



METRO COUNCIL OFFICE

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

COUNCIL MEETING DATE: **February 17, 2015**

RE: **Analysis Report**

Unaudited Fund Balances as of 2/11/15:

4% Reserve Fund	\$28,228,276*
Metro Self Insured Liability Claims	\$4,130,121
Judgments & Losses	\$3,171,254
Schools Self Insured Liability Claims	\$2,505,447
Self-Insured Property Loss Aggregate	\$6,881,372
Employee Blanket Bond Claims	\$656,007
Police Professional Liability Claims	\$2,714,889
Death Benefit	\$977,816

*Assumes unrealized estimated revenues in fiscal year 2015 of \$14,492,058

– RESOLUTIONS –

RESOLUTION NO. RS2015-1383 (PRIDEMORE) – This resolution approves an application for a grant in the amount of \$29,866 from the Tennessee arts commission to the Metro arts commission for continuation of the Arts Build Communities program in Nashville. These funds would be used to make grants to non-profit organizations for community arts projects. There would be a required local match in the amount of \$29,866 to be provided from the Metro arts commission budget.

RESOLUTION NO. RS2015-1384 (PRIDEMORE & BAKER) – This resolution approves a grant in the amount of \$5,000 from CSX Transportation, Inc. to the Nashville fire department for air monitoring training. This grant is more in the form of a donation, with no specific conditions the fire department is required to satisfy.

RESOLUTION NO. RS2015-1385 (PRIDEMORE & GILMORE) – This resolution approves a sole source contract with Nashville Cares for the provision of dental services through the Ryan White HIV/AIDS program. Sole source contracts may be awarded under the Metro procurement code when it is determined that there is only one source for the supply or services rendered. The Metro code requires all sole source contracts having a total value in excess of \$250,000 to be approved by the council by resolution.

Nashville Cares will provide services to Ryan White Part A eligible clients in Cannon, Cheatham, Davidson, Dickson, Hickman, Macon, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties. The Ryan White Part A program is a federal program that provides grants to local governments that have a higher concentration of persons infected by HIV/AIDS. Metro has been the recipient of these federal grant funds for a number of years.

Pursuant to this contract, the coordination of dental services under the Ryan White Part A program is being subcontracted to Nashville Cares. This is a new contract for the health department, although a similar contract for these services has been in place between the United Way and Nashville Cares. The United Way will cease being the administrative agent for this program on March 1, 2015. The contract indicates a contract “value” of \$5 million, but this is essentially a cap on the amount to be paid under the contract. All of the contract funds are provided by the federal government. No local health department funds will be used. The program budget attached to the contract for the first year is for an amount of \$584,085, which is the total of three categories of Ryan White program funding. But this contract only pertains to the Ryan White Part A services, which shows a budget for the first year of approximately \$250,000. The term of the contract is from March 1, 2015 through February 29, 2016, with an option to renew for up to four additional one year terms.

The services to be provided by Nashville Cares include recruiting and contracting with a dental provider network, arranging for the provision of dental services in the 13 county region, coordinating with medical case managers, reimbursing the dental providers, and fulfilling the federal reporting requirements.

RESOLUTION NO. RS2015-1386 (PRIDEMORE & GILMORE) – This resolution approves an agreement between the Metropolitan board of health and Vanderbilt University to provide clinical experience to Vanderbilt resident physicians. This agreement will allow residents in Vanderbilt’s pediatric residency program to participate in a clinical instruction program with the health department. There is no direct cost to the Metropolitan Government for providing this clinical experience. All applicable compensation and benefits to residents will be paid by Vanderbilt. A criminal background check will be required for each resident to be provided at the resident’s expense in order to participate in the clinical program.

The term of the agreement is for five years, but may be terminated by either party upon 30 days written notice. Vanderbilt is required to provide assurance that the residents are covered by health and professional liability insurance, and the school agrees to assume responsibility for all of its residents participating in the program.

