

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director  
Metropolitan Council Office

DATE: **Tuesday, May 6, 2008**

**- BILLS INVOLVING AMENDMENTS TO THE ZONING ORDINANCE -**

**ORDINANCE NO. BL2008-153** (JAMESON) – This zoning text change amends the tree protection and replacement provisions in the code regarding the calculation of tree density. The code currently requires properties to achieve a tree density factor of at least fourteen units per acre. A tree density unit consists of two 2-inch trees in diameter. The code allows for a deduction in gross acreage from the tree density calculation for structures, areas covered by a pond, and fenced athletic fields. A recent Tennessee Court of Appeals decision held that parking areas are considered “structures”, and thus qualify for the deduction in acreage.

This ordinance would clarify that parking areas are not to be considered structures. The ordinance would exempt service areas, drive aisles, and parking/loading areas for tractor trailers from the tree density calculation, but employee parking and loading areas at commercial establishments would not be exempt.

There is a housekeeping amendment for this ordinance that clarifies the exemption in acreage is only for areas used by tractor trailers.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2008-167** (STEINE) – This zoning text change creates a new use called “animal boarding facility”, and makes the use permitted with conditions in the industrial warehousing/distribution (IWD) and industrial restrictive (IR) zoning districts. The only use similar to animal boarding included in the existing code are kennels, which are allowed as a special exception use only in the AG/AR2a, CS and CL zoning districts and require approval by the board of zoning appeals. The zoning code defines a kennel as “any lot, building, structure or premises used for the boarding, breeding, training, and/or raising of domestic animal/wildlife (excluding livestock)...” Thus, persons desiring to open a dog boarding business in an industrial area are prohibited from doing so by the zoning code.

This ordinance would create a new use in the zoning code called “animal boarding facility”, which is defined as any buildings or land used for the temporary boarding, care and grooming of domesticated dogs and cats for profit. This use would not include an animal hospital facility. Animal boarding facilities would be a use permitted with conditions in the IWD and IR zoning districts. The conditions that would apply to the use are as follows:

1. No part of any building or structure in which animals are housed may be closer than two hundred feet, and no kennel run may be located within one hundred feet, from any existing residence.
2. Enclosures must be provided to allow adequate protection against weather extremes.
3. Each animal boarded at the facility must have sufficient space to stand up, lie down and turn around without touching the sides or top of cages.
4. Each run must have at least a six-foot high fence completely surrounding it.
5. All animals must have fresh water available at all times. Water vessels are to be mounted or secured in a manner that prevents tipping.
6. All on-site waste must be housed either within the kennel building or an accessory structure, and all waste must be disposed of in a sanitary fashion no less frequently than one time per week.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2008-168** (CRAFTON) – This zoning text change would require the written consent of all property owners of record before the planning commission staff could accept an application to rezone the property. The planning commission currently requires signatures for zoning applications that are not initiated by a member of council or the planning commission. Rezoning requests initiated by councilmembers or the planning commission are usually for large areas with numerous property owners. This ordinance would prohibit the acceptance of any application to rezone property without the written consent of all property owners of record. The requirement for property owner consent could be waived upon adoption of a resolution of the council receiving twenty-seven affirmative votes.

The council office would caution the council against delegating authority for rezoning property to individual property owners. The Tennessee courts have held that zoning decisions are a legislative function and rest solely with the local legislative body. Further, the supermajority requirement for the resolution waiving the property owner consent is not consistent with the Charter provisions governing the rezoning of property.

This ordinance has been disapproved by the planning commission.

**ORDINANCE NO. BL2008-169** (COLE, BENNETT & BARRY) – This ordinance amends the zoning code provisions applicable to financial institutions and check cashing, title loan, pawnshops, and cash advance establishments. Although these types of establishments are separately regulated by state law, the zoning code currently makes no distinction between these uses. Check cashing, title loan, and cash advance establishments are all considered “financial institutions” under the zoning code, although this term is not defined in the code. Pawn shops are considered retail establishments. Financial institutions are currently permitted by right in most of the mixed-use, office, commercial, and shopping center districts. The use is permitted with conditions in the MUN, ON and CN districts, with a requirement that such establishments not exceed 2,500 square feet of floor area.

