METRO COUNCIL OFFICE

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: **April 19, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 4/13/16:

4% Reserve Fund	$23,750,196*
Metro Self Insured Liability Claims	$3,770,683
Judgments & Losses	$408,886
Schools Self Insured Liability Claims	$3,253,734
Self-Insured Property Loss Aggregate	$7,030,860
Employee Blanket Bond Claims	$667,774
Police Professional Liability Claims	$2,543,123
Death Benefit	$1,183,840

*Assumes unrealized estimated revenues in Fiscal Year 2016 of $4,969,023

– RESOLUTIONS ON PUBLIC HEARING –

RESOLUTION NO. RS2016-195 (O'CONNELL) – This resolution approves an exemption for 5th and Taylor, LLC, located at 1411 5th Avenue North, from the minimum distance requirements for obtaining a beer permit.

The Metro Code of Laws 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, several exceptions exist to the distance requirements. Facilities within the USD separated by state or federal four-lane highways from the protected establishments are exempt, as are retailer on-sale beer permit holders in the MUL and events catered by holders of caterers' permits. (*See*, Code section 7.08.090(A)). Additionally, the code provides a mechanism to exempt (*a*) restaurants that already have a state on-premises liquor consumption license or (*b*) any retail food store, from Metro's minimum distance requirements, allowing each to obtain a beer permit upon the adoption of a resolution by the Council. (See, Code Section 7.08.090(E)). A public hearing must be held by the Council prior to voting on resolutions brought under section 7.08.090(E).

– RESOLUTIONS –

RESOLUTION NO. RS2016-172 (PRIDEMORE) – This resolution would appropriate $3,347,400 to various departments and programs to balance their FY2016 operating budgets. The Council typically considers a supplemental appropriation resolution each spring.

A total of $2,914,300 would be appropriated from the undesignated fund balance of the General Services District (GSD) General Fund. $837,900 of this total would go to an administrative account for an additional subsidy to the Farmers' Market.

Other administrative increases would be $212,300 for an additional subsidy to the Municipal Auditorium, $150,000 for an NCAC Youth Employment Initiative, and $104,000 for an additional subsidy to the Metropolitan Action Commission (MAC).

In addition to the additional subsidy from the administrative account, the Municipal Auditorium would receive $209,900 for regular pay, utilities, security services, temporary service, and building maintenance service.

The Police Department would receive a total of $617,800 to pay for special events overtime.

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RESOLUTION NO. RS2016-172, continued

The Election Commission would receive $314,100 for staff regular pay and fringe benefits.

General Services would receive $250,000 for EBID.

The District Attorney would receive $154,000 for Domestic Violence regular pay and fringe benefits.

Finally, the State Trial Courts would receive $64,300 for jury pay, transport, and lunch.

According to the policy approved by the Council in 1989 and OMB in 2005, the minimum fund balance percentage should be no lower than 5% of the operating budget. The Finance Depart estimates the appropriations per this resolution would bring the undesignated GSD General Fund balance percentage down to approximately 7%.

In addition to the appropriations from the GSD General Fund, two departments would receive additional appropriations from other sources. The Public Defender would receive $7,100 for registration (training), office supplies, and signage. This would come from their expungement fees.

The Board of Fair Commissioners (State Fair) would receive $426,000 to pay for overtime, utilities, repairs & maintenance, security services, temporary service, and advertising & promotion. $250,900 of this additional appropriation would come from their additional revenue. The remaining $175,100 would come from the undesignated fund balance of the State Fair Enterprise Fund.

RESOLUTION NO. RS2016-196 (PRIDEMORE & VANREECE) – This resolution approves an annual grant in the amount of $34,560 from the Tennessee Arts Commission to the Metropolitan Arts Commission for the "Arts Build Communities" program. These funds will be used to make grants up to $2,500 to non-profit organizations for community arts projects. There is a required local match in the amount of $34,560 to be provided from the Metropolitan Arts Commission's budget.

RESOLUTION NO. RS2016-197 (PRIDEMORE & ELROD) – This resolution would enable a grant application of $150,000 with a required local cash match of $160,750 from the Tennessee Housing Development Agency to the Metropolitan Nashville Social Services Commission in conjunction with the Homelessness Commission. The grant is to be used to provide targeted outreach and support to individuals living in encampments.

RESOLUTION NO. RS2016-198 (PRIDEMORE & MURPHY) – This resolution approves a letter of agreement between Metro and Western Governors University - Tennessee (WGU Tennessee). WGU Tennessee is a nonprofit, online university established in the summer of 2013 by the state of Tennessee through a partnership with Western Governors University. WGU Tennessee offers more than 50 accredited undergraduate and graduate degree programs. As of last May, there were 2,021 students enrolled in WGU Tennessee.

