



## METRO COUNCIL OFFICE

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MEMORANDUM TO: All Members of the Metropolitan Council

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

COUNCIL MEETING DATE: **October 18, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 10/12/16:

4% Reserve Fund	\$36,506,977*
Metro Self Insured Liability Claims	\$3,797,836
Judgments & Losses	\$1,923,005
Schools Self Insured Liability Claims	\$3,516,696
Self-Insured Property Loss Aggregate	\$5,242,566
Employee Blanket Bond Claims	\$648,269
Police Professional Liability Claims	\$2,474,591
Death Benefit	\$1,386,941

\*Assumes unrealized estimated revenues in Fiscal Year 2017 of \$27,950,995.

**– RESOLUTIONS ON PUBLIC HEARING –**

**RESOLUTION NO. RS2016-397 (O'CONNELL)** – This resolution would approve an exemption for 5<sup>th</sup> and Taylor, LLC, located at 1411 Fifth Avenue North, 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 from these protected establishments by state or federal four-lane highways are exempt, as are retailer on-sale beer permit holders in the MUL and events catered by holders of caterers' permits. (*See*, Code section 7.08.090(A)). Additionally, the Code provides a mechanism to exempt (*a*) restaurants that already have a state on-premises liquor consumption license or (*b*) any retail food store from Metro's minimum distance requirements, allowing each to obtain a beer permit upon the adoption of a resolution by the Council. (*See*, Code Section 7.08.090(E)).

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

**– RESOLUTIONS –**

**RESOLUTION NO. RS2016-378** (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 for purchase of an interpretive historical marker at Fort Nashborough. It also requires 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.

With the influx of telecommunications franchise requests and related legislation, a comprehensive review of this resolution, other ordinances (BL2016-302, BL2016-432 and BL2016-433), as well as general telecommunication uses, is slated for a three-way joint committee hearing before the Council on October 17<sup>th</sup>, 2016.

**RESOLUTION NO. RS2016-398** (COOPER) – This resolution would authorize the Metro Arts Commission to accept the donation of six artworks to be installed and displayed in locations throughout Metro. These artworks would be donated by Bridgestone Americas, Inc. The six artworks are as follows:

- “Wildcat Mudpump”, pencil, 38” x 50”
- “Savanna”, print on handmade paper, 1977, 15” x 89”
- “Yellow Abstract”, 29” x 41”
- “Walter Mitty Aviator in Easy Chair”, mixed media, 38” x 28”
- “Abstract”, mixed media, 44” x 36”
- “The Death of a Rose series”, 3 works, acrylic on canvas, 67” x 78”

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**RESOLUTION NO. BL2016-398**, continued

Transportation of these artworks to a destination as determined by Metro shall be at the donor's expense. Metro reserves the right to refuse acceptance if the artwork is damaged or does not otherwise meet the standards of the Metro Arts Guidelines. Installation of these artworks is the responsibility of Metro. They will be displayed at Metro locations at the discretion of Metro when space is available.

There are no charges or fees for these artworks. The cost of storage and maintenance should be negligible.

**RESOLUTION NO. RS2016-399** (DOWELL & COOPER) – In 2014, Resolution No. RS2014-1289 approved an Economic and Community Development Incentive Grant to the Industrial Development Board (IDB) for the benefit of Bridgestone Americas, Inc. and its affiliates (“the Project”). Previously, in 2011, the Council enacted Substitute Ordinance No. BL2010-806, allowing incentive grants to be provided upon the location or relocation of the international, national, or regional headquarters of a large company, comparable to companies on the Fortune 500 listing, when expected to result in the creation of at least 500 additional jobs in Nashville during the first five years of operations. This was an extension of a program enacted in 1999 for the benefit of Dell Corporation.

Bridgestone is the world's largest manufacturer of tires and rubber products. It currently maintains headquarters for its North, South, and Central American tire operations in Nashville at a site near the airport. Bridgestone plans to move its Nashville operations from the existing facility -- as well as several other divisions located in other cities -- to a new office tower to be constructed on Fourth Avenue South in the SoBro area of downtown Nashville.

Highwoods Realty Limited Partnership was selected to develop the 30-story, 514,000 square foot building and to lease approximately 506,000 square feet to Bridgestone. The new building is expected to open in the second half of 2017. In addition to its operations currently in Nashville, Bridgestone will be relocating its retail operations from Bloomington, IL and its industrial and building products divisions from Carmel, IN. This was expected to increase the number of Bridgestone employees in Nashville from 1,100 to approximately 1,700. The new development is expected to exceed \$200 million.

