METRO COUNCIL OFFICE

MEMORANDUM TO: All Members of the Metropolitan Council

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

COUNCIL MEETING DATE: **May 2, 2017**

RE: **Analysis and Fiscal Notes**

Unaudited Fund Balances as of 4/26/17:

4% Reserve Fund	$32,237,877*
Metro Self Insured Liability Claims	$5,315,223
Judgments & Losses	$3,081,417
Schools Self Insured Liability Claims	$4,044,900
Self-Insured Property Loss Aggregate	$7,433,140
Employee Blanket Bond Claims	$670,962
Police Professional Liability Claims	$2,404,445
Death Benefit	$1,389,694

*This assumes unrealized estimated revenues in Fiscal Year 2017 of $25,412,505.

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

– ORDINANCES ON PUBLIC HEARING –

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".

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.

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BILL NO. BL2016-513, continued

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.

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.

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BILL NO. BL2016-513, continued

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."

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.

BILL NO. BL2017-608 (HAGAR & RHOTEN) – This ordinance would make multiple changes to the Metro Code of Laws (MCL) concerning Short-Term Rental Property (STRP) regulations. In its most significant provisions, the ordinance would establish two STRP uses: (1) STRP (owner-occupied) – an accessory use to residential uses; and (2) STRP (not owner-occupied) – a commercial use permitted with conditions in zoning districts where multi-family residential uses are allowed (RM2 through RM20-A, RM40 through RM100-A, MUN and MUN-A, MUL and MUL-A, MUG and MUG-A, MUI and MUI-A, OG, OR20 through OR40-A, ORI and ORI-A, CN and CN-A, CL and CL-A, CS and CS-A, CA, CF, DTC North, DTC South, DTC-West, DTC Central, SCN, SCC and SCR). STRPs that are not owner-occupied would be prohibited in AG, AR2a, R, R-A, RS and RS-A districts. Additionally, the ordinance would allow permits issued under previous regulations to be renewed, but only until a phase-out date of June 28, 2019.

Additional changes made under the ordinance are as follows:

- Section 1 would amend the STRP definition in Section 17.04.060 of the MCL, and would specify that STRPs must contain no more than four (4) sleeping rooms, (for both owner-occupied and not owner-occupied.)
- Section 2 would modify the district land use tables per Section 17.08.030 of the MCL by deleting STRPs.
- Section 3 would further modify the district land use tables by adding owner-occupied STRPs as an accessory use.
- Section 4 would further modify the district land use tables by adding not owner-occupied STRPs as a use permitted with conditions.
- Section 5 of the ordinance would modify the title of Section 17.16.250.E of the MCL, presently titled “Short Term Rental Property (STRP)”, to “Short term rental property (STRP) — Owner-Occupied”.
- Section 6 would replace Subsection 17.16.250.E.1 in the MCL with similar provisions regarding permit requirements.
- Section 7 would add a new subsection to Section 17.16.070 of the MCL establishing regulations for STRPs that are not owner-occupied.

BILL NO. BL2017-609 (GLOVER, SWOPE, & WEINER) – This ordinance would amend Section 17.16.250.E. of the Metro Code of Laws (MCL) by establishing a 12-month moratorium upon permits for not owner-occupied Type 2 and Type 3 STRPs in single and two-family residential zoning districts, or within SP districts that permit STRPs in single or two-family dwellings.

The ordinance would add a new Subsection 17.16.250.E.5 to establish the moratorium, beginning May 1, 2017. However, it would not preclude the renewal of STRP permits for current permit holders who have committed no more than two violations within the preceding year, or applicants with current STRP applications on file.

It is anticipated that the sponsors intend to withdraw this ordinance from further consideration.

BILL NO. BL2017-610 (VANREECE) – Similar to Ordinance No. BL2017-609, this ordinance would amend Section 17.16.250.E. of the Metro Code of Laws (MCL) by establishing a moratorium upon permits for not owner-occupied Type 2 and Type 3 STRPs in single and two-family residential zoning districts, or within SP districts that permit STRPs in single or two-family dwellings. In this instance, the moratorium would extend to 36 months.

The ordinance would add a new Subsection 17.16.250.E.5 to establish the moratorium, beginning May, 1, 2017. However, it would not preclude the renewal of STRP permits for current permit holders who have committed no more than two violations within the preceding year, or applicants with current STRP applications on file.

It is anticipated that the sponsors intend to withdraw this ordinance from further consideration.

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, Section 17.16.250.E.2.v requires that an STRP application include a statement that "the applicant has confirmed that operating the proposed STRP would not violate any Home Owners Association agreement or bylaws, Condominium Agreement, Covenants, Codes and Restrictions or any other agreement governing and limiting the use of the proposed STRP property."

As amended, BL2017-611 would likewise require a statement that the applicant has notified in writing the Home Owners Association, Condominium Association, or other such community association governing the proposed STRP property. But it would further require the applicant to advise "the department of codes administration of any objection or opposition to the application by any such association of which the applicant is aware."

BILL NO. BL2017-653 (ALLEN & BEDNE) – Currently, applicants for owner-occupied short term rental property permits can establish their ownership of the property by submitting two (2) of any of the following documents:

- Tennessee Driver's license
- Other valid State of Tennessee identification card
- Davidson County voter registration card
- Current employer verification of residential address
- Paycheck / check stub
- Work ID or badge

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BILL NO. BL2017-653, continued

- Internal Revenue Service W-2 form
- Bank statement

The ordinance under consideration would add two (2) additional documents as acceptable modes of proof, for the benefit of applicants without traditional forms of identification:

- Current employer verification of residential address or a letter from employer on company letterhead with original signature (notarized if not on letterhead)
- Current automobile, life, or health insurance policy

BILL NO. BL2017-654 (WEINER, ROSENBERG, & OTHERS) – The Metropolitan Code uses the term "church" when referencing buildings or property used for religious worship. The Code broadly defines "church" to include any building or property where a congregation regularly meets for religious worship (MCL §7.08.010). However, the term "church" is generally construed as referring primarily to a building used for Christian worship or even the whole body of Christian believers. (See, *e.g.*, Merriam-Webster's unabridged dictionary, 11th ed.) Because Nashville is home to a variety of religious denominations whose congregations may not necessarily subscribe to the term "church", the ordinance under consideration would substitute "place of worship" or "religious institution" for "church" in twelve (12) sections of the Code.
In ten (10) of the revised sections, the term "place of worship" would be substituted for "church" without otherwise changing the definition in MCL §7.08.010 ("a building or property where a congregation regularly meets at least one day per week for religious worship.")
The final two (2) revised sections appear in Title 17, and would instead use "religious institution" as the substituted term because that is the term currently used in Title 17.

BILL NO. BL2017-684 (HENDERSON) – This ordinance would subtly alter Note 2 in Table 17.12.020.A of the Metro Code of Laws (MCL) which establishes the bulk standards for structures. This table in the zoning regulations concerns single-family and two-family dwellings. This change was prompted by the Metro Council's adoption of ordinance No. BL2016-493 which, in part, revised provisions for the dedication of rights-of–way to facilitate the construction of sidewalks.

