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 20, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 9/14/16:

4% Reserve Fund	$36,286,632*
Metro Self Insured Liability Claims	$4,206,087
Judgments & Losses	$2,504,472
Schools Self Insured Liability Claims	$3,245,627
Self-Insured Property Loss Aggregate	$5,240,212
Employee Blanket Bond Claims	$647,935
Police Professional Liability Claims	$2,548,274
Death Benefit	$1,386,225

*Assumes unrealized estimated revenues in Fiscal Year 2017 of $28,872,673.

– RESOLUTIONS –

RESOLUTION NO. RS2016-371 (O'CONNELL, COOPER, & OTHERS) – This resolution would authorize the Director of Public Property Administration to purchase a portion of real property on 1711 and 1713 Jo Johnston Avenue for the use and benefit of the Metro Nashville Public Schools. Metro holds an option to purchase this tract of approximately 0.42 acres for the fee simple price of $693,000. This property would be used for parking for the MLK Magnet School and is included in the MLK construction project.

This purchase has been approved by the Metro Board of Education. It was also approved by the Planning Commission on September 6, 2016.

RESOLUTION NO. RS2016-372 (COOPER) – This resolution would approve the fifth amendment to a grant from the Tennessee Department of Human Services to the Davidson County Juvenile Court to establish and enforce federal and state mandated child support guidelines concerning children born out of wedlock. This grant is used to fund part of the Juvenile Court referee salaries for the purpose of hearing child support cases and paternity hearings on an expedited basis.

This amendment would increase the amount of the grant by $91,235 for a new grant total of $3,960,489.10. There is also a required increase of $47,000 in the local cash match for a new total of $2,040,252.90. There would be no other changes to the terms of the grant.

RESOLUTION NO. RS2016-373 (PARDUE, COOPER, & ALLEN) – This resolution would approve an amendment to a lease agreement between the Metropolitan Government and Southern Land Commercial Construction, LLC for a portion of the fire hall property located at 2025 Richard Jones Road in Green Hills. Southern Land currently leases the 6,500 square foot existing storage building and surrounding property to use as a construction office/storage facility and parking area while the company's new high-rise mixed-use development is being constructed at the corner of Hillsboro Pike and Richard Jones Road. The original term of the lease was from the date of final Council approval through December 31, 2015. However, this may be renewed on a month-to-month basis after that.

Southern Land was to pay a total rent amount of $65,640 during the first year of the lease term. Southern Land may make improvements to the property subject to Metro's reasonable approval. All improvements were to revert to Metro at the end of the lease term. Southern Land

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RESOLUTION NO. RS2016-373, continued

is responsible for all maintenance costs associated with the property. The lease agreement included the standard insurance and indemnification requirements typically found in such Metro leases.

Amendments to this lease may be approved by resolution of the Council receiving 21 affirmative votes. The amendment now under consideration would provide that the permitted use, as set forth in the lease, shall include exclusive use of all of the real property and improvements on the leased property. The annual rental would also be increased to $82,584. The termination date of the lease would also be extended to March 31, 2018.

RESOLUTION NO. RS2016-374 (COOPER, PARDUE, & HURT) – This resolution would approve an annual grant in the amount of $154,600 from the Tennessee Department of Transportation (TDOT) to the Davidson County Sheriff's Office for litter pick-up along roads and highways as well as providing litter prevention education. These grant funds would be used to fund a program in place for many years that uses misdemeanor offenders under the custody of the Sheriff's Office to pick up roadside litter.

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

RESOLUTION NO. RS2016-375 (COOPER & PARDUE) – This resolution would authorize the Mayor to execute a letter to the Tennessee Emergency Management Agency (TEMA) confirming acceptance of a Homeland Security Grant Program award. Davidson County has been approved for a grant in the amount of $149,270 from TEMA to the Office of Emergency Management (OEM) for Homeland Security Preparedness activities. This would be part of the Homeland Security District 5 award of $694,984 for seven counties in Tennessee.

These federal pass-through funds would be used to build capabilities for core homeland security assistance at the State and local levels through planning, equipment, training, and exercise activities. At least 25% of the funds would be dedicated towards law enforcement terrorism prevention-oriented activities.

