

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: September 7, 2010

RE: **Analysis for Proposed Charter Amendments, Bond Resolutions, and Amendments to the Zoning Code**

### **Charter Amendment Analysis**

There are seven resolutions that propose amendments to the Metropolitan Charter. The council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. The council has already used one of its two opportunities to place Charter amendments on the ballot this term.

Amendments approved by the council at the September 7<sup>th</sup> special council meeting would be included on the ballot for the November 2, 2010 gubernatorial election. Attached to this analysis is a document providing the text of all of the proposed Charter amendments.

**Resolution No. RS2008-431** (Gotto) proposes an amendment to the Charter to require council approval prior to the use of eminent domain to acquire interests in real property on behalf of the Metropolitan Government, or any of its departments, boards, commissions, or agencies. Technically, the council is already vested with the power of eminent domain, and no department can condemn property without the council's authorization. However, the council can and has delegated this authority to the Metropolitan development and housing agency (MDHA) through the adoption of redevelopment districts under state law.

Under this amendment, no Metro department or agency could commence condemnation proceedings after August 5, 2010, unless the council specifically authorizes the use of eminent domain to acquire the particular property by ordinance. This requirement would apply to any redevelopment plan or urban renewal plan adopted after August 5, 2010. Each new redevelopment plan would be required to include a provision specifically reserving the power of eminent domain to the council. The amendment further provides that the council may adopt ordinances to further the intent of the charter amendment and to aid in its implementation.

There is a proposed amendment changing the effective date to coincide with the November 2010 gubernatorial election and clarifying that the amendment would not apply to NES or the airport authority.

The charter revision commission recommended disapproval of this amendment.

**Resolution No. RS2009-989** (Crafton) proposes two amendments to the Charter to require a referendum election prior to the issuance of bonds or pledging Metro revenue for capital projects in excess of \$250 million. The Charter currently provides that a referendum election can be held for general obligation bonds upon the filing of a petition signed by six percent of the registered voters protesting the issuance of the bonds. This is the method used to challenge the issuance of the debt for the Titans stadium, which was ultimately approved by the voters. The Charter also provides that the council may call an election “for the purpose of ascertaining the will of the qualified electors” with respect to the issuance of any Metropolitan government bonds. However, no such mechanism for a referendum exists when the debt is to be in the form of revenue bonds issued by an instrumentality of the government, such as the sports authority or the convention center authority.

The first amendment included as part of this resolution would require a referendum prior to the issuance of any tax bonds or revenue bonds for the construction of an individual capital project with a total cost in excess of \$250 million. “Revenue” would include property taxes, sales taxes, hotel occupancy taxes, tourist accommodation taxes, and other fines and fees collected by Metro. This referendum requirement would not apply to the board of education, Nashville electric service, or for essential infrastructure projects of Metro water services or the department of public works.

The second amendment is broader than the first amendment in that it would require a referendum prior to the pledge of any Metro revenues for a capital project in excess of \$250 million, regardless of whether the Metropolitan Government is issuing the debt or not. The same exceptions as noted above would apply to this amendment.

There is a housekeeping amendment for one of the amendments correcting a typographical error.

Only one of the amendments should be submitted to the ballot, as they both deal with the same subject matter.

The charter revision commission recommended disapproval of these two proposed Charter amendments.

**Resolution No. RS2009-1020** (Wilhoite) proposes an amendment to the Charter to prohibit the members of council elected to serve on the planning commission and the traffic and parking commission from serving more than one consecutive two-year term on the same commission. The Charter currently does not place any limits on the number of two-year terms a council member can serve in these positions.

The charter revision commission recommended disapproval of this proposed Charter amendment.

**Resolution No. RS2010-1118** (Tygard) proposes an amendment to the Charter to allow wine sales in groceries county-wide if the Tennessee General Assembly enacts such legislation. The Charter currently prohibits any liquor stores from being located within the general services district (GSD). The Charter makes no distinction between the sale of wine and liquor, so in the event the Tennessee General Assembly enacted legislation allowing wine sales in groceries, such sales within the GSD would still be prohibited by the existing Charter language. This Charter amendment would allow groceries to sell wine within the entire area of the Metropolitan Government (assuming the state law was changed to allow retail food stores to sell wine). This Charter amendment would have no effect unless the Tennessee General Assembly enacted the necessary enabling legislation.

The charter revision commission recommended that this amendment be approved by the council.

**Resolution No. RS2010-1119** (Forkum) proposes to amend the Charter to allow Metro school teachers to teach in the community education program and to allow Metro employees to serve as part-time substitute teachers or coaches in the Metro public school system. The Charter currently prohibits employees from holding more than one position with the Metropolitan Government, except that school personnel can work for other departments in between school years. This precludes Metro employees, such as police officers, from serving as athletic coaches or substitute teachers while off duty. The language also prohibits Metro school teachers from teaching community education classes in the evenings.

