

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: May 5, 2009

**RE: Analysis for Ordinances Amending
the Zoning Code Text**

ORDINANCE NOS. BL2008-325, BL2009-410 & BL2009-416 – These three zoning text changes amend the code provisions pertaining to mobile vending activity. In January 2007, the council enacted Ordinance No. BL2006-1087, as amended, to designate mobile vending as a use permitted with conditions in the commercial zoning districts. The conditions require mobile vendors to be located within a permanent, enclosed structure. The ordinance exempted street vendors licensed by the county clerk, as well as mobile vendors selling only food items, living plants or agricultural products.

Ordinance No. BL2008-325 (Murray) would amend the definition of “mobile vendor” to exclude mobile vendors on Cleveland Street. This is a one mile street running between Dickerson Pike and McFerrin Avenue that is located solely within the 5th council district. There are currently six commercially-zoned properties on this street to which this ordinance would apply.

The planning commission disapproved this ordinance.

Ordinance No. BL2009-410 (Murray) would allow mobile vendors who are unable to comply with the indoor-only requirement to apply for a special exception from the board of zoning appeals (BZA) to engage in the outdoor vending activity. The code provides that a special exception permit is not to be considered an entitlement, and is only to be granted by the BZA if the applicant demonstrates that all of the required standards are met. In addition to the specific conditions applicable to the use, the BZA is to determine whether the proposed use will not “adversely affect other property in the area to the extent that it will impair the reasonable long-term use of those properties.”

The specific conditions that would apply to mobile vendors are as follows:

1. The hours of operation would be restricted to 7:00 a.m. to 6:00 p.m.
2. The mobile vending activity must be setback at least fifty feet from the public right-of-way and from any residential zoning district.

3. The mobile vending activity shall take place only along a collector street, not a residential or arterial street.
4. No loud speakers or public address systems would be permitted.

The BZA may also impose other reasonable restrictions necessary to protect the public health, safety and welfare.

This ordinance was deferred indefinitely by the planning commission.

Ordinance No. BL2009-416 (Claiborne & Bennett) amends the mobile vending provisions to exempt non-profit organizations engaged in occasional mobile vending activity as part of a fundraiser. Such tax exempt nonprofits would be allowed to engage in mobile vending activity outdoors, provided they have no more than two fundraising events per year, with each event not to exceed five days in duration.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2009-432 (DOMINY) - This zoning text change would eliminate the historic bed and breakfast overlay district and would make such use a special exception (SE) and permitted (P) use in certain zoning districts. Prior to August 2005, historic bed and breakfast establishments were permitted by special exception. In response to a particular establishment, the council enacted Ordinance No. BL2005-701 to remove historic bed and breakfasts from the jurisdiction of the board of zoning appeals and place it solely with the council through the creation of a new historic bed and breakfast homestay zoning overlay district.

This ordinance essentially reinstates bed and breakfast homestays as a special exception use in the residential and office districts, and as a use permitted by right in the mixed-use and commercial districts. The conditions for those districts in which the use would be a special exception are essentially the same as the conditions for the current overlay. The historic zoning commission must approve the existing structure, as well as any future exterior improvements. The property must be owner-occupied, contain no advertising, and restrict meal service to overnight guests only. The fire marshal must also certify that the structure is safe for operation as a bed and breakfast.

This ordinance was approved by the planning commission with a proposed amendment.