



## 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: **May 17, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 5/11/16:

4% Reserve Fund	\$23,750,196*
Metro Self Insured Liability Claims	\$3,736,498
Judgments & Losses	\$345,846
Schools Self Insured Liability Claims	\$3,230,375
Self-Insured Property Loss Aggregate	\$7,036,554
Employee Blanket Bond Claims	\$667,839
Police Professional Liability Claims	\$2,545,284
Death Benefit	\$1,184,833

\*Assumes unrealized estimated revenues in Fiscal Year 2016 of \$3,810,850

**– RESOLUTIONS –**

**RESOLUTION NO. RS2016-203** (ELROD) – The Tennessee General Assembly recently enacted legislation (HB1892 / SB1830) potentially affecting the Metropolitan Government's *Stormwater Management Manual*, which governs storm water management throughout Davidson County. The Manual was promulgated by the Director of Water and Sewerage Services, and subsequently approved by the Mayor earlier this year. The recent state legislation could be construed as requiring the Metropolitan Council's approval by Resolution of post-construction stormwater control measures set forth within the Manual in order to remain enforceable.

The state legislation adds a requirement for the "local legislative body" to approve any post-construction stormwater control measures that exceed the minimum requirements of federal law. However, federal law does not specify minimum requirements; it merely requires post-construction discharge of pollutants to be reduced to the "maximum extent practicable." According to the Department of Water and Sewerage Services, the control measures in question are entirely consistent with these federal requirements, thereby making Council approval unnecessary. Nevertheless, in an abundance of caution – and in the absence of clear minimum requirements from the federal government – approval by the Council is recommended to eliminate doubt as to compliance with the new state law.

**RESOLUTION NO. RS2016-224 AND RS2016-225** – These two resolutions have been filed as part of the revenue changes included in the proposed FY17 Operating Budget. Both should be deferred to track with the budget. The revenue enhancements are as follows:

- **Resolution No. RS2016-224** (PRIDEMORE) – This would establish a new fee structure for private collection permit fees for waste haulers. The new fee schedule would be \$60 per year per small truck, \$120 per year per large truck, and \$12 per year per mobile waste container (dumpsters, compactors, or rolloff containers).
- **Resolution No. RS2016-225** (PRIDEMORE) – This would establish a new fee structure associated with the processing and review of Planning Commission applications associated with Title 17 of the Metro Code. A chart showing the current and proposed rates is attached to this analysis.

**RESOLUTION NOS. RS2016-226 THROUGH RS2016-228** – These three resolutions adopt new pay plans for the employees of the Metropolitan Government, with the exception of the Board of Education, to take effect July 1, 2016. The primary effects of these resolutions are to

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**RESOLUTION NO. RS2016-226 THROUGH RS2016-228**, continued

provide a 3.1% across-the-board pay increase effective July 1, 2016, to continue increment pay, and to provide for the possibility of merit pay increases for open range employees.

The pay plan provides step increases known as “increments” for certain employment classifications on a six month, one year, eighteen month, or two year interval, depending on the position. The Council previously approved a freeze of the increment pay increases and longevity pay, but increments were restored in Fiscal Year 2014. Approximately 75% of Metro employees are currently in the increment portion of the pay plan.

In addition to the step increases, the equivalent of an additional 3% merit pay increase will be available for open range employees (those that do not receive increments). The amount of individual raises for increment employees will be determined by the department heads. The pay plan contemplates that open range employees are to be paid based upon merit, not length of service.

The proposed FY2017 operating budget incorporates changes recommended by a salary structure study performed by Deloitte Consulting, LLP. These changes would create, remove, change the title, and upgrade the salary of several job classifications. Some job classifications would be moved to Open Range. In addition, some pay grades would be added to the Open Range and Correctional Officer pay charts. Finally, some modifications would be made to the Standard Range (SR) pay scales as well as adjusting the pay of Part-Time / Seasonal employees.