RESOLUTION NO. RS2015-1387 (PRIDEMORE & GILMORE) – This resolution approves a renewal of a contract between the Metropolitan board of health and Vanderbilt University Medical Center to provide medical professionals to distribute antibiotics, vaccines, and antivirals in the event of a public health emergency. The health department will be responsible for obtaining the mass prophylaxis from the state and deliver it to Vanderbilt during a public health emergency. Vanderbilt will be responsible for distributing the prophylaxis, and will not receive any form of compensation for providing these services. Vanderbilt agrees to indemnify the Metropolitan Government from claims arising out of its performance of the contract. This contract is for a term of five years.

RESOLUTION NO. RS2015-1388 (BANKS) – This resolution approves an amendment to the charter of the convention center authority (CCA) for the Metropolitan Government. The state Convention Center Authorities Act of 2009 was enacted for the benefit of the Metropolitan Government, which allowed Metro to create an entity similar to the sports authority to oversee the construction and operation of a convention center. The CCA was formed by Metro in 2009 upon the adoption of Resolution No. RS2009-881. The state law required the local legislative body to approve the formation of the CCA by resolution, which resolution also approved the form of the charter for the authority.

On March 13, 2014, the CCA adopted a motion approving the filing of an application with the council seeking to amend its charter to provide for Charles Starks to replace Richard Riebeling as registered agent for the authority, and to change the official address from the Metro finance department to the Music City Center. State law provides that the council must approve this change by resolution in order for it to become effective.

RESOLUTION NO. RS2015-1389 (PRIDEMORE & GILMORE) – This resolution authorizes the department of law to compromise and settle the lawsuits brought by Pamela DeSoto against the Metropolitan Government and various Metro employees for the amount of \$295,000. This settlement is the result of a number of lawsuits brought by Ms. DeSoto in both federal and state court against Metro and nine Metro employees. Ms. DeSoto is a 30-plus year employee of the (continued on next page)

RESOLUTION NO. RS2015-1389, continued

parks police department. In the spring of 2013, Ms. DeSoto, who was a sergeant at the time, applied for an open lieutenant position with the parks police. Shortly after, she was decommissioned as a sergeant by Captain Taylor during a meeting in Captain Taylor's office that was recorded on tape. The audio evidences that Ms. DeSoto requested the reasoning for the decommissioning, but no reason was given by Captain Taylor. After the decommissioning, the parks director sent Ms. DeSoto a letter outlining the charges against her based upon her job performance, which included insubordination, violation of written policies, and dishonesty (as alleged by her subordinates).

Ms. DeSoto requested a hearing panel, which recommended that her termination be reversed, that she be suspended without pay for 20 days, and that she be demoted to the rank of officer with a corresponding reduction in pay. The parks director followed this recommendation, which was appealed by Ms. DeSoto to the Civil Service Commission. That appeal is still pending. After the departmental hearing, Captain Taylor and Sergeant Hope cleaned out Ms. DeSoto's office and discarded some items, some of which Ms. DeSoto claims were important personal documents. A Metro IT employee then inadvertently erased her Metro-issued Blackberry phone. Subsequently, Captain Taylor's phone was destroyed when the parks police phones were upgraded even though the legal department had placed a litigation hold on the device.

In addition to the pending civil service appeal, Ms. DeSoto filed five separate lawsuits against Metro and nine employees. The federal lawsuits seeking \$6 million in damages allege a number of claims of discrimination and violation of Ms. DeSoto's constitutional rights, mostly related to claims of discrimination based on her gender, age, race, and sexual orientation. Ms. DeSoto also filed suit in state court against four of her subordinate officers seeking an additional \$650,000 from each defendant claiming they defamed her and placed her in a false light. Due to the potential conflicts of interest that could arise among Metro and the various employees that were sued, most of the employees have retained outside counsel. The Metro code provides that the legal department is to pay for such outside counsel, which to date totals more than \$133,000. Metro also had to hire a forensic computer expert who has been paid more than \$52,000 thus far, and the real discovery period in the lawsuits has not even commenced.

