLUTION NO. RS2016-367 (COOPER, PRIDEMORE, & OTHERS) – This resolution would appropriate $1,080,400 from the General Fund Reserve Fund (4% Fund) to the Police Department. This would be used to purchase body armor and helmets for police officers.

The Four Percent Fund may only be used for the purchase of equipment and repairs to buildings. The balance in the General Fund Reserve Fund prior to the appropriation in this resolution was $37,371,032. This includes unrealized revenue for FY17 in the amount of $29,304,656. The resolution provides in part: "The Director of Finance may schedule acquisitions authorized herein to ensure an appropriate balance in the Fund."

RESOLUTION NO. RS2016-369 (SHULMAN) – This resolution would approve the election of Notaries Public in accordance with state law.

– BILLS ON SECOND READING –

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.

An amendment by the sponsors is anticipated which would clarify that imposition of the fine ($50) would be through a court of competent jurisdiction, would apply to each day of operation without a permit, that the three-year waiting period would commence from the date of the court's finding, and that only properties that have paid all taxes due shall be eligible to apply for a permit.

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

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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 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.

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BILL NO. BL2016-343, continued

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 *ar*e applicable to privately-owned poles, including poles owned by AT&T. (In Nashville, approximately 80% of poles are municipally-owned through NES.)

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 -- when asked to orchestrate make-ready arrangements and are paid to do so -- 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. (Note, however, that these regulations do not apply when a new attacher arranges the make-ready

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work. *See*, FCC Rule 1.403. As of 2011, the FCC allows new attachers to orchestrate make-ready work and to provide notice to existing attachers. It does not *require* pole owners to play this role.)

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, may 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 NOS. BL2016-373, BL2016-374 and BL2016-375 (MENDES, SLEDGE, & OTHERS) These three ordinances would provide three separate revisions to Section 6.28.030 of the Metro Code of Laws regarding operation of Short-Term Rental Properties (STRP) within Davidson County. The details of each are as follows:

BL2016-373 - Paragraph C of Section 6.28.030 states: "No person or entity shall operate a STRP or advertise a residential property for use as a STRP without the owner of the property first having obtained a STRP permit issued by the department of codes administration."

This ordinance would add a requirement to post STRP permit numbers by adding a sentence stating: "Any advertising or description of a STRP on any internet website must prominently display the permit number for the STRP unit."

BILL NO. BL2016-374 Paragraph D of Section 6.28.030 specifies what information must be provided as part of the application process to operate a STRP.

The current phrasing of the initial sentence states: "The STRP permit application shall include the following information:". This ordinance would revise this sentence to require a verified statement, stating: "The STRP permit application shall verify by affidavit that all of the information being provided is true and accurate and the application shall include the following information:".

Additionally, a new subsection 4 would be added to Paragraph D stating: "A statement that that the applicant has confirmed that operating the proposed STRP would not violate any Home Owners Association agreement or bylaws, Condominium Agreement, Covenants, Codes and Restrictions or any other agreement governing and limiting the use of the proposed STRP property."

BILL NO. BL2016-375 Paragraph K of Section 6.28.030 currently states: "The maximum number of occupants permitted on a STRP property at any one time shall not exceed more than twice the number of sleeping rooms plus four."

This ordinance would replace this sentence to state: "The maximum number of occupants permitted on a STRP property at any one time shall not exceed the lesser of: (1) twice the number of sleeping rooms plus four; and (2) the maximum capacity allowed under Title 16 and 17 of the Metropolitan Code."

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BILL NO. BL2016-375, continued

Under Metro Code 17.04.060, the definition of "family" limits to three (3) the number of unrelated individuals that may occupy a single dwelling unit. The Metro Codes Department relies upon this section and Section 16.24.400 to enforce occupancy limits. This ordinance would similarly limit STRP occupancy -- essentially restricting large gatherings of unrelated STRP occupants.

BILL NO. BL2016-377 (GLOVER) – Title 13 of the Metro Code of Laws (MCL) lists the requirements governing "Streets, Sidewalks, and Public Places". This ordinance would add a new Chapter 13.21 concerning "Maintenance and Work by Utility Companies".

This chapter would require utility companies to provide advance written notice to property owners within six hundred (600) feet of any utility work or maintenance efforts requiring either a disruption to vehicular or pedestrian traffic flow in excess of 48 hours, or any vegetation trimming. This would apply to any regularly scheduled work or maintenance. Such notice would be required at least 48 hours before the traffic disruption or vegetation trimming would occur.

In the case where work of this type is required for emergency repairs, the advance notice requirement would be waived. Instead, notice would be required to be given as soon as practicable to the affected property owners, setting forth the work being undertaken and the purposes for such emergency repairs.

The written notice required per this chapter would include the purpose of the work, a description of the work to be performed, the expected beginning date and duration of the work, and contact information for the person who can provide information regarding the project and who can address questions or comments from the public.

Failure to provide the notice required by this chapter would result in a fine of $50 for each offense, with each day of a violation constituting a separate offense.

BILL NO. BL2016-378 (ROSENBERG, PULLEY, & O'CONNELL) – Section 39-17-418 of the Tennessee Code of Laws Annotated (TCA) lists the penalties that would apply for simple possession or casual exchange of a controlled substance, which would include marijuana under current state and federal law. Paragraph (b) of this section states, "It is an offense for a person to distribute a small amount of marijuana not in excess of one-half (1/2) ounce." Paragraph (c) defines a violation of this section as a Class A misdemeanor.

