Metropolitan 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: **March 7, 2017**

RE: **Analysis and Fiscal Notes**

Unaudited Fund Balances as of 3/1/17:

4% Reserve Fund	$32,237,877*
Metro Self Insured Liability Claims	$5,105,550
Judgments & Losses	$3,026,792
Schools Self Insured Liability Claims	$3,763,211
Self-Insured Property Loss Aggregate	$6,913,682
Employee Blanket Bond Claims	$665,227
Police Professional Liability Claims	$2,439,587
Death Benefit	$1,388,352

*This assumes unrealized estimated revenues in Fiscal Year 2017 of $14,288,741.

Note: No fiscal note is included for any legislation without significant financial impact

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– RESOLUTIONS ON PUBLIC HEARING –

RESOLUTION NO. RS2017-571 (O'CONNELL) and
RS2017-572 (KINDALL) – These two resolutions would approve exemptions from the minimum distance requirements for obtaining a beer permit for (1) Henrietta Red, located at 1200 Fourth Avenue North, and (2) Slim & Husky's Pizza Beeria, located at 911 Buchanan Street, respectively.

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 MUL districts 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 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)). (Until recently, this Code section further required restaurants to have state on-premises liquor consumption licenses to obtain such exemption. However, Ordinance No. BL2016-454, adopted November 15, 2016, eliminated this requirement.)

Of note, the Tennessee General Assembly is currently considering legislation that would amend Tenn. Code Ann. §57-5-113 to require beer boards to issue permits to any holder of a state on-site liquor consumption license, thereby eliminating distance requirements set forth in the Metro Code.

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

– ORDINANCES ON PUBLIC HEARING –

BILL NO. BL2017-580 (O'CONNELL & GILMORE) – The Downtown Central Business Improvement District (Downtown CBID) was initially created by Ordinance No. BL098-1037 with an expiration date of December 31, 2007. Ordinance No. BL2007-1312 renewed the CBID, extending the expiration date to December 31, 2017. The ordinance under consideration would renew the existence of the Downtown CBID with no specific expiration date.

The purpose of the CBID is to "undertake and provide an enhanced level of programs and services not provided by the Metropolitan government which will help maintain the CBID area of downtown Nashville as a clean, safe, and vibrant place to work, live, shop, play, and invest." This would include such services as maintenance and cleaning, safety, hospitality, streetscape and landscape programs, communications and marketing, district advocacy, district management, etc.

The activities of the CBID are under the control of the District Management Corporation, governed by a Board of Directors consisting of at least twelve (12) members. Any Council member whose district includes any of the area contained within the CBID would serve as an ex officio member.

The services to be provided by the Downtown CBID would be provided by the District Management Corporation as a service to and in support of Metro. Such services would be paid out of revenues from the special CBID assessment. These revenues would be used to supplement and not to pay for the same level of services provided by Metro within the District as provided throughout the Urban Services District (USD).

As proposed, the ordinance under consideration would allow for dissolution of the Downtown CBID by Council upon receipt of a written petition filed either (a) by the owners of 75% of the assessed value of the taxable real property in the Downtown CBID; or (b) by 50% of the owners of record within the Downtown CBID. This is a slight change from previous CDIB establishment ordinances which typically provided an automatic dissolution period, absent an ordinance by the Council continuing the CBID. (See, e.g., Ordinance Nos. 098-1037, BL2007-1312, BL2006-1123 and BL2015-67). State law does not mandate an automatic dissolution period, however.

This matter is scheduled for public hearing on third reading only because the enabling legislation requires "all readings to have been held prior to the public hearing, except the final such reading, so that the adoption may take place at the conclusion of such public hearing." Tenn. Code Ann. §7-84-515.

Fiscal Note: The ordinance under consideration includes an estimated cost of the initially proposed improvements, services, projects, and other permitted uses of special assessment revenues of $2,474,943. Because 2017 is an assessment year, the initial rate of the levy of the

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BILL NO. BL2017-580, continued

special assessment for the Downtown CBID would be calculated from mid-year 2017 records of the Metro Tax Assessor and dividing this $2,474,943 budget by the total assessment real property value within the area of the Downtown CBID to determine the required assessment rate per dollar of assessed property value.

The District Management Corporation shall annually submit to the Council a financial report and a written report of its activities for the preceding year together with a proposed budget for the next year. This proposed budget must be approved by the Council.

SUBSTITUTE BILL NO. BL2016-493 (HENDERSON, O'CONNELL, & OTHERS) – Chapters 17.04, 17.20, and 17.40 of the Metro Code of Laws (MCL) currently detail the requirements for the provision of sidewalks within Metro. The ordinance under consideration would amend these Code sections to support access to and use of Nashville's transit system. It would close a loophole wherein single- and two-family infill development on major and collector streets and on neighborhood streets is not required to install sidewalk infrastructure. It would also reduce instances where "in-lieu" payments may be applied and require more physical construction of sidewalks throughout the city as development occurs.

The language being changed would expand sidewalk installation in the USD for multifamily and nonresidential uses and remove triggers such as percentage of expansion, percentage of value of expansion, and references to a sidewalk priority index. This would apply on a street in the Major and Collector Street Plan (MCSP) and/or within one-quarter mile of a "center" designated in the General Plan.

The ordinance would also bring additional, improved infrastructure to more suburban areas outside of the downtown core and close a loophole where no infrastructure improvements are typically required for infill single and two-family construction. This would apply within the UZO, on a street within the MCSP, and/or within a quarter-mile of a center designated in the General Plan.

Under the current language, in-lieu payments are allowed unless an existing sidewalk network exists adjacent to the site or on the same block face. These payments would be applied to the same pedestrian benefit zone, which could be located miles away from the location of the actual new construction. The possibility of these payments would be significantly reduced.

