



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: **October 4, 2016**

RE: **Analysis Report**

Unaudited Fund Balances as of 9/28/16:

4% Reserve Fund	\$36,727,323*
Metro Self Insured Liability Claims	\$4,163,948
Judgments & Losses	\$2,495,087
Schools Self Insured Liability Claims	\$3,229,600
Self-Insured Property Loss Aggregate	\$5,240,212
Employee Blanket Bond Claims	\$647,935
Police Professional Liability Claims	\$2,548,274
Death Benefit	\$1,386,225

*Assumes unrealized estimated revenues in Fiscal Year 2017 of \$28,872,673.

– BILLS ON PUBLIC HEARING –

BILL NO. BL2016-350 (O'CONNELL & MENDES) – Section 17.08.030 of the Metro Code allows adult entertainment uses in various zoning districts through overlay, including MUI and MUI-A. The MUI and MUI-A zoning districts also permit high-density residential development which could be considered incompatible with adult entertainment uses. Because of this, the ordinance under consideration would remove “adult entertainment” as a permitted use within such districts.

This matter is on the agenda for the Planning Commission’s meeting on October 27, 2016.

BILL NO. BL2016-379 (SYRACUSE) – Section 17.04.060 of the Metro Code of Laws (MCL) presently defines a “financial Institution” as “any building, room, space or portion thereof where an establishment provides a variety of financial services, including generally, banks, credit unions, and mortgage companies, but excluding alternative financial services. A financial institution is open to the public within hours that do not exceed 8:00 a.m. to 6:00 p.m. Monday to Friday, and 8:00 a.m. to 1:00 p.m. on Saturday.”

This ordinance would amend the definition to add the requirement that a financial institution must be “a state or federally chartered bank, savings and loan association, or credit union, a mortgage company, or other financial institution whose services are insured by an agency of the United States government.” The sentence reciting the hours of operation as part of the definition of a financial institution would also be deleted.

Alternative financial services would continue to be expressly excluded from the definition of a financial institution. Instead, a new paragraph would be added to this section of the MCL to define alternative financial services:

“Alternative financial service’ means any building, room, space or portion thereof where an establishment provides a variety of financial services, including but not limited to cash advance, title loans, check cashing, pawnshops and flex loans, and such establishment is not a state or federally chartered bank, savings and loan association, or credit union, a mortgage company, or other financial institution whose services are insured by an agency of the United States government.”

BILL NO. BL2016-415 (O'CONNELL & ELROD) – This ordinance would modify Title 17 of the Metro Code of Laws to create a mechanism for the zoning and permitting of small cell telecommunications uses and to update existing zoning provisions for other kinds of telecommunications uses. The intent is to facilitate growth of these services while encouraging the location and co-location of equipment on existing structures in order to reduce the need for new towers.

Section 1 of the ordinance would modify Section 17.04.060 (Definitions of General Terms) by adding several definitions related to the changes in these regulations.

Section 2 would modify Section 17.08.030 (District Land Use Tables) by deleting "Radio/TV/Satellite Tower and Telephone Services" and adding "Telecommunication Facility" under "Communication Uses" as a use permitted with conditions (PC) under all zoning districts.

Section 3 would modify Section 17.16.080 (Communication Uses) by adding a new subsection covering "Telecommunications Facility". This subsection would specify requirements covering the application for a new telecommunications facility, including co-locating on an eligible support structure. This would include notification requirements for the Codes Department as well as the Historic Zoning Commission. In addition, it would specify that any telecommunication facility permitted under this chapter that is not operated as a personal communication system carrier application for a continuous period of twelve months would be considered abandoned, requiring the owner to remove it within ninety days. Finally, it would specify detailed landscaping and maintenance standards for telecommunication facilities both outside and within the public right-of-way.

Section 4 would delete Subsections A and B in Section 17.16.180 of the MCL concerning "Communication Uses".

Section 5 would modify Section 17.40.520 (Applicability) to require an application for a zoning permit to be filed with the zoning administrator prior to any person or entity commencing any construction or alteration of a structure, initiating a change in the use of the property or for a telecommunication facility, including co-location.

Section 6 would modify Section 17.40.750 (Fees) by adding a subsection granting Metro authority to require supplemental review by the Director of the Information Technology Services Department (ITS) for any application for a telecommunication facility where placement of equipment on an alternative structure or new vertical support structure is sought. This review

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BILL NO. BL2016-415, continued

would also apply in cases where the complexity of the analysis requires technical expertise, or where there is a request for a variance to Section 17.16.080.C. All costs for such review would be borne by the applicant.

Section 7 would modify Section 17.40.340 (Limits To Jurisdiction) by adding a subsection requiring the board not to grant a variance without first considering a supplemental review by the Metro Planning Commission and the Director of ITS.

Section 8 would modify Section 6.26.350 to reference the changes that would be made to Chapter 17 of the MCL by this ordinance.

– RESOLUTIONS –

RESOLUTION NO. RS2016-387 (COOPER) – This resolution would approve a grant in the amount of \$140,000 from the Davidson County Mental Health and Veteran’s Court Assistance Foundation to the Davidson County General Sessions Court, Division II, to fund a Veteran’s Court to provide evaluations and treatment for eligible veteran defendants.