Currently, Note 2 provides that when a right-of-way dedication is required for an existing lot or parcel "that could be subdivided into two or more lots" that would each meet the minimum lot size requirements, the minimum lot area is considered to be the area *prior* to the dedication. The ordinance under consideration would also apply this minimum lot area to existing lots or parcels *that meet the minimum lot area.*

BILL NO. BL2017-685 (WEINER) – This ordinance would make several changes to Section 17.16.250 of the Metro Code of Laws (MCL) concerning short-term rental properties. Most notably, the ordinance would allow an "online marketplace operator" of STRPs to apply for permits on behalf of STRP operators, It would reduce occupancy to either twice the number of sleeping rooms plus four, or ten persons, whichever is lower; and also reduce census tract limitations outside the Urban Zoning Overlay. The ordinance would further allow Metro to request that operators with violations or without permits be removed from an online marketplace.

The specific changes are as follows:

- No more than two and a half percent (2.5%) of residential units within each census tract outside of the UZO that includes an RS district would be permitted as Type 2 non-owner occupied short-term rental use. No more than three percent (3%) of single-family or two-family residential units within each UZO census tract would be permitted as a Type 2 non-owner-occupied short-term rental use. Existing Type 2 STRP permit holders within a census tract that has reached either of these limits would continue to be allowed to apply for renewal.
- An on-line marketplace provider would be permitted to submit applications and renewal applications on behalf of STRP operators. (Currently, Section 17.16.250.E requires submission of an affidavit verifying application information, and further requires the applicant 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. It is unclear whether BL2017-685 would require these affidavit submissions and confirmations from someone other than the STRP operator.)
- The maximum number of occupants permitted on a STRP property at any one time could not exceed more than twice the number of sleeping rooms plus four, or ten persons, whichever is lower. Simultaneous rental to more than one party under separate contracts would not be allowed. The maximum occupancy would be required to be conspicuously posted within the STRP unit. Advertising a STRP for more occupants than allowed would be grounds for revocation of the permit.
- The ordinance provides that "[t]he City" may contact the on-line marketplace operator to request that it voluntarily remove a listing from the on-line marketplace. The ordinance does not indicate what effect, if any, such requests would be given, and Metro presumably has the authority to make such requests currently. The ordinance does state that no on-line marketplace operator would be held responsible for content created or controlled by its users.
- On-line marketplaces that list STRPs and that submit STRP applications to Metro would be required to provide certain information about activity on the on-line marketplace on a monthly basis. This would include the total number of STRPs listed on the on-line

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marketplace during the reporting period, aggregated statistics regarding the total number of nights that STRPs on the platform were rented to guests, , aggregated statistics regarding the number of nights that STRPs on the on-line marketplace are booked for rental during the remaining months of the applicable calendar year, aggregated statistics regarding the STRP permit type for each listing, and the total amount of tax collected by the platform and remitted to the city.

Under the ordinance, Metro would have the authority to issue a subpoena for information from "the on-line marketplace", provided the subpoena is submitted in writing attesting that Metro has reasonable belief that a STRP may be in violation of the MCL, and is related to a specific investigation by Metro relating to a single STRP specifically identified in the subpoena and specifying the alleged violations. However, the Metropolitan Charter currently provides authority for compelling the attendance of witnesses and records. This authority is maintained by the Council, Civil Service Commission, the Board of Education, and every other officer and agency of Metro authorized to conduct investigations. (Metropolitan Charter, Section 18.10).

Lastly, the adoption of regulations upon online marketplace operators is not typical of land use or zoning provisions under Title 17 of the Metro Code and would perhaps be more suitably set forth under Title 6 of the Metro Code (Business licenses and regulations).

– RESOLUTIONS –

RESOLUTION NO. RS2017-663 (COOPER) – This is a routine, annual resolution to call the Metropolitan Board of Equalization (MBOE) into regular session convening from June 1, 2017 until June 23, 2017. It would also call the MBOE into special session convening June 26, 2017 to complete any unfinished business regarding appeals on pro-rated assessments. The special session is not to extend beyond May 31, 2018.

The MBOE always meets during the month of June to hear appeals of assessments on real property. Historically, the MBOE has been required to have special sessions to conclude its work due to the large number of appeals.

State law authorizes county legislative bodies to fix the number of days the Board of Equalization is to sit in regular session and to call the board into special session to complete any unfinished business. (*Tenn. Code Ann. § 67-1-404*).

RESOLUTION NO. RS2017-664 (COOPER) – This resolution would approve the appointment of 98 Davidson County citizens to serve as hearing officers for the Metro Board of Equalization (MBOE). The MBOE is authorized under state law to hear appeals of assessments on real property.

In the past, members of the MBOE had to be approved by the Tennessee Board of Equalization. This state law was changed to require the members to be approved by the county legislative body by resolution. (*Tenn. Code Ann. §67-5-1406*).

RESOLUTION NO. RS2017-665 (COOPER) – As required by state law, this resolution would approve the new four-year plan for reappraisal and equalization of assessment for Davidson County, finishing in FY2021. Although Section 67-5-1601 of the Tennessee Code Annotated (TCA) requires that a reappraisal of all real property and an equalization of assessments be completed in every county every six (6) years, it also allows a reappraisal to be held every four (4) years by the Assessor of Property with the review of the local governing body. Metro has followed this four-year schedule for many years.

The reappraisal program will begin July 1, 2017, and will provide for the reevaluation of some 273,364 parcels of property in Davidson County. The property reevaluation will be completed in the year 2021, which will be the next reevaluation year. The plan provides that 51,690 parcels will be inspected in year one, 115,374 in year two, and 90,775 in year three. The fourth year is

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RESOLUTION NO. RS2017-665, continued

the reevaluation year in which approximately 257,839 parcels are estimated to be reviewed. The cost of the reappraisal program, which is funded in the annual operating budget of the Assessor of Property, funds the salary and benefits for the employees and other related costs for the program.

The state has provided approximately $200,000 per year in previous years as the state's share of the reappraisal functions by the Metro Assessor of Property to help fund the reappraisal program. However, the Assessor does not know how much funding, if any, will be provided by the state for the next reappraisal. The resolution provides that any funds received from the state will be expended solely for assisting in the costs of the reappraisal.

In addition to approving the reappraisal plan, this resolution would approve a Memorandum of Understanding (MOU) with the Tennessee Division of Property Assessments to document the specific areas of responsibility of all parties involved in the 2021 Year Reappraisal Program for Davidson County. Section 12-9-104 of the TCA requires Metro to approve by resolution an agreement of joint or cooperative action with another public agency of the state.

RESOLUTION NO. RS2017-666 (PRIDEMORE) – This resolution would authorize the Metropolitan Development and Housing Agency (MDHA) to enter into an agreement accepting payments in lieu of taxes (PILOT) for a 47-unit townhome-style apartment project located at 501 Forest Park Road, known as Forest Bend Townhomes.