No local cash match would be required.

RESOLUTION NO. RS2016-376 (PARDUE & SHULMAN) – This resolution would resolve a conflict between language in the Tennessee Code Annotated (TCA) and Resolution No. R90-1136 that created the Community Corrections Advisory Board for Davidson County. Section 2 of the resolution required the Board member positions to include a state probation officer nominated by the Commissioner of the Department of Corrections and a state parole officer nominated by the Executive Director of the Board of Paroles.

However, TCA 40-36-201(a)(1)(F) which authorized the creation of this Board states that "two state probation and parole officers assigned to work in the county" are to be "nominated by the Department of Correction and confirmed by the county legislative body."

The resolution now under consideration would resolve this conflict by amending the original resolution to match the Board member requirements as shown in the TCA.

RESOLUTION NO. RS2016-378 (COOPER & ALLEN) – This resolution would approve a Memorandum of Agreement (MOA) between the Metropolitan Historical and Historic Zoning Commissions and Access Fiber Group, Inc. (AFG). The State Historic Preservation Office of the Tennessee Historical Commission (THC) reviewed the request to construct Distributed Antenna System Nodes in various areas of Davidson County per Section 106 of the National Historic Preservation Act.

This review was necessary because some of these nodes would be constructed in historic areas of downtown Nashville. The THC determined that the proposed project would not adversely affect any property that is eligible for listing in the National Register of Historic Places. However, the THC does require a one-time monetary contribution of $2,000, designated to purchase an interpretive historical marker at Fort Nashborough. It also requires the commission of an economic impact study evaluating historic preservation policies and activities on the Metro Nashville economy.

AFG has agreed to the terms of this MOA. Within six (6) months of the execution of this agreement, AFG would commission an economic impact study on historic properties in Nashville. The scope of work for the study is listed in Exhibit A of the resolution. The specific properties are listed in Exhibit B. A draft copy of the study must be provided within ten (10) months of the execution of the agreement. Submittal of the final version would be required within twelve (12) months following execution.

RESOLUTION NO. RS2016-379 (O'CONNELL, ALLEN, & ELROD) – This resolution would authorize RSF Investors, LLC, dba Rippys Bar & Grill, to construct, install, and maintain an aerial encroachment at 419 Broadway. The encroachment would consist of two double-faced, illuminated, projecting signs encroaching the public right-of-way. The signs would be 16' tall, 5' wide, and 18" thick, projecting a total of 6' from the wall.

The applicant must indemnify the Metropolitan Government from all claims in connection with the installation of the signs, 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 August 4, 2016.

RESOLUTION NO. RS2016-380 (WEINER) – This resolution is in response to stakeholder meetings held during deliberation of Ordinance No. BL2016-343, currently under consideration on third reading.

Google Fiber, AT&T, Comcast, NES and Metro Law representatives met on August 24, 2016 to discuss the "One Touch Make Ready" legislation and related rules being proposed. No resolution resulted from the meeting. Moreover, if BL2016-343 is approved on third reading, at least one party has indicated the intent to proceed with litigation.

This resolution would require the stakeholders to meet in an effort to produce a memorandum of understanding (MOU) that would substantially eliminate the current backlog in make-ready work. This MOU would require the stakeholders to work to reduce initial permitting time and eliminate unnecessary permitting requirements. NES and Metro Public Works would coordinate the timing for necessary permitting to streamline the process for broadband deployment.

The MOU would further require that all stakeholders meet once per week in an effort to improve coordination and planning for all attachers. In addition, the MOU would require the stakeholders to provide timely funding for the performance of make-ready work by existing attachers to secure and allocate labor resources and prevent delays.

The projected goal would be for providers in a high-volume project to complete required make-ready work on an average of 125 poles per week. Any provider who fails to satisfy the work within this timeline would be liable to the provider requesting such make-ready work for a penalty fee of $500 per incomplete pole up to the 125-pole weekly average. Theoretically, this could result in a penalty each month as high as $62,500.