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SUBSTITUTE BILL NO. BL2016-493, continued

In addition to the above, the proposed ordinance would add a requirement that in instances when one chooses to pay an in-lieu fee, he/she still must dedicate right-of-way to accommodate future sidewalk installation along a site's frontage. This would eliminate the need for Metro to purchase easements for future sidewalk improvement projects.

A requirement would also be added that if one seeks a variance from sidewalk improvements from the Board of Zoning Appeals, the Planning Department must make a recommendation on whether the variance is justified or whether there are potential alternative designs that could result in installation of public sidewalk benefitting the community.

Finally, obstructions would be prohibited within the required sidewalks, but may be located within a grass strip or frontage zone. Existing obstructions would be relocated.

The Planning Commission deferred consideration of this ordinance until the March 23, 2017 Planning Commission meeting at the request of the applicant. A second substitute ordinance is expected as the sponsor continues to work with stakeholders.

Fiscal Note: Although approval of this ordinance would be likely to result in a reduction in the amount of "in-lieu" payments that would be received from developers, it would be speculative to estimate the amount of this reduction.

BILL NO. BL2016-513 (WEINER, ELROD & ALLEN) – This ordinance would make multiple changes to Title 15 and 17 of the Metro Code of Laws (MCL) concerning stormwater. Responsibility for stormwater management was moved from Public Works (PW) to the Department of Water and Sewerage Services (DWSS) per Resolution No. RS2012-277 as approved by public referendum.

The ordinance under consideration would make changes to MCL sections as follows:

Section 15.64.010 – The definition of several new terms would be added, such as "Base Flood", "Base Flood Elevation", "Community Waters", "Discharge", "Infill (regulated residential)", "Qualified Control Structure", etc.

Section 15.64.015 – This would eliminate the present sentence at the end of the section that identifies stormwater authority as being with PW instead of MWSS.

Section 15.64.020 – This would change the existing reference from "Director of Public Works" to "Director of the Department of Water and Sewerage Services".

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BILL NO. BL2016-513, continued

Section 15.64.030 – The reference to the Codes Department would be eliminated.

Section 15.64.032, Subsection A – The existing stormwater fee definitions would be eliminated.

Section 15.64.032, Subsection C(1) – This would change the agricultural exemption definitions by changing the zoning references to the definition of a "qualified farmer or nurseryman".

Section 15.64.032 Subsection C(4) – This would remove the reference to Lakewood in the list of satellite cities.

Section 15.64.032, Subsection D(3) – This would remove the requirement to post proposed regulations in "a newspaper of general circulation."

Section 15.64.032, Subsection F – This section of required reports would be deleted.

Section 15.64.032, Subsection J – This would remove the requirement to post proposed regulations in "a newspaper of general circulation."

Section 15.64.034 – This would revise the list of items that would be required to be included in the annual written report from the Director of DWSS to the Council.

Section 15.64.080 – This would add "variance requests" to the list of items that may be considered by the Stormwater Management Committee.

Section 15.64.100 – This would add "variance requests" to the list of items that may be appealed. The procedure to be followed by the Committee would also be updated to reflect the new process.

Section 15.64.110, Subsection C – This would add the requirement that no building permit could be issued until the grading permit is issued.

Section 15.64.110, Subsection E – This new subsection would add requirements for the issuance of grading permits.

Section 15.64.130, Subsection (B)(1) – This definition for commercial or industrial development would change "Adds less than ten thousand square feet of impervious surface" to say "Disturbs less than ten thousand square feet."

Section 15.64.140, Subsection A – This would establish new requirements for persons responsible for grading and drainage plans for new developments.

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BILL NO. BL2016-513, continued

Section 15.64.140, Subsection B – This would establish new requirements for overall property development grading and drainage plans.

Section 15.64.150 – This would change the heading and requirements of the Tennessee Water Quality Control Act and Federal Water Pollution Control Act.

Section 15.64.160, Subsection A – This would correct the MCL reference from "Chapter 17.136" to "Chapter 17.36".

Section 15.64.160, Subsection B – This would be deleted in its entirety.

Section 15.64.180, Subsection A – This would update the requirements for the construction of a levee, earth fill, building, or other structure that alters the floodplain area.

Section 15.64.180, Subsection A(1) and A(2) – This would define the minimum floor elevation of any structure as being at least one foot above the base flood elevation.

Section 15.64.195 – This would be deleted in its entirety.

Section 15.64.205, Subsection A – This would be deleted in its entirety.

Section 15.64.205, Subsection D – This would detail the authority of the Director of DWSS, with the approval of the Mayor, to implement these regulations.

Section 15.64.205, Subsection E – This would add the requirement that discharges with valid NPDES permits must still meet the pollutant parameters in order not to be prohibited by this section.

Section 15.64.205, Subsection G - This would be deleted in its entirety.

Section 15.64.215 – This would update the methods to be used by the DWSS to develop a schedule of charges for services provided per this section.

Section 15.64.220, Subsection A – This would establish punishment by an administrative penalty "in an amount authorized by state law" in place of the current reference to fifty dollars per day.

Section 15.64.220, Subsection B – This would change references of a "civil penalty" to an "administrative penalty."

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BILL NO. BL2016-513, continued

Section 17.28.040, Subsection A – This would be deleted in its entirety.

Section 17.28.040, Subsection C – This would be deleted in its entirety.

Section 17.28.040, Subsection D – This would expand the requirements to maintain the eligibility of the National Flood Insurance Program to include all requirements of Section 15.64 of the MCL

Section 17.28.040, Subsection E – This would be deleted in its entirety.