This ordinance simply makes a distinction in the zoning code between the financial institutions, check cashing, title loan, pawnshops, and cash advance uses. The definition of financial institution in the ordinance would include establishments that provide a variety of financial services, including banks, credit unions and mortgage companies. The definitions of check cashing, title loan, pawnshop and cash advance reference the state law provisions that regulate

these different types of establishments. The uses would be either permitted by right or permitted with conditions in the same districts as financial institutions and retail establishments currently are. Thus, although the different types of establishments will be considered separate uses, their treatment under the zoning code will remain the same.

The only real effect the council office sees this ordinance having would be to prohibit or limit pawnshops, check cashing, and cash advance establishments as part of an adopted specific plan (SP) district. Although some SPs, such as the SP for the Gallatin Pike corridor, prohibit pawnshops and title loan businesses, the zoning code does not presently include a definition of these types of uses.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2008-201** (STEINE & CLAIBORNE) - This zoning text change amends the code provisions pertaining to digital and LED display signs. Metro's current sign ordinance was approved in 1992 and has not been significantly modified since its adoption. The sign industry has evolved in recent years to include more and more electronic and digital technology, and Metro's sign ordinance does not adequately address some of this technology. Further, Metro's sign ordinance is not consistent with a recent change in state law pertaining to changeable message signs.

The code currently prohibits signs with graphics or displays that do not remain static for at least two seconds, except in the commercial attraction zoning district (Opryland area). A separate code provision prohibits billboards or signs in certain commercial districts "with lights or illuminations that flash, move, rotate, scintillate, blink, flicker or vary in intensity or color except for time/temperature/date signs." The existing code language has caused some confusion regarding digital billboards, as these are not prohibited video signs, but may be considered signs with lights or illuminations that move.

This ordinance deletes the rather antiquated language pertaining to signs with lights that "flash, move, scintillate, blink, and flicker". In its place, this ordinance would provide that video, continuous scrolling image, and animation signs are prohibited in all but the commercial attraction district. The ordinance would also increase the amount of time that digital or electronic signs must remain motionless from two seconds to eight seconds. Further, the ordinance provides that digital display billboards must be at least 2,000 feet apart. This ordinance would make the code consistent with the recent state law which requires images on billboards to remain motionless for eight seconds and requires that there be at least 2,000 feet of separation between digital billboards.

Although this ordinance is similar to Ordinance No. BL2007-152, which was deferred indefinitely by the council, there is one important distinction. Ordinance No. BL2007-152, as amended, would allow churches, schools, and community recreation centers to have LED signs in residential districts along arterial and collector streets. This ordinance, however, expressly prohibits LED signs in all residential districts.

This ordinance has been approved by the planning commission with certain recommended amendments, which are to be offered on third reading.

**ORDINANCE NO. BL2008-202** (COLEMAN) – This zoning text change would designate “religious institution” as a permitted use in the shopping center regional (SCR) district. The zoning code currently allows religious institutions by right in all agricultural, mixed-use, office, commercial, and industrial zoning districts, however the use is not permitted in the SCR district. The SCR district is intended for high intensity retail, office and consumer service uses, and includes areas around the major malls and shopping centers in Davidson County, such as Rivergate, Hickory Hollow, Green Hills, and Nashville West.

Although religious institutions would be permitted in the SCR district under this ordinance, any SCR property subject to a planned unit development (PUD) overlay that does not allow this type of use may require the individual PUD to be amended by the council before the facility could obtain a use and occupancy permit.

This ordinance has been approved the planning commission.

**ORDINANCE NO. BL2008-203** (GOTTO) – This zoning text change would add “rehabilitation services” as a permitted use in the agricultural (AG and AR2a) zoning districts. The zoning code defines rehabilitation services as the treatment for addictive, mental or physical disabilities on either a twenty-four hours a day or an outpatient basis. In February 2007, the council approved Ordinance No. BL2006-1260 to remove rehabilitation services as a permitted use in the AG and AR2a districts. The use has always been prohibited in the other residentially zoned districts. There are only a few rehabilitation services facilities located in the agricultural zoning districts, including Cumberland Heights on River Road.

After enactment of Ordinance No. BL2006-1260, a lawsuit was filed against the Metropolitan Government by an organization that had been seeking to locate a rehabilitation services establishment on AR2a property alleging that the ordinance violates the federal fair housing act. Subsequent to the filing of the lawsuit, the U.S. department of justice initiated an investigation of the Metropolitan Government and its land use policies to determine whether Metro is in violation of the fair housing act.

The department of law recommends that this ordinance be enacted to restore rehabilitation services as a permitted use in the agricultural districts to show that we are making a good faith effort to comply with the fair housing act.

This ordinance has been approved by the planning commission.