These pay plans may not be amended by the Council except by making uniform changes, as the relationship between pay grades must remain the same pursuant to the Metro charter. The pay plan amendments have been approved by the Civil Service Commission, the Finance Director, the Board of Health, and the Mayor. The pay plans are as follows:

- **Resolution No. RS2014-226** (PRIDEMORE & MURPHY) approves the pay plan for general employees of the Metropolitan Government,
- **Resolution No. RS2014-227** (PRIDEMORE, GILMORE, & MURPHY) approves the pay plan for the Board of Health employees, and
- **Resolution No. RS2016-228** (PRIDEMORE, MURPHY, & PARDUE) approves the pay plan for employees of the Fire and Police departments.

**RESOLUTION NO. RS2016-229** (WITHERS, BEDNE, & OTHERS) – This resolution would approve the second amendment to the 2013-2018 consolidated plan for Housing and Community Development programs for the Metropolitan Government to the U.S. Department of Housing and Urban Development (HUD). HUD requires local governments seeking federal funding under the Community Development Block Grant program (CDBG), the HOME Investment Partnerships program, the Emergency Shelter Grant program (ESG), and the Housing Opportunities for Persons With AIDS (HOPWA) program to submit a consolidated plan for Housing and Community Development. The current five year consolidated plan, which is administered by the Metropolitan Development and Housing Agency (MDHA), was approved by the Council in March, 2013 and amended in August, 2013. The goals of the plan are to increase the supply of affordable housing, increase access to healthy food choices, reduce homelessness, and promote community and economic development.

This amendment to the plan would submit a revised budget for Program Year Four, from April 1, 2016 through March 31, 2017. The revised plan provides for an allocation of \$4,559,221 for the CDBG program, \$1,819,757 for the HOME program, \$416,420 for the ESG program, and \$942,082 for the HOPWA program. This amendment would also allow ESG funds to be used for homeless prevention activities.

The local match required for the ESG will be provided by local non-profit organizations selected as sub-grantees. The 25% local match for the HOME Investment Partnerships program will be provided by non-federal funds utilized for HOME projects as well as the value of donated land or improvements associated with HOME-funded projects, or by other eligible methods as provided in the HOME regulations.

These funding amounts are based upon the formula allocations released by HUD on February 16, 2016. Any changes to project budgets greater than twenty-five percent (25%) or the addition of new activities would trigger the need for a new substantial amendment.

The Council appropriates funds for projects described in this update, but expressly withholds any approval for the expenditure of CDBG funds for capital improvement projects. These must be submitted to the Council for final approval by separate resolution.

Finally, CDBG, HOME, ESG, and HOPWA funds are prohibited from being used for any property acquisition for which the power of eminent domain is utilized by MDHA, which is restricted by federal law.

**RESOLUTION NO. RS2016-230** (PRIDEMORE) – This resolution would approve an amendment to the contract between the Tennessee Department of Mental Health and Substance Abuse Services to the General Sessions Court for mental health evaluations and treatment for defendants charged with misdemeanor crimes. General Sessions Court judges are authorized to order defendants charged with misdemeanors to undergo outpatient or inpatient mental health evaluations and treatment. This amendment is essentially a renewal of the agreement whereby the state will provide these evaluations and treatment services to be paid for by Metro, with the termination date of the contract now being extended to June 30, 2017.

The agreement includes a chart outlining the services the state will provide and the cost for each service, which ranges between \$100 and \$900 per outpatient service and \$450 per day for inpatient evaluation and treatment. If the court determines that the defendant has the financial means to pay for part or all of the evaluation treatment services, Metro is to seek reimbursement from the defendant.

**RESOLUTION NO. RS2016-231 AND RS2016-232** – Bill No. BL2010-765 authorized the Department of Water and Sewerage Services to apply for federal and state funds to acquire and demolish flood-damaged properties pursuant to a hazard mitigation program. Resolution No. RS2011-1724 approved the application for a grant from the Tennessee Emergency Management Agency (TEMA) for the acquisition and removal of 22 houses and two vacant lots located in various floodway and floodplain areas in Davidson County.

The two resolutions now under consideration would execute new contracts to utilize funds left over from that grant to replace flood-damaged properties that chose not to participate in the home buyout. The term of these contracts would be from November 8, 2011 through June 29, 2017.

The number of properties and the amounts of the contracts are as follows:

- **Resolution No. RS2016-232** (A. DAVIS & PRIDEMORE) – 15 properties; \$2,235,557.41 grant proceeds with a required local cash match of \$319,365.40 and
- **Resolution No. RS2016-231** (VANREECE & PRIDEMORE) – 11 properties; \$2,840,317.79 grant proceeds with a required local cash match of \$405,759.79.