Section 17.28.040, Subsection F – This would replace the reference from the "Department of Public Works" to the "Department of Water and Sewerage Services."

Section 17.36.210 – This would remove "An Ordinance" from the title of Chapter 15.64.

Section 17.36.220 – This would change the reference from a report to the "Stormwater Management Appeals Board" to the "Stormwater Management Committee."

The Planning Commission approved this ordinance with an amendment at the December 8, 2016 Planning Commission meeting. It is anticipated that the sponsor will defer the public hearing of this matter until the April 4, 2017 Council meeting.

BILL NO. BL2016-611 (BEDNE) – The ordinance under consideration would make two changes to the requirements for the operation of a short-term rental property (STRP) found in newly established paragraph 17.16.250.E.

Currently, subsection 17.16.250.E.2.iii requires STRP permit applicants to provide proof of written notification to the owner of each adjacent property prior to filing the application. Such proof can consist of a signature of an owner; a signed U.S. mail receipt, or notice from the U.S. Postal Service that mail to an owner was refused or not timely accepted.

The current ordinance would require proof of the actual consent to the STRP permit by each adjacent property owner -- not merely notification. Such proof would consist of a statement signed and dated by each adjacent property owner(s) verifying that the STRP permit may be issued with their consent.

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BILL NO. BL2016-611, continued

Subsection 17.16.250.E.2.v currently requires STRP applicants to confirm 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.

Under the proposed ordinance, an additional provision would be added requiring proof that any Home Owners Association, Condominium Association, or other community association that governs the proposed STRP property has consented to the STRP permit.

It is anticipated that the sponsor will defer public hearing as required per Rule 21 of the Metro Council Rules of Procedure because a recommendation has not yet been provided by the Planning Commission. It is further anticipated that the sponsor will offer an amendment to avoid improper delegations of legislative power.

– RESOLUTIONS –

RESOLUTION NO. RS2017-573 (SLEDGE, COOPER, & OTHERS) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-574 (COOPER) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-575 (COOPER) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2016-576 (COOPER, ELROD, & ALLEN) – This resolution would authorize the Director of Public Property to exercise an option to acquire real property by purchase for use as part of a stormwater improvement project. This addition would consist of Parcel 031-00-0-036.00. The address is 0 Ingram Road in Whites Creek, Tennessee. The parcel is owned by Adelena C. and William H. McGill.

Fiscal Note: The total appraised value of the parcel as shown on the current property records is $600.The option for this parcel specifies a price of $900, to be paid from the Stormwater Operating Fund (#67431).

RESOLUTION NO. RS2017-577 and 578 (PARDUE, COOPER, & OTHERS) – The Old Shiloh Bridge over Mansker Creek at the boundary line between Davidson and Sumner Counties has fallen into disrepair and has been closed. This bridge was used by Millersville and Nashville residents and its closure has made travel between the two locations difficult.

The Tennessee Department of Transportation (TDOT) has proposed that Metro enter into the Off-System Bridge Replacement Program for the replacement of this bridge. The two resolutions under consideration would approve the required intergovernmental agreements for this project -- one between Metro and the City of Millersville; the other between Metro and TDOT.

This agreement would approve replacement of the bridge with 80% of the costs being paid with federal funds. The remaining 20% would be paid equally by Metro and Millersville. When the bridge replacement is complete, Millersville would take ownership and be responsible for maintenance of the bridge. Metro would continue to be responsible to maintain the roadway in Davidson County from the edge of Tinnin Road to the west bridge abutment.

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RESOLUTION NO. RS2017-577 and 578, continued

Fiscal Note: The total replacement cost of the bridge is estimated to be $719,232. The 20% local share of this amount would be $143,846. Since the local share would be paid equally by Metro and the City of Millersville, Metro would be responsible to pay $71,923.

The State holds money designated for Metro as state aid funds. This money is either placed there by state legislation, through federal legislation allocations, or through Metro contributions for specific project matches. In this case, the state will be performing all the work and will pull Metro's portion of the "match" money out of the Metro Bridge State Aid account.

RESOLUTION NO. RS2017-579 (SWOPE, HENDERSON, & OTHERS) – This resolution would approve an intergovernmental agreement between the Tennessee Department of Transportation (TDOT) and the Metro Department of Public Works. This would be a General Maintenance Agreement for a traffic signal at I-65 Northbound Exit Ramp at SR-254 (Old Hickory Boulevard) near the Williamson County line.

This has been approved by the Planning Commission.

Fiscal Note: TDOT would pay the entire cost for the installation of this traffic signal. Metro would only be responsible for the cost to maintain the signal after it is placed in service.

RESOLUTION NO. RS2017-580 (SLEDGE, ELROD, & ALLEN) – This ordinance would amend Ordinance No. BL2016-103 to abandon existing sewer mains and easements and to accept new sewer mains, manholes, and any associated easements for four properties located along Franklin Pike.

The previous ordinance authorized the abandonment of certain portions of 10-inch and 36-inch sewer mains and the acceptance of new 10-inch and 36-inch sewer mains and easements, along with new manhole assemblies, for properties located at 2600, 2608, 2610, and 2612 Franklin Pike.

The resolution under consideration would amend the previous ordinance by abandoning approximately 65 additional linear feet of existing 10-inch sanitary sewer main, 294 linear feet of existing 36-inch sanitary sewer main and easements, and accepting approximately 94 additional linear feet of new 10-inch sewer main, 457 linear feet of new 36-inch sanitary sewer main, six sanitary manholes and any associated easements for properties located at 2600, 2608, 2610, and 2612 Franklin Pike, to construct Project #15-SL-207.