The Tennessee Department of Mental Health and Substance Abuse Services received a three year grant from the U.S. Justice Department to fund a Veteran’s Court in Davidson County. The Davidson County Mental Health and Veteran’s Court Assistance Foundation was chosen to be the recipient of the grant, which in turn granted the funds to the Davidson County General Sessions Court to supplement the salaries of existing General Sessions court employees working directly with the Veteran’s Court.

This resolution would accept \$140,000 for the Veteran’s Court through the next federal fiscal year beginning October 1, 2016. This represents the third year’s installment of a three year grant. There would be no required local cash match for this grant.

RESOLUTION NO. RS2016-388 (COOPER) – This resolution would approve a grant in the amount of \$82,557 from the Tennessee Administrative Office of the Courts to the State Trial Courts for interpreter services involving individuals with limited English proficiency. No local cash match would be required. The term of the grant would be from July 1, 2016 through June 30, 2017.

The administrator would be required to make an initial determination as to whether the cost of the translation/interpretation services in the case may exceed \$5,000. If so, the administrator would be required to advise the attorney/party that they must obtain an order from the judge to approve such an amount. If the attorney/party has questions, they would be advised to contract the Administrative Office of the Courts (AOC) regarding the process.

Once the AOC has given this pre-approval, or in cases where the anticipated cost would be less than \$5,000, the administrator would make arrangements for the service to be provided.

RESOLUTION NO. RS2016-389 (COOPER) – This resolution would accept an Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$504,412 from the U.S. Department of Justice to the Metropolitan Nashville Police Department (MNPD) for equipment and supplies for direct support for basic police training, as well as in-service and specialized training.

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RESOLUTION NO. BL2016-389, continued

These funds would be used to ensure MNPD personnel maintain needed skills and certifications by attending professional and mandatory specialized training, enhance Community Policing initiatives and service accountability and response to community concerns, and continue MNPD's efforts toward overall crime reduction and community satisfaction.

RESOLUTION NO. RS2016-390 (SWOPE, COOPER, & OTHERS) – In 2014, Resolution RS2014-980 approved an agreement with the Tennessee Department of Transportation (TDOT) and the City of Brentwood for a regional traffic management study and traffic signal optimization effort for several intersections in southern Davidson County and the City of Brentwood in Williamson County.

The project involved hiring an engineering firm to study 33 intersections along Franklin Pike, Maryland Way, and Old Hickory Boulevard. The study was to include the development and implementation of updated signal timing plans, with coordination between Metro and Brentwood.

The initial cost of the project was estimated to be \$382,500 with 80% of the costs funded with federal transportation funds. Metro and Brentwood were each to contribute 10% of the cost, totaling \$38,250. The project was estimated to take between 10 and 14 months to complete.

The resolution under consideration would approve the reallocation of right-of-way funds into design funds. No change would be made to Metro's total financial obligation for the project.

One of the recitals in the resolution identifies Metro's share as 20% rather than 10%. But this should have no effect on the financial terms of the amendment under consideration.

RESOLUTION NO. RS2016-391 (COOPER & ELROD) – Ordinance No. BL2016-235 raised several fees charged by the Public Works Department which had not been increased during the last 12 to 27 years and were no longer sufficient to cover the actual costs of providing the services.

Additional revenues expected to be generated by these revised fees were as follows:

- Meter Bag Permit \$61,000
- Temporary Street Closure Permit \$1,050,000
- Excavation Permit \$365,000

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RESOLUTION NO. BL2016-391, continued

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| • Banner Permit | \$11,000 |
| • Film Permit | \$25,800 |
| • Parade Permit | \$150,300 |
| • Special Event Permit | \$87,000 |

These additional expected revenues were included as part of the FY17 operating budget.

The resolution under consideration proposes several changes to the previous fee changes, as follows:

- Section 1 places parking meter rates on the same basis as garage rate increases where passed by the Traffic and Parking Commission. It does not affect the parking meter rates passed by the Council, as the Commission passed the same rate.
- Section 2 refers to temporary street closures where the phrase “per fifty linear feet” was mistakenly included. The linear feet terminology only applies to excavation fees. The initial revenue analysis was only done on days per closure and this change is in line with what was projected. This section also adds inspector expense fees at \$50 per hour per inspector rather than charging inspector time based upon the number of street closures. This makes fee calculation easier and should generate approximately the same revenue amount.
- Section 3 removes the inspector expense fee from the “Special Event” section. Section 2 above places it in the “Right of Way” section where it should be.
- Section 4 removes references to Public Works from this section because it is under the jurisdiction of the Mayor’s Office of Film and Special Events and the Metro Police Department. This also removes the charges designed to cover inspector expenses and places it in Section 2 above.

RESOLUTION NO. RS2016-392 THROUGH RS2016-394 – These three resolutions would authorize applicants to construct, install, and maintain aerial encroachments. All three were approved by the Planning Commission on September 6, 2016.