**RESOLUTION NO. RS2016-233** (PRIDEMORE, O'CONNELL, & OTHERS) – This resolution would declare eight properties to be surplus and authorize the Director of Public Property Administration to sell the properties in accordance with the standard procedures for the

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**RESOLUTION NO. RS2016-233**, continued

disposition of surplus property. The individual parcels are small and generally un-buildable. These parcels are no longer needed for any governmental purpose.

The sale proceeds would be credited to the General Fund of the district from whose operating budget the last department, commission, board, or agency using the real property is financed.

These eight properties are as follows:

- 1729 14<sup>th</sup> Ave. South (District 17)
- 56 Lyle Lane (District 17)
- 0 Jane Street (District 19)
- 1215 Scovel Street (District 19)
- 5319 Indiana Avenue (District 20)
- 2944 Torbett Street (District 21)
- 0 Belmont Boulevard (District 25)
- 8745 Hester Beasley (District 25)

The sale of these properties was approved by the Planning Commission on March 7, 2016.

**RESOLUTION NO. RS2016-234** (PRIDEMORE & PARDUE) – This resolution would grant the Vanderbilt University Medical Center (VUMC) access to the 800 MHz emergency radio dispatch and response system. The Metropolitan Government and NES jointly own and operate the emergency radio dispatch and radio response system utilizing 800 MHz radio frequencies licensed by the Federal Communications Commission (FCC). This system was jointly funded by Metro and NES, with Metro General Services now maintaining the system and NES contributing funds to help pay for its maintenance.

The Council granted 800 MHz access to Vanderbilt University's LifeFlight and Police Department per Bill No. BL2012-335 on January 15, 2013. Vanderbilt University is in the process of effecting a restructuring arrangement whereby VUMC will acquire and succeed to the clinical health care assets and businesses owned by Vanderbilt University.

The proposed assignment of this agreement will allow VUMC to interface directly with Metro's system. VUMC will not be required to pay any user fee or charge of any kind. They will be responsible for the purchase of any new subscriber units for its own use. They will also pay for any maintenance that Metro performs of their radio equipment and vehicles at their request.

The Council has approved similar agreements with several other entities, most recently granting access to CCA of Tennessee, LLC via Ordinance no. BL2016-119.

**RESOLUTION NO. RS2016-235** (PRIDEMORE & PARDUE) – This resolution would approve a Jail Garden Grant in the amount of \$1,655 from the Davidson County Farm Bureau to the Davidson County Sheriff's Office. The grant proceeds would be used for the enhancement of the horticulture program for the production of produce. No local cash match would be required.

**RESOLUTION NO. RS2016-236** (PRIDEMORE & MURPHY) – This resolution would approve a grant in the amount of \$431,103 from the Tennessee Department of Labor and Workforce Development to the Nashville Career Advancement Center (NCAC) to establish programs and services for the Supplemental Nutrition Assistance Program (SNAP).

This federal pass-through grant provides operating funding for the NCAC. The grant consists of \$387,993 in program funds and \$43,110 in administrative funds. The term of the grant is from February 15, 2016 through September 30, 2016.

**RESOLUTION NO. RS2016-237** (GILMORE) – This resolution would approve a clinical affiliation agreement between the Metropolitan Board of Health and Meharry Medical College to provide public health training for their students enrolled in a master of Science Public Health Program. Students will not receive any compensation and are not to be considered as employees of Metro. There is no cost to the Metropolitan Government for providing this service. The term of the agreement would become effective upon execution by both parties and continue until July 31, 2021. The agreement may be terminated by either party with thirty (30) days written notice.

Metro participates with several colleges and universities to provide clinical experience to students.

**RESOLUTION NO. RS2016-238** (PRIDEMORE & HENDERSON) – This resolution would approve a grant in the amount of \$5,000 from the Nashville Predators Foundation to the Metropolitan Parks Department to provide funding for new uniforms and camping equipment for the Parks Department's Boy and Girl Scout Troops. There is no required local cash match.

Acceptance of this grant was approved by the Metro Parks Board on February 3, 2016.