The department of law recommends settling these cases for a total amount of \$295,000. The parks department would provide \$30,000 of this amount to address back pay, and the remaining \$265,000 would be paid out of the judgment and losses fund. It is unclear at this point whether Metro would actually be found to have discriminated against Ms. DeSoto. The jury could likely find the decommissioning and demotion were justified for job performance reasons, not as acts of discrimination. However, there are a number of facts that would not place Metro in the best light. It is possible that Metro could be sanctioned for inadvertently erasing the Blackberry and for destroying Captain Taylor's phone after the litigation hold was in place. Further, discarding the items from Ms. DeSoto's office could lead to a perception that Metro intentionally destroyed incriminating documents and the jury may decide to punish Metro accordingly.

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RESOLUTION NO. RS2015-1389, continued

Also, there is little question that the decommissioning process could have been better handled. Although it did not violate any civil service policy, Ms. DeSoto should have been given an explanation about her termination, especially since she had not been advised about the complaints from her subordinates against her. If a jury allowed Ms. DeSoto to prevail in federal court on even one of the discrimination claims, federal law provides that she would be entitled to recover costs and attorney fees estimated to be in the \$200,000 range. Even more problematic would be a finding by the administrative law judge in the civil service appeal that Metro discriminated against her. Such a finding could be used as a determination of discrimination in federal court without the jury even having to make a decision. IN that case, the jury would only decide the amount of damages to be awarded.

The primary motivation for settling the lawsuits is to avoid the expense of protracted litigation. As noted above, Metro is already responsible for paying over \$180,000 in outside counsel and expert fees. It is estimated that Metro would spend another \$450,000 if the cases went to trial. These cases would require dozens of witness depositions and a great deal of forensic computer expert work to image the various employees' phones and computers. This settlement would result in Ms. DeSoto dismissing the various lawsuits against Metro and the individual employees and agreeing to retire. This would alleviate the ongoing tension and fear among the parks police employees that they could be sued in the future, which is negatively impacting the work environment.

No disciplinary action has been taken against any of the Metro employees named in the lawsuits.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2015-1015 (GLOVER) – This ordinance amends the Metro code to eliminate the size requirement for street address numbers displayed on mailboxes at single and two-family residential properties. The code currently provides that residences are to have numbers at least three inches in size on a contrasting background that are plainly visible and legible from the street fronting the property. Numbers can be displayed either on the outside of the residential structure or on the mailbox, provided the mailbox is located next to the street.

This ordinance would eliminate the specific three inch minimum size requirement for the numbers. The numbers would simply need to be plainly visible and legible from the street.

ORDINANCE NO. BL2015-1016 (HARRISON) – This ordinance amends the Metro code to require building and demolition permit holders for major projects to post a sign on the property providing information about the development. This ordinance is in part modeled after an ordinance enacted in Philadelphia, Pennsylvania. This ordinance defines “major project” as a project meeting any one of the following:

1. New construction or demolition of a building more than three stories in height;
2. New construction or demolition of a building with an average roof height more than 40 feet above grade;
3. New construction or demolition of a building covering 10,000 square feet or more of lot area, regardless of height; or
4. Any alteration to a building façade or any demolition activity that impacts the exterior of the building and is performed at a level above the third story or more than 40 feet above grade, whichever is less.

If a project meets the definition of major project, the developer would be required to post a sign on the property at least 24 hours before work commences that includes the following information about the project:

1. Except in the case of demolition projects, a rendering or elevation drawing of the building exterior;
2. A title line stating “Work in Progress” and specifying the intended type(s) of occupancy classification(s);
3. Anticipated project completion date;
4. The name or company name, physical address, and telephone number of the owner of the property;
5. Website and telephone number of the project developer or development company, if applicable; and
6. The company name and telephone number of the general contractor, or for a demolition site, the demolition contractor.

The ordinance includes various size and material requirements for project information signs. The sign must remain clearly visible on the site until all work is completed.

ORDINANCE NO. BL2015-1018 (WESTERHOLM, PRIDEMORE & OTHERS) – This ordinance approves a lease agreement between the Metropolitan Government and Nashville Classical, Inc. for the use of the former Ross Head Start Center located at 1310 Ordway Place in East Nashville as a K-8 charter school. Nashville Classical will be leasing the 24,278 square foot facility at a rental cost of \$10,115 per month (\$2.40 per square foot) for the first year, which is to increase by 2% each year thereafter. The term of the lease is for ten years with an option to renew for two additional five year periods. The agreement provides that the premises may only be used for a charter school serving kindergarten through eighth grade students in the East Nashville area.