The initial resolution provided a grant in the amount of \$500 per employee for a period of seven years for all employees over and above the existing 1,100 already working in Nashville. The resolution also approved the corresponding grant contract among Metro, the IDB, and Bridgestone. The agreement provided that full-time Bridgestone incremental employees, as well

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**RESOLUTION NO. BL2016-399**, continued

as outsourced employees paid in excess of the average wage for all occupations in Nashville, would be included in the grant amount calculation. The agreement defines “full-time” as working 32 or more hours per week for at least 26 weeks out of the year.

Bridgestone has the right to specify the date on which the grant period commences. The company will be required to submit annual settlement statements to the IDB and the department of finance showing the calculation of the number of incremental positions from the previous year in order to receive the grant. Assuming the job creation estimates are met, Metro would be providing \$300,000 per year to Bridgestone under the grant agreement for seven years for a total grant of \$2,100,000.

The resolution was a companion to Ordinance No. BL2014-953, which approved a 20-year property tax abatement for the benefit of Bridgestone.

The resolution now under consideration would amend this incentive grant agreement. BSAM has announced its decision to expand its headquarters by opening a satellite location in the southeastern portion of Davidson County (the “Project Expansion”). This is expected to consist of approximately 77,218 square feet of office space on a parcel of land located at 5244 Hickory Hollow Parkway.

The occupancy of the Project and the Project Expansion collectively is expected to result in the creation of additional Incremental Company Entity Positions during the first five years of the completion of the project and Project Expansion. The resolution under consideration quotes an estimate of 500 additional positions. The latest estimate from the Economic and Community Development Office is approximately 415 new positions, for a net increase of approximately 1,015 new positions.

This resolution would approve incentive grant payments in the amount of \$500 each year for each incremental company entity position created by the Project and Project Expansion. As specified in the initial grant resolution, these annual payments would be made for a period of seven (7) years. Based on the new estimate of 1,015 new positions, this would result in annual payments to Bridgestone of \$507,500 for this seven-year term.

**RESOLUTION NO. RS2016-400** (COOPER & PARDUE) – This resolution would approve a sole-source contract with Remotec, Inc. to provide the AndrosFX robotic platform, tools, and accessories for the Hazardous Devices Unit of the Police Department.

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**RESOLUTION NO. BL2016-400**, continued

Sole-source contracts may be awarded under the Metro procurement code when it is determined that there is only one source for the supply or services rendered. The Metro Code of Laws requires all sole-source contracts having a total value in excess of \$250,000 to be approved by the council by resolution.

Remotec, Inc. is purported to be the only source for this equipment. The term of this contract would be for five years. The total contract value is estimated to be \$286,025, which averages \$57,205 per year.

**RESOLUTION NO. RS2016-401** (COOPER & MURPHY) – This resolution would approve a sole-source contract with Workbay LLC to provide an integrated workforce development platform for the Opportunity Now Internship Program.

Sole-source contracts may be awarded under the Metro procurement code when it is determined that there is only one source for the supply or services rendered. The Metro Code of Laws requires all sole-source contracts having a total value in excess of \$250,000 to be approved by the Council by resolution.

Workbay LLC is purported to be the only source for this platform. Implementation of the platform would be complete by January 15, 2017, although Workbay would be retained for ongoing maintenance, support, and development through September 30, 2017.

Metro would pay Workbay \$100,000 for the platform customization and implementation. An additional \$195,000 would be paid for the subscription fee through September 30, 2017. Additional projects, development work, content creation, or otherwise custom projects would require a new contract.

The contract would cover the first 10,000 applicants using the platform. For each additional 10,000 applicants, an additional annual fee of \$15,000 would be charged.

**RESOLUTION NO. RS2016-402** (COOPER & GILMORE) – This resolution would approve a grant in the amount of \$510,000 from the Tennessee Department of Mental Health and Substance Abuse Services to the Metropolitan Social Services Commission to assist veterans and other individuals experiencing homelessness. The grant would be used to provide services to homeless veterans or other chronically homeless persons who are mentally ill and/or who have

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**RESOLUTION NO. BL2016-402**, continued

a substance abuse disorder. The services include permanent housing, treatment, and assistance with obtaining benefits for which the individuals are eligible.

\$266,628 of the grant proceeds would be used for the Mental Health Program. The remaining \$243,372 would be used for the Substance Abuse Program.

These federal pass-through funds would be sub-granted by the Metropolitan Social Services Commission to Park Center working with the Mental Health Cooperative. The grant is intended to reduce homelessness and chronic homelessness and to offer treatment and recovery-oriented care for substance use and mental health disorders to at least one hundred (100) eligible participants. It will also ensure that at least 25 participants per year in CABHI programs (Cooperative Agreements to Benefit Homeless Individuals) will have access to individual placement and support services and supportive employment.

The term of this grant would be from September 30, 2016 through September 29, 2017.