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RESOLUTION NO. RS2016-392 THROUGH RS2016-394, continued

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

The details of each resolution are as follows:

- **RS2016-392 (O'CONNELL, ALLEN, & ELROD)** – CJS-Nashville d/b/a Cerveza Jack's, for a 14' x 3' wide double-faced, illuminated, projecting sign on property located at 135 2nd Avenue North.
- **RS2016-393 (O'CONNELL, ALLEN, & ELROD)** – The Stage on Broadway, Inc. for a 3' 7.75" x 5' 0" double-faced, illuminated, projecting sign on property located at 412 Broadway.
- **RS2016-394 (O'CONNELL, ALLEN, & ELROD)** – Cusaboo Jr. Operating Company, LLC, d/b/a The Valentine, for a 16' x 3" double faced illuminated projecting sign on property located at 312 Broadway.

RESOLUTION NO. RS2016-395 (SHULMAN) – This resolution would approve the election of six (6) Notaries Public in accordance with state law. The Davidson County Clerk has advised that each of the applicants meets the qualifications for the office.

– BILLS ON SECOND READING –

BILL NO. BL2016-308 (HASTINGS) –Tennessee Code Annotated § 66-28-401 requires tenants to comply with certain maintenance and conduct standards and to refrain from any illegal conduct on the premises of the dwelling being rented.

This ordinance would create a mechanism for informing tenants of these obligations by requiring residential rental properties receiving Barnes Fund grants to include a “tenant conduct clause” within their rental agreements.

The clause would repeat the conduct requirements of state law as follows:

- Tenants must not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so;
- Tenants must not engage in any illegal conduct on the premises; and
- Tenants must act, and require other persons on the premises with the tenant’s consent, to act in a manner that will not disturb the neighbors’ peaceful enjoyment of the premises.

By comparison, the Metropolitan Development & Housing Authority (MDHA) adopts HUD model lease agreements which generally prohibit criminal conduct though without enumerating specific prohibited conduct.

Under the proposed ordinance, if a tenant fails to comply with these restrictions, the landlord is required to remedy this noncompliance pursuant to TCA 66-28-505(a) – although this particular statute actually affords discretion to the landlord to give written notice to the tenant and to require any breach to be remedied within fourteen (14) days.

This ordinance was indefinitely deferred on August 16, 2016 pursuant to Rule 23 of the Metro Council Rules of Procedure and has been placed back upon the agenda at the sponsor’s request.

BILL NO. BL2016-336 (GLOVER) –This ordinance would revise the Metro purchasing process by requiring contracts to be awarded to a business from Davidson County in cases where they have submitted a low tie bid against one or more other companies from outside of Davidson County. It would also allow any bidder in their competitive sealed bid to indicate a willingness to meet the lowest responsible bid if that bidder is not the low respondent.

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BILL NO. BL2016-336, continued

Low tie bids are defined in the ordinance as “low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation to Bid”. Historically, the Tennessee Supreme Court and Courts of Appeals have strongly disfavored local bidder preferences, citing the negative impact such preferences can have on competitive market forces. Tennessee law provides that bidders should be placed on equal footing so that they are bidding on the same proposition and on the same terms as all others. Conditions imposed on bids must not unduly restrict competition, and bidders should be allowed to compete freely without unreasonable restrictions. Consistent with these opinions, the Metro Legal Department has in previous years opined that local bidder preferences are inconsistent with competitive bidding requirements set forth in the Metro Charter (section 8.111) and state law, citing Tenn. Code Ann. § 12-3-1204.

Former Tenn. Code Ann. §12-4-111 previously prohibited bid preferences that permit local companies to match the lowest bid. But in July 2013, the Tennessee legislature adopted extensive amendments to Title 12, wholly eliminating prior § 12-4-111 and adding new provision § 12-3-302. The current text of Tenn. Code Ann. §12-3-302 prohibits only “state agencies” from offering bid preferences that allow local companies to match the lowest bid, omitting reference to local governments.

The Tennessee Attorney General subsequently opined in November 2013 that municipalities subject to the Municipal Purchasing Law of 1983 should not implement policies that grant a preference to local businesses on municipal contracts. Per the terms of Tenn. Code Ann. 6-56-302, however, the Metropolitan Government of Nashville & Davidson County would be exempt.

BILL NO. BL2016-416 (MENDES & COOPER) –This ordinance would require all reports that are regularly submitted to the Metro Council to be provided in a searchable electronic format and simultaneously posted onto the Internet website of the submitting department, board or commission. The web posting and public access to reports would be required for a period of at least six months. As examples of the reports received by Metro Council members, the second recital of the ordinance lists 14 reports currently required to be submitted to the Council on a recurring basis.

Every Metro department and agency is a current user of Nashville.gov and pays internal service fees to the Metro Information Technology Services Department for such service. Assuming little additional effort would be required to format and store reports per the requirements of this ordinance, the result should be increased transparency and ease of access by the Council and general public to the information submitted.