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Finally, the MOU would require the stakeholders to retain appropriate project management and sufficient work crews to perform the work according to the standards of the MOU. The MOU would set the terms and conditions under which compensation would be due to an attacher for unreasonable and repeated failures to complete make-ready work in a timely fashion.

It is arguable that Metro Council does not have the legal authority to control how private companies address one another, much less mandate that they meet. Initiating a requirement making one private company liable to pay a penalty to another company is likewise problematic. It is anticipated therefore that a substitute resolution will be offered.

– BILLS ON SECOND READING –

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

Until recently, section 6.26.030.B.5 of the Metro Code of Laws (MCL) provided a unique process for approving fiber optic communications services franchises, including a "full public proceeding" in which the grantee's "legal, character, financial, technical and other qualifications" are reviewed. Pursuant to ordinance No. BL2016-310 adopted August 3, 2016, that process has now been altered to allow the applicant submits a certified report attesting to its ability to perform. The Council office is advised that TN Backhaul Networks, LLC wishes to proceed under this new provision and it is anticipated that the report and an amendment will be submitted in advance of the Council meeting.

Section 6.26.240 of the MCL currently defines 5% of gross revenues as the required amount of compensation that is to be paid to Metro for fiber optic communications service franchises. However, the franchise agreement under consideration recognizes that this requirement may be changed in the future. If that happens, TN Backhaul Networks, LLC agrees they shall thereafter pay the new fee so specified.

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

This application was originally scheduled for consideration by the Planning Commission at their meeting in August. However, it has now been deferred indefinitely by the Commission.

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

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BILL NO. BL2016-336, continued

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

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

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

It is anticipated that the sponsor will defer second reading of this ordinance.

BILL NO. BL2016-375 (MENDES, SLEDGE, & O'CONNELL) This ordinance would revise Section 6.28.030 of the Metro Code of Laws regarding operation of Short-Term Rental Properties (STRP) within Davidson County. 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.

It is anticipated that the sponsor will defer second reading of this ordinance.

BILL NO. BL2016-381 (ALLEN) – This ordinance is the first of two under consideration that would comprehensively revise Section 6.28.030 of the Metro Code of Laws (MCL) concerning short-term rental properties (STRP). A summary of these changes is as follows:

1. Section D currently lists the information that must be provided as part of an STRP permit application. This would be changed to specify that applications would only be valid for sixty (60) calendar days from the date filed and would expire if not completed within that time.

2. Section D.3. currently requires proof of written notification to any neighboring property owner(s) prior to filing the application. A sentence would be added to specify that this proof of notification shall be a signature from the adjacent property owner or a receipt of U.S. registered mail.

3. A new paragraph would be added to Section D. This would add a new requirement for two documents proving owner occupation when applying for an owner-occupied permit. Acceptable documentation would include a Tennessee Driver's license, Davidson County voter registration card, bank statement, or a U.S. passport, each showing the owner's name and address matching that of the property.

4. Section F currently requires all STRP occupants to abide by all applicable noise restrictions. This would be expanded to require adherence to all regulations regarding the public peace and welfare.

5. Section H currently specifies that no recreational vehicles, buses, or trailers shall be visible on the street or property in conjunction with the STRP use. This would be expanded by requiring parking to be provided as required by MCL Section 17.20.030, "Parking Requirements Established". (Current commercial use provisions under §17.16.070.U for vehicular rental/leasing state in part: "No…recreational vehicles…shall be rented or leased from the property.")

6. Section N currently specifies that STRP permits shall expire three hundred sixty-five (365) days after being issued. These can be renewed by paying a fifty dollar ($50) renewal fee to the Codes Department. This would be changed to specify these permits would expire if not renewed prior to expiration. If no complaints have been documented by Metro Codes, Police, or Public Works, permit renewal is still possible. However, it would be required to submit proof of payment of taxes, and an affidavit of continued compliance by mail, on-line, or in person to the Codes Department. A grace period of

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BILL NO. BL2016-381, continued

thirty (30) calendar days may be allowed for properties that have no complaints by appealing the Board of Zoning Appeals (BZA) if the applicant can reasonably explain the delay. If complaints have been documented, no grace period would be allowed.