This is the third such PILOT program proposed by MDHA since August of 2015 when Ordinance No. BL2015-1281 was enacted, authorizing MDHA to negotiate and accept PILOT payments 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 previously been utilized by Metro to provide incentives through the Industrial Development Board (IDB) to large employers to create job opportunities. MDHA now has the authority to enter into PILOTs to create affordable rental housing.

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

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RESOLUTION NO. RS2017-666, continued

The maximum term for a PILOT lease under this program is 10 years. The PILOT would only be available for additional tax liability over and above the pre-development assessed value of the property. The PILOT lease is to be terminated if the property sits vacant for two years.

MDHA is required to file an annual report with the Council, Assessor of Property, and State Board of Equalization identifying the values of the properties subject to PILOTs, the date and term for each PILOT, the amount of PILOT payments made, and a calculation of the taxes that would otherwise be owed.

Forest Bend Townhomes is a new 47 unit townhome style apartment project that is intended to be constructed as an LIHTC property on vacant commercial land located at 501 Forest Park Drive. The application for this project as well as the associated PILOT agreement have been approved by the MDHA Board of Commissioners. The Planning Commission issued a recommendation on March 27, 2017 advising that the project is consistent with the NashvilleNext adopted general plan and the community character policy for the area (T4 Neighborhood Evolving).

An amendment is anticipated to correct an error in the calculations shown in the resolution. The resolution currently refers to the difference between the in-lieu payment in the first year and the tax that would normally be due as $178,864. This would be correct if the GSD tax rate is used. However, this parcel is now part of the USD. Using the higher USD rate, the abatement in the first year would be $207,045.

Fiscal Note: This PILOT request would require the developer to make a first year payment of $7,931 in lieu of property taxes, which would increase annually by 5% in year 2 and each subsequent year for the remainder of the 10 year period. The LIHTC ensures long-term affordability by restricting rents for ten (10) years beyond the term of the PILOT.

The existing appraised value for this vacant commercial property as shown on the Assessor's web site is $403,000, equating to annual ad valorem property taxes of $6,325. Assuming the final assessed value agrees with MDHA's estimate of the project construction costs, the standard ad valorem property tax would be $214,976 higher than the current value. Even though the abatement in the first year would be $207,045, the developer would still be paying approximately $7,931 more than the current property tax amount. This would increase each year thereafter, reaching a value of $12,304 by the tenth year.

Over the 10-year life of this PILOT agreement, a total of $2,050,006 would be abated, though Metro would still receive $99,758 in new property taxes from this project.

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RESOLUTION NO. RS2017-666, continued

It should be noted that the 2017 reappraisal of the existing property is $434,000, which is an increase of 7.7% over the current value. Since this is a smaller increase than the average for the entire county, the taxes for the existing property will be reduced. The additional taxes for the proposed project will depend on the assessment made after completion. This could be higher, but will more probably be lower, than the projected construction costs being used for this analysis.

In addition to the PILOT payments, the developer would be required to pay a monitoring and reporting fee to MDHA. This fee will be set by MDHA, not to exceed five percent (5%) of the amount of the PILOT payment due each year.

RESOLUTION NO. RS2017-667 (HASTINGS) – This resolution would authorize the Metropolitan Development and Housing Agency (MDHA) to enter into an agreement accepting payments in lieu of taxes (PILOT) for the renovation of a 208 unit apartment development located at 2715 Whites Creek Pike, known as Haynes Garden Apartments.

This is the fourth such PILOT program proposed by MDHA since August of 2015 when Ordinance No. BL2015-1281 was enacted, authorizing MDHA to negotiate and accept PILOT payments 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 previously been utilized by Metro to provide incentives through the Industrial Development Board (IDB) to large employers to create job opportunities. MDHA now has the authority to enter into PILOTs to create affordable rental housing.

MDHA developed their PILOT program to provide additional financial incentives 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. The PILOT would only be available for additional tax liability over and above the pre-development assessed value of the property. The PILOT lease is to be terminated if the property sits vacant for two years.

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RESOLUTION NO. RS2017-667, continued

MDHA is required to file an annual report with the Council, Assessor of Property, and State Board of Equalization identifying the values of the properties subject to PILOTs, the date and term for each PILOT, the amount of PILOT payments made, and a calculation of the taxes that would otherwise be owed.

Haynes Garden Apartments is an existing 208 unit apartment development located at 2715 Whites Creek Pike. The owner intends to renovate this as an LIHTC property. The application for this project as well as the associated PILOT agreement have been approved by the MDHA Board of Commissioners. The Planning Commission issued a recommendation on October 25, 2016 advising that the project is consistent with the NashvilleNext general plan.

Fiscal Note: This PILOT request would require the developer to make a first year payment of $80,000 in lieu of property taxes, which would increase annually by 3% in year 2 and each subsequent year for the remainder of the 10 year period. The LIHTC ensures long-term affordability by restricting rents for ten (10) years beyond the term of the PILOT.

The existing appraised value for this vacant commercial property as shown on the Assessor's web site is $3,761,290, equating to annual ad valorem property taxes of $59,037. Assuming the final assessed value agrees with MDHA's estimate of the project construction costs, the standard ad valorem property tax would be $550,989 higher than the current value. Even though the abatement in the first year would be $470,989, the developer would still be paying approximately $80,000 more than the current property tax amount. This would increase each year, reaching a value of $104,382 by the tenth year.

Over the 10-year life of this PILOT agreement, a total of $4,592,782 would be abated, though Metro would still receive $917,111 in new property taxes from this project.

It should be noted that the 2017 reappraisal of the existing property is $4,193,840, which is an increase of 11.5% over the current value. Since this is a smaller increase than the average for the entire county, the taxes for the existing property will be reduced. The additional taxes for the proposed project will depend on the assessment made after completion. This could be higher, but will more probably be lower, than the projected construction costs being used for this analysis.

In addition to the PILOT payments, the developer would be required to pay a monitoring and reporting fee to MDHA. This fee will be set by MDHA, not to exceed five percent (5%) of the amount of the PILOT payment due each year.

RESOLUTION NO. RS2017-668 (COOPER & PARDUE) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-669 (COOPER & GILMORE) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-670 (COOPER & GILMORE) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-671 (COOPER & GILMORE) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-672 (COOPER & GILMORE) – See attached grant summary spreadsheet.

RESOLUTION NO. RS2017-673 (COOPER, ELROD, & OTHERS) – In the aftermath of the flood of May 2010, Ordinance No. BL2010-765 authorized the Metro Department of Water and Sewerage Services (MWS) to acquire properties, pursuant to a hazard mitigation grant program using federal and state funds, upon adoption of a resolution.

Section 2.24.250.F of the Metro Code provides that prior to the acquisition of real property for any purpose other than as Metro right-of-way, the Public Property Administration Director must first negotiate an option to purchase the property at a fixed price, subject to the approval of the Council by resolution, and no purchase can be consummated until such approval. However, since MWS had already determined the amount the government would pay for each property under the home buyout, and since this amount had been relayed to the property owners, it was unnecessary to go through the process of obtaining an option. Accordingly, Ordinance BL2010-765 allowed MWS to acquire the properties upon approval of the Council without first negotiating an option to sell as long as the resolution included the specific parcels to be acquired and the amount to be paid for each property. The ordinance also authorized MWS to administer the hazard mitigation grant program for the Metropolitan Government.