**RESOLUTION NO. RS2016-403** (COOPER & GILMORE) – This resolution would approve amendment one to a contract with the Vanderbilt University School of Medicine for the Health Department's participation in the Tuberculosis Trials Consortium. Vanderbilt received a grant from the U.S. Centers for Disease Control and Prevention through the U.S. Veteran Affairs Medical Centers for this tuberculosis project. The Health Department's responsibilities under this contract are to provide space and equipment for the project, as well as consultation and support services.

The Health Department was to receive \$20,259 to reimburse the cost of its services. The initial term of this contract was set from October 1, 2014 through September 30, 2019.

The amendment being considered by this resolution would amend the contract to increase the amount by \$1,013 for a new total of \$21,272, effective October 1, 2015 through September 30, 2016.

**RESOLUTION NO. RS2016-404** (COOPER & GILMORE) – This resolution would approve the first amendment to a grant from the Tennessee Department of Health to the Metro Board of Health for the Emergency Management Program. These funds are used for the operation of

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**RESOLUTION NO. BL2016-404**, continued

emergency preparedness programs to prepare for, respond to, and recover from public health threats in accordance with the Centers for Disease Control (CDC) standards.

The initial grant was awarded in the amount of \$775,800. The amendment now under consideration would increase this by \$25,104 for a new grant total of \$800,904. The required local cash match would remain \$81,200.

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

**RESOLUTION NO. RS2016-405** (COOPER & GILMORE) – This resolution would approve the second amendment to a grant from the Tennessee Department of Health to the Metro Health Department for operation of the Women, Infants and Children (WIC) and breastfeeding peer counseling programs.

The funds from this federal pass-through grant are used to pay the salaries and benefits of the health department employees administering the programs. The first amendment increased the amount of the grant by \$138,000 from \$20,595,200 to \$20,733,200.

The second amendment now under consideration would decrease the amount by \$231,600, for a new total of \$20,501,600. There would still be no local cash match required. The term of the grant would remain from October 1, 2014 through September 30, 2018.

**RESOLUTION NO. RS2016-406** (GILMORE) – Earlier this year, the Tennessee General Assembly approved a change to Public Chapter 1028 concerning required vehicle inspections. Under the revised law, counties are now authorized to exempt motor vehicles three (3) model years or less old from their required inspections and maintenance program to attain or maintain compliance with national ambient air standards. This would be an expansion of the current exemption of vehicles that are one (1) model year or less old.

Such exemption must be approved by resolution of the county's legislative body on or before December 31, 2016. The exemption would not become effective until the State Implementation Plan has been revised and approved by the Environmental Protection Agency (EPA). It would also not take effect until the expiration or revision of any contract in effect with the contractor currently conducting the motor vehicle emissions testing for Metro as of the date of EPA approval.

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**RESOLUTION NO. BL2016-406**, continued

Metro currently contracts with Opus Inspection, Inc. (formerly named Systech International, LLC) to perform these inspections. The current contract was amended per Resolution No. RS2015-1508 to extend the contract through June 30, 2017. This contract would remain in force with no change in terms until it expires. Any renewal of the contract or change in its terms would need to be negotiated at that time.

Subject to the above restrictions, this resolution would authorize the exemption for vehicles three (3) model years or less old. The Vice-Mayor, as presiding officer of the Metro Council, would then submit a certified copy of the resolution to the Technical Secretary of the Air Pollution Board of the State of Tennessee no later than January 31, 2017.

**RESOLUTION NO. RS2016-407** (COOPER & ELROD) – This resolution would approve a Keep America Beautiful / Lowe's Community Partner Grant in the amount of \$5,000 to the Metro Beautification and Environment Commission within the Public Works Department. The grant proceeds would be used to plant 55 trees in 11 Metro Nashville Public Schools during Hands on Nashville Day.

No local cash match would be required.

**– 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 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 to submit 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 has submitted the requisite report.

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

The company has posted the required bond in the amount of \$500,000 guaranteeing performance of its obligations under the franchise, as well as a certificate of liability insurance -- naming the Metropolitan Government as an 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. But it has since been approved administratively as of September 16, 2016.

With the influx of telecommunications franchise requests and related legislation, a comprehensive review of this ordinance, other legislation (RS2016-378, BL2016-432 and BL2016-433), as well as general telecommunication uses, is slated for a three-way joint committee hearing before the Council on October 17<sup>th</sup>, 2016.

**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."

As amended, 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 twice the number of sleeping rooms; provided however that any STRP property with a valid permit as of November 30, 2016, is entitled to the maximum occupancy allowed prior to that date until the earlier of: (a) such time as there is any change in ownership of the STRP; or (b) such time that the STRP property ceases having a valid permit for any reason."

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.

It is anticipated that the sponsors intend to defer this ordinance indefinitely.

**BILL NO. BL2016-381** (ALLEN) – This ordinance, as substituted, 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. Subsection 6.28.030(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. Subsection 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, a receipt of U.S. registered mail, or U.S. Postal Service notice of refusal.