This Charter amendment would create two new exceptions to address these situations. Certificated school personnel could be employed on a part-time basis to teach community education classes and Metro employees could be employed part-time by the board of education to lead, teach, or coach students in extracurricular activities and/or to serve as substitute teachers.

There is a proposed amendment that would clarify that elected officials would not be eligible to serve as part-time school employees, and would require the civil service commission to promulgate rules and regulations necessary for the implementation of the Charter amendment.

The charter revision commission recommended that this amendment (as amended) be approved by the council.

**Resolution No. RS2010-1270** (Tygard) proposes an amendment to the Metropolitan Charter to require council approval of department head salaries. The salary ranges for department heads are already included as part of the pay plan approved by the council, but the pay plan does not set specific salaries (other than for elected officials). Under this Charter amendment, the mayor would be required to submit the recommended salaries for all department directors appointed by the mayor not later than June 1 of each year to be effective the following fiscal

year. The council could (1) adopt the recommendations by a resolution receiving twenty-one affirmative votes; (2) amend the recommendation by making uniform modifications to all salaries; or (3) reject the recommendation. If the council rejects the mayor's recommendation, the mayor would be required to develop a new department head salary recommendation. This is the same process set out in the Charter for approval of the general pay plan. The previous fiscal year's department head salaries would remain in effect until a new proposal is adopted by the council.

The charter revision commission recommended disapproval of this proposed Charter amendment.

**Resolution No. RS2010-1318** (Ryman & Tygard) proposes an amendment to the Metropolitan Charter to require directors and assistant directors of Metropolitan Government departments, boards, commissions, and agencies to be residents of Davidson County. For many years, the Metro Code required that all employees be residents of the area of the Metropolitan Government. However, the council repealed that requirement in 1994 and replaced the residency requirement with one that required employees to be residents of the State of Tennessee.

This Charter amendment would require all existing and future directors, assistant directors, deputy directors, chiefs, assistant chiefs, and deputy chiefs of any department, board, commission, or agency of the Metropolitan Government created by the Charter or by ordinance, other than those who are employees of the electric power board, the metropolitan board of public education, or the airport authority, to be residents of the area of the Metropolitan Government and shall continue to reside therein as a condition of his/her employment. Persons currently serving in any of these positions that live out-of-county would have 180 days to establish residency within the area of the Metropolitan Government.

The United States Supreme Court has ruled that it is constitutional to require that employees of local governments be residents of the jurisdiction of the government.

There is a proposed amendment to extend the compliance period from 180 days to 365 days.

The charter revision commission recommended disapproval of this proposed Charter amendment.

### **Analysis of Bond Resolutions**

**RESOLUTION NO. RS2010-1361** (BARRY) –This resolution approves a loan agreement between the state school bond authority and the Metropolitan Government for qualified school construction bond funding in the amount not to exceed \$40,000,000. State law authorizes the Tennessee school board authority to issue “qualified school construction bonds” and loan the bond proceeds to local governments at low interest rates for the benefit of local public schools. The proceeds of these loans can only be used for the construction, repair, improvement, or equipping of public schools.

The funding for this loan is from the federal government through the American Reinvestment and Recovery Act (the federal economic stimulus program). Pursuant to the loan agreement, the Metropolitan Government agrees to pledge its full faith and credit and unlimited taxing power, as well as the unobligated state-shared taxes received by the Metropolitan Government, to cover the payments on the bonds and administrative expenses. The interest on the bonds will be reimbursed by the Metropolitan Government's portion of the stimulus funds received by the state for this program. The principal and upfront interest costs will be paid from the schools debt service fund. The Metropolitan Government agrees to indemnify the state school bond authority and the bond trustee, to the extent legally permissible, against any loss arising out of the acceptance of the funds or administration of the loan agreement.

These funds will be used for the following school capital projects approved as part of a previous capital spending plan:

- Chadwell Elementary Renovation
- Gateway Elementary Addition
- Gateway Elementary Renovation
- Litton Middle School Addition
- Litton Middle School Renovation
- Hermitage Elementary School Renovation
- Apollo Middle School Roof Replacement
- Haywood Elementary School Roof Replacement
- Pennington Elementary Roof Replacement
- McMurray Middle School Roof Replacement
- Murrell School Roof Replacement
- Cockrill Elementary School Roof Replacement
- Lake View Elementary Roof Replacement
- Stratford High School Roof Replacement
- Antioch High School Roof Replacement
- McGavock High School Roof Replacement

The projects must be completed within three years from the date of issuance of the bonds. The council approved a similar loan agreement in October 2009 with the state school bond authority in the amount of \$21,760,000 for the benefit of Metro schools.