The resolution now under consideration would approve the purchase of nine (9) properties under the terms of this program. These proposed purchases have been approved by the Planning Commission.

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RESOLUTION NO. RS2017-673, continued

The properties to be purchased and the price to be paid are as follows:

- 925 Delray Drive - $200,000
- 227 Harrington Avenue - $136,000
- 3062 High Rigger Drive - $115,000
- 722 Hite Street - $165,000
- 4805 Humber Drive - $166,000
- 856 Joseph Avenue - $176,000
- 860 Joseph Avenue - $176,000
- 4808 Torbay Drive - $167,000
- 706 Hite Street - $156,000

Fiscal Note: The total purchase price for the options on these nine (9) properties is $1,457,000.

RESOLUTION NO. RS2017-674 (ELROD & ALLEN) – 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 State Route 6 near the intersection at Church Street.

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. RS2017-675 (ELROD & ALLEN) - This resolution would authorize Rudy's Jazz Room, LLC to construct, install, and maintain an aerial encroachment at 809 Gleaves Street. The encroachment consists of a double-faced, illuminated projecting sign.

Under the terms of the resolution, 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. The applicant must also hold the Metropolitan Government harmless from all claims connected with the installation.

Metropolitan Government retains the right to pass resolutions or ordinances regulating the use of surrounding streets, including the right to construct and maintain utilities, and to order the

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RESOLUTION NO. RS2017-675, continued

relocation of facilities at the expense of Rudy's Jazz Room, LLC. Metro further retains the right to repeal approval of the encroachment without liability.

Plans for the encroachment must be submitted to the Director of Public Works for approval, along with all work and materials; and the installation, when completed, must be approved by the Director.

The sign's construction must be carefully guarded and must be completed promptly, so as to cause the least inconvenience to the public.

This proposal has been approved by the Planning Commission.

RESOLUTION NO. RS2017-676 (COOPER) – This resolution would authorize the Department of Law to settle the property damage claim of BellSouth Telecom, LLC, dba AT&T-Tennessee, against the Metropolitan Government in the amount of $42,500.

On December 1, 2016, a Metro Water Services crew was attempting to locate a water leak near the intersection of East Douglas Avenue and Gallatin Road. The crew accidentally damaged a buried telephone line. The MWS night supervisor indicted that the only visible color markings in the area were from MWS, Nashville Gas, and Metro Public Works. But photographs taken at the site showed orange paint present on the asphalt surface marking the telephone line location.

AT&T has reported damages in the amount of $47,598.81, but has agreed to accept a total of $42,500 in full settlement of this case.

The Department of Law recommends settlement of this claim for $42,500. If this case proceeds to trial, the Metropolitan Government will almost certainly be found negligent.

Disciplinary action against the employee has yet to be determined, pending supervisor review.

Fiscal Note: This settlement would reduce the balance of the Self-Insured Liability Fund by $42,500.

RESOLUTION NO. RS2017-677 (MURPHY) – This resolution would approve the execution and delivery of intergovernmental applications by the Metropolitan Government to the United States Department of Labor for the processing of H1-B petitions.

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RESOLUTION NO. RS2017-677, continued

An H-1B visa is a non-immigrant visa provided under Section 101(a)(17)(H) of the Immigration and Nationality Act. These visas allow employers in the United States to employ foreign workers in certain occupations.

The U.S. Citizenship and Immigration Services announced it would temporarily suspend premium processing for all H-1B petitions for a period of at least six (6) months, beginning on March 3, 2017. During this time, petitioners will be unable to file Form I-907 (Request for Premium Processing Service) for a Form I-129 (Petition for a Non-immigrant Worker) to request H-1B non-immigrant classification.

Submission of an H-1B petition requires the signature of the employing entity. In any instance where a non-citizen is legally employed by the Metropolitan Government pursuant to a work visa or other temporary authorization, the Metropolitan Government would be the signatory to any H-1B petition for such employee.

The resolution under consideration would authorize the execution and delivery of applications entitled "Labor Condition Application for Non-Immigrant Workers" (LCA Applications), a sample of which is attached to the resolution as Exhibit A. Any amendments or other changes to the LCA Applications would require approval of the Council by at least twenty-one (21) affirmative votes.

Metro is authorized under Section 12-9-101 of the Tennessee Code Annotated (TCA) to enter intergovernmental agreements, subject to the approval of their respective governing bodies.

RESOLUTION NO. RS2017-680 (SHULMAN) – This resolution would approve the election of six hundred twenty-eight (628) 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. BL2017-687 (ELROD) – This ordinance would amend chapter 13.26 of the Metro Code to establish a more formalized process for the naming of public buildings, structures, and spaces within Metro, including provisions for soliciting public input and historical perspective.

Under the proposed process, no public building, structure, or space may be named in honor of any living person. In addition, a waiting period of two (2) years would be required before naming in honor of a person who is deceased.

However, this prohibition would not apply to persons who have made significant and long-lasting contributions to Nashville's history and culture through deeds, words, or inspiration. In addition, in order to encourage philanthropic donations or contributions, the prohibition would not apply to persons who have contributed significantly to a specific public building, structure, or space or the immediate surrounding area through the contribution of land, money, or other resources, provided the proposed naming was stipulated as a condition of the contribution.

A public building, structure, or space would also not be allowed to be named in honor of an elected or appointed public official or employee until such time as they are no longer an official or employee of Metro. Additionally, public buildings, structures, or spaces may only be named after current or former residents of Nashville and Davidson County.

The Metropolitan Historical Commission would administer the process of the naming of any public building, structure, or space. Requests in writing would be submitted to the Historical Commission for consideration. The Historical Commission would establish a formal procedure, including a mechanism for soliciting and measuring public input, and the ordinance specifies six (6) criteria to be considered by the Historical Commission:

- The articulated preference of the public, particularly from residents in the immediate area;
- Natural or geographic references;
- Historic and cultural significance;
- Civic values or principles embodied by or within the building, structure or space;
- Common or colloquial names which have previously been applied; and
- Avoiding duplication of, confusion with, or similarity to existing names.

After their consideration, the Historical Commission would forward their recommendation to the Council.

After receiving and considering such recommendations, the Council would vote to approve the name by resolution receiving at least twenty-one (21) affirmative votes. The Council may also vote to remove an existing name of a public building, structure, or space. This would also

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BILL NO. BL2017-687, continued

require a resolution receiving at least twenty-one (21) affirmative votes. The ordinance would not apply to names for items of comparative insignificance (trees, refuse cans, flagpoles, water fountains, etc.) nor to the Metropolitan Board of Parks & Recreation or to the Metropolitan Board of Education.

BILL NO. BL2017-688 (ELROD) – This ordinance would modify Section 16.04.200 of the Metro Code of Laws (MCL) concerning the construction and use of electric fences. This section currently prohibits electric fences in all zoning districts unless under the requirements of keeping domestic animals or wildlife on the property per Section 17.16.330 of the MCL.