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**BILL NO. BL2016-381**, continued

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 or other valid state identification card, Davidson County voter registration card, or a bank statement, 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 and waste management provisions of the Code.
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 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 section, as substituted, would establish three (3) types of permits: Type 1 (owner-occupied), Type 2 (Not Owner-Occupied), and Type 3 (Not Owner-Occupied Multifamily). No more than 3% of single- and or two-family residential units within each census tract would be permitted as Type 2. Only one permit per lot would be issued for single-family and two-family home, triplexes and quadplexes.

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**BILL NO. BL2016-381**, continued

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, based upon reasonably reliable information, that three STRP violations have occurred within a 12-month period, based on documented evidence. This evidentiary basis ("reasonably reliable information") tracks the Tennessee Rules of 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. As substituted, this ordinance would establish limits on two (2) of the three (3) new types of permits as follows:

1. Type 2 (Not Owner-Occupied) – 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.
2. Type 3 (Not Owner-Occupied Multifamily) – 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 November 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.

It is anticipated that the sponsors intend to defer this ordinance indefinitely.

**BILL NO. BL2016-417** (K. JOHNSON) –This ordinance would amend Section 12.40.150 of the Metro Code of Laws (MCL) concerning the unlawful parking of vehicles for sale or repair purposes. In addition to current restrictions, this ordinance would add a new prohibition against parking a vehicle on residential property fronting an arterial street for the principal purpose of displaying the vehicle for sale.

It would also add a new restriction in Paragraph A of Section 17.16.030 concerning consignment sales on residential property by specifying that such consignment sales may not include the sale of a vehicle.

A substitute is anticipated to replace the phrase “principal purpose” with “purpose.”

**BILL NO. BL2016-420** (COOPER & ALLEN) –This ordinance would amend the agreement between Metro and the Nashville Hockey Club Limited Partnership (NHCLP) concerning the operation of the ice rinks at the Centennial Sportsplex. This would make the NHCLP the exclusive sponsorship sales agency for the Sportsplex ice rinks in order to drive new sponsorship revenues.

The NHCLP would develop a complete menu of sponsorship inventory at the Sportsplex, subject to Metro’s approval. The NHCLP would also have the option to pursue naming rights with respect to Ice Rink Two, subject to Metro’s board approval and approval by ordinance.

The initial term of this amendment would be from August 1, 2016 through July 31, 2018. Either party could extend this term by giving written notice to the other party at least ninety (90) days prior to the expiration of the term. Both parties must then agree to the extension.

During this initial two-year term, the NHCLP would retain sixty percent (60%) of all annual net revenue from these Sportsplex Sponsorship Services. Metro would retain the remaining forty percent (40%). However, Metro would be required to reinvest twenty percent (20%) of its annual revenue share in the Sportsplex each year of the term.

If the term is extended, then as of August 1, 2018, the revenue would be mutually determined by NHCLP and Metro. Metro would continue to be required to reinvest twenty percent (20%) of its annual revenue share.

**BILL NO. BL2016-430** (COOPER, DOWELL, & ELROD) – This ordinance would authorize Metro to enter into a participation agreement for the construction of public infrastructure improvements with Century Farms, LLC. Century Farms has developed plans for the design and construction of a proposed multi-use development on real property they own. These plans would require construction within the public right-of-way, specifically including roadway improvements at Old Franklin Road, Preston Road and Cane Ridge Road. The plans further require Century Farms to acquire additional land, easements, and/or rights-of way over property owned by private land owners. These plans were approved and permitted by Metro on December 8, 2015.

The costs necessary to complete the project would be expected to be in the range of \$6,700,000 to \$10,300,000. This ordinance would authorize Metro to contribute \$5,500,000 for the public infrastructure improvement to the right-of-way of the project. Upon final inspections and approvals, Century Farms would convey the project to Metro.

This payment by Metro would be paid from the FY16 Metro Capital Spending Plan, using the Public Works "Roads Bridges Bikeways GSD" Business Unit.

**BILL NO. BL2016-431** (SCOTT DAVIS, ALLEN, & ELROD) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning unimproved Alley Number 308 right-of-way.

This ordinance was approved by the Traffic and Parking Commission on October 10, 2016 and the Planning Commission on August 9, 2016.

**BILL NO. BL2016-432** (COOPER, ALLEN, & ELROD) – Chapter 6.26 of the Metro Code provides terms and conditions for companies wishing to construct and operate telecommunications systems using fiber optic cable in the public right-of-ways. ExteNet Systems, Inc. received a Certificate of Public Convenience and Necessity from the Tennessee Regulatory Authority on May 7, 2015 to provide competing local telecommunication services within the State of Tennessee. ExteNet now desires to provide multi-carrier and multi-technology distributed networks for use by wireless carriers and venue owners in Davidson County.