**RESOLUTION NO. RS2016-239** (PRIDEMORE & HENDERSON) – This resolution would approve an annual grant in the amount of \$88,000 from the Tennessee State Library and Archives to the Nashville Public Library system for library services for the hearing impaired. These funds would be used to provide access and circulation of special materials formatted for those individuals.

The term of this grant is for one year beginning July 1, 2016 and extending through June 30, 2017.

**RESOLUTION NO. RS2016-240** (PRIDEMORE & ALLEN) – This resolution would approve an interlocal agreement between Metro and the Nolensville/College Grove Utility District. Metro currently provides a sanitary sewerage system operating in Davidson, Williamson, and Wilson Counties. Under the terms of this agreement, the District would provide water meter readings for its customers in Williamson County to Metro. This information would be used by Metro for the determination of the sewer bills for these customers.

Metro would pay the District \$0.45 per meter reading per month. This would be cost-neutral with the existing procedures.

**RESOLUTION NO. RS2016-241** (O'CONNELL, ELROD, & ALLEN) – This resolution authorizes Vitality LLC dba Daily Juice Cafes of Nashville to construct, install, and maintain an aerial encroachment at 211 3<sup>rd</sup> Avenue South. The sign per this encroachment will measure 34" x 34" x 12". The sign will extend 46" from the building. The height above the ground is not specified in the plans attached to the resolution.

The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the sign, and it is required to post a certificate of public liability insurance with the Metropolitan Clerk naming the Metropolitan Government as an insured party.

This proposal was approved by the Planning Commission on February 11, 2016.

**– BILLS ON SECOND READING –**

**BILL NO. BL2016-188** (ELROD) – This bill would make five changes to Chapter 2.48 of the Metropolitan Code of Laws by adding a new Section 2.483.040 establishing new reporting requirements by the Department of Public Works. The ordinance is modeled after state legislation for managing Tennessee Department of Transportation projects.

Paragraph A would require the Director of Public Works to be responsible for the day-to-day management of the department and to keep a detailed record of all business of the department.

Paragraph B would require a new Projects Report describing each capital project of Public Works. This would include construction and repair of sidewalks, street, bridges, bikeways, pedestrian enhancements, and other such infrastructure improvements that are to be started, completed, or which will be ongoing within the ensuing three (3) years. This report would be submitted annually with each proposed budget to the Council.

Paragraph C would require a Quarterly Report on District Projects to be submitted to each member of the Council, describing the construction or implementation status of each capital project by Public Works with the members' respective districts.

Paragraph D would require the preparation of a proposed annual budget for Public Works that discloses the allocation of all anticipated funds for the ensuing fiscal year for each capital project within the Projects Report. This report would also include what projects would be undertaken in the event additional funds are appropriated or otherwise become available. The Director would be allowed to designate funds for unanticipated projects, provided that advance notice of at least thirty (30) days is submitted to the Council.

Paragraph E would clarify that the requirements of this new Section would not apply to projects, funds, or allocations required for purposes of emergency or disaster response.

The details and costs for implementing these new requirements have not yet been determined.

**BILL NO. BL2016-220** (PULLEY) – Section 2.40.115 of the Metro Code of Laws currently requires the Metropolitan Attorney to report to the Council all judgments entered against Metro. These reports are required to be made within thirty (30) days after the judgment becomes final. The resolution under consideration would expand that requirement

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**BILL NO. BL2016-220**, continued

In addition to the monthly report of all final judgments, this resolution would add the requirement for the Metropolitan Attorney to submit a new report to the Council within thirty (30) days after the end of each calendar quarter. This report would list all pending lawsuits against Metro if the claims being asserted against Metro seek a total amount greater than \$300,000. The report would further recite the party names, the court in which the action is pending, case number, a description of the damages amount and other remedies sought, and the name of counsel for the Metropolitan Government.

**BILL NO. BL2016-221** (ROSENBERG) – Chapter 6.12 of the Metro Code of Laws currently regulates dances and dance halls within Metro. This requires dance halls to be registered with the Chief of Police and a permit to be issued by the Beer Board for the operation of the dance hall or the holding of such dance. The permit requires an application fee of one hundred dollars (\$100) plus an additional annual fee in the same amount.