The ordinance under consideration would change this to allow electric fences in non-residential zoning districts, subject to the following standards:

- The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. This battery would be charged primarily by a solar panel, but the panel may be augmented by a commercial trickle charger.
- The electric charge produced by the fence upon contact shall not exceed energizer characteristics set forth by the International Electrotechnical Commission (IEC).
- Electric fences would be required to be completely surrounded by a non-electrical fence or wall not less than six feet (6') in height.
- Electric fences would be permitted on any non-residential outdoor storage area.
- Electric fences would be required to be at least ten feet (10') high, and would be required to have warning signs at intervals of not less than thirty feet (30').
- A Knox Box or similar device would be required for purposes of minimizing damage and to allow access to the enclosed area.

An amendment is anticipated that would (1) specify that electric fences in the AG, AR2a, RS80, RS40, RS30, RS20, R80, R40, R30, and R20 zoning districts must otherwise comply with zoning code requirements for the keeping of domestic animals or wildlife, (2) reduce the proposed maximum height of ten feet (10') down to heights consistent with the current zoning code (which allows 2 ½ feet, 6 feet or 8 feet depending upon the location); and (3) attach the relevant cited excerpt from the International Electrotechnical Commission.

BILL NO. BL2017-689 (PULLEY, ELROD, & ALLEN) – This ordinance would approve a lease agreement between the Metropolitan Government and Grace's Plaza, Ltd., for the lease of space at 4005 Hillsboro Pike for use by the County Clerk. The County Clerk has maintained a satellite office at this Grace's Plaza location for many years.

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BILL NO. BL2017-689, continued

This lease consists of a written agreement for the lease of 638 square feet of office space to be used solely for the dispensing of auto license tags, license plates, and transferring auto titles. The premises could not be used for any other purpose.

The term of this lease agreement would be from June 1, 2017 through May 31, 2021, with an option to terminate as of January 31, 2018 with written notice no later than November 30, 2017. Either party would have the ability to terminate the lease at any time thereafter with 180 days written notice.

Metro would be responsible for the general upkeep of the premises, but Grace's Plaza would be responsible for repairs to the exterior walls, roof, and HVAC system. If litigation arises out of a dispute regarding the lease agreement, the prevailing party will be entitled to recover reasonable costs and attorney's fees.

This lease agreement has been approved by the Planning Commission.

Fiscal Note: The base rent for the office space would be $10,555.68 for the first year, which is to increase by three percent (3%) each year thereafter. In addition to the base rent, Metro would pay Grace's Plaza a proportionate share of property taxes, which would currently amount to $212.37 per month.

BILL NO. BL2017-690 (WEINER, COOPER, & ALLEN) – This ordinance would approve an agreement between Metro and Bellevue Redevelopment Associates, LP ("BRA") concerning a parcel exchange to enable the construction of a new community center and hockey facility.

Metro currently owns a 2.02-acre parcel at the mixed-use project called One Bellevue Place (formerly the site of Bellevue Mall). This parcel was donated to Metro by the project's developer, Crosland Southeast. The original plan called for the construction of a regional community center on this parcel. Metro now desires to construct an adjacent ice center, requiring additional space.

BRA owns an 8.38-acre parcel within the same development that would be suitable for construction of the ice center, in addition to the community center. This ordinance would authorize the exchange of the 8.38-acre parcel owned by BRA for the 2.02-acre parcel owned by Metro plus $2,226,000.

If this agreement is not approved by May 31, 2017, either party would have the right to terminate the agreement with written notice to the other party. Metro would also have the right to inspect the property through July 15, 2017 to confirm the suitability for the intended use. Metro would have the absolute right to cancel this agreement during that time.

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BILL NO. BL2017-690, continued

This proposed land exchange has been approved by the Planning Commission.

Fiscal Note: The $2,226,000 payment in addition to the exchange of the two parcels only addresses the property needs for a new ice center and community center. Construction costs for these two facilities would require inclusion in a future capital spending plan and Council approval.

BILL NO. BL2017-691 (MURPHY, ELROD, & ALLEN) – This ordinance would abandon existing easement rights for property located at 3900 Alabama Avenue, formerly 39th Avenue North, between Alabama Avenue and I-40. It has been determined that these easements are no longer needed.

This was approved by the Planning Commission on April 13, 2017. Amendments to this legislation may be approved by resolution.

BILL NO. BL2017-692 (ELROD & ALLEN) – This ordinance would abandon any easement rights for property located at 5212 Louisiana Avenue, formerly 53rd Avenue North, between Louisiana Avenue and Alley #1209. It has been determined that these easements are no longer needed.

This was approved by the Planning Commission on April 13, 2017. Amendments to this legislation may be approved by resolution

BILL NO. BL2017-693 (WITHERS, ELROD, & ALLEN) – This ordinance would authorize the acquisition of certain permanent and temporary easements by negotiation or condemnation for the Barclay Drive Stormwater Improvement Project for two (2) properties located at 2819 and 2821 Barclay Drive.

This was approved by the Planning Commission on April 13, 2017. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2017-694 (WITHERS, ELROD, & ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning an Unnumbered Alley right-of-way and easement.

This was approved by the Planning Commission on March 23, 2017.

BILL NO. BL2017-695 (ELROD & ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning a portion of Alley Number 2004 right-of-way and easement.

This has been approved by the Planning Commission.

BILL NO. BL2017-696 (O'CONNELL, ELROD, & ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning a portion of Demonbreun Street, 5th Avenue South, 6th Avenue South, and Korean Veterans Boulevard right-of-way.

This was approved by the Planning Commission on April 13, 2017.

BILL NO. BL2017-697 (O'CONNELL, ELROD, & ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning Lannom Avenue and a portion of Alley Number 2062 right-of-way and easement.

This was deferred indefinitely by the applicant before the Planning Commission.

BILL NO. BL2017-698 (MURPHY, ELROD, & ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by abandoning an unimproved portion of Alley Number 1705 right-of-way.

This has been approved by the Planning Commission.

BILL NO. BL2017-699 (SWOPE, ELROD, & ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of Sterling Oaks Drive to "Montessori Drive".

This has been 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). In addition, pursuant to the requirements of Section 13.08.015.B. of the MCL, the Historical Commission has provided a report to the Council, distributed April 26, 2017, regarding the historical significance, if any, associated with the existing street name.

– ORDINANCES ON THIRD READING –

BILL NO. BL2016-484 (LEONARDO, ELROD, & M. JOHNSON) – Section 68-211-707 of the Tennessee Code Annotated (TCA) permits local government legislative bodies to require local approval of landfills, solid waste disposal facilities and solid waste processing facilities prior to the construction of such facilities and prior to the issuance of a permit by the Tennessee Department of Environment and Conservation (TDEC) or the Commissioner. This is commonly known as the "Jackson Law". The ordinance under consideration would apply the requirements of the Jackson law to the proposed construction of landfills, solid waste disposal facilities, and solid waste processing facilities in Davidson County.