Nashville Classical will be responsible for all utility and maintenance expenses. The school will be allowed to make improvements to the property and Metro will give a rent credit to the school for the documented costs of such improvements. The plans for all improvements must be approved in advance by the department of general services. Nashville Classical will also have the right to place portable classrooms on the property.

The lease includes the typical insurance and indemnification provisions for the protection of Metro. Nashville Classical will have the right to terminate the agreement with 60 days written notice to Metro, but the school will not get full credit for the improvements to the property if it terminates the agreement early.

Future amendments to the lease could be approved by the council by resolution.

ORDINANCE NO. BL2015-1019 (PRIDEMORE, A. DAVIS & HUNT) – This ordinance authorizes the director of public property administration to execute a deed transferring 0.179 acres of property located at the northwest corner of 38th Avenue North and Charlotte Avenue to the state of Tennessee for use in connection with the state’s I-40E ramp improvement project. The state is paying Metro \$167,650 for this property.

There is an amendment to this ordinance adding the amount Metro is being compensated, as opposed to just being noted in the deed.

ORDINANCE NOS. BL2015-1020 (GILMORE) – This ordinance abandons a portion of Alley No. 160 right-of-way from Division Street to Alley No. 196 between 7th Avenue South and 8th Avenue South. This closure has been requested by Southeast Venture, LLC, the adjacent property owner. Consent of the affected property owners is included as an attachment to the ordinance. This ordinance retains the Metro utility easements. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2015-1021 (MOORE, PRIDEMORE & OTHERS) – This ordinance authorizes the acquisition of right-of-way easements, drainage easements, temporary construction easements, and other property rights for Lealand Lane and Kirkwood Avenue sidewalk improvements. Metro will be constructing sidewalks on Lealand Lane and Kirkwood Avenue from Gale Lane to 12th Avenue South. The estimated acquisition cost for these easements is \$5,500 to be paid out of capital funds for sidewalks. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2015-1022 (A. DAVIS & HUNT) – This ordinance abandons various sections of water/sewer mains and easements, and accepts replacement lines located on various properties south of Charlotte Avenue. This ordinance is necessary in order for the Hill Center Sylvan Heights mixed-use development to proceed. Future amendments to this ordinance may be approved by resolution. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2015-1039 (GILMORE) – This ordinance abandons the water and sewer easement rights that were retained by Ordinance No. BL2006-930 when a portion of the 11th Avenue South and 12th Avenue South right-of-way was abandoned for property located at 401 11th Avenue South. This abandonment is necessary in order for the Gulch Hotel project to proceed. There is no longer a government need for these easements. This ordinance has been approved by the planning commission.

– **BILLS ON THIRD READING** –

SUBSTITUTE ORDINANCE NO. BL2014-909 AND ORDINANCE NO. BL2014-951

(ALLEN, TYGARD & OTHERS) – These two companion ordinances amend the Metro code pertaining to the regulation of short term rental properties (STRP). The code currently does not include any provisions specific to STRPs. Thus, the zoning administrator has determined they are allowed in residential areas without conditions as long as they do not meet the specific definitions of a hotel, bed and breakfast, or boarding house. Given the rise in popularity of vacation rental websites and the popularity of Nashville as a vacation destination, hundreds of homes in Nashville are currently being offered as vacation rentals.

The ordinances define STRP as a dwelling unit containing not more than four sleeping rooms that is used and/or advertised for rent for transient occupancy by guests for a period of less than 30 continuous days. Bed and breakfast establishments, boarding houses, hotels, and motels are not considered STRPs under the ordinances. STRPs would be permitted as an accessory use in all zoning districts that permit residential use. STRP owners would be required to obtain an annual STRP use permit with the codes department. The application for the permit must provide the name, telephone number, address, and email address of the owner and of a person or business residing or located within 25 miles of the STRP that is responsible for addressing all maintenance and safety concerns. The application must also include proof of liability insurance coverage with limits of not less than \$1,000,000 per occurrence. If the STRP unit shares a common wall or a common driveway with another property owner, written notice must be given to the neighboring property owner prior to submitting the application.