The regulations require a dance hall to be a “safe and proper place” for the purpose for which it shall be used. They are also required to be properly ventilated and supplied with separate and sufficient toilet conveniences for each sex. These requirements are redundant to other building and construction code requirements.

Chapter 6.12 does prescribe additional conduct standards. Public dances are required to be discontinued and all dance halls closed from 3 AM to 6 AM on weekdays and Saturdays and from 3 AM to noon on Sundays. Persons under eighteen years of age are not permitted to “loiter or congregate about the premises” when alcoholic beverages are being sold. If a minor is seated at a table, there shall be no beer served at the table unless the minor is accompanied by one or both parents, but only if the beer is served in conjunction with food. It is unlawful for the permit holder or any person conducting a public dance hall or public dance to allow or permit any “indecent act” to be committed or any “disorder or conduct of a gross, violent, or vulgar nature.” Also it is unlawful for any “known prostitute, pimp, or procurer” to be present.

The Beer Board has projected that \$40,000 in revenue from these permit fees would be generated in FY17, to be posted to the GSD General Fund. This revenue would be lost if the current permit requirements are eliminated. However, this is not expected to have any impact on the staffing requirements of the Beer Board.

**BILL NO. BL2016-222** (GILMORE) – Section 8.04.020 of the Metro Code of Laws (MCL) currently requires dogs (but not cats) to be vaccinated against rabies, but does not mention a specific required frequency.

Section 8.04.030 requires veterinarians to administer these vaccinations according to the standards of the Metro Board of Health. The Board is required to consult with the Davidson County Academy of Veterinary Medicine to determine, among other things, the frequency and method of its administration.

Section 68-8-102 (3) of the Tennessee Code Annotated (TCA) defines the “rabies compendium” as being the most recent issue of the national “Compendium of Animal Rabies Prevention and Control”, published by the Association of State Public Health Veterinarians.

Section 68-8-103 (i) of the TCA says, “Nothing in this section shall be construed to require more frequent rabies vaccinations or a greater number of rabies vaccinations than are required by the rabies compendium.”

The most recent version of the compendium on the NASPHV website was just published last month. Part II of this document makes their recommendations for vaccinations. Paragraph B in this part says, “Any of the listed vaccines can be used for revaccination, even if the product is not the same as the one previously administered.” The list of vaccines shown in Appendix 1 of this document includes several that are good for 3 years.

Based on the above, there is no current regulatory prohibition against increasing the rabies vaccination period for dogs from the current one (1) year to three (3) years. The Health Department is not opposed to the extension of this period.

It is anticipated that the sponsor will introduce a substitute ordinance allowing a shorter duration for initial vaccines, distinguishing license fees from rabies fees, and adopting state law provisions.

**BILL NO. BL2016-223** (PRIDEMORE) – Section 55-8-153(c) of the Tennessee Code Annotated (TCA) gives Metro the authority to prescribe lower speed limits within certain areas or zones, or on designated highways, avenues, or streets that are not designated as state highways.

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**BILL NO. BL2016-223**, continued

This bill would add Section 12.20.080 to the Metro Code of Laws (MCL). This would set a speed limit of 15 miles per hour in any construction or demolition site which meets the MCL definition of a “major project” and which is located within one hundred (100) linear feet of a public road or street.

Sections D and E of MCL Section 16.28.235 would be replaced and a new Section F added. These would add the requirement for speed limit signs to be posted at these sites along with project information signs. These would be required to be in place at least twenty-four (24) hours prior to the commencement of any construction or demolition activity. The signs would be required to remain at the site until all work is completed.

**BILL NO. BL2016-224** (PRIDEMORE & ELROD) – Metro has been operating under a consent decree program since 2009 with the United States Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC). This decree was to settle problems found with the Department of Water and Sewerage Services overflow abatement.

The capital program to address these issues consists of 110 different projects for which the program management and construction management services were competitively procured and awarded for terms of sixty (60) months, which is the maximum allowable contract term length without Council approval.

Contract #19448 was awarded in 2011 for program management services to Camp Dresser & McKee, Inc., now known as CDM Smith, Inc. Contract #19572 was awarded in 2012 for construction management services to Gresham Smith & Partners. Annual performance audits by Crosslin & Associates have confirmed that the performance of both consulting teams has been excellent.