Pursuant to the Metro Code of Laws (MCL), requests for special exceptions are heard by the Board of Zoning Appeals. (MCL §17.40.280). Under this section, if a special exception is sought for sanitary landfills, asphalt plants, waste transfer facilities, airport runways, and hazardous operation and wastewater treatment facilities, Council approval of the "specific location" must be obtained by resolution prior to the public hearing before the BZA. (MCL § 17.40.280). By contrast, Section 68-211-704 of the Jackson Law provides evaluation criteria for the approval or disapproval of proposed new construction by the Council -- arguably establishing a heightened threshold for evaluation. The criteria to be considered are (1) the type of waste to be disposed; (2) the method of disposal; (3) projected impact on surrounding areas from noise and odor; (4) projected impact on property values; (5) adequacy of existing roads and bridges; (6) economic impact on county or city; (7) compatibility with existing development or zoning plans; and (8) other factor affecting public health, safety or welfare. (Tenn. Code Ann. § 8-211-704).

Because approval by resolution is not specifically allowed in the Jackson Law, Council approval of landfills would need to be by ordinance. The Jackson Law further requires that public notice be given to inform interested persons in the area of a proposed landfill, waste processing or disposal facility, and that interested persons be given the opportunity to request the local legislative body to hold a public hearing – including provisions for written comment. The Code requirement for Council approval of landfill special exception requests is subject to waiver in the event the Council fails to approve or disapprove a requested location within 60 days. (MCL § 17.40.280). It should be noted that whether "the specific location" of a sanitary landfill (MCL § 17.40.280) provides for something separate from "the plans" for new landfills (Tenn. Code Ann. § 68-211-701) has not been specifically addressed by any court.

At the Public Works committee meeting of January 3, 2017, research requests were submitted to determine whether only portions of the Jackson Law could be adopted, and whether adoption would preempt Metro's current zoning mechanism under MCL § 17.40.280. As discussed below, there is no authority directly addressing either issue, but it appears likely that (1) the Jackson Law must be adopted as a whole, not partially; and (2) Metro cannot adopt the Jackson Law as an additional mechanism while keeping its current zoning ordinance in place.

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BILL NO. BL2016-484, continued

The plain language of Tenn. Code Ann. § 68-211-707 notes that Sections 68-211-701 through -704 require a two-thirds majority to pass, and later refers to counties or municipalities who have approved "this part." This language suggests that "this part" is meant to be adopted as a whole. Each section prescribes a step-by-step process to be taken in sequence. Specifically, §68-211-701 discusses the general outline of the Jackson Law, including the submission and approval of the plans of a landfill by the appropriate legislative body. Subsection 701(c) notes that after submission, there must be public notice and a public hearing before the legislative body approves or disapproves of the plans. Section 703 outlines in detail the requirements of the public notice and comment period. Section 704 outlines the specific criteria for evaluating the plans of the landfill that "shall" be considered before a legislative body approves of those plans.

Generally, local governments may act only in strict compliance with the express authority provided by a statute. Any doubt as to the existence of a power is typically resolved by the courts against the municipality. *Arnwine v. Union Cnty. Bd. of Educ.*, 120 S.W.3d 804, 808 (Tenn. 2003). Because the Jackson Law statute does not explicitly state that municipalities are allowed to adopt it in portions, doing so would likely be construed as an expansion of the power granted to the municipality. Predictably, there is no evidence that any other counties or cities in Tennessee have adopted the Jackson Law only in part. (This is not to say, however, that the Council could not amend Section 17.40.280 or other sections of the Code to add provisions regarding landfills.)

The possibility of adopting the Jackson Law while simultaneously maintaining current Mero Code provisions for the approval of the specific location of a landfill (17.40.280) is likewise remote. Available authority suggests that the Metro Code provisions would be preempted by adoption of the Jackson Law.

An Attorney General Opinion issued in 2009 opined that a private act allowing Warren County to issue variances for landfills violated the Jackson Law because the provisions of the private act were inconsistent with the general law. *Op. Tenn. Att'y Gen. 09-127*, at *2. The opinion referenced "the uniform approach intended by the General Assembly when it passed the Jackson Law." *Id*. at 3.

A second Attorney General opinion construed a Lewis County private act prohibiting construction of certain types of solid waste disposal or processing facilities. *Op. Tenn. Atty Gen. 09-12*. The AG determined that this legislation would contravene the Jackson Law, stating in part: "Under the Jackson Law, a local legislative body must approve or disapprove of a proposed new solid waste landfill *based solely on specific criteria in the statute*. Tenn. Code Ann. § 68-211-704." *Id*. at 2 (emphasis added). (It should be noted that this contention is *not* supported by the plain language of § 68-211-704, which states only that the enumerated criteria

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BILL NO. BL2016-484, continued

"shall be considered" in evaluating the construction of a facility. In context, it appears the statement was intended to convey only that a private act banning certain landfills is not supported by the text of the legislation.)

But a further indication that preemption would be likely stems from language that was previously amended out of the Jackson Law. The original 1989 provision included § 68-211-705 which stated:
(a) The provisions of this act shall not be construed to preempt any zoning ordinance or plan adopted, in accordance with the provisions of Tennessee Code Annotated, Title 13, Chapter 7, on or after October 1, 1988, but shall be in addition to any such ordinance or plan to the extent that the provisions of this act do not conflict with any such ordinance or plan.
(b) The provisions of this act shall not apply to any county which has implemented any zoning ordinance or plan before October 1, 1988. (Emphasis added.)

1989 Tenn. ALS 515, 1989 Tenn. Pub. Ch. 515, 1989 Tenn. HB 741. These provisions -- explicitly providing that the Jackson Law was not intended to preempt municipal zoning provisions -- were then deleted in a 1995 amendment to the Jackson Law. By removing this section, it could be argued, the General Assembly intended to take away previous protections against preemption.

In the event of a legal challenge, a court's review of the Council's approval or disapproval of the specific location of landfills or waste transfer facilities under MCL § 17.40.280 is limited to a determination of whether the decision was "clearly illegal, arbitrary or capricious" -- a standard considered extremely deferential. In contrast, the Jackson Law specifies that judicial review of the legislative body's determination "shall be a *de novo* review" -- a more scrutinizing assessment. (T.C.A. 68-211-704(c)).

Questions have been raised regarding the specific facilities to which the Jackson Law applies. By its terms, the law applies to landfills "for solid waste disposal of for solid waste processing." (§68-211-701(a)), but the statute doesn't expressly define these terms. The Tennessee Solid Waste Act defines "solid waste disposal" as "the process of permanently or indefinitely placing, confining, compacting, or covering solid waste." "Solid waste processing" is defined as "any process that modifies the characteristics or properties of solid waste, including but not limited to, treatment, incineration, composting, separation, grinding, shredding, and volume reduction; provided, that it does not include the grinding or shredding of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch or other useful products."