Amendments to ordinances such as this can be allowed by resolution, and additional amendments to this ordinance may likewise be approved by future resolution.

This was approved by the Planning Commission on February 6, 2017.

RESOLUTION NO. RS2017-581 (ALLEN & ELROD) - This resolution would authorize GC Restaurant Operations, LLC to construct, install, and maintain an aerial encroachment at 2003 Belcourt Avenue. The encroachment consists of a double-faced, illuminated projecting sign.

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

This proposal has been approved by the Planning Commission.

RESOLUTION NO. RS2017-582 (COOPER) – This resolution would authorize the Department of Law to settle the personal injury claim of Ms. Wilma F. Braden against the Metropolitan Government in the amount of $15,000.

On September 19, 2016, an employee of the Public Works Department made an improper lane change while driving a Metro vehicle at the intersection of Fourth Avenue and Lafayette Street. The employee struck the car in which Ms. Braden was a passenger, causing her to experience soft tissue injuries. Her medical expenses for the treatment of these injuries totaled $8,178.

A previous payment of $2,615.67 was made to Ms. Braden in September 2016 for damages to her vehicle.

Ms. Braden has agreed to accept a total of $15,000 in full settlement of this case, based upon $8,178 for reimbursement of her direct medical expenses and $6,822 for pain and suffering.

The Department of Law recommends settlement of this claim for $15,000. If this case proceeds to trial, the Metropolitan Government will almost certainly be found negligent. The settlement amount would be paid from the Self-Insured Liability Fund.

Disciplinary action against the employee consisted of a one day suspension.

Fiscal Note: This settlement would reduce the balance of the Self-Insured Liability Fund by $15,000.

RESOLUTION NO. RS2017-583 (COOPER) – This resolution would authorize the Department of Law to settle the personal injury claim of Ms. Robin Williamson, as next of kin of Mr. Joseph Garcia, against the Metropolitan Government in the amount of $125,000.

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Mr. Garcia was driving on Interstate 65 North / 40 West, near the Church Street exit on October 24, 2014. His vehicle became disabled during rush hour in the middle lane of traffic and could not be moved from that location. Mr. Garcia called 911 to report the problem.

The Metro Emergency Communications Center (ECC) call taker asked Mr. Garcia several questions to determine the exact nature of the problem, including the specific location of his vehicle. During this conversation, Mr. Garcia exited his vehicle to determine the specific problem with his vehicle -- that a front tire had fallen off. The call taker specifically instructed Mr. Garcia to get back in his car, put on his seatbelt, and turn on his flashers. The call taker told Mr. Garcia to call back if anything worsened and informed him that help was on the way.

Approximately nine minutes after the call ended, a tractor/trailer collided with Mr. Garcia's vehicle, causing the vehicle to catch on fire. Mr. Garcia was pronounced dead on the scene, but a witness described seeing purposeful motions by Mr. Garcia inside the vehicle immediately after the accident. This, and the medical observation of smoke in Mr. Garcia's lungs, led the Medical Examiner to conclude that Mr. Garcia survived the initial collision and that the cause of death was thermal burns and smoke inhalation.

The ECC does not provide specific instructions for call takers to give in such instances. Moreover, an ECC policy states, "[i]f there is a question as to the appropriateness of pre-arrival instructions for a particular police, fire, or medical incident that has not been addressed in writing, none should be relayed unless directed to do so by supervisory or field personnel. The caller will be advised to use their own discretion." Plaintiff's 911 call taker expert determined that the call taker failed to follow this policy by giving Mr. Garcia specific instruction to re-enter his car.

Mr. Garcia was eighteen years old at the time of the accident. Plaintiff's expert economist estimated the pecuniary value of Mr. Garcia's life at $517,577 to $1,487,266, depending on the level of education he would have otherwise achieved. Metro's economist estimated the pecuniary value at between $202,139 and $212,778, based on the hourly wage he was earning at the time of the accident.

In addition to this loss, recovery for Plaintiff Robin Williamson's loss of "filial consortium" would be part of the overall amount to be awarded. Although the exact amount is not known, it is likely the Plaintiff would receive a substantial amount for the loss of her son.

Finally, a jury would be likely to award a substantial amount for pain and suffering. The evidence would support a conclusion that Mr. Garcia was alive, conscious, and able to feel pain while trapped in his burning car. It is likely that a jury would be greatly swayed by the circumstances of his death.

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RESOLUTION NO. RS2017-583, continued

The Department of Law has estimated that Plaintiff's total damages award could be as high as two to three million dollars. If Metro is assigned 10% of the fault in this case, the award would therefore be between $200,000 and $300,000. With the addition of a filial consortium claim, the total recovery against Metro could be higher. In addition to the potential award in this case, the Department of Law would need to spend an additional $15,000 to $20,000 to pay its own experts if the case proceeds to trial.

It should be noted that the legislature has now granted extended immunity from suit "to employees and local governments that manage, supervise, or perform 911 emergency communications services". As a result call-takers as well as Metro would be immune from suit for claims such as the ones made in the present lawsuit. However, this legislation did not become effective until after the accident and the death of Mr. Garcia. As such, the extended immunity provisions would not apply in this case.

The Governmental Tort Liability Act (GTLA) limits the total amount that can be awarded in this case to $300,000. If the judgment is less than this amount, Metro would also be required to pay Plaintiff's discretionary costs associated with her claims against Metro. These costs would likely be in excess of $25,000.

Ms. Williamson has agreed to accept a total of $125,000 in full settlement of this case. The Plaintiff has already settled her claims against the truck driver and the truck driver's employer.