The bill under consideration would extend both contracts for a term of up to seven (7) years. Ten (10) projects are currently in the design phase and fourteen (14) are under construction. It would likely be difficult to manage and maintain existing data, project records, and construction status details for active projects if the consulting firms were to be changed at this point.

Selection for engineering services must be based on qualifications under state law. Bidding for these services is prohibited and costs are negotiated after selection. The additional effort that would be required for new teams to develop an adequate understanding of the program would arguably take time and increase costs.

Extension of the current contracts has been recommended by the Director of the Department of Water and Sewerage Services as well as the Purchasing Agent.

**BILL NO. BL2016-225** (PRIDEMORE) – This bill approves a lease agreement between JDJP Development, LLC and Metro for temporary office space at 749 Massman Drive to be used by the Metro Nashville Police Department.

The term of the lease is from July 1, 2016 through December 31, 2019, unless terminated earlier. The minimum monthly rent for this office space is as follows:

- Commencement date – June 30, 2017                      \$25,000.00 (\$12.00 per square foot)
- July 1, 2017 – June 30, 2018                              \$25,750.00 (\$12.36 per square foot)
- July 1, 2018 – June 30, 2019                              \$26,522.50 (\$12.73 per square foot)
- July 1, 2019 – December 31, 2019                      \$27,318.18 (\$13.11 per square foot)

Any additional charges required to be paid by Metro would be considered “additional rent”.

In addition, Metro would be required to pay forty-five thousand dollars (\$45,000) at the execution of the lease. Twenty-five thousand dollars (\$25,000) would be credited against the first required monthly lease payment. The remaining twenty thousand dollars (\$20,000) would be considered a security deposit.

This proposed lease was approved by the Planning Commission on April 12, 2016. Amendments to this lease may be approved by resolution of the Council receiving 21 affirmative votes.

**BILL NO. BL2016-226** (A. DAVIS & ELROD) – This bill would rename an unimproved portion of Rosecliff Drive from Rosebank Avenue westward to its terminus as “Colbert Drive”. The name change has been requested by the Department of Public Works.

This proposed name change has been approved by the Planning Commission. However, the Emergency Communications District Board has not yet reviewed this name change request as required under Metro Code section 13.08.015. It is on their agenda for May 19, 2016.

The bill should therefore be deferred for one meeting.

**BILL NO. BL2016-227 THROUGH BL2016-229** – These bills would abandon a portion of certain streets, alley, rights-of way, and easements. All have been approved by the Planning Commission and the Traffic and Parking Commission. Metro has no future need for any of these streets, alley, rights-of- way, or easements. The details are as follows:

- **BL2016-227 (Withers, Allen, & Others)** - Alley No. 258 right-of-way and easement, requested by Civil Site Design Group, PLLC, Applicant and 200 Main Partners, LLC, Owner;
- **BL2016-228 (Roberts, Allen, & Others)** – Hill Circle right-of-way and easement, requested by Bonnie Mitchell, Applicant; and
- **BL2016-229 (Allen, Elrod, & Potts)** – Evergreen Avenue right-of-way, requested by Heithcock Construction, LLC, Applicant.

**BILL NO. BL2016-230** (ALLEN & ELROD) – This bill would abandon existing sewer and water main and easements and accept new sewer, water main, and easements for six properties located along 9<sup>th</sup> Avenue North.

This ordinance was approved by the Planning Commission on March 31, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-231** (ROBERTS, ALLEN, & ELROD) – This bill would abandon easement rights that were previously retained by Council Bill No. O74-1115 for property located at 5000 Indiana Avenue. These are no longer needed by Metro for any purpose.

