

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: January 3, 2012

RE: **Analysis of Proposed Amendments  
to the Zoning Code**

**ORDINANCE NO. BL2011-30** (JOHNSON) – This ordinance amends the Metropolitan zoning code to prohibit the conversion of nonconforming billboards to tri-face billboards. The state nonconforming use grandfather statute allows certain existing nonconforming businesses to remain when a change in local zoning regulations makes the business no longer technically in compliance with the law. The purpose of the grandfathering statute is to prevent a hardship to existing property owners and businesses that were in compliance with the applicable laws at the time a new zoning restriction was enacted. Tennessee courts have interpreted the nonconforming use statute to be applicable to advertising signs, which allows the sign face to be changed without losing its protected nonconforming status.

Tri-face billboards consist of triangular louvers that automatically rotate to allow three different sign messages to be shown on the same sign. In January 2011, the council enacted Ordinance No. BL2010-798 to exempt tri-face billboards from the distance requirements applicable to electronic signs, which essentially resulted in tri-face billboards being treated the same as static billboards. This ordinance would treat static billboards and tri-face billboards as separate structures and would prohibit a nonconforming static billboard from being replaced with a tri-face.

This ordinance has been referred to the planning commission, but was deferred indefinitely by the commission at the request of the sponsor.

**ORDINANCE NO. BL2011-47** (BENNETT, A. DAVIS & OTHERS) – This ordinance, commonly referred to as “the chicken bill”, amends the zoning code provisions pertaining to the keeping of domesticated hens on residential property. The zoning code currently allows “domestic animals/wildlife” (including common domestic farm animals) as an accessory use in the residential zoning districts. There is no specific definition as to what constitutes a common domestic farm animal. The current conditions applicable to the keeping of domestic animals/wildlife in residential areas include the following:

1. The animals are only permitted as an accessory use in the R80, RS80, R40, RS40, R30, RS30, R20, and RS20 residential zone districts with a minimum lot size of five acres.

2. The property containing the residence and farm animals/wildlife cannot be located within the urban services district.
3. All pens, runs, paddocks, pastures and other open outdoor areas must be fully enclosed by fencing. Barns, stables, stalls, and similar shelters cannot be within 250 feet of a residence.
4. All required permits must be obtained from the Tennessee wildlife resources agency and/or the department of health.

The codes department has always interpreted these provisions to prohibit the keeping of chickens within the urban services district, and on lots within the general services district less than five acres in size. However, the health code provides that chickens may be kept as long as they do not create a nuisance, which has resulted in the board of zoning appeals overturning at least one of the zoning administrator’s decisions regarding chickens when the appellant could prove the chickens were kept as pets and were not creating a nuisance.

This ordinance is an amendment to both the zoning code and the health code provisions to allow domesticated hens in residential (R and RS) zoning districts on a limited basis upon obtaining a permit from the department of health. The cost for the annual permit would be \$25. The permit holder would be required to occupy the residence where the hens are kept as his/her personal, primary residence. An applicant for the permit must either be the owner of the property or obtain written permission from the property owner prior to filing the application.

The number of hens that would be allowed on residential property is based upon the size of the lot, as follows:

<b>Max. Number</b>	<b>Parcel Area (sq ft)</b>	<b>Acreage</b>
2	0 to 5,009	0.00 to .11
4	5,010 to 10,236	.12 to .23
6	10,237 to 87,119	.24 or more

In addition, the following conditions would apply:

- No roosters would be allowed.
- No hens would be permitted in the front yard.
- The hens must be kept in a predator-proof enclosure that is at least 25 feet away from any residence and 10 feet from the property line. This enclosure must consist of a fenced area with a covered henhouse. A minimum of two square feet per hen must be provided in the henhouse and a minimum of six square feet per hen in the fenced enclosure.
- No slaughtering would be permitted on the property.
- Chickens could not be raised for the purpose of fighting.
- No breeding of chickens would be permitted on the property.
- The fenced enclosure and henhouse must be kept clean and odor-free at all times.

There is a substitute for this ordinance to be offered on third reading that addresses issues raised by councilmembers, Metro departments, the public, and the planning department. The substitute makes the following modifications:

1. All of the health-related provisions are moved from the zoning code section to the health code.
2. Allows for the submission of an affidavit of compliance at the time the application is filed to keep the health department from having to inspect every property before issuing an initial permit. Inspections by the health department would be "complaint-based" as they are with other codes violation complaints.
3. Deletes the requirement that a building permit be obtained for a henhouse.
4. Clarifies that the 25-foot setback from a residence would not apply to the permit holder's own residence.
5. Property owners would not be required to call public works before removing a dead hen.
6. Adds a two year "sunset" provision requiring council action by resolution to prevent the bill from expiring on March 1, 2014.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2011-48** (CLAIBORNE & ALLEN) – This ordinance amends the Metropolitan zoning code provisions applicable to nonconforming on-premises signs. As noted above, legally nonconforming signs (those signs that were in compliance with the zoning code prior to a change in the zoning laws) fall within the protection of the state nonconforming use grandfather statute. Further, the statute allows nonconforming billboards to be destroyed and reconstructed if the sign is a business necessity. However, neither the grandfather statute nor the Metro zoning code specify what constitutes a destruction of the sign.

This ordinance attempts to clarify the protections afforded by state law and the zoning code as it relates to the destruction of nonconforming signs. The Metro zoning code currently provides that a legally nonconforming sign must be brought into compliance with the zoning code if the primary use of the property changes or if the sign is altered, repaired, restored, or rebuilt to the extent that the cost exceeds fifty percent of the estimated replacement cost of the sign, provided that the fifty percent standard does not apply in the case of involuntary damage or casualty. This ordinance provides that a sign will be deemed destroyed if more than fifty percent of the display surface area is altered or repaired. All sign permits within one year are to be aggregated for purposes of measuring the fifty percent alteration standard. The board of zoning appeals has on several occasions had to make a determination regarding whether a nonconforming sign is the sign structure itself or the face of the sign. This ordinance would take that issue off the table by specifying that destruction of the sign means changing more than half of the sign surface area.

This ordinance has been referred to the planning commission.

**ORDINANCE NO. BL2011-80** (CLAIBORNE) – This ordinance amends the adaptive reuse provisions in the Metropolitan zoning code provisions to allow such developments in commercial and industrial areas along arterial and collector streets within the urban services district (USD). The adaptive reuse ordinance (ARO) was approved in 2005 in an attempt to encourage residential development in vacant, underutilized, and distressed commercial areas. The ARO allows residential development that would otherwise be prohibited in certain existing (continued on next page)

**ORDINANCE NO. BL2011-80** (continued)

commercial areas as long as the building has frontage on an arterial or collector street and at least 40% of the floor area is devoted to residential uses.

As proposed by the planning department in 2005, the ARO would have applied to such qualifying properties within the USD. However, the council amended the ordinance to limit its application to the smaller urban zoning overlay (UZO) district. This ordinance would use the USD boundary as originally proposed. To date, 340 residential units have been built in commercial areas using the ARO.

This ordinance has been approved by the planning commission.