No more than three percent (3%) of the single-family or detached two-family residential units within each census tract could be used as a non-owner-occupied STRP. This provision, modeled after the Austin, Texas STRP ordinance, is to ensure a large number of homes used exclusively as STRPs are not located in any one area.

The regulations include prohibitions regarding signage, noise, recreational vehicle parking, and food service for STRPs. The regulations also reference compliance with the waste management provisions of chapter 10.20 of the Metro code. The principal renter of a STRP unit must be at least 21 years old and the maximum number of guests permitted on a STRP property at any one time cannot exceed more than twice the number of sleeping rooms plus four. The applicant would have to comply with all applicable state and local fire and building code requirements, including smoke alarms in all sleeping areas and in every room in the path of the means of ingress and egress. If a permit is revoked, or the owner is found to have operated an STRP without a permit, no new permit could be issued to the owner for a period of one year.

The regulations include a provision making the permit holder responsible for collecting and remitting all applicable room, occupancy, and sales taxes required by state law or the Metropolitan Code. Regardless of this ordinance, STRP owners are legally required to collect and remit such taxes, though only a few owners are currently doing so. The codes department would begin accepting STRP applications on March 31, 2015, and begin enforcement on July 1, 2015.

Substitute Ordinance No. BL2014-909 amends the Metro zoning code to include STRPs as an accessory use to a primary residential use. This substitute ordinance has been approved by the planning commission.

Ordinance No. BL2014-951 amends Title 6 of the Metro code to provide for the regulation of STRPs and adopts the permitting requirements.

ORDINANCE NO. BL2014-948 (WESTERHOLM & A. DAVIS) – This ordinance approves a third amendment to the Five Points redevelopment plan. This redevelopment district was created in 1991 and was last amended in 2005. First, this amendment would replace the district map to shift the permitted use for seven parcels from single and two-family residential to mixed-use. Second, this amendment would combine the “neighborhood commercial” component with the mixed-use component to support the adaptive reuse of existing residential structures; to support businesses, services, and other uses that serve the contiguous residential neighborhoods; and for specialty services catering to a larger market. Permitted uses would include offices, financial institutions (other than check cashing businesses), retail (other than car sales), full-service restaurants, and bed & breakfast establishments. Finally, the amendment would provide \$670,000 of additional tax increment financing (TIF) capacity to be used for streetscape and other infrastructure improvements.

The Five Points redevelopment plan is set to expire in 2020.

ORDINANCE NO. BL2015-1007 (PRIDEMORE & WEINER) – This ordinance amends the Metro code to ensure Metro’s pension plan is in compliance with federal tax laws. This ordinance makes some technical changes that will not affect the benefit calculations for any member of the pension plan, and will have no impact on the required annual funding for the plan. The ordinance, which was prepared by Metro’s actuary (BPSM), is simply to ensure Metro’s benefit plan will remain a qualified plan under the federal tax laws. Due to amendments to the federal Internal Revenue Code, these amendments to the Metro pension plan are necessary for the plan to maintain its tax qualified status. A similar ordinance pertaining to compliance with federal tax laws was approved by the council in 2004.

ORDINANCE NO. BL2015-1008 (BENNETT, WEINER & OTHERS) – This ordinance amends the Metro code regulations regarding pet tethering. In November 2006, the council enacted Ordinance No. BL2006-1208 to place restrictions on outdoor pet tethering. The ordinance made it unlawful to use a chain, cord, or rope to tie up an animal unless the rope, chain, or cord is not unreasonably heavy in proportion to the weight of the animal, contains a swivel at both ends, and no choke collar is used. The code was subsequently amended in 2009 to specify that the rope, chain, or cord used to tether an animal be at least fifteen feet in length.