This ordinance was approved by the Planning Commission on April 7, 2016. Future amendments to this ordinance may be approved by resolution

**BILL NO. BL2016-234** (BEDNE, VERCHER, MINA JOHNSON) – This ordinance would amend Chapter 10.56 of the Metro Code, which governs local air pollution control, to add “natural gas compressor stations” to a list of facilities regulated as a “major source” of air pollutants. [*A slight typographical error appears in the local transcription of section 10.56.010 under “major source”, subsection (2), omitting the words “stationary” and “unless the source” from the second sentence thereof.*] Gas compressor stations are facilities located along gas pipelines -- typically at intervals of every 40 to 100 miles -- which compress gas to move it through a pipeline system at high speeds. The ordinance would add “natural gas compressor stations” to

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**BILL NO. BL2016-234**, continued

the list of facilities specifically requiring application for a construction permit to the Metropolitan Health Department, along with plans and specifications. Moreover, the ordinance would require the department director to deny construction permits to facilities which may "cause or contribute to an exceedance" of applicable air quality standards -- a standard of uncertain enforceability.

Most significantly, the ordinance would require all new sources of emissions to comply "with the Metropolitan Zoning Code for the use of the property" on which the source would be constructed. This legislation follows adoption of Ordinance No. BL2015-1210, enacted by the Metro Council in August, 2015, which established "natural gas compressor station" as a use permitted only in industrial zoning districts. Accordingly, in the case of gas compressor stations, the proposed ordinance would have the effect of requiring compliance with zoning provisions as part of Metro's air pollution regulations.

Under the Clean Air Act (CAA), individual states are authorized to establish their own air quality regulations, consistent with the national standards promulgated by the Environmental Protection Agency (EPA) -- an approach described as "an exercise in cooperative federalism." States wishing to regulate their own air quality must first adopt a "state implementation plan" (SIP) that sets forth its air quality standards, subject to approval by the EPA. Tennessee has adopted a SIP which explicitly references Chapter 10.56 of the Metro Code. As currently drafted, that Chapter includes no zoning component, but the proposed ordinance seeks to include zoning compliance as a requirement.

The proposed ordinance raises issues of federal preemption. In 1938, Congress enacted the Natural Gas Act (NGA) for the principal purpose of "encourag[ing] the orderly development of plentiful supplies of...natural gas supplies at reasonable prices." Generally, federal law prohibits local governments from regulating natural gas facilities which serve gas pipelines traversing state lines. Consistent with this principle of preemption, the NGA vests the Federal Energy Regulatory Commission (FERC) with "exclusive jurisdiction" over the transportation of natural gas in interstate commerce. However, the Commission's power to preempt state and local law is restricted by the NGA's "savings clause", which saves the "rights of states" from preemption under the Clean Air Act. While Congress intended to occupy the field -- to the exclusion of state law -- by establishing a "comprehensive scheme of federal regulation of all wholesales of natural gas in interstate commerce", it expressly spared states' CAA powers from preemption. Simply put, air quality regulations that are part of a state's SIP are not preempted, unless the NGA states otherwise. The proposed ordinance reflects an attempt to amend this portion of Tennessee's SIP for Davidson County.

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**BILL NO. BL2016-234**, continued

Just as individual states are allowed under the CAA to administer regulations equivalent to the EPA, the CAA further permits states to delegate to local authorities the authority to administer local air pollution control programs. To do so, local authorities must file an application with the state's Air Pollution Control Board, whereupon the Board issues a "certificate of exemption". Currently, four counties in Tennessee – including Davidson County – do so.

If this ordinance is passed, subsequent approval by the state's Air Pollution Control Board would be required for inclusion within the SIP. If approved, the amended SIP must then be submitted to the EPA for approval. The amendment would not be federally enforceable until those two steps were completed.

– **BILLS ON THIRD READING** –

**BILL NO. BL2016-205** (ROSENBERG) – Metro has the authority pursuant to Tennessee Code Annotated Section 39-17-1551 to regulate the use of tobacco products in all buildings owned or leased by Metro. MCL Section 10.18.020 currently exercises that authority by prohibiting smoking inside all Metropolitan Government buildings. Smoking is also currently prohibited in all non-enclosed areas of public spaces where smoke can infiltrate into a Metropolitan Government building.

The bill under consideration would add a new smoking restriction. If this is approved, smoking would also be prohibited on the grounds of all outdoor amphitheatres with a seating capacity of at least six thousand (6,000) owned or operated by the Metropolitan Government. All existing smoking restrictions would remain intact. This bill was prompted by a recent amendment to T.C.A. 39-17-1551 authorizing local governments “to prohibit smoking on the grounds of a swimming pool ... or an outdoor amphitheater with a seating capacity of at least 6,000 owned or operated by local government.”

