



METRO COUNCIL OFFICE

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

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

RE: **Analysis Report**

Unaudited Fund Balances as of 3/11/15:

| | |
|---------------------------------------|---------------|
| 4% Reserve Fund | \$28,228,276* |
| Metro Self Insured Liability Claims | \$3,818,321 |
| Judgments & Losses | \$3,007,054 |
| Schools Self Insured Liability Claims | \$2,275,448 |
| Self-Insured Property Loss Aggregate | \$6,918,154 |
| Employee Blanket Bond Claims | \$656,959 |
| Police Professional Liability Claims | \$2,721,327 |
| Death Benefit | \$980,133 |

*Assumes unrealized estimated revenues in fiscal year 2015 of \$11,527,448

– RESOLUTION ON PUBLIC HEARING –

RESOLUTION NO. RS2015-1403 (WESTERHOLM) – This resolution approves an exemption for Margot Café located at 1017 Woodland Street from the minimum distance requirements for obtaining a beer permit. The Metro code prevents a beer permit from being issued to an establishment located within 100 feet of a church, school, park, daycare, or one or two family residence. However, the code provides a mechanism to exempt restaurants that already have a state on-premises liquor consumption license from Metro’s minimum distance requirements to obtain a beer permit upon the adoption of a resolution by the council. A public hearing must be held by the council prior to voting on this resolution.

– RESOLUTIONS –

RESOLUTION NO. RS2015-1389 (PRIDEMORE) – 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 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 (continued on next page)

RESOLUTION NO. RS2015-1389, continued

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.

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.

RESOLUTION NO. RS2015-1404 (PRIDEMORE) – This resolution appropriates \$1,996,600 from the undesignated fund balances of the general fund and the fleet management fund to various departments and programs to balance their fiscal year 2014-2015 operating budgets. The Council typically considers a supplemental appropriation resolution each spring. The specific appropriations in this resolution from the undesignated fund balance of the general fund are as follows:

| | |
|--|--------------------|
| Police - special events overtime and associated fringe benefit costs | \$413,800 |
| State Trial Courts – domestic violence position, including benefits | 66,900 |
| Codes – Additional inspectors in construction land use and building inspection divisions | 279,400 |
| Study and Formulating Committee - Consultant | 50,000 |
| Victim Resource Center (JCAC) | 98,300 |
| Transportation planning subsidy | 528,700 |
| District Attorney - domestic violence positions, including benefits | 179,200 |
| Public Works - roadway maintenance overtime | 175,000 |
| Office of Emergency Management - overtime | 23,600 |
| Office of Emergency Management - Small Equipment and Supplies | 16,400 |
| TOTAL | \$1,846,600 |

The \$528,700 subsidy for transportation planning is the result of the council’s recent action to defund the AMP project. The funds will essentially provide a reimbursement for the capital funds that had been spent for employees working on the project.

The resolution also appropriates \$150,000 from the fleet management undesignated fund balance to the department of general services for automotive repair parts.

The council office is of the understanding that another supplemental appropriation resolution will be filed for a subsequent council meeting pertaining to the municipal auditorium, fairgrounds, and farmers market.

RESOLUTION NO. RS2015-1405 (PRIDEMORE) – This resolution approves a seventh amendment to a grant from the state emergency management agency to the Metropolitan Government for the reimbursement of expenses resulting from the May 2010 flood. This grant is for the receipt of federal and state funds to reimburse Metro for flood repairs and the replacement of equipment and facilities. This amendment extends the term of the grant through April 29, 2020.

RESOLUTION NOS. RS2015-1406 (PRIDEMORE & BAKER) – This resolution approves a renewal of an intergovernmental agreement between the U.S. Army Corps of Engineers and the Metropolitan police department for the use of off-duty police officers to patrol the recreation areas at Percy Priest and Old Hickory Lakes. All officers will be assigned exclusively through the Metro police secondary employment unit. The Corps agrees to pay a fixed hourly rate depending on the rank of the officer. The total compensation to Metro is not to exceed \$68,572. The term of this agreement is from January 30, 2015 through September 30, 2015.

RESOLUTION NO. RS2015-1407 (PRIDEMORE, GILMORE & LANGSTER) – This resolution approves a grant in the amount of \$85,000 from the state department of health to the Metropolitan health department for tobacco use prevention services. These federal pass-through funds are used to pay a portion of the salaries and benefits for two positions in the health department to provide services with the goal of eliminating smoking during pregnancy, reducing secondhand smoke exposure to infants and young children, and to promote tobacco abstinence among children. The term of the grant is from April 1, 2015 through March 31, 2017. There is a required local match of \$14,600 to be provided through the health department's operating budget.

RESOLUTION NO. RS2015-1408 (PRIDEMORE, GILMORE & LANGSTER) – This resolution approves an intergovernmental agreement between the state department of health and the Metro board of health to review the sudden deaths of children. The Metro health department will be responsible for reviewing all sudden death cases of children under the age of 19 for the purpose of understanding what happened and how to prevent future child deaths. The health department will be required to submit quarterly reports to the state. Metro will be compensated up to \$28,000 for these services for the total 43 month term of the contract.

