



## METRO COUNCIL OFFICE

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MEMORANDUM TO: All Members of the Metropolitan Council

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

COUNCIL MEETING DATE: **December 1, 2015**

RE: **Analysis Report**

Unaudited Fund Balances as of 11/24/15:

4% Reserve Fund	\$36,477,396*
Metro Self Insured Liability Claims	\$4,103,670
Judgments & Losses	\$2,488,807
Schools Self Insured Liability Claims	\$2,934,631
Self-Insured Property Loss Aggregate	\$5,877,307
Employee Blanket Bond Claims	\$658,217
Police Professional Liability Claims	\$2,614,337
Death Benefit	\$1,182,128

\*Assumes unrealized estimated revenues in fiscal year 2016 of \$24,229,463.

**– RESOLUTIONS –**

**RESOLUTION NO. RS2015-64** (WEINER, PRIDEMORE, & ALLEN) – This resolution authorizes the Director of Public Property Administration to accept the donation of a 2.01 acre parcel of property identified as Tract 3 on the proposed Subdivision Plat for Bellevue Place. There has been no specific use identified by Metro for this property. The only limitation placed by the donor is that it be used for some public use, such as a park, community center, police station, or Metro office building.

A mandatory referral has been made to the Planning Commission. It is anticipated they will have approved this donation before the Council meeting where this resolution will be considered.

**RESOLUTION NO. RS2015-65** (PRIDEMORE) – This resolution approves a compromise and settlement of a personal injury claim by Mr. Sivilay Sayachak against Metro. In this case, a police officer was responding to a burglary call. As he neared the location of the call, he turned off his siren, in order to avoid warning the possible burglars – a standard police practice. The officer attempted to go through the intersection of 2<sup>nd</sup> Avenue South and the I-40 entrance ramp against a red light.

The officer tapped his air horn and looked left for cars attempting to enter the intersection, but he did not see the car driven by Mr. Sayachak who was on the other side of a stopped vehicle at the green light. Mr. Sayachak did not see or hear the officer's vehicle before entering the intersection. The officer struck Mr. Sayachak's car, causing it to spin, hit a pothole, and flip onto its side.

Although the Tennessee Code Annotated allows police vehicles to enter intersections against a traffic light, it is required that audible and visual emergency signals be active. Therefore, this section of the TCA cannot be used in the officer's defense.

The Police Department's investigation determined that the officer was negligent and at-fault for the accident. The officer agreed with this finding and accepted a disciplinary ruling of a two-day suspension.

Mr. Sayachak's medical expenses total \$10,317. In addition, he lost wages in the amount of \$640. His vehicle, valued at \$17,232.45, was a total loss as a result of this accident.

Mr. Sayachak is willing to settle his claim for \$43,000. If this case continued on to trial, the Department of Law believes a higher amount would be awarded. Accordingly, pursuant to Rule 18 of the Rules of Procedure, they recommend settling this claim for \$43,000.

**RESOLUTION NO. RS2015-66** (PRIDEMORE) – This resolution approves a compromise and settlement of claims by Ms. Heather Minick against Metro. This case is the result of an incident that took place in Nashville General Hospital at Meharry (NGHM) on May 30, 2011. Ms. Minick's husband, Mr. Michael Minick, was arrested by a Metro Nashville Police Department officer who responded to a call for a man running shirtless through the woods in a Nashville neighborhood. The officer located the subject, who was Mr. Minick. The officer determined that Mr. Minick had an outstanding warrant and, deploying his Taser one time, took Minick into custody. Upon arrival of an ambulance at the scene, MNPD officers decided to transport Mr. Minick to NGHM for evaluation and possible treatment of a medical condition known as "excited delirium".

While at MNGH, Mr. Minick was held in the 7<sup>th</sup> Floor Lockup unit – a secured area. He repeatedly refused instructions to stay in his bed. Ultimately, four Davidson County Sheriff's Office (DCSO) officers who were on duty at the hospital responded in an attempt to force Mr. Minick to comply. Evidence of the events that transpired during the ensuing altercation are essentially limited to the testimony of the four officers and staff members present on the floor. No videotape of the events was obtained.

After being ordered to return to bed, Minick – who was then shackled at the foot to the bed frame – allegedly broke free from the restraint. At that point, Minick allegedly charged at the officers. Chemical spray was used by the officers at least twice with no effect. The officers took Mr. Minick to the floor in an attempt to handcuff and restrain him. During the struggle on the floor, Mr. Minick tried to bite two of the officers. The officers struck Mr. Minick on each side of his face while defending themselves against being bitten.

The officers were finally able to handcuff Mr. Minick. The complaint filed on his behalf alleges that the officers beat Mr. Minick after he was placed in handcuffs and other restraints. Metro maintains that no credible evidence of such claims materialized. The officers acknowledge strikes were directed toward Minick's face, thighs, and upper rear – using batons and closed fists. One officer described a portion of the strikes being administered when Minick was handcuffed -- though he continued to kick his legs in an effort to avoid leg restraints.