BILL NO. BL2016-417 (K. JOHNSON) –This ordinance would amend Section 12.40.150 of the Metro code of laws (MCL) concerning the unlawful parking of vehicles for sale or repair purposes. In addition to current restrictions, this ordinance would add a new prohibition against parking a vehicle on residential property fronting an arterial street for the principal purpose of displaying the vehicle for sale.

It would also add a new restriction in Paragraph A of Section 17.16.030 concerning consignment sales on residential property by specifying that such consignment sales may not include the sale of a vehicle.

A substitute is anticipated to replace references to “principal purpose” with the more specific “purpose.”

BILL NO. BL2016-418 (MENDES, GLOVER, & WEINER) – On September 20, 2016, the Council approved Ordinance No. BL2016-343, allowing the process commonly known as “One Touch Make Ready” (OTMR). Two days later, a lawsuit was filed by BellSouth Telecommunications LLC d/b/a AT&T seeking a judgment that the Ordinance was preempted by federal law, contravenes the Metro Charter and state law, and violates federal and state contract clauses. The lawsuit further seeks payment of AT&T’s costs and reasonable attorneys’ fees. In addition to the risk of incurring liability for AT&T’s legal fees, Metro will invariably incur its own legal expenses, including primarily the fees of outside counsel who assist in the defense of this litigation.

The current ordinance would delete and replace three sections of the OTMR Ordinance and add a new section essentially requiring indemnification of Metro. The specific changes are as follows:

- The replacement Section D would add a provision stating that the Attacher “shall be solely responsible” for assuring all OTMR work is done in full accordance with all applicable federal, state, and local laws and regulations as well as all applicable engineering and safety standards.
- Section G currently requires Attachers to indemnify, defend, and hold harmless the owner of the affected utility pole from any action, suit, or proceeding by an affected pre-existing third-party user arising from their transfer, relocation, rearrangement, or alteration of their facilities. The ordinance under consideration would add a requirement for an Attacher to obtain a corporate surety bond in the amount of one million dollars in

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BILL NO. BL2016-418, continued

order to safeguard the public right-of-way, guarantee timely performance of the OTMR construction and implementation of the telecommunication system, and to guarantee the Attacher's full compliance with all of the obligations set forth in this Chapter.

- Section H currently states that the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith, in the event of a dispute arising out of this Chapter. The ordinance under consideration would add the restriction that this would only apply in cases except as otherwise specified in this Chapter.
- A new Section would be created and inserted immediately above Section G regarding instances in which an Attacher has been provided written notice by any Owner or Pre-Existing Third Party User that their anticipated OTMR work will not be in accordance with the applicable laws and regulations as required in Section D. The Attacher would then be required to provide a copy of this notice to the Metropolitan Department of Law within seven (7) days. More importantly, the Attacher would also be required to execute an agreement approved by the Metropolitan Department of Law within fourteen (14) days to indemnify, defend, and hold Metro harmless from any action, suit, or proceeding related to the OTMR Non-Accordance Notice. The Attacher would be prohibited from proceeding with the OTMR work related to the Non-Accordance Notice until the Attacher has executed the hold harmless agreement as described in this section.

The ordinance states that the best interests of the citizens of Nashville would be served by forcing the interested private market competitors to bear the costs and risks of litigation related to the OTMR Ordinance.

On September 19, 2016, the Metro Legal Department and Metro Council Office were notified by general counsel for Google Fiber that, in the event of litigation, Google Fiber would "share the capabilities of its in-house and outside attorneys, including some of the most experienced and accomplished regulatory attorneys in the industry." No express offer of indemnification was proposed, however.

Opponents of the ordinance may contend that (1) there is no known legal precedent for requiring private parties to indemnify a local government for services or entitlements that the government is otherwise obliged to provide or allow; (2) the ordinance would establish the potentially negative precedent of requiring private party indemnification in other instances; and (3) passage of the ordinance may simply result in Metro litigating against *two* parties instead of one (AT&T and Google Fiber). Proponents however may note that (1) there is likewise no known legal prohibition *against* private indemnification; (2) there are other instances in the Metro Code wherein private parties are required to hold Metro harmless as a condition of permit issuance (*e.g.*, encroachments, valet parking, *etc.*); and (3) Metro has clearly incurred significant legal costs in defending previous litigation requiring outside counsel.

BILL NO. BL2016-419 (K. JOHNSON, GILMORE, & OTHERS) –Executive Order No. 6 and 7 require training of all Metro Government employees, as well as all board and commission members, on diversity issues. This ordinance would expand that requirement to include all members of the Metro Council and all Davidson County elected officials in this training. Council members and elected officials who have attended similar training within the preceding five (5) year period would be exempt from this requirement.

The Department of Human Resources would be required to report annually to the Vice-Mayor on the status of this training, specifying the Council members and elected officials that have complied (or failed to comply) with this requirement.

The Council has the authority to impose duties, responsibilities and restrictions upon itself. It is less clear that the Council has the authority to impose the same upon other elected officials, particularly within the Executive Branch of government. The duties and responsibilities of these offices are defined in Title 2 of the Metro Charter.

Similar legislation addressing sexual harassment training is proposed in Ordinance no. BL2016-385, currently on third reading.