WGU Tennessee's current tuition structure is based upon a flat fee per 6-month term instead of per credit hour. According to their website, the fee for most programs is currently $2,890 per term. Under this agreement, WGU Tennessee will offer Metro employees a five percent (5%) tuition discount for up to four (4) academic terms.

Metro would be required to inform all employees about this partnership through standard internal communication channels at least quarterly. It would also be required to establish a web link from Metro's internal web page to the WGU Tennessee welcome page. If Metro offers other tuition assistance programs, WGU Tennessee's degree programs would be added to the list of eligible programs for this assistance. WGU Tennessee staff would also be available to participate in any local education/benefit fairs, seminars, and "lunch and learn" presentations Metro may offer.

The partnership between Metro and WGU Tennessee may be modified by mutual written consent or terminated by either party upon thirty (30) days' prior written notice. If the partnership is terminated for any reason, any Metro employee then receiving any educational benefit per this agreement will receive the full value of that benefit towards their studies, provided they remain in good academic standing at WGU Tennessee.

RESOLUTION NO. RS2016-199 (HURT, PRIDEMORE, & HENDERSON) – This resolution authorizes the Director of Public Property to exercise an option to purchase approximately 13 acres of property located on Blue Berry Hill Road for use as a public park. The parcel is currently owned by the Tennessee Parks and Greenways Foundation. Metro has an option to acquire this property for $25,000, defined in the option as the fair market value. The purchase price is to be paid out of capital funds approved for open space acquisition.

The Metro Code allows for the acquisition of property through the exercise of a negotiated option to sell at a fixed price, subject to approval of the Council by resolution. (*See*, Code section 2.24.250(F)). This resolution has been recommended by the Metropolitan Board of Parks and Recreation and approved by the Planning Commission at their meeting on April 7, 2016.

RESOLUTION NO. RS2016-200 (A. DAVIS, PRIDEMORE, & ELROD) – This resolution authorizes the acquisition of additional properties located at 0 Fernbank and 826 Idlewild Drive for a Metro water services project. This is to be used for the construction of the Gibson Creek Equalization Facility as part of the Clean Water Nashville Overflow Abatement program.

Ordinance No. BL2014-783 authorized the original acquisition of property for this project on July 15, 2014. That ordinance provided that future amendments could be approved by resolution.

The estimated acquisition cost for the two new properties is $90,000. This acquisition requires referral to the Planning Commission as a mandatory referral and has not yet been approved by the Commission.

RESOLUTION NO. RS2016-201 (PRIDEMORE & ELROD) – This resolution approves the renewal of a joint funding agreement between the U.S. Department of the Interior-U.S. Geological Survey and Metro Water Services for the continued operation and upgrades of water quality monitors and flood warning gauges on Mill Creek, Dry Creek, Browns Creek, Richland Creek, Whites Creek, Stones River and Cumberland River.

The term of the agreement is from July 1, 2016 through June 30, 2021. Metro will contribute $958,650 and the U.S. Geological Survey will contribute $493,850 to cover the costs of the field and analytical work associated with the gauges. Metro's portion will be paid from the Operations Fund of the Department of Water and Sewerage Services.

RESOLUTION NO. RS2016-202 (ELROD) – This resolution is an annual housekeeping matter required by state law to formally classify all public roads in Davidson County. By adoption of this resolution, those roads and alleys listed on the Official Street and Alley Acceptance and Maintenance Map, as approved by Ordinance No. BL2015-069 and as supplemented by the public county road list attached to the resolution, will be officially classified as public roads.

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

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RESOLUTION NO. RS2016-203, continued

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 set specific 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. RS2016-204 (O'CONNELL & ELROD) – This resolution authorizes 506 Church Lofts to construct, install, and maintain an aerial encroachment at 506 Church Street. The sign per this encroachment will measure 5', 0" x 2', 2". The sign will extend 6', 0" from the building and will be 12', 0" above the ground.

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 March 1, 2016.

RESOLUTION NO. RS2016-205 (PRIDEMORE) – This resolution would compromise and settle a class-action lawsuit brought by Corrections Officers (COs) employed by the Sheriff's Office for a total of $2,099,936.25. The lawsuit filed involves two different claims.

Suit was originally filed in May, 2012. During the relevant period of the lawsuit, the Davidson County Sheriff's Office (DCSO) was required to staff five correctional facilities with COs. The original staffing patterns called for three rotating shifts of 8.5 hours. This allowed 30 minutes for outgoing and incoming COs to work together to "clear count", verifying that all inmates were present and accounted for. Over a 28-day pay cycle, COs working 8.5 hour shifts for 20 shifts per cycle worked a total of 170 hours per cycle, or 85 hours per two-week period.