7. Section Q currently requires that only one permit shall be issued per lot for single- and two-family homes. This would be expanded to included triplexes or quadplexes.

8. Paragraph R.1 currently requires the Codes Department to notify the permit holder in writing upon the filing of three or more complaints within a calendar year regarding an STRP permit. This requirement would be revised to require such notification after a single complaint.

9. Paragraph R.2 currently states that an STRP permit may be revoked if the Codes Department determines that STRP violations have occurred. This would be revised to specify that STRP permits shall (not may) be revoked if the Zoning Administrator determines that three STRP violations have occurred within a 12-month period, based on documented evidence.

BILL NO. BL2016-382 (MENDES & SLEDGE) – This ordinance is the second of two under consideration proposing several changes to Section 6.28.030 of the Metro Code of Laws (MCL) concerning short-term rental properties (STRP). A summary of these changes is as follows:

Section Q currently requires that no more than three percent (3%) of the single-family or two-family residential units within each census tract shall be permitted as non-owner-occupied short-term rental use as determined by the zoning administrator. This ordinance would define three (3) new types of permits, as follows:

1. Type 1 (Owner-Occupied) – A Type 1 permit would only be available for an owner-occupied STRP.

2. Type 2 (Not Owner-Occupied) – A Type 2 permit would only be available for units that are: (i) single-family, duplex, or non-conforming triplex or quadplex in residential zoning districts; and (ii) non owner-occupied.

3. Type 3 (Not Owner-Occupied Multifamily) – A Type 3 permit would be available for units that are: (i) multifamily apartments or condominiums; and (ii) not owner-occupied.

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BILL NO. BL2016-382, continued

No more than one percent (1%) of units eligible for Type 2 status within each census tract would be permitted as a Type 2 STRP unit. Also, no more than one percent (1%) of units eligible for Type 3 status within each census tract would be permitted as a Type 3 STRP unit. However, any Type 2 or Type 3 STRP units with a valid permit as of September 30, 2016 would be able to continue to have their permit renewed until such time as there is any change in ownership of the STRP.

Section N currently specifies that STRP permits shall expire three hundred sixty-five (365) days after being issued. These can be renewed by paying a fifty dollar ($50) renewal fee to the Codes Department. This would be changed to specify that the Metro Codes Department may promulgate regulations that would allow a renewal application to be submitted by mail, online, or in person for STRP units that have received no documented complaints to Metro Codes, Police, or Public Works during the most recent permit period. An affidavit would be required, providing all information required under Part D of this Section and confirming that the STRP remains in full compliance with applicable laws.

For such units with no documented complaints, a 30-day grace period for renewal may be allowed. The Board of Zoning Appeal (BZA) may allow renewal upon a showing by the owner of a reasonable explanation other than neglect or mistake for the delay. For units with documented complaints, no such grace period would be allowed. After full resolution of all documented complaints, the permit may be renewed.

BILL NO. BL2016-383 (O'CONNELL, GILMORE, & OTHERS) – Chapter 7.08 of the Metro Code of Laws (MCL) regulates beer and alcoholic beverages of less than five percent. Section 7.08.010 currently defines "School" as "an institution, including kindergarten, where regular classes are conducted under the supervision of a teacher or instructor, including schools or colleges where specialized subjects are taught to students of all ages. Such term shall include vocational, medical, law, art, cosmetology, and other institutions where similar special subjects are taught; provided, however, mortuary colleges shall not be included in such term."

References to schools appear throughout Chapter 7.08, particularly under section 7.08.090 addressing the location restrictions for beer permit applicants. More specifically, the MCL prevents a beer permit from being issued to an establishment located within 100 feet of a school, among other restrictions, presumably because of concerns regarding proximity of beer-selling establishments to minors.

The ordinance under consideration would revise this language by defining a "school" as: "a public or private daycare, preschool, kindergarten, elementary, middle, or high school", thereby removing from the definition facilities attended by adults.