BILL NO. BL2016-420 (COOPER & ALLEN) –This ordinance would amend the agreement between Metro and the Nashville Hockey Club Limited Partnership (NHCLP) concerning the operation of the ice rinks at the Centennial Sportsplex. This would make the NHCLP the exclusive sponsorship sales agency for the Sportsplex ice rinks in order to drive new sponsorship revenues.

The NHCLP would develop a complete menu of sponsorship inventory at the Sportsplex, subject to Metro’s approval. The NHCLP would also have the option to pursue naming rights with respect to Ice Rink Two, subject to Metro’s board approval and approval by ordinance.

The initial term of this amendment would be from August 1, 2016 through July 31, 2018. Either party could extend this term by giving written notice to the other party at least ninety (90) days prior to the expiration of the term. Both parties must then agree to the extension.

During this initial two-year term, the NHCLP would retain sixty percent (60%) of all annual net revenue from these Sportsplex Sponsorship Services. Metro would retain the remaining forty percent (40%). However, Metro would be required to reinvest twenty percent (20%) of its annual revenue share in the Sportsplex each year of the term.

If the term is extended, then as of August 1, 2018, the revenue would be mutually determined by NHCLP and Metro. Metro would continue to be required to reinvest twenty percent (20%) of its annual revenue share.

BILL NO. BL2016-421 (O'CONNELL, COOPER, & OTHERS) –This ordinance would approve an agreement for the acquisition of a parcel of property, an agreement for the disposition of that parcel, and an easement agreement, all relating to the construction of a pedestrian bridge spanning the railroad gulch.

Exhibit 1 of the agreement would authorize Metro to acquire the property commonly known as the "Clement LandPort" from the Metropolitan Transit Authority. This sale must be approved by the MTA Board, the Federal Transit Administration, and the Council. These approvals must be completed by December 31, 2016.

The total purchase price would be \$8,400,000. \$840,000 of this amount would be retained by Metro as reimbursement for the contribution Metro made toward MTA's original purchase of the property. The net purchase price to be paid by Metro would therefore be \$7,560,000.

Exhibit 2 of the agreement would authorize the sale of this property to Cummins Station, LLC (CS). The sale price would be \$8,400,000. However, CS would be entitled to the \$840,000 credit received by Metro toward its purchase of the property.

Exhibit 3 of the agreement would authorize Metro to acquire the easement from CS that would be necessary for the construction of a pedestrian bridge spanning the railroad gulch. Metro would pay \$2,662,000 to CS for this easement.

The plan would be for Metro to construct, own, and operate a pedestrian bridge spanning the CSX Transportation Railroad right-of-way and other railroad facilities located to the west of and adjacent to the Cummins Station property. Metro would also construct a plaza and related improvements providing ingress, egress, and access to and from the Pedestrian Bridge.

In 2014, the Metro Council passed BL2014-670 authorizing acquisition of property for a similar bridge project (although the current proposal involves a significantly altered design). Estimated acquisition costs in 2014 totaled \$1 million, and preliminary cost estimates for the previous bridge design totaled \$15 to \$16 million. The project had been included in the fiscal year 2014-2015 capital improvements budget (CIB). The capital spending plan approved in 2013, which provided \$18 million in funding for bridge projects countywide, would provide for construction. However, following an indefinite deferral by the Council, a revised financing plan was proposed whereby funding for the bridge would be derived from tax increment financing (TIF) payments through the Metropolitan Development and Housing Agency (MDHA). In 2014, a total of seven (7) TIF loans remained outstanding for projects within the Arts Center redevelopment district. Under the revised financing arrangement, the TIF payments for these loans -- after payment in full -- would be available to cover debt service on the bridge, with a maximum price of \$18 million to be funded out of the commercial paper program.

The current project was approved by the Planning Commission on September 16, 2016.

BILL NO. BL2016-422 (LEONARDO, COOPER, & OTHERS) – In 2014, the Council enacted BL2014-688 which approved agreements between the Metropolitan Government, the Metropolitan hospital authority, and various private entities for the privatization and continued operation of the Bordeaux Long Term Care and J.B. Knowles Home facilities.

Bordeaux Long Term Care (BLTC), located at 1414 County Hospital Road, is a 419-bed skilled nursing facility that currently has an average daily census of 200 patients/residents. Previously operated by the hospital authority, BLTC had been operating at a substantial financial loss for many years. Prior to passage of BL2014-688, the Metro Government had been subsidizing BLTC and Knowles at an annual cost of \$10.5 million dollars, with BLTC representing the majority of that subsidy (approximately \$9 million dollars).

In 2013, Metro solicited proposals from 162 private healthcare operators. Finalists' proposals were analyzed, whereupon Metro and the hospital authority agreed upon a plan proposed by Signature Healthcare (and its subsidiary LP North Nashville, LLC) for the continued operation of BLTC and eventual elimination of Metro's subsidy by fiscal year 2017. Based in Louisville, Kentucky, Signature Healthcare operated 87 long-term care communities in 7 states, including one facility in Nashville. Of their 35 urban facilities, 27 had the highest (5 star) rating available to nursing homes from the Centers for Medicare and Medicaid Services.