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Since March 15, 2009, COs began working shifts of 12 hours in the Hill Detention Center. Beginning in September, 2012, this was also the case at the Correctional Detention Center Male and Correctional Detention Center Female. (It is now the standard practice for COs to work 12-hour shifts at all five correctional facilities.) Working seven shifts of 12 hours equates to 84 hours of work during each two-week period. Over a 28-day pay cycle, COs working 12-hour shifts for 14 shifts per cycle totaled 168 hours per cycle, or 84 hours per two-week period.

During the time COs worked shifts of differing lengths, depending on the facility, this led to a situation where COs would be paid the same for working different amounts of hours. However, Metro's contention is that COs are annually salaried employees, not hourly; so differing numbers of hours worked in any pay cycle would not be relevant.

This position was supported by the details of the pay plans, through the version issued on July 1, 1999. COs were identified as "GS" employees, and the explanation of pay calculations for GS employees explicitly stated that the pay scales were "based on an annual salary." The hourly rates were noted to be approximate, based upon the assumption that an employee would work 40 hours per week (2,080 hours per year), but the "[a]ctual hourly rate may vary based on the actual hours worked in a week."

Metro's pay plans were revised in the version issued July 1, 2001. "GS" job types were now shown as "SR", which remains the current classification. Corrections employees were moved out of the SR pay types and listed in the pay plan under their own "CO" pay table. However, the explanation of pay calculations for the various pay types in this new plan was not updated to address the new CO pay type.

This omission was not corrected until publication of the pay plan issued on July 1, 2013. That pay plan included "CO" job types with "SR" (Standard Rate) and "PS" (Public Safety) employees in explaining that their pay scales were based on an annual salary. Metro HR and former DCSO HR employees stated that the "CO" notation was inadvertently omitted from the Explanation of Pay Calculations. It can be fairly inferred that the intent was to continue the practice of considering Corrections employees as being paid based upon an annual salary in the earlier pay plans as well, but this was not explicitly stated.

Each of the pay plans at issue in this case (FY07 to FY13) includes the following: (1) a comprehensive list assigning a "pay type/grade" to each Metro job classification; (2) several pay "tables" or "charts" with multiple "pay scales" for each pay type/grade; (3) an "Explanation of

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Pay Types" page, which explains the nature of the jobs listed in each table; and (4) an "Explanation of Pay Calculations" page, which explains table calculations, along with promotions and reclassifications.

Every job class in these pay plans, including the "CO" pay types, has four lines to identify the salaries for those jobs: "Annual", "Bi-Weekly", "Semi-Monthly", and "Hourly". Calculations of the salary details in these plans followed a standard formula. The bi-weekly amounts were determined by dividing the annual amounts by 26. The semi-monthly amounts were determined by dividing by 24. The hourly rates were determined by dividing the annual number by 2,080, based on 40 hours per week for 52 weeks.

Again, it has been explicitly stated in the pay plans that the hourly rates shown for salaried employees are approximations only, recognizing the fact that salaried employees may work variable numbers of hours.

Even after the pay plan published on July 1, 2013 was updated to include CO pay types as being salaried instead of hourly, the Court ruled in response to a discovery motion that Plaintiffs' claim for damages could continue beyond that time. Because the amendment did not automatically cut off damages according to the Court, Metro amended the Pay Plan again, this time to remove the hourly rates in the CO Pay Table altogether.

The distinction between salaried and hourly employees is important in this case. If an 8.5-hour-shift CO was paid the hourly rate listed in the Pay Plan for all 2,210 regularly-scheduled hours in a year, that CO would earn more than the annual salary listed in the Pay Plan.

At trial, the jury concluded that Metro treats COs more like hourly employees. Four elements of Plaintiffs' proof may have been determinative. First, during the relevant time period, COs' biweekly pay stubs list 80 regular hours (by default) even though COs do not work a standard 40-hour work week. Second, COs are paid overtime and shift differential by the hour. Third, COs take sick leave and vacation leave in hourly increments. Finally, Plaintiffs argue that COs are treated as hourly employees because when they are out of paid leave time but do not show up for work, their pay is docked in hourly increments.

Metro had contended that COs are salaried and treated as such. First, because of the around-the-clock staffing requirements of correctional facilities, COs work pre-assigned 28-day pay cycles. To reiterate, COs worked either a 168-hour work schedule (fourteen 12-hour shifts) or a 170-hour work schedule (twenty 8.5-hour shifts) in each 28-day cycle, depending on the

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correctional facility in which they work. All COs were paid the salary listed in the Pay Plan for their particular job classification, regardless of whether they worked in 168 or 170-hour facilities.

