

BILL NO. BL2018-1188 (COOPER & VERCHER) – This ordinance would establish a committee system to review high-value real property transactions.

This ordinance would require Request for Quotation (RFQ) awards and leases, sales, and exchanges involving over \$2,000,000 of Metro-owned property to be evaluated by a committee and the Metropolitan Council. The Director of Public Property, with the Procurement Division and Department of Finance, would determine the need for an RFQ, lease, sale, or exchange of property and cause an evaluation committee to be created. The Director of Finance would determine whether the property meets the value threshold, in consultation with private appraisers and/or the Davidson County Assessor of Property.

The evaluation committee would be comprised of one member each from the Metropolitan Planning Commission, the Metropolitan Historical Commission, and the Board of Parks and Recreation Department, as selected by the chairpersons of those commissions. The mayor would select one (1) licensed architect or landscape architect in good standing and in active practice for more than 10 years and one (1) business and finance professional in good standing with more than 10 years' experience. No architect or business professional selected for the committee could have an active business relationship with any of the applicants within 5 years prior to the award being made, nor could any architect or business professional have received a consulting fee, retainer, or payment from Metro within 5 years prior to the award being made. No employee of Metro could be a voting member of the evaluation committee, but the Director of Finance, or his or her designee, could serve as an ex-officio member to facilitate the committee's work.

The evaluation committee would submit a recommendation to the Metro Council regarding the appropriate recipients of the RFQ award, lease, sale, or exchange. The committee could make a recommendation of no recommendation. Upon a position recommendation, the Council could approve the transaction by ordinance or refer the recommendation to the Planning Commission, Historical Commission and/or Board of Parks and Recreation. The Council could not approve a transaction without recommended approval of the evaluation committee. The criteria used to evaluate an applicant's proposal would be determined by the evaluation committee and would include a specific valuation of the total financial compensation offered under each proposal, and the valuation of that total compensation shall be based on the fair market value and be clearly stated by the committee in its final recommendation to the Council. The evaluation committee's work would be required to be made public to the fullest extent permitted by law.

Metro Legal has opined that this ordinance, as drafted, violates the Metropolitan Charter in two respects. First, because this ordinance establishes a process for disposing of property, it may violate Section 8.103(k) of the Metropolitan Charter, which grants the Finance Department authority to establish procedures for acquiring and disposing of land for Metro departments, boards, and commissions. Second, because Section 2.01(5) of the Metropolitan Charter gives the Metro Government the authority to acquire and dispose of property belonging to the Metro

Government, and the Council is authorized to legislate in regards to this pursuant to Sec. 3.06 of the Metropolitan Charter, Metro Legal concludes that allowing unelected citizens to evaluate the disposition of property and make binding determinations would be an unlawful delegation of the Council's legislative authority.

At least one (1) amendment is anticipated prior to second reading.

Fiscal Note: The proposed committee for evaluating high-value real property transactions would be comprised of an architect and business or finance professional who would serve on an unpaid basis. In addition, an employee from the Planning Commission, Historical Commission, and the Board of Parks and Recreation would serve on the committee. An employee from the Finance Department would also be tasked with facilitating the committee's work.

The employees working on or for this committee would be performing this work as part of their normal job responsibilities. Any additional staff time and/