BILL NO. BL2016-384 (SHULMAN & PARDUE) – This ordinance would abolish the Alarm Appeals Board (AAB). This Board was created by Ordinance No. O91-1523 on April 3, 1991. The purpose was to determine whether an alarm permit should be revoked for violations of Chapter 10.60 of the Metro Code of Laws (MCL).

However, Division IV of the Metropolitan General Sessions Court was designated as the "Environmental Court" by Ordinance No. O94-930 on March 15, 1994. This was done in part for the purpose of addressing violations of the Metropolitan Code of Laws pertaining to health, housing, fire, land subdivision, building and zoning, maintaining jurisdiction thereof.

The establishment of the Environmental Court makes the continued existence and operation of the Alarm Appeals Board unnecessary. Since the AAB was created by ordinance, the Council has the authority to abolish the AAB by ordinance as well.

In order to eliminate the inherent redundancy of having the AAB as well as the Environmental Court, this ordinance would abolish the AAB and direct all records be transferred to the Environmental Court. The Metro Clerk would hear all appeals for denials or revocations of commercial solicitation permits after the AAB is abolished.

BILL NO. BL2016-385 (WEINER, HURT, & OTHERS) – Executive Order No. 6 and 7 require training of all Metro Government employees, as well as all board and commission members, on sexual harassment awareness and prevention. This ordinance would expand that requirement to include all members of the Metro Council and all Davidson County elected officials in this training. Council members and elected officials who have attended similar training within the preceding five (5) year period would be exempt from this requirement.

The Department of Human Resources would be required to report annually to the Vice-Mayor on the status of this training, specifying the Council members and elected officials that have complied (or failed to comply) with this requirement.

The Council has the authority to impose duties, responsibilities and restrictions upon itself. It is less clear that the Council has the authority to impose the same upon other elected officials particularly within the Executive Branch of government. The duties and responsibilities of these offices are defined in Title 2 of the Metro Charter.

BILL NO. BL2016-386 (SLEDGE) – This ordinance would establish the honorary designation of "Rev. Curtis W. Goodwin, Sr. Way" for Horton Avenue between 12th Avenue South and 15th Avenue South.

Section 13.08.025 of the Metro Code of Laws provides a procedure for the use of honorary street signs whereby the Council, by ordinance, can authorize and direct the Department of Public Works to install honorary street signs beneath the official street name sign for any street identified on the official Street and Alley Centerline Layer map.

The honorary designation for Rev. Goodwin would be the second such approval during 2016. Up to five (5) honorary designations may be approved during each calendar year. Any additional honorary designations beyond the first five (5) approved by the Council in the same year would require the identification of a new funding source to pay for the signs.

Neither this ordinance nor honorary street names in general officially rename the designated street. There would be no change of official street address for any residents or businesses on Horton Avenue.

BILL NO. BL2016-387 (COOPER & PRIDEMORE) – This ordinance would approve a contract between Metro and the United Way for the continuation of the Nashville Financial Empowerment Center. Metro was the recipient of a grant from Bloomberg Philanthropies for the purpose of operating the financial empowerment program through December 2015. This program provided 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 would pay an amount not to exceed $250,000 to the United Way to operate at least two financial empowerment centers. The services to be provided include budget counseling, educating clients about credit and banking, and referrals to other social service agencies.

The term of this contract would be from July 1, 2016 through June 30, 2017. The United Way is to conduct a minimum of 1,650 counseling sessions during this period. At least five (5) full-time (or equivalent) counselors would be retained and supervised to provide these services.

BILL NO. BL2016-388 (COOPER, PRIDEMORE, & OTHERS) – This ordinance would authorize the Metro Health and Educational Facilities Board to negotiate a Payment In Lieu Of Taxes (PILOT) agreement for the benefit of ECG Wedgewood, L.P. ECG would receive unused parcels of land at 1440 12th Avenue South and 1500 12th Avenue South from Metro. These parcels

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BILL NO. BL2016-388, continued

would be used to develop 138 units of income-restricted multi-family workforce housing for persons of low and moderate income. A minimum of 40% of the units would be restricted to persons earning less than 60% of the area medium gross income in Davidson County.

