MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **November 16, 2010**

RE: **Analysis Report**

Balances As Of:	**11/10/10**	**11/11/09**
GSD 4% RESERVE FUND	***** $29,959,991	$24,450,556
GENERAL FUND UNDESIGNATED FUND BALANCE		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE		
	Unavailable	Unavailable

* Assumes estimated revenues in fiscal year 2011 in the amount of $20,681,297

– RESOLUTION ON PUBLIC HEARING –

RESOLUTION NO. RS2010-1441 (HOLLIN) – This resolution exempts Holland House Bar & Refuge located at 935 W. Eastland Avenue from the minimum distance requirements for obtaining a beer permit. The Metro code prevents a beer permit from being issued to an establishment located within 100 feet of a church, school, park, daycare, or one or two family residence. However, the code was amended in September 2010 to exempt restaurants that already have a state on-premises liquor consumption license from Metro's minimum distance requirements to obtain a beer permit upon the adoption of a resolution by the council. A public hearing must be held by the council prior to voting on this resolution.

– RESOLUTIONS –

RESOLUTION NO. RS2010-1415 (BARRY & FORKUM) – This resolution approves a third amendment to a contract between the Metropolitan board of health and SysTech International, LLC, for operation of the automobile emission testing program. In December 2006, the council approved the contract with SysTech, thus ending the contractual relationship with Envirotest Systems, which had been operating the program since 1990. At the time of the expiration of the former contract, Envirotest was charging $10.00 per test, with $1.80 going to the Metro health department to fund the air pollution program. The initial contract with SysTech provided that Metro was to receive $4.50 for each inspection, plus $7.25 for every vehicle inspected that exceeds a 2% increase in the number of vehicles inspected in the previous year. If the contract was to be extended past the 2012 deadline, Metro was to receive $5.00 per inspection under the terms of the original contract.

In June 2007, this contract was amended to reduce the inspection fee to $9.00, which also reduced the payment to the health department by one dollar. Under the existing terms of the contract, Metro is to receive $6.25 for every vehicle inspected that exceeds a 2% increase in the number of vehicles inspected in the previous year. The amendment also decreased the amount of the inspection fee after 2012 to $4.00. The contract was again amended in 2008 to add a liquidated damages provision to protect Metro against SysTech's failure to fulfill certain contractual requirements that it was not in compliance with at the time.

This third amendment would extend the term of the contract through June 30, 2017, and would provide that Metro would continue to receive $3.50 per inspected vehicle as opposed to $4.00. However, SysTech has agreed to provide some additional services including extension of the Saturday hours at the Antioch location, opening the Dickerson Road station on Saturday, and adding hours to the mobile test vans. This amendment also provides if the vehicle inspection program is revised in such a manner that would result in a reduction in the number of vehicles inspected (currently approximately 500,000 annually) by more than ten percent, then the amount of the fee submitted to Metro by SysTech will be reduced accordingly.

RESOLUTION NOS. RS2010-1442 & RS2010-1443 (BARRY & HODGE) – These two resolutions authorize the issuance of water and sewer revenue bonds to refund existing debt and to provide the long-term financing for improvements to the water and sewer system. In March 2009, the council approved Ordinance No. BL2009-407, commonly referred to as the Clean Water Infrastructure Program ordinance, to provide a water and sewer rate increase necessary to rehabilitate Metro's aging water and sewer infrastructure to meet federal and state environmental requirements. Subsequently, in October 2009, the council approved the issuance of water and sewer revenue bonds in the amount of $500 million and bond anticipation notes in the amount of $200 million for capital improvements to the water and sewer system. This enabled Metro water services (MWS) to issue commercial paper to commence work in furtherance of the clean water infrastructure program. These two resolutions allow for a refunding of a portion of the water and sewer outstanding debt and provide for the issuance of bonds to fund approximately $250 million in new projects.