RESOLUTION NO. RS2015-1409 (PRIDEMORE & GILMORE) – This resolution approves an amendment to an agreement between Vanderbilt University and the Metro board of health to participate as a member site for tuberculosis epidemiologic consortium studies. Vanderbilt, through Duke University, is the recipient of a grant from the U.S. Centers for Disease Control and Prevention to conduct clinical research, and has subcontracted with the health department to assist with the study. This amendment extends the term of the agreement through September 28, 2015, and approves a \$80,985 increase in the amount the health department is to be reimbursed.

RESOLUTION NO. RS2015-1410 (CLAIBORNE, PRIDEMORE & OTHERS) – This resolution approves an application for a grant in the amount of \$30,000 from the state historical commission to the Metro historical commission, working in conjunction with the Metro parks department, to hire a consultant to complete a master plan for Two Rivers Mansion, the 1802 House, and the associated grounds. Metro purchased this property in 1966 and the council approved a historic landmark district designation for the property in 1999. Metro spent \$1.1 million in capital funds in 2013 to repair and paint the exterior woodwork of the mansion.

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RESOLUTION NO. RS2015-1410, continued

This grant would be used to hire a consultant to address security concerns, evaluate the condition of the buildings, and develop a plan for the use of the site. The plan is to include cost estimates for implementation of the plan. If awarded, there would be a required match of \$30,000 for this grant to be provided by the Friends of Two Rivers Mansion.

RESOLUTION NO. RS2015-1411 (TODD, PRIDEMORE & OTHERS) – This resolution approves an application for a grant in the amount of \$30,000 from the state historical commission to the Metro historical commission, working in conjunction with the Metro parks department, to hire a consultant to complete a master plan for the Kellytown Native American Archaeological Site. The council approved the purchase of this 6.72 acre property located at the corner of Hillsboro Road and Old Hickory Boulevard in December 2012 for \$740,000. Friends of Kellytown and the City of Forest Hills donated a combined \$400,000 to be used for the purchase and preservation of the property.

If awarded, this grant would be used to hire a consultant to prepare the master plan. Final products of the master plan would include a National Register nomination, an archaeological survey report, a site survey, and a site development plan. Friends of Kellytown has agreed to provide the required \$30,000 match for the grant.

RESOLUTION NO. RS2015-1412 (PRIDEMORE) – This resolution authorizes the department of law to settle the lawsuits brought by Clarisse Sweat against the Metropolitan Government and Metro police officer Joe Shelton for the amount of \$50,000. These lawsuits stem from the shooting death of Ms. Sweat's husband, Reginald Wallace, on March 21, 2010. K-9 unit officer Joe Shelton responded to a 911 home burglary call after hearing about the burglary over the radio dispatch system. Officer Shelton and his dog were directed to the area where the suspect was last seen. Officer Shelton released the dog, and the dog tracked the suspect (Reginald Wallace) underneath the deck of a house.

According to Officer Shelton, he commanded the dog to apprehend the suspect. Officer Shelton ran to the back of the house and got on the ground so he could see the dog and the suspect under the deck. The officer thought it was odd that the suspect was not making noise and was not attempting to fight off the biting dog. The officer saw Reginald Wallace put his hand in his pocket and was afraid he was reaching for a gun. Officer Shelton drew his gun on Wallace and ordered him to surrender. Wallace refused to comply with the officer's commands. Once Wallace came out from under the deck he no longer had his hand in his pocket. Officer Shelton holstered his gun and continued to command Wallace to stop resisting.

Wallace then attempted to escape by climbing over a fence. Officer Shelton pulled him off the fence and Wallace struck the officer in the face. Wallace then put his hand back in his pocket. Officer Shelton attempted to trap Wallace's hand by placing his hands on top of Wallace's right hand. The officer felt what he believed to be a pistol in Wallace's pocket and noticed what appeared to be a silver metal object. Wallace continued to ignore the officer's directions to stop resisting. Officer Shelton felt like he was losing his grip on the suspect so he pushed him away, drew his weapon, and fired three shots in rapid succession striking Wallace in the side and (continued on next page)

RESOLUTION NO. RS2015-1412, continued

back. The officer stated he fired his weapon because he was afraid he would be shot. The object in Wallace's pants turned out to be the iPod he stole during the burglary. Wallace died from the gunshot wounds later that day.

After investigating this incident, the police department determined that Officer Shelton acted within departmental policy and no disciplinary action was taken against him.

Ms. Sweat initially sued Metro and Officer Shelton in federal court, and filed a negligence action against Metro in state court. The federal lawsuit alleges Officer Shelton violated Wallace's civil rights. Metro was dismissed as a defendant early on in the federal litigation, but that decision could still be appealed.