This PILOT agreement is to be effective from the date the Health and Educational Facilities Board takes title to the property for a maximum term of 30 years. ECG will have three years in which to develop the property before the discounted payment period starts. Once the abatement period commences, ECG will receive a 100% real and personal property tax abatement for each year that at least 40% of this multifamily residential development project meets low income tax credit requirements as defined in Section 42 of the Internal Revenue Code of 1986, as amended.

ECG will pay 100% of the taxes owed on the property prior to the start of the abatement period, though this amount is to be offset by the amount of leasehold taxes ECG would pay. An accurate prediction of the amount of real and personal property taxes that would be abated is virtually impossible until the project is complete and an assessment is performed. The property assessor's website lists a land value of $238,000 for the two properties, which would result in an annual tax bill of approximately $4,300 if the property remained undeveloped and no abatement was granted.

The lease agreement will end on December 31, 2115. The rental amount is not specified in the lease agreement. At any time during the term, ECG would have the right to purchase the property for $100. Section 20.01 of the lease agreement would require ECG to purchase the property no later than the thirtieth (30^{th}) anniversary of the commencement of the term. Section 6 of the PILOT agreement provides that the abatement ends at 30 years (or sooner if ECG takes title to the property) whereupon the property would be fully taxable.

BILL NO. BL2016-389 (KINDALL, ALLEN, & OTHERS) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of Buchanan Street to "Delta Avenue".

This ordinance was approved by the Planning Commission on August 18, 2016. The Emergency Communications Division is scheduled to consider this matter at their meeting on September 14, 2016. The matter has also been referred to the Traffic and Parking Commission.

BILL NO. BL2016-390 (O'CONNELL, KINDALL, & OTHERS) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of Garfield Street to "Buchanan Street" from Delta Avenue, across I-65, to 9th Avenue North.

This ordinance was approved by the Planning Commission on August 18, 2016. The Emergency Communications Division is scheduled to consider this matter at their meeting on September 14, 2016. The matter has also been referred to the Traffic and Parking Commission.

– BILLS ON THIRD 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.

As amended, the ordinance imposes a fifty dollar ($50) fine through a court of competent jurisdiction, applied to each day of operation without a permit. The three-year waiting period would commence from the date of the court's finding, and only properties that have paid all taxes due would 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. As amended, the ordinance would exempt Metro Government attachments on utility poles from its provisions.

When an owner receives an application for a new attachment to one of their poles, this new MCL chapter, as amended, would allow "preapproved contractors" approved by the owner (if required) to perform the make ready work at the attacher's expense. This would include

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BILL NO. BL2016-343, continued

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. As amended, the ordinance requires fifteen (15) days' advance written notice from the attacher to pre-existing third party users before make ready work commences.

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 so that a "filed meeting" can be held between technicians from the pre-existing third party and the attacher. 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 pre-approved contractors approved by the pole owner. However, as amended, the ordinance allows pre-existing third party users sixty (60) days from the date of original notice to perform complex make ready work if the technicians mutually agree to such in the field meeting.

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. Additionally, as amended, the ordinance would require the attacher to place its attachment where instructed by the owner and to ensure that the make ready attachments are rearranged in accordance with all applicable laws and safety and engineering standards.

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 60 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 60-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.

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As amended, the ordinance requires the attacher to obtain, at its own expense, a corporate surety bond of one million dollars ($1,000,000) to safeguard the public right of way and guarantee timely performance. Attachers are further required to indemnify owners from any suit or proceedings by a pre-existing third party user arising from make ready work.

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 *ar*e 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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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 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

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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. BL2016-349 (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.

BILL NOS. BL2016-373 and BL2016-374 (MENDES, SLEDGE, & OTHERS) These two ordinances would provide 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. BL2016-378 (ROSENBERG, S. DAVIS, & OTHERS) – 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.

This ordinance would add a new section to the Metro Code of Laws (MCL). For a person who possesses 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

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($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 the 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 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.

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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.

As amended, the ordinance provides that police officers have the discretion to issue a civil citation but are not required to do so.

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.