After suit was initially filed asserting FLSA claims, Plaintiffs filed an amended claim in July, 2012 asserting a separate claim based on different facts. Plaintiffs' amended complaint alleged state law breach of contract and unjust enrichment claims against DCSO, arising out of the Metropolitan Government's classification of COs in Metro Pay Plan ("Pay Plan") as salaried, non-exempt employees. This opt out class, consisting of 974 COs, alleged that they are hourly, non-exempt employees who must be paid the hourly rate listed in the Metropolitan Pay Plan for all hours worked.

The parties eventually mediated their claims and even reached a tentative agreement regarding the FLSA claim. But given their inability to resolve the other claim, and the unique nature of the case (which involved hundreds of former and current Metro workers), the parties decided to delay final resolution of their tentative agreement until after the Pay Plan claim was resolved. Thus, the FLSA claim was stayed pending final resolution of the Pay Plan claim. The parties proceeded through litigation on the Pay Plan claim, and Metro filed a motion for summary judgment requesting dismissal of the claim after discovery was fully completed. The Court granted Metro's motion for summary judgment as to Plaintiff's breach of contract claim, but denied Metro's motion on Plaintiffs' unjust enrichment claim. The parties thereafter requested that the court reconsider their respective contentions, which the Court declined to do. Upon order of the Court, the parties thereafter mediated the Pay Plan claim unsuccessfully before ultimately trying the case in August 2015.

The jury verdict upheld the unjust enrichment claim, presumably because Metro did not pay the COs the hourly rate listed in the Metro Pay Plan for all hours worked. The jury reached this conclusion despite the Metro Council amendment to the Pay Plan to include the CO pay table on the Explanation of Pay Calculations page as an annual-salaried pay table. Metro subsequently renewed its previous motion for judgment, and that motion remains pending. The parties then mediated the case again upon order of the Court. The case did not immediately settle during the mediation. But the parties continued to negotiate, ultimately reaching an agreement in principle in February, 2016.

The Fair Labor Standards Act requires employers to pay employees at a rate of one-and-one-half times their regular rate of pay for each hour worked over 40 in a week. But law enforcement personnel are subject to the so-called 207(k) exemption which allows public employers to calculate overtime on the basis of work periods longer than the standard one-week work period. The work period can be as long as 28 days. The employer still maintains its

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preferred payroll schedule (weekly, bi-weekly, monthly) but overtime pay is determined and paid out at the end of the 207(k) work period. The 207(k) exemption is necessary because law enforcement officers can present bookkeeping challenges by frequently working shifts of 12 or even 24-hours, often scheduled several days in a row, and thereby accruing multiple hours quickly.

The parties agree that Plaintiff COs fall within the 207(k) exemption. As a result, Plaintiffs must establish that the named Plaintiff, Vonda Noel, worked more than 171 hours in any one 28-day pay cycle. To establish their state-law off-the-clock claim, Plaintiffs must establish that Ms. Noel worked more than 170 hours in a 28-day pay cycle (because DCSO policy/practice at the time was to pay COs overtime for any scheduled work beyond their regular shift of 168 or 170 hours in a 28-day cycle).

It is the opinion of this office and the Metro Legal Department that the Plaintiff has a strong case of liability under the FLSA wage and hour claim. Employees must be paid for all time worked, including time before and after the end of a scheduled work shift. The responsibility for maintaining records of all time worked falls on the employer. An expert consulted by Metro calculated all uncompensated off-the-clock work by analyzing "count clear" times at the 8.5-hour facilities and by estimating the roll call times at the 12-hour facilities, and then comparing those times with the actual shifts for each opt-in Plaintiff Vonda Noel had at least one 28-day cycle in which her work hours exceeded 171 but she was not compensated overtime for the additional hours. With an established FLSA violation, Plaintiff would therefore be entitled to back wages for all uncompensated work, likely liquidated damages equal to the amount of back pay owed, and all incurred attorneys' fees. Metro's expert concluded that the actual damages totaled only $22,147.98 in back wages. However, the jury could also consider the opt-in Plaintiffs' own testimony regarding the frequency and duration of their overtime hours (though their estimates far exceeded the objective figures calculated by Metro's expert. Nevertheless, given the certainty of an FLSA violation, and particularly the mounting attorneys' fees in the case, a settlement of $45,000 in damages (consisting of the back wages calculated by Metro's attorney, plus liquidated damages of the same amount) and $150,000 in attorneys' fees is in Metro's best interests.