Based upon all the evidence at hand, the department of law does not believe Officer Shelton violated Wallace's constitutional rights. However, there is no guarantee a jury would agree, especially given the current public interest in police shootings. The Metro code allows the department of law to indemnify employees for judgments against them, but only up to \$50,000. A judgment in excess of \$50,000 would likely bankrupt the police officer. Further, since Metro is paying for the officer's private attorney as a result of a possible conflict of interest, Metro would be responsible for paying approximately \$40,000 in attorney fees and \$10,000 in expert fees if the case went to trial. So, the \$50,000 settlement amount is likely what Metro would end up paying were the case to be fully litigated. However, settling the case will remove the possibility of a judgment against Officer Shelton individually.

The department of law recommends settling both of the pending lawsuits for a total of \$50,000 to be paid out of the judgments and losses fund. This will result in the civil rights lawsuit being dismissed against Officer Shelton and the waiver of an appeal of the decision to dismiss Metro as a defendant.

RESOLUTION NO. RS2015-1413 (HARMON) – This resolution approves the election of notaries public in accordance with state law.

– BILLS ON SECOND READING –

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. BL2015-1042 (LANGSTER, PRIDEMORE & A. DAVIS) – This ordinance approves the renewal of a ground lease between Eckerd Corporation and the Metropolitan Government for a portion of excess 25th Avenue North right-of-way between West End Avenue and Elliston Place for the drug store located at 2416 West End Avenue. Eckerd began leasing this property in 1985 for signage, landscaping, and a few parking spaces.

This ordinance approves a 30 year renewal of the lease for a continuation of the existing uses. Eckerd will pay rent in the amount of \$560 per month for the first year, which is to increase by 2.5% annually thereafter for the remainder of the lease term. Eckerd is required to maintain \$1 million in commercial liability insurance naming Metro as additional insured. Eckerd can terminate the lease with 30 days written notice to Metro, but will not be allowed to remove any improvements it makes to the property. Metro can terminate the lease with 180 days written notice to Eckerd.

This lease has been approved by the planning commission. Future amendments to the lease may be approved by resolution receiving 21 affirmative votes.

– **BILLS ON THIRD READING** –

ORDINANCE NO. BL2015-1036 (BENNETT, PRIDEMORE & OTHERS) – This ordinance amends the Metro zoning code to prohibit clubs as a use in the office zoning districts. The zoning code defines “club” as a facility that offers social, educational, cultural or other similar activities that are only available to members and their guests. Clubs are currently allowed in the mixed-use, office, commercial, and downtown zoning districts. This ordinance would remove clubs as a permitted use in the office neighborhood (ON), office limited (OL), office general (OG), and office/residential intensive (ORI) zoning districts. According to the zoning administrator, there are currently no clubs operating with a valid use permit in any of the office zoning districts.

The zoning code provides that the office districts are specifically intended for office developments. According to the planning department staff recommendation for this bill, the potential for a large number of members and varying operating hours make clubs more akin to a commercial use than an office use. Club events could pose traffic and parking issues in office areas since these areas are often not designed to accommodate a large number of people or vehicles. The planning department staff recommendation also notes that the location of a club in an office district could disrupt the normal operations of other traditional office uses.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2015-1038 (STITES) – This ordinance amends the Metro zoning code to modify the conditions applicable to boat storage facilities. Prior to 2012, the storage of boats was considered to be a self-storage use, which is permitted by right in the CF, DTC, IWD, IG, and IR districts, and permitted with conditions in the CS district. The council enacted BL2012-158 in 2012 to make boat storage its own separate use, which is permitted only in the CL district. The conditions applicable to boat storage facilities in the CL district include the following:

1. The facility must be located on at least a four acre lot.
2. No more than 100 boat slips would be permitted on the premises.
3. A landscape buffer yard standard B would be required along all residential districts, plus a 25-foot vegetation buffer would be required between any storage building and the closest residential property line.
4. No building on the property could exceed 16 feet in height.
5. The boat storage facility must be within two miles of a public boat launching ramp on a lake maintained by the U.S. Army Corps of Engineers.

This ordinance would delete the minimum 4-acre lot requirement and delete the 100 boat slip limitation.

The planning commission recommended disapproval of this ordinance.

ORDINANCE NO. BL2015-1040 (ALLEN) – This ordinance authorizes Nashville Downtown Partnership to install and maintain an automated bike kiosk within the public right-of-way at 2101 Belmont Boulevard for the “B-cycle” bikeshare program. B-cycle member riders will be able to swipe their card at the kiosk to unlock the bike. The kiosk, which will allow up to 11 bikes, will be powered using solar electricity. The encroachment will consist of the construction of a concrete pad measuring 33 feet in length by 6 feet in width. The Downtown Partnership has agreed to indemnify Metro for any claims arising out of the operation of the bike kiosk, and is required to maintain liability insurance in the amount of \$2 million.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2015-1041 (A. DAVIS & HUNT) – This ordinance adopts the geographic information systems street and alley centerline layer, with the changes as reflected on the centerline layer to date, as the official street and alley acceptance and maintenance record for Metro. The changes to the record are submitted annually by Metro public works for council approval. The updated centerline layer shows the dedicated streets and alleys that were either accepted or abandoned for public maintenance by Metro since it was last adopted.

This ordinance has been approved by the planning commission.