Following approval by Council, Signature took over operations of BLTC in May 2014, committing to operate a 120-bed nursing home at the Bordeaux campus for at least 10 years.

Under the operating lease agreement, Metro was required to cover losses on the facility up to \$3 million during the first six months, \$2.5 million in the second six months, \$2 million in the third six months, and \$1.5 million in the fourth six months. Regardless of the actual amount of the losses, Metro's minimum subsidy remained at \$5 million the first year and \$3.5 million the second year, including a management fee of 3% of the facility's revenue.

Signature was also required to permit all existing patients to remain at the BLTC facility during the term of the lease, regardless of ability to pay or health status. (However, a patient could be transferred to another facility if Signature determined it could not appropriately provide for his/her needs.) Additionally, all but 32 of the existing BLTC employees were to be offered employment with Signature at the same or greater rate of pay.

The original intent under the operating lease agreement was that Signature would also build a new \$18 million 168-bed skilled nursing facility on Dickerson Pike near Skyline Medical Center. Once built, Signature would have the option of either continuing operations at the existing BLTC facility or building a new nursing home on the campus. But this agreement was conditioned

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BILL NO. BL2016-422, continued

upon a change in Tennessee state law allowing a division and transfer of the bed licenses, thereby further allowing the new Dickerson Pike facility to obtain a Medicare and Medicaid certification. Signature was to pay all costs associated with changing the state law and the approval of its Certificate of Need (CON). Signature was to then pay Metro \$1.3 million upon approval.

Unfortunately, the Tennessee General Assembly failed to approve the change. The envisioned relocation could not go forward, so a new facility was never constructed.

As part of the original 2014 proposal, a separate transfer and development agreement between Metro, the hospital authority, Signature (through LP North Nashville, LLC), and Investors II, LLC (Ed Street Company) set forth responsibilities pertaining to the construction of the new Signature skilled nursing facility on Dickerson Pike and the continued operation of the facility on the Bordeaux campus. Ed Street Company was responsible for building the 168-bed Dickerson Pike facility and assisting Signature and the hospital authority with preparation of the required CON.

An additional agreement between Metro and Vision Real Estate provided for the phased sale of 76.6 acres of the Bordeaux campus to Vision for development after the new Dickerson Pike facility was constructed. One half of the BLTC facility was to be converted into 62 senior living apartments. The other half of the facility was to remain a skilled nursing facility unless/until a replacement facility was built on the Bordeaux campus.

Following the General Assembly's failure to enact the necessary change to state law, however, these prior agreement terms essentially unraveled, and Signature currently operates BLTC at a significant loss, primarily due to the large number of indigent patients. (While Metro still owns the property and is responsible only for major structural repairs if needed, Signature is still responsible for all expenses associated with the operation of the BLTC facility, including general maintenance and utility costs.)

To address these concerns, BL2016-422 proposes a new agreement extending the previous operating lease agreement through June 30, 2020, during which Signature agrees to keep all current BLTC patients regardless of their ability to pay or health status. (Either party can terminate the lease at the end of a fiscal year with 180 days' written notice.) Under the additional terms of the agreement, Signature would be required to negotiate with the hospital authority to develop a plan to take more patients that can be transferred out of BLTC into a nursing home. Signature would be reimbursed for losses up to \$3.5 million annually. An audit

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BILL NO. BL2016-422, continued

would be conducted at the end of each fiscal year, and continued financial reports would be required from Signature, including patient census and payer mix data. Metro would agree to pay for facility "life safety" improvements estimated at \$600,000

Under the new agreement, Signature would also continue to seek a CON from the state in order to construct a new 120 to 160-bed facility in the North Nashville area. (If approved, the agreement requires Signature to notify Metro by December 15, 2016 of the specific location of the new facility.) If and when the state approves the CON, Signature would pay Metro the appraised value for the rights associated with the relocated beds -- estimated in 2014 at approximately \$5,000 per bed resulting in a payment between \$500,000 and \$800,000. No new legislation by the state -- authorizing a split of the number of approved beds between the two facilities -- would be required since this agreement proposes a move of *all* beds from BLTC to the new facility.

In the event Signature is unable to relocate their facility by June of 2020, Metro would have the option of soliciting and selecting a new facility operator or purchaser. Alternatively, Signature would be responsible for winding down their operations at the facility, whereupon Metro would be responsible for their losses incurred from the process, up to \$750,000.

In its two-year operation of the BLTC facility, Signature has demonstrated efficiencies in maintaining a lesser price-per-day for patient care compared to pre-2014 operations. However, while 60% of Signature's facilities had rankings between 3 to 5 stars from the Centers for Medicare and Medicaid Services, BLTC has received a 1 star ranking under Signature's control (although this appears to have been the same rating when BLTC was Metro-operated). By signing this agreement, Signature will likely obtain its long-sought Certificate of Need by virtue of Metro's bed licenses. For its part, Metro will maintain its current long-term care options and retain the BLTC employees on current payrolls at an annual subsidy cost of \$3.5 million dollars.