The merits of the plaintiff's unjust enrichment claim are more dubious, although settlement is likewise warranted under a financial risk assessment. The unjust enrichment claims are frankly dangerous, especially in light of the Plaintiffs' prior favorable jury verdict for liability. It is true that Plaintiffs' ultimate likelihood of success on the unjust enrichment claim is uncertain at best, and could possibly be overturned by either the District Court or the Sixth Circuit Court of Appeals. The Department of Law has filed several post-trial motions, one of which would result

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in outright dismissal with no damages awarded. Moreover, the court ordered the parties to mediate a second time and has not ruled on these motions, although the District Court would have to do so before a damages hearing or an appeal.

The difference in how the parties calculate damages under the unjust enrichment claim is crucial. Plaintiffs will contend that their damages are calculated by multiplying the stated hourly rate in the Pay Plan times the number of hours they worked beyond 160 hours in a 28-day cycle. If that method of calculation were upheld by the court, damages could approach $8,000,000. Metro will contend, however, that Plaintiffs cannot establish *any* damages because Plaintiffs have already been paid a reasonable value for the services they performed. The remedy for unjust enrichment under Tennessee law is essentially reimbursement of the reasonable value of the services provided. Testimony offered at trial by several COs provided a reasonable basis to conclude that the COs were not underpaid, according to the Department of Law. However, this evidence obviously did not sway the jury.

Alternatively, Metro could limit the damages calculation by limiting the damage period to six months, in accordance with the Civil Service Grievance Rule; eliminating a third of the Plaintiffs' class under the applicable statute of limitations; and by cutting off Plaintiffs' damages as of July 1, 2013 when the Pay Plan was amended. There are multiple potential outcomes under these scenarios, and potential damages awards could therefore range from $0, to less than $1,225,000, or from $2,500,000 to close to $8,000,000 – depending upon the District Court's interpretation of the law (which to date has been adverse to Metro).). If damages are actually awarded at the damages hearing, the Department of Law will maintain that the calculation should be under $2,500,000, under the Civil Service Rules, or alternatively that a six year statute of limitations should apply.

If the District Court awards damages in excess of $1,225,000, it is the intent of the Metro Legal Department to appeal, although a number of factors would be considered at that point. Several defenses could be raised, potentially eliminating Plaintiffs' claims or damages. And even if the appellate court upheld the jury verdict, the court could easily conclude that a direct enforcement action of the Pay Plan (declaratory judgment action) or a contract action—not an unjust enrichment claim—is the proper legal avenue for the resolution of this dispute. Metro would then have the benefit of a judicial interpretation of the Pay Plan and could then continue to argue that, under Tennessee law, the District Court should find that CO positions are salaried, not hourly. The District Court could also determine that Plaintiffs acquiesced to Metro's pay practices by failing to report any concerns about pay through the Civil Service Grievance Procedure. Either outcome could result in the elimination of – or a vast reduction in – Plaintiffs' calculations of damages.

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RESOLUTION NO. RS2016-205, continued

Nevertheless, the District Court has rendered multiple rulings adverse to Metro, and the risks of the court's unfavorable damages calculations are significant. While viable defenses remain, settlement of the Pay Plan claim in the amount of $1.9 million avoids the risks of an $8,000,000 judgment, caps the mounting attorneys' fees on both sides, and concludes complex litigation that to date has lasted nearly four (4) years. It is therefore the recommendation of this office that the Council adopt the settlement proposal.

– BILLS ON SECOND READING –

BILL NO. BL2016-100 (HAGAR, K. JOHNSON, & BEDNE) – This ordinance would require the Codes Department to notify the Metropolitan Council of all building permits and applications. These reports have been provided to individual Council members in the past, but some gaps in the reports have been reported.

Section 16.04.70 of the Metropolitan Code of Laws (MCL) currently requires a record of "all such permits and notices and all other business transactions" to be available for public inspection during regular business hours of the department. The revision proposed by this ordinance would add an ongoing requirement to provide this information to Council members each month.

BILL NO. BL2016-123 (MENDES & GILMORE) – This ordinance approves Amendment #8 to the Rutledge Hill Redevelopment Plan. It is anticipated that the sponsors intend to withdraw this bill, in light of the recent passage of the sponsors' alternative ordinance.

The Rutledge Hill Redevelopment District was established in 1980 for redevelopment activities in areas south of downtown Nashville. This plan expires in 2040. The current tax increment financing (TIF) capacity for this district is $60 million, which is basically a cap on the amount of project costs to be financed through TIF within that particular district.

TIF is a form of development incentive whereby the increased property taxes generated by a development are used to pay part of the development costs or pay down a TIF loan. Examples of projects that have been built using TIF as a financing tool include restoration of the Ryman Auditorium, the Viridian, the BellSouth Building, the Country Music Hall of Fame, and the Omni convention center hotel.

There are various concerns with the current version of the plan which the proposed ordinance seeks to address. The first concern recognizes that the original plan required any proceeds from the sale of land owned by MDHA in this district either to be re-invested in the same district or to be returned to the GSD General Fund. (Under state law, MDHA can only sell land in a redevelopment district "in accordance with the redevelopment plan." Tenn. Code Ann §13-20-202(a)).