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**BILL NO. BL2016-432**, continued

This ordinance would grant a telecommunications franchise to ExteNet in accordance with the Metro Code. ExteNet Systems would have a fifteen (15) year franchise and 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 used by the company.

Section 6.26.240 of the MCL currently defines 5% of gross revenues as the required amount of compensation to be paid to Metro for fiber optic communications service franchises. However, the franchise agreement under consideration recognizes that this requirement could change in the future. If that happens, ExteNet agrees that they will thereafter pay the new fee.

ExteNet 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 -- 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 is scheduled for consideration by the Planning Commission at their meeting on November 10, 2016.

With the influx of telecommunications franchise requests and related legislation, a comprehensive review of this ordinance, other legislation (BL2016-302, RS2016-378, and BL2016-433) as well as general telecommunication uses, is slated for a three-way joint committee hearing before Council on October 17<sup>th</sup>, 2016.

**BILL NO. BL2016-433** (COOPER, ALLEN, & ELROD) – In 2013, the Council approved a 15-year franchise agreement for Nashville Data Link, LLC (NDL) per Ordinance No. BL2012-325. NDL is now being dissolved and its operations are being absorbed by parent company Windstream KDL, LLC.

According to the provisions of Section 6.26.290 of the Metro Code of Laws (MCL), franchises cannot be transferred or conveyed by the grantee without the written consent of the Council by ordinance. Accordingly, the ordinance under consideration would approve the requested franchise transfer from NDL to Windstream.

Windstream has acknowledged its understanding of the obligations imposed by the franchise and has agreed to meet those obligations. They have also obtained a replacement bond and certificate of insurance in its own name to replace those initially provided by NDL. Additionally,

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**BILL NO. BL2016-433**, continued

at Metro's request, Windstream has provided updated maps depicting the locations of the relevant infrastructure in the public rights-of-way. No other changes are being made to the terms or conditions of the franchise agreement initially awarded to NDL.

This matter will be considered by the Planning Commission on November 10, 2016. With the influx of telecommunications franchise requests and related legislation, a comprehensive review of this ordinance, other legislation (BL2016-302, RS2016-378, and BL2016-432), as well as general telecommunication uses, is slated for a three-way joint committee hearing before the Council on October 17<sup>th</sup>, 2016.

**BILL NO. BL2016-434** (SHULMAN) – This ordinance would readopt the Metro Code prepared by Municipal Code Corporation to include supplemental and replacement pages for ordinances enacted on or before July 6, 2016. This is a routine re-adoption to ensure the Metro Code is up to date.

**BILL NO. BL2016-435** (MENDES) – On August 4, 2015, Ordinance No. BL2015-1281 was enacted to authorize the Metropolitan Development and Housing Agency (MDHA) to negotiate and accept payments in lieu of taxes (PILOT) from operators of low income housing tax credit (LIHTC) properties. PILOT agreements essentially provide tax abatements for real and/or personal property taxes that would otherwise be owed to the Metropolitan Government. PILOTs have been utilized by Metro to provide incentives through the Industrial Development Board (IDB) to large employers to create more job opportunities. MDHA now has the authority to enter into PILOTs to create affordable rental housing.

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

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

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**BILL NO. BL2016-435**, continued

Ordinance No. BL2016-334 was enacted to further engage the Metro Planning Department in authorizing PILOT projects and it revised the program to determine qualifications and eligibility for such payments. Under these revised terms, MDHA was further authorized to negotiate up to \$2,500,000 in additional PILOTs per calendar year. These agreements continue to be required to be approved by Council resolution.

The ordinance now under consideration would replace Section 1 of BL2016-334 with new language. The existing language requires MDHA to state how the project avoids concentrations of poverty in Nashville, whether the project is consistent with the Planning Commission's general plan for Nashville, whether the project is consistent with MDHA's Consolidated Plan for Nashville, and whether the property is consistent with the affordable and workforce housing goals of the Metropolitan Housing Trust Fund Commission.

The revised language would further change requirements before a PILOT agreement could be submitted to the Council for approval. MDHA would be required to obtain a recommendation from the Planning Commission as to whether the project is consistent with the General Plan for Nashville, with a list provided by the Planning Department of other federally subsidized multi-family properties in the same census tract. MDHA would also be required to certify whether the project is consistent with the Consolidated Plan for Nashville-Davidson County and to state whether other PILOT agreements are in effect in the same census tracts.

All other requirements as approved per BL2016-334 would remain unchanged.

**– BILLS ON THIRD READING –**

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

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

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

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

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

Under the proposed ordinance, as amended, if a tenant fails to comply with these restrictions, the landlord is required to take all steps reasonably necessary to safeguard other tenants’ peaceful enjoyment of their units, implementing remedies allowed under T.C.A. 66-28-505(a).