At some point during the altercation, Minick had urinated and defecated on himself and the floor. Subsequently, one of the officers noticed a change in the color of Mr. Minick's ear and that he was no longer moving. Medical assistance was immediately requested. The medical staff determined that Mr. Minick was in full cardiac arrest and began CPR. They restored his pulse and moved him to the ICU. However, Mr. Minick died 42 days later, on July 2, 2011.

The Davidson County Medical Examiner performed an autopsy and ruled the death to be a homicide caused by complications from an "asphyxia event" that occurred during the struggle with the officers. (It should be noted that the term "homicide" has a specific meaning in a

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**RESOLUTION NO. RS2015-66**, continued

forensic setting and is not synonymous with "murder", though the distinction may be lost at trial.) Three of the officers denied placing their full weight upon Minick during the altercation and denied grabbing Minick's throat. A fourth officer initially described the officers as placing all their weight on Minick, but later stated that the officers were never physically lying on top of Minick.

Ms. Minick filed two claims against Metro, as well as an action against the four DCSO employees, alleging violation of the Fourth Amendment. The claims against Metro have since been dismissed in court, but could still be the subject of an appeal.

The civil rights action against the four DCSO employees remains active. If judgment were to be rendered against them, the Metro Code allows Metro to indemnify each employee only up to \$50,000 for a maximum of \$200,000. A verdict for the Plaintiff would likely force the

employees to declare bankruptcy. Even after that, the law is not clear that bankruptcy could protect the employees after being found guilty of civil rights violations. Full internal affairs and criminal investigations were conducted, concluding that the employees adhered to DCSO policy. As a result, no disciplinary action has been administered against the employees.

If this case were to continue to trial, expert witness fees for Metro would likely be in the range of \$50,000 to \$60,000. The fees of the two private attorneys for the Plaintiff would likely be in excess of \$100,000, and those fees would be awarded to the Plaintiff if she were to prevail. She is willing to settle all lawsuits related to this case for \$200,000.

The Department of Law and the DCSO both believe the best course would be to compromise and settle this case. In addition to protecting the DCSO employees from potential bankruptcy, this would preclude the possibility of the claims against Metro being re-litigated on appeal.

**RESOLUTION NO. RS2015-67** (SHULMAN) – This resolution approves the election of certain Notaries Public in accordance with state law.

**– BILLS ON SECOND READING –**

**ORDINANCE NO. BL2015-42** (ALLEN) – This ordinance abandons approximately 250 linear feet of existing sanitary sewer main and easement and to accept 332 linear feet of eight inch sanitary sewer main and easement and two manholes for properties located at 2209, 2211, 2213, 2215, and 2217 29th Avenue South.

This was approved by the Planning Commission on July 9, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-60** (ROBERTS & ELROD) – This ordinance abandons easement rights that were previously retained by Council Ordinance #O61-224 within a portion of the right of way of former Franklin Street for property located at 619 Ries Avenue. These are no longer needed by Metro for any purpose.

This was approved by the Planning Commission on September 23, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-61** (FREEMAN, ELROD, & ALLEN) – This ordinance authorizes Metro Water Services to negotiate and accept permanent and temporary easements for four properties located at 716, 720, 724, and 728 Glenclyff Court for the Glenclyff Court Stormwater Improvement Project.

This was approved by the Planning Commission on September 23, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-62** (SLEDGE, ELROD, & ALLEN) – This ordinance abandons 380 linear feet of existing two inch water main and 75 linear feet of six inch existing water main for property located at 2535 Franklin Pike.

This was approved by the Planning Commission on September 25, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-63** (ROBERTS, ELROD, & ALLEN) – This ordinance authorizes Metro Water Services to negotiate and accept permanent and temporary easements for 47

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**ORDINANCE NO. RS2015-63**, continued

properties located along Maxon Avenue, Lovell Street, Robertson Avenue, and Snyder Avenue for the Lovell Street Stormwater Improvement Project.

This was approved by the Planning Commission on October 9, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-64** (ROSENBERG, ELROD, & ALLEN) – This ordinance authorizes Metro Water Services to negotiate and accept permanent and temporary easements for property located at 7663 Lakeview Drive for the Lakeview Drive Stormwater Improvement Project.

This was approved by the Planning Commission on October 19, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-65** (HENDERSON & PRIDEMORE) – This ordinance approves an agreement with CSX Transportation, Inc. (CSXT) for the construction of the Warner Park pedestrian tunnel. This project was initially approved in 2011 with a projected total cost of \$1,565,339.75. The state will reimburse Metro \$1,252,271.80 (80%) of the total construction costs. Metro will be responsible to pay the remaining cost of \$313,067.95.

Metro agrees to reimburse CSXT for its construction engineering, inspection, and flagging costs, estimated to be \$208,459. This expense is to be included as part of the total capital costs of the project. It is intended that all work by CSXT or on CSXT property shall conclude no later than December 31, 2016.