In a 1986 amendment to this plan, this requirement was deleted and not replaced with any different language or direction to MDHA. The current version of the plan is now silent on how MDHA is to apply the proceeds from the sale of property owned by MDHA within this district. Assuming each redevelopment district is a separate entity – subject to separate TIF limits and redevelopment plans – allowing proceeds from one district to be applied in another begs the

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BILL NO. BL2016-123, continued

question why separate districts exist and may be contrary to Tenn. Code Ann. § 13-20-202(a)(5) wherein MDHA is empowered to undertake a redevelopment project and, "to that end", may sell or lease land "in accordance with the redevelopment plan." Regardless, Council is granted clear authority to direct land sale proceeds within a redevelopment plan. A new Section C.3 would be added to the Rutledge Hill Plan to restore the requirement that these proceeds must either be re-invested within the same district or returned to the GSD General Fund.

A second concern stems from the 2014 amendment wherein new Tax Increment provisions allowed MDHA to apply the $60 million TIF capacity not only for purposes of carrying out the Rutledge Hill Redevelopment Plan, but for any other redevelopment plan as well. The ordinance would clarify that tax increment financing should only be applied in the plan area.

An additional concern stems from the fact there is no source readily available outside of MDHA to determine the amount, terms, or duration of any bonds, loans, or other indebtedness incurred and payable from tax increment funds related to the Rutledge Hill Plan. There are also no means outside of MDHA to determine the amount of money on deposit in MDHA's tax increment funds related to this plan. But under state law and the redevelopment plan itself, Metro is entitled to retain all tax increment funds once the original debt related to the TIF financing has been paid, or MDHA otherwise has reserved sufficient funds to pay that debt. The Rutledge Hill Plan would therefore be amended by adding text at the end of Section H to require MDHA to deliver a written report to the Council within 90 days after the end of each fiscal year. For each project providing any tax increment funds under the terms of this plan during the fiscal year, the report would include the following:

1. The name and address of the project;
2. The date(s) that MDHA provided tax increment financing for the project;
3. The amount of tax increment financing provided by MDHA for the project;
4. The maturity date of that financing;
5. The balance, if any, remaining due at the end of the fiscal year;
6. The amount of tax increment funds received by MDHA during the fiscal year for the project; and
7. The total amount of tax increment funds received by MDHA in connection with the plan during the fiscal year.

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BILL NO. BL2016-123, continued

The report would also state the total amount of bonded or other indebtedness obligation(s) owed by MDHA related to the Rutledge Hill Redevelopment Plan. For each obligation comprising this total amount of bonded or other indebtedness, the report would state the following:

1. The original principal amount of the obligation incurred by MDHA;
2. The terms of such obligation including without limitation, the maturity date, any interest rate, whether the interest rate is fixed or floating, whether there are any associated interest rate swap or other derivative or hedge obligations, and the required payment schedule;
3. The balance remaining due at the end of the fiscal year;
4. A summary of any changes to the terms of the obligation during the fiscal year;
5. Whether any financial or other defaults by MDHA occurred in connection with the obligation during the fiscal year; and
6. The amount reserved by, or otherwise on deposit with, MDHA in connection with the obligation at the end of the fiscal year.

The ordinance also corrects a typographical error persisting since 2014. Since the 1986 amendment, the Tax Increment section has been labeled "Section H" in the redevelopment plan. In the 2014 amendment, this section was inadvertently mislabeled as "Section G."

BILL NO. BL2016-158 (SHULMAN & K. JOHNSON) – This ordinance would make three substantive changes to the Metro Code of Laws.

The present language of Section 2.20.020 (A) documents the responsibility of the Codes Department to enforce all laws, ordinances, and regulations "relating to electrical installations, building and construction, plumbing installations, gas/mechanical installations, the housing code and the zoning code and regulations." The new language would preface this by the addition of the phrase "including, but not limited to", removing any limitation on the enforcement authority of the Codes Department. There is therefore a pending amendment by the sponsor that would delete this change from the bill.

The present language of Section 2.20.040 (A.5.) requires the Codes Department to prepare monthly reports on departmental activities, including "The number, by type, location, and date filed, of any and all complaints to the department by council districts". The new language would reflect the change in Section 2.20.020 (A), requiring this report to include "All complaints filed with the department of codes including, but not limited to, the type of complaint, the location of

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BILL NO. BL2016-158, continued

the complaint subject, the date received, and when and how the complaint was resolved, organized by council district."