**BILL NO. BL2016-379** (SYRACUSE) – Section 17.04.060 of the Metro Code of Laws (MCL) presently defines a “financial Institution” as “any building, room, space or portion thereof where an establishment provides a variety of financial services, including generally, banks, credit unions, and mortgage companies, but excluding alternative financial services. A financial institution is open to the public within hours that do not exceed 8:00 a.m. to 6:00 p.m. Monday to Friday, and 8:00 a.m. to 1:00 p.m. on Saturday.”

This ordinance would amend the definition to add the requirement that a financial institution must be “a state or federally chartered bank, savings and loan association, or credit union, a mortgage company, or other financial institution whose services are insured by an agency of

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**BILL NO. BL2016-379**, continued

the United States government.” The sentence reciting the hours of operation as part of the definition of a financial institution would also be deleted.

Alternative financial services would continue to be expressly excluded from the definition of a financial institution. Instead, a new paragraph would be added to this section of the MCL to define alternative financial services:

“‘Alternative financial service’ means any building, room, space or portion thereof where an establishment provides a variety of financial services, including but not limited to cash advance, title loans, check cashing, pawnshops and flex loans, and such establishment is not a state or federally chartered bank, savings and loan association, or credit union, a mortgage company, or other financial institution whose services are insured by an agency of the United States government.”

**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 was approved by the Planning Commission on August 18, 2016. The Emergency Communications District approved the matter on September 15, 2016. It has also been referred to the Traffic and Parking Commission, which will consider the matter at their meeting on October 10, 2016.

**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 9<sup>th</sup> Avenue North.

This was approved by the Planning Commission on August 18, 2016. The Emergency Communications District approved the matter on September 15, 2016. It has also been referred to the Traffic and Parking Commission, which will consider the matter at their meeting on October 10, 2016.

**BILL NO. BL2016-416** (MENDES & COOPER) –This ordinance would require all reports that are regularly submitted to the Metro Council to be provided in a searchable electronic format and simultaneously posted onto the Internet website of the submitting department, board or commission. The web posting and public access to reports would be required for a period of at least six months. As examples of the reports received by Metro Council members, the second recital of the ordinance lists 14 reports currently required to be submitted to the Council on a recurring basis.

Every Metro department and agency is a current user of Nashville.gov and pays internal service fees to the Metro Information Technology Services Department for such service. Assuming little additional effort would be required to format and store reports per the requirements of this ordinance, the result should be increased transparency and ease of access by the Council and general public to the information submitted.

**BILL NO. BL2016-419** (K. JOHNSON, GILMORE, & OTHERS) –Executive Order No. 6 and 7 require training of all Metro Government employees, as well as all board and commission members, on diversity issues. 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.

Similar legislation addressing sexual harassment training is required per Ordinance No. BL2016-385, approved on October 4, 2016.

**BILL NO. BL2016-421** (O'CONNELL, COOPER, & OTHERS) –This ordinance would approve an agreement for the acquisition of a parcel of property, an agreement for the disposition of that parcel, and an easement agreement, all relating to the construction of a pedestrian bridge spanning the railroad gulch.

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**BILL NO. BL2016-421**, continued

Exhibit 1 of the agreement would authorize Metro to acquire the property commonly known as the "Clement LandPort" from the Metropolitan Transit Authority. This sale must be approved by the MTA Board, the Federal Transit Administration, and the Council. These approvals must be completed by December 31, 2016.

The total purchase price would be \$8,400,000. \$840,000 of this amount would be retained by Metro as reimbursement for the contribution Metro made toward MTA's original purchase of the property. The net purchase price to be paid by Metro would therefore be \$7,560,000.

Exhibit 2 of the agreement would authorize the sale of this property to Cummins Station, LLC (CS). The sale price would be \$8,400,000. However, CS would be entitled to the \$840,000 credit received by Metro toward its purchase of the property.

Exhibit 3 of the agreement would authorize Metro to acquire the easement from CS that would be necessary for the construction of a pedestrian bridge spanning the railroad gulch. Metro would pay \$2,662,000 to CS for this easement.

The plan would be for Metro to construct, own, and operate a pedestrian bridge spanning the CSX Transportation Railroad right-of-way and other railroad facilities located to the west of and adjacent to the Cummins Station property. Metro would also construct a plaza and related improvements providing ingress, egress, and access to and from the Pedestrian Bridge.

In 2014, the Metro Council passed BL2014-670 authorizing acquisition of property for a similar bridge project. Estimated acquisition costs in 2014 totaled \$1 million, and preliminary cost estimates for the previous bridge design totaled \$15 to \$16 million. The project had been included in the fiscal year 2014-2015 capital improvements budget (CIB). The capital spending plan approved in 2013, which provided \$18 million in funding for bridge projects countywide, would provide for construction. However, following an indefinite deferral by the Council, a revised financing plan was proposed whereby funding for the bridge would be derived from tax increment financing (TIF) payments through the Metropolitan Development and Housing Agency (MDHA). In 2014, a total of seven (7) TIF loans remained outstanding for projects within the Arts Center redevelopment district. Under the revised financing arrangement, the TIF payments for these loans -- after payment in full -- would be available to cover debt service on the bridge, with a maximum price of \$18 million to be funded out of the commercial paper program.