The Department of Law recommends settlement of this claim for $125,000. If this case proceeds to trial, the Metropolitan Government will likely be found negligent. The settlement amount would be paid from the Self-Insured Liability Fund.

Disciplinary action against the employee consisted of a written reprimand.

Fiscal Note: This settlement would reduce the balance of the Self-Insured Liability Fund by $125,000.

RESOLUTION NO. RS2017-584 (COOPER) – This resolution would authorize the Department of Law to settle the personal injury claim of Ms. Geneva Woods against the Metropolitan Government in the amount of $11,500.

On February 1, 2016, a Metro Police Officer was driving west on Harding Place in his patrol car. The officer saw two vehicles stopped in the center lane after being involved in a traffic accident. The officer pulled into the right lane, turned on his blue lights, and started to back up in order to position his car behind the accident.

RESOLUTION NO. RS2017-584, continued

The officer failed to notice the vehicle behind his car driven by Ms. Woods, who was 8 months pregnant at the time. The officer struck her car while backing up, causing her to suffer soft tissue injuries and false contractions, and incur direct medical expenses of $6,706.57.

Ms. Woods' vehicle was considered to be a total loss as a result of the accident. A separate settlement for this property loss is pending a demand by her insurance company.

Ms. Woods has agreed to accept a total of $11,500 in full settlement personal injury portion of this case, based upon $6,706.57 for reimbursement of her direct medical expenses and $4,793.43 for pain and suffering.

The Department of Law recommends settlement of this claim for $11,500. If this case proceeds to trial, the Metropolitan Government will almost certainly be found negligent. The settlement amount would be paid from the Self-Insured Liability Fund.

Disciplinary action against the employee consisted of a suspension for one day.

Fiscal Note: This settlement would reduce the balance of the Self-Insured Liability Fund by $11,500.

RESOLUTION NO. RS2017-585 (SHULMAN) – This resolution would approve the election of six hundred forty-two (642) Notaries Public in accordance with state law. Per Rule 27 of the Metro Council Rules of Procedure, the Davidson County Clerk has advised that each of the applicants meets the qualifications for the office.

– ORDINANCES ON SECOND READING –

BILL NO. BL2016-483 (MENDES, GILMORE, & OTHERS) – This ordinance would revise Section 2.44.115 of the Metro Code of Laws (MCL) which currently requires the Metro Nashville Police Department (MNPD) to submit quarterly and annual crime reports to the Metro Council.

The proposed changes would establish a new subsection requiring the MNPD to further submit an annual traffic stop report to the Council no later than March 30th of each year. These reports would provide the following:

a. The total number of traffic stops;
b. The percentage of stops resulting in:
   (i) warrantless probable cause searches;
   (ii) warrantless consent searches without probable cause; and
   (iii) warrantless "pat down" searches; and
c. The success rate of each type of search (wherein "success" is defined as a search resulting in seizure of incriminating evidence).

Each category would be reported within demographic categories, defined by sex, race, and ethnicity.

In furtherance of adding a new traffic stop report requirement, this ordinance would change the current Section title from "2.44.115 - Crime reports to be submitted to the metropolitan council" to "2.44.115 - Crime *and traffic stop* reports to be submitted to the metropolitan council" (Italics added.) Similarly, current references to a "Quarterly report" and "Annual report" would be changed to "Quarterly *crime* report" and "Annual *crime* report", respectively, distinguishing the proposed traffic stop reports.

On November 29, 2016, the MNPD voluntarily submitted the requested data for calendar year 2015, in the format requested in the proposed ordinance, as a supplement to the current MNPD annual report entitled "Motor Vehicle Stop Data Collection Analysis." The MNPD has further indicated that the addition of these reporting requirements will not have a significant impact upon their personnel needs or operating budget.

BILL NO. BL2017-559 (HASTINGS) – Section 17.40.060 of the Metro Code of Laws (MCL) addresses applications to the Planning Commission for amending the official zoning map. Subsection A provides, in part, that applications to amend the zoning map may be initiated by the property owner, the Metropolitan Planning Commission, or a member of Metro Council.

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BILL NO. BL2017-559, continued

Subsection B specifies that amendments to the official zoning map for property owned by the Metropolitan Government may only be initiated by the Mayor, the head of the department or agency to which the property is assigned, or by the Director of Public Property Administration. The ordinance under consideration would expand that list by specifying that a member of the Council may also initiate applications regarding Metro-owned property.

BILL NO. BL2017-581 (SHULMAN) – In 2006, an amendment to the Charter of the Metropolitan Government was approved by referendum which established a new and independent Department of Audit, directed by the newly-created Metropolitan Auditor and generally overseen by a Metropolitan Audit Committee. Section 2.24.300 of the Metro Code of Laws (MCL) describes the functions and authority of the independent Metropolitan Auditor. The Metropolitan Auditor shall conduct "financial, performance, and other audit services" per Government Auditing Standards as established by the United States Government Accountability Office.

The ordinance under consideration would add a new Paragraph H to this section of the MCL. This new subsection would empower the Metropolitan Auditor to conduct an independent investigation of any department, board, and/or commission of Metro. In addition, the Metropolitan Auditor would be empowered to audit the performance of contracts by entities that contract with Metro.

In performing these audits, the authority being granted would include the ability to review, research, and conduct interviews as well as having access to any and all necessary documentation. If any entity under such audit refuses to cooperate, the Metropolitan Auditor would be required to report this to the Audit Committee as well as to the Budget and Finance Committee "for further action".

What constitutes "further action" is not explicitly defined within this section of the MCL. It would be up to the Audit Committee and/or Budget and Finance Committee to determine what recourse to pursue.