The last change would create a new requirement for the Department of Law. Section 2.40.105 would be added to require the Metropolitan Attorney to report the number and types of actions brought by the Department of Law that are related to the violations of the Metro Code to the Council on a quarterly basis.

BILL NO. BL2016-159 (COOPER) – Section 2.24.300 in Article IV of the Metro Code of Laws established the Division of Metropolitan Audit, directed by the Metropolitan Auditor. The ordinance under consideration would add new Subsections H through L. A summary of the provisions added by these subsections is as follows:

- H. The Division of Metropolitan Audit shall have full access to all records, agreements, information systems, properties, and personnel of the Metropolitan Government.

- I. In addition to financial, performance, or other audit services, the Division of Metropolitan Audit is required to establish a process by which suspected illegal, improper, wasteful, or fraudulent activity can be reported. All such reports are required to be investigated.

- J. All reports of unlawful conduct within Metro completed in accordance with the Tennessee Local Government Instances of Fraud Reporting Act are required to be communicated to the Metropolitan Auditor. They are also to be reported to the Comptroller of the Treasury if so required by state law.

- K. All engagement plans and final reports for all financial, performance, and other audit activities conducted on behalf of Metro Government shall be communicated to the Metropolitan Auditor.

- L. This reaffirms that the Division of Metropolitan Audit is authorized to conduct audits, including investigation and disposition of reported incidents of fraud as contemplated in the new Subsection I. This authority covers any department, board, commission, officer, agency, or office of Metro.

Appendix Three, Article 42, sections 13, 15 and 18, of the Metro Charter provide exclusive control to the Electric Power Board over its internal recordkeeping, accounting and operations systems. This would arguably include financial audits and performance audits. Additionally, Article 42 explicitly prevails over conflicting provisions within the Metro Charter. (Article 42, section 24).

BILL NO. BL2016-177 (PARDUE) – Section 6.28.010 of the Metro Code details the requirement that anyone operating a "hotel or rooming house" is required to keep a register showing the name, address, date of arrival, and date of departure for each of its guests within the preceding six-month period. Paragraph C of this section requires these operators to show this register to "any member of the Police Department upon the written request of the Chief of Police or the Chief of the Detective Department."

The U.S. Supreme Court considered a similar requirement in the case of *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015). The Court decided that such requests are permissible, but there must be a procedure allowing appeals from these requests.

The bill under consideration would make two changes to the Metro Code. The first would replace "or the Chief of the Detective Department" with "any duly appointed Deputy Chief of Police".

The second change would allow the hotel or rooming house operator to refuse the request by the Police to see the register, but the register must be secured in the manner required by the requesting Police officer so that the contents are preserved. This register would be required to be kept in this secured location until an administrative or judicial search warrant, subpoena, or order can be granted or denied, and any appeal resolved. There is no specified time limit for how long that process might take.

BILL NO. BL2016-178 (SLEDGE) – Paragraph C of Section 16.28.240 of the Metro Code currently sets time limits on demolition permits issued by Metro. It requires the work authorized by such permits to begin with thirty (30) days after issuance or unless the authorized work is completed within sixty (60) days after work is commenced. However, extensions of time may be allowed.

The bill under consideration would make two additions to this paragraph. The first would be to add the word "timely" so that the 60 day completion requirement would only apply after work is "timely commenced".

The second change would add two sentences to this paragraph. The first would require an affidavit to be submitted within 30 days after a demolition permit is issued to certify the date that demolition has commenced and describing the nature of the work performed to date. The second new sentence would specify that demolition permits would be deemed invalid if the newly required affidavit is not submitted within the required 30 day period.

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BILL NO. BL2016-178, continued

Under Metro Code section 17.04.060, a "demolition" means the decimating, razing, ruining, tearing down or wrecking in whole or in part, any facility, structure, foundation, landscaping, pavement or building, (wall, fence) whether in whole or in part, whether interior or exterior. But historically, the legally required preliminary work (such as shutting off utility lines) has been construed to be part of the demolition process.

BILL NO. BL2016-179 (MURPHY) – The Department of Finance's Procurement Division currently has a single position within their Business Assistance Office with the title of "Business Development Officer". This position was initially established as a "Minority Business Liaison Officer" before being renamed.

This position is responsible for performing administrative duties designed to enhance minority and small business participation in the procurement of goods and services for Metro. There is an incumbent employee in this position, performing this function since September 9, 2013.

Bill No. O88-586 provided that this position would be in the unclassified service of Metro. This is currently the only position in the Finance Department not in the classified service. It is unclear why the decision was made in 1988 to exclude this position, but there seems to be no advantage for continuing this exclusion.

Upon the request of the Finance Department, the Civil Service Commission voted in their meeting on March 8, 2016 to reclassify this position as being within Civil Service. The bill under consideration would add the Council's approval to this reclassification.