Future amendments to this agreement may be approved by resolution.

**ORDINANCE NO. BL2015-66** (WITHERS, HENDERSON, & ALLEN) – This ordinance grants a License Agreement between Metro and Tennessee's Commissioner of Transportation. This agreement authorizes the installation and operation of the Cayce Landing Riverfront Park Project on property owned by the state. This property is not needed by the state for any other purpose.

The Riverfront Master Plan for downtown Nashville was developed in 2007. This was further refined and completed in 2011. Metro received an Army Corps of Engineers Individual Permit for the overall downtown riverfront plans in 2012, which were then approved by the Metro

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**ORDINANCE NO. BL2015-66**, continued

Board of Parks and Recreation. With these permits in place, the city can move straight to construction on these projects as funding is allocated over time.

Projects that have been funded and completed so far include Cumberland Park, the NABRICO building rehabilitation, the Landing on the east bank, and the development of the site that now includes the Ascend Amphitheater.

The Cayce Landing project is proposed under the Silliman Evans Bridge on the east bank of the river in unused TDOT right-of-way with river access. The project would include an accessible concrete river ramp, pile-supported platform, and floating dock kayak launch with accessible gangway. The estimated construction cost for the Casey Landing project in 2011 was \$2,308,500.

This ordinance does not appropriate any additional funding for this purpose. The License Agreement being approved by this ordinance simply gives Metro permission to use this land for this project if it is ever funded in the future.

**– BILLS ON THIRD READING –**

**ORDINANCE NO. BL2015-3** (FREEMAN) – This ordinance abandons a portion of Alley No. 1860 from Austin Avenue southwestward to a dead end. This closure has been requested by Ron and Sabrina Sepehr. All utility easements are also being abandoned.

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

**ORDINANCE NO. BL2015-36** (ROBERTS) – This ordinance authorizes Hunter Marine Transport, LLC to install, construct, and maintain an underground and structural encroachment in the right-of-way of Robertson Avenue. This encroachment will consist of an 8" steel liquid fertilizer pipe and a 1" waterline. Hunter Marine Transport, LLC has agreed to indemnify the Metropolitan Government from all claims in connection with the installation of the encroachment, and is required to provide a \$2 million certificate of public liability insurance naming the Metropolitan Government as an insured party. They are also required to provide \$5 million in pollution liability coverage for the payment of any judgment had on any claim arising out of or connected with this encroachment.

This ordinance has been approved by the Planning Commission.

**ORDINANCE NO. BL2015-38** (VANREECE & ELROD) – This ordinance authorizes Metro Water Services to negotiate and accept permanent and temporary easements for five (5) properties located at 509, 511, 513, and 524 Ronnie Road and 101 Diane Court for the Ronnie Road Stormwater Improvement Project.

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

**ORDINANCE NO. BL2015-39** (ROBERTS) – This ordinance abandons easement rights that were previously retained by Council Ordinance No. O80-348 for property located at 5212 Tennessee Avenue. These are no longer needed by Metro for any purpose.

This was approved by the Planning Commission on August 4, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-40** (ROBERTS) – This ordinance abandons easement rights that were previously retained by Council Ordinance No. O61-224 for property located at 722 Croley Drive. These are no longer needed by Metro for any purpose.

This was approved by the Planning Commission on August 27, 2015. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2015-46** (SHULMAN) – This ordinance readopts the Metro code prepared by Municipal Code Corporation to include supplemental and replacement pages for ordinances enacted on or before July 8, 2015. This is a routine re-adoption to ensure the Metro Code is kept up to date.

**ORDINANCE NO. BL2015-47** (HAGAR, PRIDEMORE, & OTHERS) – This ordinance authorizes the acquisition of rights-of-way, easements, and other property rights by negotiation or condemnation for public projects for Old Hickory Boulevard at Lakeshore Drive / Pitts Avenue Traffic Signal. The estimated acquisition cost for the easement and property rights necessary for this project is \$5,000 to be paid from the FY16 Capital Projects Fund.

**ORDINANCE NO. BL2015-48** (PULLEY, ELROD, & OTHERS) – This ordinance amends the official street and alley acceptance and maintenance map by abandoning Crestview Drive right-of-way from Grandview Drive southward to its terminus. This closure has been requested by Barge, Waggoner, Sumner & Cannon, Inc. on behalf of Lipscomb University. This section of right-of-way is no longer needed by the Metropolitan Government. All affected property owners have consented to the proposed right-of-way abandonment.

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

**ORDINANCE NO. BL2015-59** (ALLEN) - This ordinance amends the official Street and Alley Centerline Layer by abandoning a portion of an unnamed, unimproved right-of-way off Primrose Circle, between 2952 and 2956 Primrose Circle. However, Metro will retain all easements for existing or future utilities, including drainage facilities

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