**BILL NO. BL2016-206** (WEINER) – This bill would add new permit requirements for anyone offering private snow plow service in the public right-of way. In order for a permit to be issued, the applicant must have the prior written approval from at least one of the following:

1. the homeowners’ association representing the location where private snow plow services are sought;
2. the neighborhood association representing the location where private snow plow services are sought;
3. the district Council member representing the location where private snow plow services are sought; or
4. at least eighty percent (80%) of the occupant(s) of the properties abutting the street, road, alley, sidewalk, or other public way in which private snow plow services are sought.

All applicants must furnish to the Department of Codes Administration a permit bond in the amount of forty thousand dollars (\$40,000). In addition, they must furnish a current certificate of public liability insurance naming the Metropolitan Government as an additional insured in the amount of at least one million dollars (\$1,000,000).

Once approved, these permits would be issued by the Department of Public Works. Each permit will cost fifty-five dollars (\$55) and be effective for a period of three (3) years. If there is a failure to obtain a permit as required by this chapter, or if work is commenced before a permit is issued, the permit fees for any permit subsequently issued for that activity would be tripled.

**BILL NO. BL2016-207** (SHULMAN) – This bill readopts the Metro Code prepared by Municipal Code Corporation to include supplemental and replacement pages for ordinances enacted on or before January 6, 2016. This is a routine re-adoption to ensure the Metro Code is kept up to date.

**BILL NO. BL2016-208** (O'CONNELL & ELROD) – This bill abandons approximately 1,086 linear feet of existing water main and easement and accepts approximately 5 linear feet of six inch DIP water main, 10 linear feet of 10 inch DIP water main, and four fire hydrant assemblies and easements for four properties located at Division Street and 8<sup>th</sup> Avenue South.

This was approved by the Planning Commission on March 23, 2016. Future amendments to this ordinance may be approved by resolution.

**BILL NO. BL2016-209** (O'CONNELL & ELROD) – This bill would abandon existing sewer mains and easements and accept new sewer mains, easements, and manhole assemblies for property located at Jo Johnston Avenue.

This was approved by the Planning Commission on March 15, 2016. Future amendments to this bill may be approved by resolution.

**BILL NO. BL2016-210** (ELROD) – This bill would abandon an existing sewer main, manhole assembly, and easements for properties located along Alley Number 893, 30th Avenue South and Vanderbilt Place.

This was approved by the Planning Commission on March 17, 2016. Future amendments to this bill may be approved by resolution.

**BILL NO. BL2016-211** (O'CONNELL & ELROD) – This bill authorizes Delray GP @ Madison Avenue, LLC to install and maintain underground and aerial encroachments in the right of way of Alley 505, 200, and 206 Madison Street and 1212 and 1214 Third Avenue North. These encroachments will include numerous changes to satisfy the requirements of NES, Metro Water Services, the Planning Commission, and Public Works.

The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the construction, installation, operation, and maintenance of the encroachments, and is required to maintain \$2 million in liability insurance naming Metro as additional insured. This has been approved by the Planning Commission.

**BILL NOS. BL2016-213 through BL2016-215** – These three bills authorize the acquisition of permanent and temporary easements for various stormwater projects. The ordinances provide that future amendments to the ordinances may be approved by resolution. These ordinances have been approved by the Planning Commission.

- **Bill No. BL2016-213** (Henderson & Elrod) authorizes the acquisition of easements on twelve properties located at Tyne Boulevard and Mountainview Drive.
- **Bill No. BL2016-214** (A. Davis & Elrod) authorizes the acquisition of easements on two properties located at 1645A and 1701 Evelyn Avenue.
- **Bill No. BL2016-215** (A. Davis & Elrod) authorizes the acquisition of easements on four properties located at 2141, 2144, and 2145 Burns Street and 1624 Moore Street.

**BILL NO. BL2016-216** (DOWELL, PRIDEMORE, & ELROD) – This bill authorizes the acquisition of various easements and other property interests for seven properties located along Bell Road, Mt. View Road, and Hickory Hollow Parkway for the construction of approximately 3,200 linear feet of 16 inch water main. The estimated cost of this project is \$97,500.

This was approved by the Planning Commission on March 15, 2016.