There is no legal requirement, or any requirement set forth in the proposed agreement, that Signature continue to accept new patients who are unable to pay. It must therefore be contemplated that both BL2014-688 and BL2016-422, carried to their practical conclusion, may herald complete divestment by Metro from long-term care services. While only 6% of long-term care facilities are government owned -- consistent with national healthcare privatization trends - - the Metropolitan Charter recites the "functions of the metropolitan government to be performed" as including "health; welfare; hospitals; housing for the aged", in addition to other core services. (Metro Charter, §1.05) This same section also provides, however, that it shall not be "construed to require the continued maintenance or furnishing of any governmental service which the council by ordinance has determined to be obsolete and unnecessary."

BILL NO. BL2016-423 (FREEMAN, ALLEN, & ELROD) –This ordinance would authorize the Metro Department of Water and Sewer Services to negotiate and accept permanent and temporary easements for various properties located along Trousdale Drive for Project No. 17-SWC-050.

This was approved by the Planning Commission on August 16, 2016. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2016-424 (WITHERS, ALLEN, & ELROD) –This ordinance would authorize the Metro Department of Water and Sewer Services to negotiate and accept permanent and temporary easements for 23 properties located along Boscobel Street, South 15th Street, and South 16th Street for Project No. 17-SWC-037.

This was approved by the Planning Commission on July 29, 2016. Future amendments to this ordinance may be approved by resolution.

BILL NO. BL2016-425 (WITHERS, ALLEN, & ELROD) –This ordinance would abandon approximately 95 linear feet of 12-inch sewer main, approximately 12 linear feet of 18-inch sewer main, approximately 235 linear feet of 24-inch sewer main, and to accept approximately 96 linear feet of 30-inch public sewer main, approximately 176 linear feet of 24-inch public sewer main, approximately 37 linear feet of 24-inch public sewer main, and any associated easements on property located at 901 Woodland Street.

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

BILL NO. BL2016-426 (O'CONNELL, ALLEN, & ELROD) –This ordinance would abandon an existing water main and fire hydrant and to accept public sewer main, three manholes, water main, and one fire hydrant assembly, and any associated easements, located at 601 11th Avenue North.

Future amendments to this ordinance may be approved by resolution. This ordinance was approved by the Planning Commission on August 11, 2016.

BILL NO. BL2016-427 (O'CONNELL, ALLEN, & ELROD) –This ordinance would abandon approximately 410 linear feet of three-inch water main and approximately 370 linear feet of four-inch water main and to accept approximately 780 linear feet of eight-inch public water main and fire hydrant, for property located at 20 Rutledge Street.

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

– BILLS ON THIRD READING –

BILL NO. BL2016-383 (O'CONNELL, GILMORE, & OTHERS) – Chapter 7.08 of the Metro Code of Laws (MCL) regulates beer and alcoholic beverages of less than five percent. Section 7.08.010 currently defines "School" as "an institution, including kindergarten, where regular classes are conducted under the supervision of a teacher or instructor, including schools or colleges where specialized subjects are taught to students of all ages. Such term shall include vocational, medical, law, art, cosmetology, and other institutions where similar special subjects are taught; provided, however, mortuary colleges shall not be included in such term."

References to schools appear throughout Chapter 7.08, particularly under section 7.08.090 addressing the location restrictions for beer permit applicants. More specifically, the MCL prevents a beer permit from being issued to an establishment located within 100 feet of a school, among other restrictions, presumably because of concerns regarding proximity of beer-selling establishments to minors.

The ordinance under consideration would revise this language by defining a school as "a public or private daycare, preschool, kindergarten, elementary, middle, or high school" -- thereby removing from the definition facilities generally attended by adults.

BILL NO. BL2016-384 (SHULMAN & PARDUE) – This ordinance would abolish the Alarm Appeals Board (AAB). This Board was created by Ordinance No. O91-1523 on April 3, 1991. The purpose was to determine whether an alarm permit should be revoked for violations of Chapter 10.60 of the Metro Code of Laws (MCL).

However, Division IV of the Metropolitan General Sessions Court was designated as the "Environmental Court" by Ordinance No. O94-930 on March 15, 1994. This was done in part for the purpose of addressing violations of the Metropolitan Code of Laws pertaining to health, housing, fire, land subdivision, building and zoning, maintaining jurisdiction thereof.

The establishment of the Environmental Court makes the continued existence and operation of the Alarm Appeals Board unnecessary. Since the AAB was created by ordinance, the Council has the authority to abolish the AAB by ordinance as well.

In order to eliminate the inherent redundancy of having the AAB as well as the Environmental Court, this ordinance would abolish the AAB and direct all records be transferred to the Environmental Court. The Metro Clerk would hear all appeals for denials or revocations of commercial solicitation permits after the AAB is abolished.

BILL NO. BL2016-385 (WEINER, HURT, & OTHERS) – Executive Order No. 6 and 7 require training of all Metro Government employees, as well as all board and commission members, on sexual harassment awareness and prevention. This ordinance would expand that requirement to include all members of the Metro Council and all Davidson County elected officials in this training. Council members and elected officials who have attended similar training within the preceding five (5) year period would be exempt from this requirement.