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BILL NO. BL2016-484, continued

According to senior legal counsel at the Tennessee Department of Environment and Conservation, the following facilities are considered subject to the Jackson Law:

- New or laterally (horizontally) expanding;
- Class I Landfills (Municipal Solid Waste);
- Class II Landfills (Industrial) that accept waste not generated by the landfill's owner;
- Class III or IV Landfills (Construction and Demolition Waste).
- Solid Waste Processors. (Only facilities that require a Permit-by-Rule "SWP" permit. This would include food composting facilities and anaerobic digesters);
- County or municipal owned/operated landfills. (This is contrary to language in TCA 68-211-706);
- A landfill that changes classification (*i.e.,* Class III to Class II); and
- A facility that makes a significant change in approved waste streams triggering a Permit Reissuance. (This would not extend to normal Special Waste approvals).
- And the following facilities are considered exempt from the Jackson Law:
- Transfer Stations (Facilities requiring Permit-by-Rule "TRF" permits);
- Convenience centers (Though these centers accept household waste, they do not "process" them);
- Processors defined as Recovered Materials Processing Facilities (Permit exempt recycling operations);
- All pre-existing active permits existing prior to Jackson Law adoption;
- The lateral expansion of an active landfill permit existing prior to June 2, 1989;
- Any vertical expansion of a landfill; and
- A private landfill that accepts waste solely generated by its owners within the same county and which does not accept household waste.
- Waste to Energy facilities may or may not be subject to the Jackson Law, depending on what their feed stock consists of and how it's obtained.

Pursuant to TCA 68-211-707(a), approval of the Council by at least a two-thirds (2/3) majority vote would be required prior to enactment of this ordinance.

BILL NO. BL2016-498 (ELROD) – This ordinance is intended to address the long-term closure of public rights-of-way resulting from excavations or obstructions by adding restrictions to Sections 13.20.020 and 13.20.030 of the Metro Code of Laws (MCL).

Permits for excavations and obstructions are regulated under Chapter 13.20 of the MCL. Under the proposed ordinance, Subsection A of Section 13.20.020 and Subsection B of Section 13.20.030 would have language added to prohibit any such obstruction or excavation from

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BILL NO. BL2016-498, continued

being permitted for a period in excess of one (1) year unless the Council approves such by resolution adopted by at least twenty-one (21) affirmative votes.

Subsection E.1 of Section 13.20.030 would be similarly amended by specifying that temporary obstructions may not exceed one (1) year. In addition, additional or cumulative permits would not be allowed if they would result in an obstruction exceeding one (1) year. Because cumulative permits may unintentionally exceed one year, an amendment allowing for such with Council approval by resolution may be suggested.

This ordinance was originally introduced at the December 6, 2016 Council meeting. The second reading was deferred twice until April 4, 2017.

BILL NO. BL2017-623 (ROSENBERG, ELROD, & ALLEN) – This ordinance would abandon approximately 970 linear feet of existing four-inch water line and accept approximately 1,135 linear feet of new eight-inch water line, approximately 999 linear feet of new eight-inch sanitary sewer main, sanitary sewer manholes, two fire hydrants, and any associated easements, for properties located at 0 River Road and 5820 River Road.

This was approved by the Planning Commission on February 1, 2017. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2017-657 (SLEDGE, HENDERSON) – The Archives Division of the Nashville Public Library is charged with the responsibility of maintaining records of enduring historical value to the Metropolitan Government as well as select records of the judicial system. However, the originating office or department for these records presently has the authority to remove records from these archives without notice. This could negatively impact the long-term storage and preservation of items of historical significance.

The ordinance under consideration would add Section 2.140.040 to the Metro Code of Laws (MCL). This would make all records given to the Archives the "permanent property of and permanently retained by the Archives Division of the Nashville Public Library." In cases where records lack historical or legal value and have been converted to an alternative media, this section would also give authority to the Archives Division to destroy the originals.

Fiscal Note: This should not result in any significant increase in the Library's operational costs. They would not be asked to archive any additional records. This ordinance would just give them clear ownership of all records in their possession as well as the authority to determine the final disposition of those records.

BILL NO. BL2017-658 (VANREECE, O'CONNELL) – Chapter 6.32 of the Metro Code of Laws (MCL) addresses "Hucksters and Peddlers". It specifies regulations in effect in areas around the Nashville Convention Center, Municipal Auditorium, and the Nashville Arena regarding the sale or offering for sale of food, goods, or personal property.

Specifically, under the current provisions of chapter 6.32, the sale (or offering for sale) of any goods or personal property -- including food, candy, confections, programs, books, pictures, tickets, records, tee-shirts, lights and other novelties, or any personal property -- is prohibited in these areas during dates on which an event has been scheduled in the related venue.

These prohibitions do not apply to individuals soliciting for charitable or religious purpose, nor to any exercise of the lawful right of speech or assembly. Violations of the restrictions can result in a misdemeanor charge, carrying a fine of not less than twenty-five dollars ($25) nor more than fifty dollars ($50).

The ordinance under consideration would add five (5) new venue locations to this chapter. The regulations in these sections would apply to the following additional locations:

- Section 6.32.050 - Ryman Auditorium
- Section 6.32.060 - Tennessee Performing Arts Center
- Section 6.32.070 - War Memorial Auditorium
- Section 6.32.080 - Ascend Amphitheater
- Section 6.32.090 - First Tennessee Park

The ordinance resulted from requests by venue management during discussions of possible anti-scalping measures.

Fiscal Note: Both Chapter 6.32 and the current ordinance are silent on enforcement of the regulations; but it would presumably be the responsibility of the Metro Police Department, either from performing security services at these venues or in response to citizen complaints.

The Police Department believes their additional costs to enforce the requirements of this ordinance would be minimal.

BILL NO. BL2017-659 (ELROD) – This ordinance would resolve an inconsistency between the definition of "arterial street" in Title 12 and 17 of the Metro Code of Laws (MCL).

Section 17.04.60 of the MCL defines "street" as a "publicly maintained right-of-way, other than an alley, that affords a means of vehicular access to abutting property." This section continues

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BILL NO. BL2017-659, continued

by defining several functional design type designations. The first of these defines "arterial street" as a "street designated as either an 'arterial-boulevard' or an 'arterial-parkway' on the adopted Major and Collector Street Plan."

Section 12.04.015 of the MCL currently defines an "arterial street" to be "any United States or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by metropolitan government within their respective jurisdictions as part of a major arterial system of streets or highways."

To maintain consistency with the definition in Title 17, the ordinance under consideration would change the definition in Title 12 to "a street designated as either an 'arterial-boulevard' or an 'arterial-parkway' on the Major and Collector Street Plan (MCSP) adopted by the Metropolitan Planning Commission."

BILL NO. BL2017-660 (A. DAVIS, COOPER) – This ordinance would authorize the Department of Water and Sewerage Services ("Metro") to participate with LVH2, LLC to provide public water service improvements for LVH2's proposed development, as well as other existing properties.

Per this agreement, LVH2 would construct approximately 450 linear feet of eight-inch water main in Chester Avenue from Chapel Avenue to the entrance of the proposed development site. Metro would inspect the construction following completion and be responsible for ongoing operation and maintenance.

The agreement per this ordinance would be null and void if the improvements are not operational by December 31, 2017. Future amendments to this agreement may be approved by resolution.

