



METRO COUNCIL OFFICE

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

COUNCIL MEETING DATE: **March 3, 2015**

RE: **Analysis Report**

Unaudited Fund Balances as of 2/25/15:

4% Reserve Fund	\$28,228,276*
Metro Self Insured Liability Claims	\$3,846,174
Judgments & Losses	\$3,112,979
Schools Self Insured Liability Claims	\$2,278,898
Self-Insured Property Loss Aggregate	\$6,928,328
Employee Blanket Bond Claims	\$657,561
Police Professional Liability Claims	\$2,721,327
Death Benefit	\$980,133

*Assumes unrealized estimated revenues in fiscal year 2015 of \$13,583,959

– BILLS ON PUBLIC HEARING –

ORDINANCE NO. BL2015-1010 (HOLLEMAN) – This ordinance amends the Metro zoning code provisions pertaining to cash advance, check cashing, pawnshop, and title loan establishments. In November 2014, the council enacted Substitute Ordinance No. BL2014-908 to prohibit cash advance, check cashing, and title loan businesses from being located within ¼ mile of another cash advance, check cashing, or title loan business, and to prohibit pawnshops from locating within ¼ mile of another pawnshop. This ordinance would basically grandfather in those businesses that owned property or had executed a lease for space within the prohibited distance at the time BL2014-908 was filed, and who were denied a permit while the ordinance was pending.

This ordinance has been referred to the planning commission.

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 (continued on next page)

ORDINANCE NO. BL2015-1038, continued

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.

This ordinance has been referred to the planning commission.

– 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.

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RESOLUTION NO. RS2015-1389, continued

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.

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. RS2015-1393 (PRIDEMORE) – This annual resolution calls the Metropolitan board of equalization (MBE) into regular session convening June 1, 2015, and adjourning June 12, 2015, and calls the MBE into special session convening June 15, 2015 to complete any unfinished business regarding appeals on pro-rated assessments. The special session is not to extend beyond May 31, 2016. The MBE always meets during the month of June to hear appeals of assessments on real property. Historically, the MBE 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 unfinished business.

RESOLUTION NO. RS2015-1394 (PRIDEMORE & BAKER) – This resolution approves a grant in the amount of \$7,200 from the Tennessee emergency management agency to Metro office of emergency management to reduce risks associated with the bulk transport of crude oil by rail. These grant funds will be used for hazardous materials emergency planning regarding the department's response to a crude oil spill. There is a required local match of \$1,800 to be provided by through the office of emergency management operating budget.

RESOLUTION NO. RS2015-1395 (PRIDEMORE & A. DAVIS) – This resolution approves a licensing agreement with CSX Transportation for the purpose of constructing a 36-inch water pipeline crossing located within the railroad right-of-way as part of the Thompson Lane Additional Discharge Main project. This encroachment agreement would be in perpetuity, however, the agreement will terminate if Metro does not complete the installation within five years. This agreement provides for a one-time license fee of \$7,500, which will be paid from the water and sewer extension and replacement fund. In addition, Metro agrees to indemnify CSX to the extent permitted by state law and agrees to require its contractors to maintain liability insurance in the amount of \$5 million. Metro will be responsible for reimbursing CSX for any additional expenses CSX incurs for allowing Metro to complete the project within the railroad tight-of-way.

Ordinance No. O98-1393 allows such license agreements regarding the construction of utility lines in the CSX railroad right-of-way to be approved by resolution rather than by ordinance.

This resolution has been referred to the planning commission.

RESOLUTION NO. RS2015-1396 (BENNETT, PRIDEMORE & OTHERS) – This resolution authorizes the acquisition of property located at 4419 Saunders Avenue for use as part of the Saunders Avenue stormwater project. The council authorized the acquisition of the necessary easements for this stormwater project in January 2014. Metro water services has determined it is necessary to purchase this 0.99-acre parcel in a flood prone area in order to make the stormwater improvements. There is an existing single-family residence on the property that will be demolished. The purchase price for the property is \$195,000, which is based upon an independent appraisal. The property assessor's website lists a value of \$149,700 for the property. The funding source for the purchase price is from Metro stormwater capital funds.

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RESOLUTION NO. RS2015-1396, continued

The Metro code allows for the acquisition of property through the exercise of a negotiated option to sell at a fixed price, which is subject to approval of the council by resolution. This resolution has been approved by the planning commission.

RESOLUTION NO. RS2015-1397 (HARMON) – This is a routine resolution approving the election of notaries public in accordance with state law.

– BILLS ON SECOND READING –

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.

– **BILLS ON THIRD READING** –

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. BL2015-1015 (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. BL2015-1018 (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.

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ORDINANCE NO. BL2015-1018, continued

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, HUNT & A. DAVIS) – This ordinance, as amended, 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 & WESTERHOLM) – 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.