An amendment is anticipated to clarify that only boards and commissions created under Metropolitan Government authority are subject to the new provision. Additionally, the amendment may also synchronize the current ordinance with BL2016-159 (addressing similar Auditor powers) which was indefinitely deferred in March, 2016.

BILL NO. BL2017-585 (WEINER) – This ordinance would add additional requirements for the care of animals. Sections 8.12.030 and 8.20.040 of the Metro Code of Laws (MCL) would be modified to add the requirement to provide shelter for animals with protection from the "elements". This term would now be defined as "weather conditions, including the following inclement weather conditions: freezing temperatures, a heat index of 95 degrees Fahrenheit (95^{o} F) or above as determined by the National Weather Service, thunderstorms, or tornados." A similar requirement would be added to section 8.20.040 to protect confined animals from the elements.

Section 2 and 3 of the Ordinance would apply the provisions of Code section 8.12.030.C.6 (which provides that tethered dogs shall not be left outside in temperature extremes or inclement weather) to all dogs – regardless of whether they are tethered.

An amendment is anticipated by the sponsor to correct an erroneous reference in Section 4 of the ordinance to "Subsection B" of Section 8.20.040.

BILL NO. BL2017-586 (WEINER) – Chapter 8.20 of the Metro Code of Laws (MCL) establishes various animal control regulations within the Urban Services District (USD). These include such items as license tag removal, treatment for persons bitten by a rabid dog, confinement of animals, animals running at large, etc.

This ordinance would remove all references to the USD in the various sections of this chapter so that the regulations would be uniformly applicable throughout Davidson County.

This ordinance should not be confused with BL2016-527, which was deferred indefinitely on January 3, 2017. That ordinance would have made several additional requirements concerning pen enclosures for dogs. The ordinance now under consideration would not add additional requirements to this chapter. It would simply make the existing requirements applicable county-wide.

An amendment by the sponsor is anticipated to retain the USD restriction for certain sections.

BILL NO. BL2017-612 (Cooper, Mendes, Mina Johnson) – Chapter 2.24 of the Metro Code of Laws (MCL) currently requires an internet posting of a calendar listing the date, time, location, and agenda of all meetings of boards and commissions of the Metropolitan government. Chapter 2.68 further requires each board and commission to develop a policy for providing adequate notice of all meeting dates, times, locations, and agendas. They are further required to include a procedure for submitting this information for posting on the calendar required by Chapter 2.24.

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BILL NO. BL2017-612, continued

In an effort to increase transparency and accessibility to relevant information, the current ordinance would add new subsection 2.68.020.B which would require each Metro board and commission to develop a policy, approved by Metro IT Services, for providing minutes of proceedings in a consistent format as soon as practicable after meeting dates. Additionally, the policy must include procedures for submitting minutes and agendas in a searchable electronic format for posting onto the nashville.gov website of the submitting board or commission.

In addition to this change, the ordinance would also update existing references in the MCL to the "Department of Information Systems" to the "Department of Information Technology Services". These references are found in Section 2.24.146 and 2.68.020. Finally, the reference to Section 2.24.150 in Subsection 2.68.020.A would be updated to Section 2.24.146.

Fiscal Note: There should be minimal expense and effort for each department that supports the various boards and commissions to post minutes and agendas according to the new standardized format. Metro IT Services director Keith Durbin has confirmed there should be no significant financial impact to ITS since the "nashville.gov" website is already designed to hold reports such as these. It should nevertheless be recognized that a large number of boards and commissions are relatively small, without staff, and operated by citizen volunteers.

BILL NO. BL2017-613 (ALLEN, ELROD) – This ordinance would abandon and accept water and sewer mains, sanitary sewer manholes, and any associated easements for properties located at 519 and 521 Chesterfield Avenue.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2017-614 (HASTINGS, ELROD, ALLEN) – This ordinance would abandon existing water main, a fire hydrant, and easement and to accept new fire hydrants for six properties located along 9th Avenue North.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2017-615 (O'CONNELL, ELROD, ALLEN) – This ordinance would abandon existing sanitary sewer main and a manhole unit and to accept new sanitary sewer main and manholes for property located at 1209 Hawkins Street.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2017-616 (KINDALL, ELROD, ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of 16th Avenue North to "BBQ Alley".

This was approved by the Planning Commission and the Emergency Communications District. A recommendation from both, prior to third reading, is required under Section 13.08.015.D of the Metro Code of Laws (MCL). A substitute is anticipated to correct the name from “BBQ Alley” to “Bar-B-Que Alley.”

– ORDINANCES ON THIRD READING –

BILL NO. BL2016-308 (HASTINGS) – Tennessee Code Annotated (TCA) § 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 would be 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.

This ordinance was previously deferred indefinitely per Rule 23 of the Metro Council Rules of Procedure on August 16, 2016. Since restored to the Agenda, the ordinance has been twice deferred. If deferred again for any reason, it will again be deferred indefinitely.

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.

Per 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.

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BILL NO. BL2016-433, continued

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. (At the request of the Metro Legal Department, the bond was changed back to the name of Nashville Data Link -- the current franchisee.) Additionally, 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.

Following a joint committee hearing on October 17, 2016, Council members requested various items of information from franchise applicants, including Windstream. The request to Windstream sought information regarding any history of franchise complaints and the resolution thereof, as well as the information that would ordinarily be provided by an initial franchise applicant (i.e., a detailed report establishing its capacity to perform franchise obligations).

Windstream submitted a written response circulated to Council members on November 2, 2016. In the opinion of the Metro Council Office, the information provided at that time was not fully responsive. However, Windstream has now provided the additional requested information.

This matter was approved by the Planning Commission on October 5, 2016.