The current project was approved by the Planning Commission on September 16, 2016.

**BILL NO. BL2016-422** (LEONARDO, COOPER, & OTHERS) – In 2014, the Council enacted BL2014-688 which approved agreements between the Metropolitan Government, the Metropolitan Hospital Authority, and various private entities for the privatization and continued operation of the Bordeaux Long Term Care and J.B. Knowles Home facilities.

Bordeaux Long Term Care (BLTC), located at 1414 County Hospital Road, is a 419-bed skilled nursing facility that currently has an average daily census of 200 patients/residents. Previously operated by the hospital authority, BLTC had been operating at a substantial financial loss for many years. Prior to passage of BL2014-688, the Metro Government had been subsidizing BLTC and Knowles at an annual cost of \$10.5 million dollars, with BLTC representing the majority of that subsidy (approximately \$9 million dollars).

In 2013, Metro solicited proposals from 162 private healthcare operators. Finalists' proposals were analyzed, whereupon Metro and the hospital authority agreed upon a plan proposed by Signature Healthcare (and its subsidiary LP North Nashville, LLC) for the continued operation of BLTC and eventual elimination of Metro's subsidy by fiscal year 2017. Based in Louisville, Kentucky, Signature Healthcare operated 87 long-term care communities in 7 states, including one facility in Nashville. Of their 35 urban facilities, 27 had the highest (5 star) rating available to nursing homes from the Centers for Medicare and Medicaid Services.

Following approval by Council, Signature took over operations of BLTC in May 2014, committing to operate a 120-bed nursing home at the Bordeaux campus for at least 10 years.

Under the operating lease agreement, Metro was required to cover losses on the facility up to \$3 million during the first six months, \$2.5 million in the second six months, \$2 million in the third six months, and \$1.5 million in the fourth six months. Regardless of the actual amount of the losses, Metro's minimum subsidy remained at \$5 million the first year and \$3.5 million the second year, including a management fee of 3% of the facility's revenue.

Signature was also required to permit all existing patients to remain at the BLTC facility during the term of the lease, regardless of ability to pay or health status. (However, a patient could be transferred to another facility if Signature determined it could not appropriately provide for his/her needs.) Additionally, all but 32 of the existing BLTC employees were to be offered employment with Signature at the same or greater rate of pay.

The original intent under the operating lease agreement was that Signature would also build a new \$18 million 168-bed skilled nursing facility on Dickerson Pike near Skyline Medical Center. Once built, Signature would have the option of either continuing operations at the existing BLTC facility or building a new nursing home on the campus. But this agreement was conditioned

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**BILL NO. BL2016-422**, continued

upon a change in Tennessee state law allowing a division and transfer of the bed licenses, thereby further allowing the new Dickerson Pike facility to obtain a Medicare and Medicaid certification. Signature was to pay all costs associated with changing the state law and the approval of its Certificate of Need (CON). Signature was to then pay Metro \$1.3 million upon approval.

Unfortunately, the Tennessee General Assembly failed to approve the change. The envisioned relocation could not go forward, so a new facility was never constructed.

As part of the original 2014 proposal, a separate transfer and development agreement between Metro, the hospital authority, Signature (through LP North Nashville, LLC), and Investors II, LLC (Ed Street Company) set forth responsibilities pertaining to the construction of the new Signature skilled nursing facility on Dickerson Pike and the continued operation of the facility on the Bordeaux campus. Ed Street Company was responsible for building the 168-bed Dickerson Pike facility and assisting Signature and the hospital authority with preparation of the required CON.

An additional agreement between Metro and Vision Real Estate provided for the phased sale of 76.6 acres of the Bordeaux campus to Vision for development after the new Dickerson Pike facility was constructed. One half of the BLTC facility was to be converted into 62 senior living apartments. The other half of the facility was to remain a skilled nursing facility unless/until a replacement facility was built on the Bordeaux campus.

Following the General Assembly's failure to enact the necessary change to state law, however, these prior agreement terms essentially unraveled, and Signature currently operates BLTC at a significant loss, primarily due to the large number of indigent patients. (While Metro still owns the property and is responsible only for major structural repairs if needed, Signature is still responsible for all expenses associated with the operation of the BLTC facility, including general maintenance and utility costs.)