BILL NO. BL2016-180 (BEDNE & PRIDEMORE) – This resolution accepts a donation in the amount of $75,000 from Lenox Village III, LLC to the Metropolitan Public Works Department to aid in the construction of traffic improvements at the intersection of Nolensville Road and Bienville Drive.

The transmittal letter from Lenox Village states the intention of the donation is to satisfy any off-site traffic conditions of approval for St. Thomas Medical Office Building (Lot 1) and any future development on Lot 2 of the Lenox Village III final plat. The letter also requests all current Public Works permitting requested for St. Thomas MOB to be signed off so construction can begin.

Public Works has agreed to these conditions.

BILL NO. BL2016-181 (A. DAVIS, PRIDEMORE, & GILMORE) – This ordinance approves a lease agreement between the Metropolitan Social Services Department / Metropolitan Homelessness Commission and City Road Chapel United Methodist Church of 1,200 rentable square feet for the use of additional office space.

The term of the lease is from March 1, 2016 through June 30, 2017, unless terminated earlier. The annual rental will be $5.00 per rentable square foot, equating to $8,000 for the term of 16 months.

Metro will be responsible for furnishing the spaces, as well as providing any phone and internet connections and service for its operations. The lessor will provide heating, air conditioning, and electricity for the space.

Access to the space would be limited to the entrance located on Neely's Bend Road. The lessor will provide exterior building keys and individual office keys for Metro staff. Metro acknowledges that the lessor has a Child Development Center (CDC) on the same site. Access would be restricted to the CDC spaces by Metro's clients and visitors. Metro would agree to abide by the lessor's "Safe Sanctuaries" policies regarding the care and supervision of children on the premises.

Amendments to this lease may be approved by resolution of the Council receiving 21 affirmative votes.

BILL NO. BL2016-182 THROUGH BL2016-186 – These bills would abandon a portion of certain alleys, 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 alleys, rights-of- way, or easements. The details are as follows:

- **BL2016-182 (Allen)** - Alley No. 893 right-of-way and easement, requested by Barge Cauthen & Associates, Applicant;

- **BL2016-183 (Allen)** - Cheron Road right-of-way, requested by William B. Geiger, Applicant and Owner;

- **BL2016-184 (Allen & Elrod)** - Gay Street right-of-way and easements, requested by Barge, Waggoner, Sumner and Cannon, Inc., Applicant;

- **BL2016-185 (Allen & Elrod)** - Gay Street and 10th Avenue North right-of-way, requested by Barge, Waggoner, Sumner and Cannon, Inc., Applicant; and

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- **BL2016-186 (Elrod & Allen)** - Taylor Street right-of-way and easement, requested by Littlejohn and S&ME Company, Applicant.

BILL NO. BL2016-187 (SYRACUSE, PRIDEMORE, & OTHERS) – This ordinance authorizes the Director of Public Property Administration to sell a portion of the right-of-way of Briley Parkway and McGavock Pike Interchange.

The total tract, including this right-of way, was acquired in 1966. This was used to build a Briley Parkway extension, Two Rivers Golf Course and Park, McGavock High School, Wave Country, and McGavock Mansion renovations. In 1970, Metro and the Tennessee Department of Transportation (TDOT) signed an agreement under the Local Interstate Connector Program to construct Briley Parkway, including interchanges at McGavock Pike and Two Rivers Parkway. The costs of this program were shared on a 50/50 basis by Metro and TDOT.

Park Holdings, LLC has now requested to purchase a portion of this property. The request has been evaluated by the Department of Transportation's Excess Land Committee. They concluded the property is no longer needed by the state or Metro for any purpose.

All parties agree the fair market value is $197,000. Since Metro and the state jointly obtained this property, each will receive one-half of the proceeds from this quitclaim deed, amounting to $98,500.

This sale was approved by the Planning Commission at their meeting on April 7, 2016.

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.

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 thee (3) years. This report would be submitted annually with each proposed budget to the Council.

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BILL NO. BL2016-188, continued

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.

– BILLS ON THIRD READING –

BILL NO. BL2016-176 (MENDES) – Under section 19.03 of the Metro Charter, the Charter Revision Commission is charged with the duty to hold hearings and make recommendations to the Council with respect to proposed amendments to the Charter. Section 2.120.100 of the Metro Code authorizes the Commission to employ such personnel as may be necessary to perform its functions, within the limits of its budget appropriation. To date, the Charter Revision Commission has not been assigned personnel to assist with administrative functions.

This bill would authorize the Metro Clerk's office to assist the Commission with administrative functions, removing the provision authorizing the Commission to employ such personnel. The Clerk would also be required to serve as the custodian of the minutes and records of the Commission.