The Department of Human Resources would be required to report annually to the Vice-Mayor on the status of this training, specifying the Council members and elected officials that have complied (or failed to comply) with this requirement.

The Council has the authority to impose duties, responsibilities and restrictions upon itself. It is less clear that the Council has the authority to impose the same upon other elected officials particularly within the Executive Branch of government. The duties and responsibilities of these offices are defined in Title 2 of the Metro Charter.

Similar legislation addressing diversity issues training is proposed in Ordinance no. BL2016-419, currently on second reading.

BILL NO. BL2016-386 (SLEDGE) – This ordinance would establish the honorary designation of “Rev. Curtis W. Goodwin, Sr. Way” for Horton Avenue between 12th Avenue South and 15th Avenue South.

Section 13.08.025 of the Metro Code of Laws provides a procedure for the use of honorary street signs whereby the Council, by ordinance, can authorize and direct the Department of Public Works to install honorary street signs beneath the official street name sign for any street identified on the official Street and Alley Centerline Layer map.

The honorary designation for Rev. Goodwin would be the second such approval during 2016. During each calendar year, up to five (5) honorary designations may be approved. Any additional honorary designations within a year beyond the first five (5) would require the identification of a new funding source to pay for the signs.

Neither this ordinance, nor honorary street names in general, officially rename the designated street. Therefore, there would be no change of official street address for any residents or businesses on Horton Avenue.

BILL NO. BL2016-387 (COOPER & PRIDEMORE) – This ordinance would approve a contract between Metro and the United Way for the continuation of the Nashville Financial Empowerment Center. Metro was the recipient of a grant from Bloomberg Philanthropies for the purpose of operating the financial empowerment program through December 2015. This program provided financial counseling services at various locations including the Levy Place Center, the Casa Azafran Community Center, and the United Way family resources centers, as well as Metro Action Commission and social services facilities.

Metro would pay an amount not to exceed \$250,000 to the United Way to operate at least two financial empowerment centers. The services to be provided include budget counseling, educating clients about credit and banking, and referrals to other social service agencies.

The term of this contract would be from July 1, 2016 through June 30, 2017. The United Way is to conduct a minimum of 1,650 counseling sessions during this period. At least five (5) full-time (or equivalent) counselors would be retained and supervised to provide these services.

BILL NO. BL2016-388 (COOPER, PRIDEMORE, & OTHERS) – This ordinance would authorize the Metro Health and Educational Facilities Board to negotiate a Payment In Lieu Of Taxes (PILOT) agreement for the benefit of ECG Wedgewood, L.P. ECG would receive unused parcels of land at 1440 12th Avenue South and 1500 12th Avenue South from Metro. These parcels would be used to develop 138 units of income-restricted multi-family workforce housing for persons of low and moderate income. A minimum of 40% of the units would be restricted to persons earning less than 60% of the area medium gross income in Davidson County.

This PILOT agreement is to be effective from the date the Health and Educational Facilities Board takes title to the property for a maximum term of 30 years. ECG will have three years in which to develop the property before the discounted payment period starts. Once the abatement period commences, ECG will receive a 100% real and personal property tax abatement for each year that at least 40% of this multifamily residential development project meets low income tax credit requirements as defined in Section 42 of the Internal Revenue Code of 1986, as amended.

ECG will pay 100% of the taxes owed on the property prior to the start of the abatement period, though this amount is to be offset by the amount of leasehold taxes ECG would pay. An accurate prediction of the amount of real and personal property taxes that would be abated is virtually impossible until the project is complete and an assessment is performed. The property

(continued on next page)

BILL NO. BL2016-388, continued

assessor's website lists a land value of \$238,000 for the two properties, which would result in an annual tax bill of approximately \$4,300 if the property remained undeveloped and no abatement was granted.

The lease agreement will end on December 31, 2115. The rental amount is not specified in the lease agreement. At any time during the term, ECG would have the right to purchase the property for \$100. Section 20.01 of the lease agreement would require ECG to purchase the property no later than the thirtieth (30th) anniversary of the commencement of the term. Section 6 of the PILOT agreement provides that the abatement ends at 30 years (or sooner if ECG takes title to the property) whereupon the property would be fully taxable.

BILL NO. BL2016-389 (KINDALL, ALLEN, & OTHERS) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of Buchanan Street to "Delta Avenue".

This was approved by the Planning Commission on August 18, 2016. The Emergency Communications District approved the matter on September 15, 2016. It has also been referred to the Traffic and Parking Commission, which will consider the matter at their meeting on October 10, 2016.

BILL NO. BL2016-390 (O'CONNELL, KINDALL, & OTHERS) – This ordinance would amend the official Geographic Information Systems Street and Alley Centerline Layer by changing the name of a portion of Garfield Street to "Buchanan Street" from Delta Avenue, across I-65, to 9th Avenue North.

This was approved by the Planning Commission on August 18, 2016. The Emergency Communications District approved the matter on September 15, 2016. It has also been referred to the Traffic and Parking Commission, which will consider the matter at their meeting on October 10, 2016.