To address these concerns, BL2016-422 proposes a new agreement extending the previous operating lease agreement through June 30, 2020, during which Signature agrees to keep all current BLTC patients regardless of their ability to pay or health status. (Either party can terminate the lease at the end of a fiscal year with 180 days' written notice.) Under the additional terms of the agreement, Signature would be required to negotiate with the hospital authority to develop a plan to take more patients that can be transferred out of BLTC into a nursing home. Signature would be reimbursed for losses up to \$3.5 million annually. An audit

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**BILL NO. BL2016-422**, continued

would be conducted at the end of each fiscal year, and continued financial reports would be required from Signature, including patient census and payer mix data. Metro would agree to pay for facility "life safety" improvements estimated at \$600,000

Under the new agreement, Signature would also continue to seek a CON from the state in order to construct a new 120 to 160-bed facility in the North Nashville area. (If approved, the agreement requires Signature to notify Metro by December 15, 2016 of the specific location of the new facility.) If and when the state approves the CON, Signature would pay Metro the appraised value for the rights associated with the relocated beds -- estimated in 2014 at approximately \$5,000 per bed resulting in a payment between \$500,000 and \$800,000. No new legislation by the state -- authorizing a split of the number of approved beds between the two facilities -- would be required since this agreement proposes a move of *all* beds from BLTC to the new facility.

In the event Signature is unable to relocate their facility by June of 2020, Metro would have the option of soliciting and selecting a new facility operator or purchaser. Alternatively, Signature would be responsible for winding down their operations at the facility, whereupon Metro would be responsible for their losses incurred from the process, up to \$750,000.

In its two-year operation of the BLTC facility, Signature has demonstrated efficiencies in maintaining a lesser price-per-day for patient care compared to pre-2014 operations. However, while 60% of Signature's facilities had rankings between 3 to 5 stars from the Centers for Medicare and Medicaid Services, BLTC has received a 1 star ranking under Signature's control (although this appears to have been the same rating when BLTC was Metro-operated). By signing this agreement, Signature will likely obtain its long-sought Certificate of Need by virtue of Metro's bed licenses. For its part, Metro will maintain its current long-term care options and retain the BLTC employees on current payrolls at an annual subsidy cost of \$3.5 million dollars.

There is no legal requirement, or any requirement set forth in the proposed agreement, that Signature continue to accept new patients who are unable to pay. It must therefore be contemplated that both BL2014-688 and BL2016-422, carried to their practical conclusion, may herald complete divestment by Metro from long-term care services. While only 6% of long-term care facilities are government owned -- consistent with national healthcare privatization trends - - the Metropolitan Charter recites the "functions of the metropolitan government to be performed" as including "health; welfare; hospitals; housing for the aged", in addition to other core services. (Metro Charter, §1.05) This same section also provides, however, that it shall not be "construed to require the continued maintenance or furnishing of any governmental service which the council by ordinance has determined to be obsolete and unnecessary."

**BILL NO. BL2016-423** (FREEMAN, ALLEN, & ELROD) –This ordinance would authorize the Metro Department of Water and Sewer Services to negotiate and accept permanent and temporary easements for various properties located along Trousdale Drive for Project No. 17-SWC-050.

This was approved by the Planning Commission on August 16, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-424** (WITHERS, ALLEN, & ELROD) –This ordinance would authorize the Metro Department of Water and Sewer Services to negotiate and accept permanent and temporary easements for 23 properties located along Boscobel Street, South 15th Street, and South 16th Street for Project No. 17-SWC-037.

This was approved by the Planning Commission on July 29, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-425** (WITHERS, ALLEN, & ELROD) –This ordinance would abandon approximately 95 linear feet of 12-inch sewer main, approximately 12 linear feet of 18-inch sewer main, approximately 235 linear feet of 24-inch sewer main, and to accept approximately 96 linear feet of 30-inch public sewer main, approximately 176 linear feet of 24-inch public sewer main, approximately 37 linear feet of 24-inch public sewer main, and any associated easements on property located at 901 Woodland Street.

Future amendments to this ordinance may be approved by resolution. This ordinance was approved by the Planning Commission on August 17, 2016.

**BILL NO. BL2016-426** (O'CONNELL, ALLEN, & ELROD) –This ordinance would abandon an existing water main and fire hydrant and to accept public sewer main, three manholes, water main, and one fire hydrant assembly, and any associated easements, located at 601 11th Avenue North.

Future amendments to this ordinance may be approved by resolution. This ordinance was approved by the Planning Commission on August 11, 2016.

**BILL NO. BL2016-427** (O'CONNELL, ALLEN, & ELROD) –This ordinance would abandon approximately 410 linear feet of three-inch water main and approximately 370 linear feet of four-inch water main and to accept approximately 780 linear feet of eight-inch public water main and fire hydrant, for property located at 20 Rutledge Street.

Future amendments to this ordinance may be approved by resolution. This ordinance was approved by the Planning Commission on August 17, 2016.