BILL NO. BL2016-532 (O'CONNELL, ALLEN, & ELROD) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of Jo Johnston Avenue to "Lifeway Plaza".

This was approved by the Planning Commission on November 17, 2016 and by the Emergency Communications District on January 19, 2017. (Recommendations from both, prior to third reading, are required under Metro Code Section 13.08.015.D).

Two legislative provisions are potentially at issue in this renaming. Metro Code section 13.08.015.E.4 prohibits name changes "for the purpose of promoting a private business." However, namesake Lifeway Christian Resources is a 501(c)(3) religious nonprofit organization and would not generally be considered a "private business" under section 13.08.015.E.4.

Additionally, however, Tenn. Code. Ann. §4-1-412, known as the "Tennessee Heritage Protection Act of 2013", prohibits the removal, renaming, relocation, or alteration of any "memorial" (including any street) regarding a "historic figure". More specifically, Section 4-1-412(a)(2) provides in relevant part that no street which has been "named or dedicated in honor of any historical military figure" may be renamed.

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BILL NO. BL2016-532, continued

Section 13.08.015.B requires ordinances proposing a street name change to be forwarded to the Metropolitan Historical Commission "for review as to whether there is any historical significance associated with the existing street name." On January 31, 2017, a report from the Metropolitan Historical Commission was circulated to Council members as required. The report states that "[t]he namesake for the new street name is believed to be Confederate General Joseph E. Johnston (February 3, 1807 – March 21, 1891), 'a dubious compliment to Little Joe, the Confederate general…'", and proceeds to describe Johnston's military background. Other historical sources describe Jo Johnston (born Joseph Eggleston Johnston) as one of the most senior general officers in the Confederate States Army during the American Civil War.

Based upon this report, it appears the provisions of the Tennessee Heritage Protection Act may apply, thereby precluding a renaming. However, the statute does provide a waiver mechanism through a petition to the Tennessee Historical Commission. (Tenn. Code Ann. 4-1-412(c)).

With two previous deferrals, a third deferral of this item would result in indefinite deferral per Rule 23 of the Metro Council Rules of Procedure.

BILL NO. BL2017-582 (LEONARDO) – Section 2.24.210 of the Metro Code of Laws (MCL) gives the Director of Public Property Administration the authority for leasing, collection of rent, sale, and disposal of all public property owned by Metro, unless otherwise provided by ordinances. Council approval is generally required prior to the sale or lease of surplus property. For example, section 2.24.250.C.1 states that the Director of Public Property is authorized to sell surplus property "with the approval of the metropolitan council." Similarly, the Director may sell properties obtained by Metro through the delinquent tax-sale process, "subject to the prior approval of the metropolitan council by resolution" (Section 2.24.250.G). The Director likewise must obtain Council approval to purchase land in fee simple (other than rights-of-way for streets and alleys) (Section 2.24.250.F).

Despite these provisions, the Code references only "leases" as being subject to the approval of Council in preceding section 2.24.210. This may simply be an oversight, given the provisions of sections 2.24.250C and G. Nevertheless, the ordinance under consideration would explicitly provide for Council approval of both sales and leases of public property owned by Metro.

Additionally, archaic provisions regarding leases of space within the Stahlman Building, and annual reports thereon, would be eliminated. These provisions are no longer applicable.

BILL NO. BL2017-583 (ALLEN) – This ordinance provides an update to Section 5.12.060 of the Metro Code that is necessary due to the approval of Ordinance No. BL2016-492 at the Council meeting on February 21, 2017. BL2016-492 transferred short-term rental property (STRP) regulations from Chapter 6.28 of the Metro Code to Title 17.

Subsection 5.12.060.A(4) of the Code provides for a portion of transient occupancy privilege tax revenue, generated by short-term rental properties, to be exclusively dedicated to the Barnes Fund for Affordable Housing. This subsection currently refers to STRP regulations as being in Chapter 6.28 of the MCL.

The ordinance under consideration would simply update the STRP reference in subsection 5.12.060.A(4) from "Chapter 6.28" to "Title 17".

BILL NO. BL2017-584 (PARDUE) – The definition of "beer" in Section 57-5-101 of the Tennessee Code Annotated has recently been changed to specify that the alcoholic content of beer by weight (ABW) cannot be more than eight percent (8%) by weight. However, Title 7 of the Metro Code of Laws (MCL) defines beer as having alcoholic content of not more than five percent (5%) by weight. The ordinance under consideration would change Metro's ABW definition to 8% to comply with the new state definition.

By making this change, sales of beer up to 8% ABW would be permitted within the territorial jurisdiction of Metro without the need for a license from the Alcoholic Beverage Commission.

It should be noted that the Tennessee General Assembly is currently considering HB0499 / SB0502 which would eliminate ABW from the definition of "beer". Instead, beer could have alcohol content up to eighteen percent (18%) by volume (ABV). Of course, it is unknown whether this legislation will pass in its current form.

BILL NO. BL2017-589 (SYRACUSE, VANREECE, & OTHERS) – The ordinance under consideration would approve an agreement consisting of three major components between Metro and Ryman Hospitality Properties, Inc. (Ryman).

In 2007, the Council enacted several legislative items geared toward providing financial incentives to assist Gaylord in financing a proposed $80 million expansion of the Gaylord Opryland property, owned by Ryman. One of these legislative items declared the Opryland Hotel property to be a secondary Tourism Development Zone (TDZ) (a state law mechanism that would allow the increased sales tax revenues generated by the Opryland expansion to be used for debt service on the project).