This ordinance would enact the following additional pet tethering restrictions:

1. Chains would be prohibited for use as a tethering device.
2. The animal could not be tethered outdoors during periods of extreme weather, including a heat index of 95° F or above, freezing temperatures, thunderstorms, or tornados.
3. The animal must have access to water, shelter, and dry ground at all times. The animal must also have access to adequate food.
4. The animal must be at least six months of age and have a current rabies vaccination.
5. The animal cannot be sick, injured, or in heat.
6. Pulley, running line, or trolley systems must be at least fifteen feet in length and must be at least six feet above the ground.
7. If there are multiple animals, each animal must be tethered separately.
8. The tethering device must allow the tethered dog to lie down comfortably at all positions of tether.

ORDINANCE NO. BL2015-1011 (MOORE, PRIDEMORE & HUNT) – This ordinance approves a lease agreement between the Metropolitan Government and STEM Preparatory Academy for the use of a portion of the Tennessee Preparatory School (TPS) campus located at 1250 Foster Avenue. Prior to December 2013, Metro had been leasing a portion of the TPS property from the state. In May 2013, the council approved a sublease with STEM to use 26,000 square feet of the old high school building as a grade 5-8 charter school. STEM is a public charter school focused on science, technology, engineering, and math.

Ownership of 28 acres of the TPS property was transferred to Metro as part of the land transaction for the new Sounds ballpark, which was approved by the council in December 2013. Since Metro is now the owner of the property, the parties desire to replace the previously approved sublease with a new lease agreement.

The terms of the new lease are similar to the former sublease, though the 20,200 square foot Field House/Gymnasium has been added as part of the lease. The agreement provides that the premises may only be used for a charter school serving fifth through eighth grade students in the South Nashville area. The term of the agreement will be through July 31, 2024, with a possible extension of two additional five year periods. Under the previous sublease agreement STEM was to pay rent in the amount of \$6,500 per month. Under the new agreement, STEM will pay \$11,781 per month to account for the increased square footage, which is to increase by 2% each year.

STEM will be responsible for all utility and maintenance expenses. The school will be allowed to make improvements to the property and Metro will give a rent credit to the school for the documented costs of such improvements. The plans for all improvements must be approved in advance by the department of general services. STEM will also have the right to place portable classrooms on the property.

The lease includes the typical insurance and indemnification provisions for the protection of Metro. Metro will have the ability to terminate the agreement if STEM has not cured any default within 30 days. Future amendments to or extension of the lease could be approved by the council by resolution.

ORDINANCE NO. BL2015-1012 (PRIDEMORE, A. DAVIS & HUNT) – This ordinance abandons 90 linear feet of sewer easement for property located at 627 Gallatin Pike. Metro water services has no future need for this easement. Future amendments to this ordinance may be approved by resolution. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2015-1013 (A. DAVIS & HUNT) – This ordinance authorizes the abandonment and acceptance of various water and sewer infrastructure for properties located at 1804 and 1808 Graybar Lane, 3505 Hopkins Street, and 1919 and 1921 Woodmont Boulevard. This includes the following:

1. The abandonment of 230 feet of 8" sewer line and easement
2. The acceptance of 1,215 feet of 8" PVC sewer line
3. The acceptance of 1,074 feet of 8" water main
4. The acceptance of 369 feet of 4" water main

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ORDINANCE NO. BL2015-1013, continued

This ordinance is necessary for the Graymont development. Future amendments to this ordinance may be approved by resolution. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2015-1014 (PRIDEMORE & A. DAVIS) – This ordinance approves a participation agreement between Metro water services and Vanderbilt University for public water service improvements associated with Vanderbilt’s proposed construction located along 19th Avenue South. Vanderbilt will be responsible for contracting and overseeing the construction of 1,200 feet of 8” water main along with the associated fire hydrants and appurtenances. Metro will be responsible for paying 81% of the construction costs not to exceed \$275,000. Vanderbilt will cover the remainder of the costs. This is a typical participation agreement where Metro contracts with private developers for water/sewer infrastructure projects that will benefit the general community. The work is to be completed not later than October 31, 2015.

The \$275,000 is to be paid out of the water/sewer capital projects fund. Future amendments to this ordinance may be approved by resolution.