Fiscal Note: Metro would pay the lesser of fifty percent (50%) of the actual project costs or an amount not to exceed Sixty-Six Thousand Dollars ($66,000). This would be paid from Water Services' capital projects fund.

BILL NO. BL2017-661 (COLEMAN, COOPER) – This ordinance would authorize a participation and maintenance agreement between the Metro Department of Water and Sewerage Services ("Metro") and Davenport Downs Holding, LLC ("Davenport").

Davenport wishes to provide public pressure sewer extension through construction of a sewerage pump station and force main for its development at Davenport Downs. Metro would be responsible for inspecting the construction and for the ongoing operation and maintenance.

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BILL NO. BL2017-661, continued

Future amendments to this agreement may be approved by resolution.

Fiscal Note: Davenport would pay $200,000 to Metro prior to filing for final plat approval or as soon as possible to obtain sewer availability. This would be used to pay for Metro's additional operational and maintenance costs.

BILL NO. BL2017-662 (SLEDGE, ALLEN, COOPER) – In 2007, Ordinance No. BL2007-1544 approved a lease agreement between Belmont University and the Board of Parks and Recreation for the development and shared use of Rose Park.

Under the terms of the original lease, Belmont proposed to construct athletic facilities for its baseball, softball, soccer, and track teams within the 25-acre Rose Park. These facilities were to be used by Belmont for games and practices, and shared by Belmont, Metro and the Edgehill community. While Belmont would not pay any set rental amount for use of the park, the lease provided that Belmont would construct the athletic facilities on the property, as well as build a concessions building, locker rooms, and improvements to common areas, all at its own expense, at an estimated cost of approximately $7 million.

Metro was to have the authority for scheduling the dates and times of Belmont and community events. Belmont was to schedule its events with Metro at least six months in advance. Metro was to make reasonable efforts to schedule Belmont's first choice of intercollegiate competitions. Metro was to be responsible for scheduling events sponsored by other school, neighborhood, and community groups. Belmont estimated that the sports fields would be available for community uses at least 80% of the time during the park's regular operating hours.

The initial term of the lease was for forty years, but could be terminated by either party upon one year's written notice. If Metro terminated the lease early, Metro was to be required to pay Belmont the fair value of the improvements Belmont made to the property.

Section 3.a. of the lease required twenty percent (20%) of the lease payment by Belmont to be allocated and evenly distributed to the Parent Teacher Organizations (PTOs) of Carter Lawrence and Rose Park public schools.

Ordinance No. BL2016-458 approved the first amendment to the 2007 lease agreement. This eliminated the reference to PTOs and instead simply specified that 20% of the lease payment would be allocated and evenly distributed to Carter Lawrence and Rose Park public schools.

The ordinance now under consideration would add the second amendment to the lease. This would authorize Belmont to construct an 80 x 120 foot indoor batting facility and related training space, office, and meeting room on the property abutting the northern edge of the Olympic

(continued on next page)

BILL NO. BL2017-662, continued

Street parking lot. Metro would schedule the use of this facility in the same manner as it schedules the use of the existing storage and locker rooms on the property.

Belmont would be required to replace any trees that are removed for construction with additional smaller trees equal to the combined total caliper of the removed trees.

The Planning Commission has not yet considered this proposal.

Fiscal Note: Belmont would pay the entire cost of constructing the new building and replacing the trees, In addition, Belmont's annual lease payment to Metro would be increased by $5,000, divided proportionately between the Metro Parks Department, Rose Park Middle School, and Carter Lawrence Elementary School.

BILL NO. BL2017-663 (O'CONNELL, ELROD, ALLEN) – This ordinance would abandon existing combined sewer mains and easements and accept new combined sewer mains, manholes, and any associated easements for property located at 1419 Rosa L. Parks Boulevard.

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

BILL NO. BL2017-664 (PRIDEMORE, ELROD, ALLEN) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of North Dupont Avenue to "Vandiver Drive" and by renaming an unimproved section of North Dupont Avenue to "Vandiver Court.

This has been approved by the Planning Commission. It was also approved by the Emergency Communications District on April 20, 2017. A recommendation from both, prior to third reading, is required under Section 13.08.015.D of the Metro Code of Laws (MCL).

In addition, pursuant to the requirements of Section 13.08.015.B. of the MCL, the Historical Commission has provided a report to the Council, distributed April 21, 2017, regarding the historical significance, if any, associated with the existing street name.

BILL NO. BL2017-665 (O'CONNELL, KAREN JOHNSON) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of Capitol Boulevard to "Anne Dallas Dudley Boulevard".

The Planning Commission and the Emergency Communications District have both approved this proposal. A recommendation from both, prior to third reading, is required under Section 13.08.015.D of the Metro Code of Laws (MCL).

In addition, pursuant to the requirements of Section 13.08.015.B. of the MCL, the Historical Commission has provided a report to the Council, distributed April 21, 2017, regarding the historical significance, if any, associated with the existing street name.

BILL NO. BL2017-666 (WITHERS, ELROD, ALLEN) – Ordinance No. BL217-533 approved the name change of a portion of Boscobel Street to "North 6th Street". This was in error. The original request was intended to change the name to "South 6th Street". The ordinance now under consideration would amend the earlier ordinance to correct the error.

The necessary approvals by all relevant agencies were previously obtained and were based upon the "South 6th Street" name, so it is not necessary to obtain these approvals again.

GRANTS AND DONATIONS LEGISLATION - MAY 2, 2017

Legislative Number	Parties	Amount	Local Cash Match	Term	Purpose
RS2017-668	**From**: Davidson County Farm Bureau **To**: Davidson County Sheriff's Office	Not to exceed $2,000	$0	N/A	The grant proceeds would be used for the enhancement of the horticulture program and community gardens program.
RS2017-669	**From**: Tennessee Department of Health **To**: Metropolitan Board of Health	Not to exceed $555,600	$0	April 1, 2017 through June 30, 2018	The grant proceeds would be used to promote the proper use of all recommended vaccines and respond to vaccine preventable diseases in collaboration with the CDC and other partners.
RS2017-670	**From**: Tennessee Department of Health **To**: Metropolitan Board of Health	Not to exceed $318,600	$0	July 1, 2017 through June 30, 2018	The grant proceeds would be used to provide public health activities to enhance the health and well-being of women, infants, and families by improving community resources and planning public health services.
RS2017-671	**From**: Tennessee Department of Health **To**: Metropolitan Board of Health	Not to exceed $116,000	$0	July 1, 2017 through June 30, 2018	The grant proceeds would be used to promote health promotion activities and education programs.
RS2017-672	**From**: United States Environmental Protection Agency (EPA) **To**: Metropolitan Board of Health	$62,565	N/A	N/A	This resolution would approve the second amendment to a grant from the U.S. Environmental Protection Agency (EPA) to the Metropolitan Board of Health for the ongoing collection of data on the ambient air concentrations for fine particulate matter. This amendment would increase the amount of the grant by $62,565 for a new total of $321,374. There would still be no required local cash match. The amendment would also accept the revised General Terms and Conditions and Interim Annual Federal Financial Reports (FFR).