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BILL NO. BL2017-589, continued

At the time these Gaylord incentives were adopted, the Council also imposed an additional one percent (1%) Hotel Occupancy Tax county-wide as part of the funding mechanism for a future convention center. However, the state law authorizing the additional one percent (1%) Hotel Occupancy tax provided that the portion of the tax collected within a secondary tourism development zone is to be deposited in the Metropolitan Government general fund.

The Council designated the additional one percent (1%) Hotel Occupancy tax to be used for debt service on the Opryland Hotel and Convention Center expansion project. But in the wake of a poor economy, the expansion project was placed on hold and no debt was issued. Thus, approximately $1.8 million in additional hotel occupancy tax funds generated by the Gaylord Opryland Hotel accumulated in the general fund.

In 2010, Ordinance No. BL2010-727 appropriated funds from the unencumbered additional one percent (1%) Hotel Occupancy tax within the Gaylord TDZ for the repair of the Grand Ole Opry House, which had sustained damages estimated at $17,000,000 - $20,000,000 because of the May 2010 flood. An initial grant of $1,600,000 was appropriated immediately from revenue already collected from the Hotel Occupancy tax for reimbursing expenses related to the repair of the Grand Ole Opry House. The ordinance also restricted future revenues generated by the additional one percent (1%) Hotel Occupancy tax collected within the Gaylord TDZ through July 1, 2025, including a 5% per annum interest rate, for flood repairs to the Opry House.

The revenues generated by the additional Hotel Occupancy Tax collected in the Gaylord TDZ are now not projected to be sufficient to fully reimburse Ryman for the initial costs to repair the Grand Ole Opry House. Additionally, Ryman submits that it has incurred additional costs in the renovation of the Grand Old Opry House to prevent future damages from flooding disasters.

The ordinance now under consideration would extend the end date of the agreement per BL2010-727 from July 1, 2025 to July 1, 2031. The purpose for use of the additional Hotel Occupancy Tax revenues would also be expanded to include expenditures to “prevent damage from future flooding disasters”.

The second component of this agreement would approve an abatement of real property taxes for the construction of a new water park by Ryman, expected to be known as “Soundwaves.” Ryman would still be required to pay the same amount of property taxes as paid for 2017 for the parcels that would be used for this water park. Ryman would only receive an abatement of the amount of real property taxes that would normally be due for the new project.

The last component of this agreement concerns the acceptance of a donation of two parcels of property by Ryman to Metro. These parcels are located at 2400 and 2410 McGavock Pike, at

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BILL NO. BL2017-589, continued

the intersection of McGavock Pike, Riverview Road, and Pennington Bend Road. As of January 1, 2013, the total appraised value of these two parcels as shown on the official Metro map is $356,000. These parcels would provide public boat access to the Cumberland River and adjacent public parking, rendering them suitable for Metro's public park system.

This has been approved by the Planning Commission.

Fiscal Note: The construction costs for the new water park are expected to be approximately ninety million dollars ($90,000,000). The annual standard USD property taxes that would be due for this amount would be $1,625,760.

Ryman would receive a complete abatement of this additional property tax amount after construction is completed, expected to occur in 2019. The abatement would continue each year through 2025. After that date, Ryman would be required to pay the full standard real property tax for the new water park, along with the remainder of their property.

The final assessed value of this water park will not be known until the project is complete. Typically, the final assessed value is less than the construction costs, so the $90,000,000 value should be considered as an upper limit.

BILL NO. BL2017-591 (SLEDGE, ELROD, & ALLEN) – This ordinance would abandon and accept sewer and water mains, sanitary manholes, and easements for property located at 1500 12th Avenue South.

This has been approved by the Planning Commission. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2017-592 (ELROD & ALLEN) – This ordinance would authorize HRT of Tennessee, Inc. to install, construct, and maintain underground encroachments in the right-of-way located at 2011 Hayes Street. These encroachments would consist of a structural concrete closure slab spanning from the Hayes Street curb line south, for the face of the new parking garage on the Midtown medical Plaza campus at 2011 Hayes Street.

HRT of Tennessee, Inc. has agreed to indemnify and hold the Metropolitan Government harmless from any and all claims in connection with the installation and maintenance of the encroachments, and would be required to provide a $2 million certificate of public liability insurance naming the Metropolitan Government as an insured party.

This proposal has been approved by the Planning Commission.

BILL NO. BL2017-593 (S. DAVIS, ELROD, & ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning an Unnumbered Alley right-of-way.

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

Legislative Number	Parties	Amount	Local Cash Match	Term	Purpose
RS2017-573	**From**: Tennessee Historical Commission **To**: Metro Historical Commission and Parks Department	$24,000	$10,000 plus in-kind match of $6,000	N/A	If approved, the grant proceeds would be used to hire a consultant to complete a Cultural Landscape Plan for Fort Negley. The Parks Department has agreed to pay the required $10,000 cash match. The Metro Historical Commission Foundation agreed to provide $2,000 of the required "in-kind" match. The remaining $4,000 of the "in-kind" match would come from the Fort Negley Technical Advisory Committee.
RS2017-574	**From**: U.S. Department of Health and Human Services **To**: Metro Board of Health	Not to exceed $2,138,569	$0	March 1, 2017 through February 28, 2018	The grant proceeds would be used to enhance access to a comprehensive continuum of high-quality, community-based care for low-income individuals and families with HIV disease.
RS2017-575	**From**: Tennessee Department of Health **To**: Metro Board of Health	Not to exceed $727,500	$0	July 1, 2017 through June 30, 2018	The grant consists of $436,500 in federal funds and $291,000 in state funds. The grant proceeds would be used to provide comprehensive care coordination services to eligible children with special healthcare needs. $617,800 of the proceeds would be used for the personnel costs of public health nurses, program specialists, office support representatives, and an interpreter.