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BILL NO. BL2016-378, continued

This ordinance would add a new section to the Metro Code of Laws (MCL). For a person who possesses or casually exchanges a small amount of marijuana not in excess of one-half (1/2) ounce, Section 11.32.030 would call for the person to be issued a citation for a civil penalty of fifty dollars ($50) for each violation. The court would have the authority to suspend the civil penalty if the person performs community service up to ten (10) hours.

In cases such as this where there are Metro and TCA laws covering the same offense, Metro police officers would typically maintain the discretion to decide which law to apply in each individual case. It would still be possible for an officer to charge the violator under state law, with the possible misdemeanor penalty. However, under this ordinance, the officer would now have the discretion to issue a Metro citation with a civil penalty rather than proceed with a criminal arrest.

Municipalities in Tennessee may not adopt ordinances that contravene state law. However, proponents of this ordinance may reasonably contend that it does not contravene Tennessee's current prohibition against marijuana possession.

There are other instances wherein the Metro Code authorizes the issuance of citations for actions deemed criminal offenses under state law. For example, Metro Code §11.16.050 prohibits drug paraphernalia with language that mirrors state statute (Tenn. Code Ann. §39-17-425, *et seq*,) but imposes a lesser penalty. Similarly, litter is an offence under both the Metro (Chapter 10.24) and Tennessee Code Annotated (39-14-501, *et seq*.)

Other cities within the United States have adopted marijuana ordinances where corresponding state law applies a more severe statutory penalty. For example, Philadelphia Code Chapter 10-2100 states that possession of 30 grams or less of marijuana is subject to a $25 fine; whereas Pennsylvania Statute 35 P.S. § 780-113 (a)(31) & (g) provides that possession of 30 grams or less of marijuana is a misdemeanor punishable by imprisonment of up to 30 days and a fine of up to $500. Other examples include Orlando, Florida (Orlando Code Chapter 1, Section 43.95 versus Florida Statute: Fla. Stat. Ann. § 893.13(6)(b)); New Orleans, Louisiana (New Orleans Code Sec. 54-505 versus Louisiana Statute: La. Rev. Stat. § 40:966); Milwaukee, Wisconsin (Milwaukee Ordinance Sec. 106-38 versus Wisconsin Statute: Win. Stat. §961.41); St. Louis, Missouri (St. Louis Ordinance No. 69429 versus Missouri statute, § 195.202 R.S. Mo. and §579.015 R.S. Mo.); Chicago, Illinois (Chicago Code of Ordinances Sec. 7-24-099 versus Illinois statute 720 ILCS 550/4); Grand Rapids, Michigan (Grand Rapids, Title XVIII, Sec. 292 versus Michigan Statute: MCLS § 333.7403); and Toledo, Ohio (Toledo Code of Ordinances Sec. 513.02: versus Ohio Statute Ohio Rev. Code Ann. 2925.11(C)(3)(a). But note that this last

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BILL NO. BL2016-378, continued

ordinance was challenged by the Ohio Attorney General and parts of the ordinance were found unconstitutional, based upon a specific provision in the Ohio Constitution that states that cities may not contravene state law.

Marijuana possession remains illegal under the federal Controlled Substances Act and Tennessee law (although federal authorities have, by and large, ceded control and enforcement of marijuana prohibitions to the states. *See*, Robert A. Mikos, *Marijuana Localism*, Case Western Reserve Law Review, vol. 65, p. 719 (2015); Vanderbilt Public Law Research Paper No. 15-18). If passed, this ordinance would not legalize marijuana possession but instead provide a civil citation option within the discretion of the police officer.

An amendment is anticipated which will clarify that police officers have the discretion to issue a civil citation rather than requiring that an officer "shall" do so, and which will further eliminate references to "casual exchange" which, though present within the state legislation, is not specifically defined therein.

BILL NO. BL2016-380 (GLOVER) – This ordinance would authorize the acquisition of a 20' x 40' easement by negotiation or condemnation on the property at Seven Points Circle to permit the installation of a Sewer Odor Control Station. The estimated acquisition cost for the easement necessary for this project has not yet been determined.

This was approved by the Planning Commission on July 25, 2016.

– BILLS ON THIRD READING –

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.

This ordinance reflects an attempt to address these housing disparities. In 1935, the Tennessee General Assembly delegated to counties the power to enact zoning restrictions governing the use of land under the jurisdiction of the county. Tenn.Code Ann. §13-7-101 *et seq* grants "broad zoning power" to local legislative bodies, and this ordinance is an amendment to Nashville's zoning code under Title 17.

The new Section 17.40.780 of the ordinance 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

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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

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.

A Second Substitute by the sponsors is anticipated which will (*a*) allow adjustments in the event the funding cap is exceeded, (*b*) extend to ½ mile the in lieu construction options for developments that are not on multimodal corridors, (*c*) formally recognize establishment of a Housing Incentive Fund, (*d*) establish a December 31, 2018 expiration or "sunset" clause, (*e*) apply an effective date of October 1, 2016, (f) adopt recommendations from the Planning Commission, and apply other minor housekeeping changes.

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.

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BILL NO. BL2016-334, continued

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.

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

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BILL NO. BL2016-342, continued

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 (a) authorize the director of finance to take corrective action when grant payments exceed maximum amounts allowed, (b) allow the OEOE to procure services of a third party administrator, (c) provide for Council approval of grant payments by resolution, (d) establish overpayment reimbursement requirements, (e) specify that the current grants cap consists of $2 million *plus* the "in lieu of" fees collected in the previous fiscal year, and (f) other minor revisions.

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 3rd 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.