**RESOLUTION NO. RS2010-1362** (BARRY) – This resolution authorizes the issuance, sale, and payment of general obligation refunding bonds in a principal amount not to exceed \$350 million. The primary purpose of this transaction is to achieve approximately \$23 million in debt savings during the years 2015 through 2019. In May 2010, the council approved the restructuring of \$190 million in Metro debt as part of a resolution authorizing the issuance of approximately \$750 million in general obligation improvement and refunding bonds. The purpose of the debt restructuring was to free up debt service dollars over the next couple of years to be used to pay a portion of the operational costs of the Metropolitan Government. This debt restructuring resulted in increased debt payments of approximately \$47.4 million to be made during fiscal years 2014 through 2020.

This resolution authorizes the issuance of up to \$350 million in series 2010D general obligation refunding bonds, which will refund six different bond series issued between 2002 and 2005.

This debt refunding does not extend the overall maturity of the bonds, but simply lowers the interest costs to the Metropolitan Government. The lead underwriter on the refunding bonds will be Jefferies & Company, Inc., with Morgan Keegan & Company, Inc., serving as the co-senior underwriter. In addition, five other banks will serve in a smaller underwriting capacity. Regions Bank is designated as the escrow agent for the bonds. The proceeds of the refunding bonds will be used to refund certain existing debt and to pay the costs of issuance. The resolution also approves the form of the preliminary official statement, as well as the bond purchase agreement and the escrow agreement.

The preliminary official statement provides that the Metropolitan Government does not intend to issue additional long term debt for capital projects during fiscal year 2010-2011. Metro does have the authority to issue up to \$375 million in new commercial paper, however, which is used to provide short-term financing for capital projects until the long-term bonds are issued.

### **Analysis of Zoning Text Amendments**

**ORDINANCE NO. BL2010-725** (HOLLIN) – This zoning text change amends the Metro Code to provide for the waiver of application fees for members of council requesting the rezoning of ten or more parcels from a specific plan (SP) zoning district to another base zoning district. In 2005, the council enacted an ordinance to provide that the zoning application fee may be waived for rezoning requests initiated by members of council in the following circumstances:

1. To rezone property from a greater intensity residential use to a lesser intensity residential use (i.e., an "R" district to an "RS" district); or
2. To rezone property from an office, commercial, or industrial district to a residential or residential single-family district; or
3. To apply the urban design overlay district, historic preservation district, neighborhood conservation overlay district, or urban zoning overlay district to the property.

This ordinance would extend the fee waiver provisions to apply to ten or more parcels being rezoned by a member of council from an SP district to another zoning district.

The planning commission voted to make no recommendation regarding this zoning text change on the grounds that this is a matter of council policy.

**ORDINANCE NO. BL2010-745** (DOMINY) – This amendment to the Metro zoning code would designate recreation center as a special exception use in the agricultural (AG and AR2a) zoning districts. "Recreation center" is defined in the zoning code as a community center, playground, park, swimming pool, and/or playing field available to the membership of a club or general public. This is a special exception use in all R, RS and RM zoning districts, but is currently prohibited in the agricultural districts.

In order to operate as a special exception use, the applicant must demonstrate to the board of zoning appeals that all of the required standards and regulations in the zoning code have been satisfied. The zoning code includes minimum setbacks for recreation centers. In addition, recreation centers must install landscape buffer screening and must have driveway access to a collector or arterial street.

The planning commission recommended approval of this zoning text change.

**ORDINANCE NO. BL2010-746** (PAGE) – This amendment to the Metro zoning code would require operators of amateur radio antennas (“ham radios”) to have a valid license issued by the federal communications commission (FCC) prior to the installation of a tower on the operator’s property. The zoning code permits amateur radio antennas in the residential and agricultural zoning districts as accessory uses provided the tower height, location, and setback requirements are met. This ordinance would add another requirement that the operator be licensed by the FCC.

The FCC requires radio operators to pass a test and obtain a license before operating on radio frequencies. However, the FCC does not regulate the radio tower the operator will use for transmission purposes. Under this ordinance, the operator would have to submit proof of a valid FCC license to the zoning administrator prior to constructing an antenna on the property. If the FCC license expires without being renewed, then the operator would have to remove the antenna at his/her expense.

The planning commission deferred consideration of this ordinance pending a review by the legal department as to whether the ordinance is preempted by state or federal law. Thus, this ordinance should be deferred until the November public hearing.