Resolution No. RS2010-1442 approves a new "master" resolution that authorizes Metro, through supplemental resolutions, to issue water and sewer revenue bonds. The purpose of the new master resolution is essentially to give Metro more flexibility in issuing water and sewer debt. Much of the debt incurred by MWS in recent years has been through the state revolving loan fund and loans through the Tennessee local development authority. These loans prohibit Metro from issuing any debt that would be senior to the state loans. Thus, it is necessary that these loans be paid off in order to be able to issue new debt having a priority status.

The master resolution essentially sets the ground rules Metro has to follow when issuing water and sewer debt. For example, the resolution provides a mechanism for the use of credit facilities (bond insurance policies) and hedge agreements. However, the council would have to expressly authorize Metro to enter into agreements providing for the use of such mechanisms as part of a supplemental resolution. The master resolution also prohibits the issuance of additional bonds that would be superior to the outstanding bonds. Thus, this master resolution would be subordinate to the old senior bond resolution. The council office is of the understanding that the bonds issued under the old master bond resolution are to be paid off in 2015. All new debt issued would be issued under the new master resolution.

Resolution No. RS2010-1443 is a supplemental resolution to RS2010-1442 that authorizes the issuance and sale of water and sewer revenue bonds in multiple series in an amount not to exceed $400,000,000. The series 2010A bonds will be traditional tax-exempt refunding bonds with a likely principal amount of approximately $125 million. These bonds will be used to refund Metro's currently outstanding series 2002 bonds and to prepay Metro's outstanding loan agreements with the Tennessee local development authority. The series 2010B bonds, having an approximate principal amount of $150 million, will be taxable revenue bonds used to retire Metro's currently outstanding commercial paper and to finance new improvements to the water and sewer system. The 2010B bonds will be in the form of "Build America Bonds", which are taxable bonds that are authorized by the American Recovery and Reinvestment Act (the federal stimulus plan). Under this program, the federal government pays 35% of the interest payments on the bonds. Taxable bonds are issued at a higher interest rate, but the 35% subsidy is expected to result in a lower cost to Metro than issuing all tax exempt bonds. These are the same type of bonds that made up the majority of the convention center debt.

(continued on next page)

RESOLUTION NOS. RS2010-1442 & RS2010-1443 (continued)

The series 2010C revenue bonds will be used to finance approximately $100 million in new water and sewer capital projects. This bond series will be another type of Build America Bonds known as "Recovery Zone Economic Development Bonds". The only real difference between this bond type and the standard Build America Bonds is that the Recovery Zone bonds provide for an interest subsidy payment from the federal government of 45%, as opposed to 35%. Finally, the series 2010D bonds would provide approximately $20 million in straight taxable bonds to prepay a portion of the outstanding local development authority loans. The proceeds of the four series of bonds would also cover the issuance costs associated with the bonds.

Only revenues generated by water and sewer customers will be used to pay the obligations on these bonds. The bonds will not constitute a debt of the Metropolitan Government that would compel the use of sales or property tax revenues. This revenue pledge will be subordinate to the prior pledges of the water and sewer revenues for other outstanding bonds that are not being refunded.

RESOLUTION NO. RS2010-1444 (RYMAN) – This resolution approves an amendment to the interlocal agreement between the Metropolitan Government and the convention center authority (CCA) for the financial, administrative, and operational services for the existing convention center to clarify the permissible uses of the convention center fund balance. This agreement was approved by the council in June 2010 to enable the convention center authority to assume the responsibility for the current center, as well as oversee the construction of the new center. The agreement provided that the existing fund balance of the convention center commission was to be transferred to an account managed by the director of finance for use by the convention center authority.

After the May 2010 flooding, the Nashville Convention & Visitors Bureau (CVB) incurred significant unbudgeted expenses to relocate conventions booked at the Opryland Hotel and to provide shuttle services for the relocated conventions. The CCA recently approved a loan to the CVB in the amount of $300,000 from the existing convention center fund balance to help offset these CVB flood-related expenses. However, it is questionable whether the CCA has the legal authority to loan these funds without council approval.

This resolution amends the interlocal agreement to expressly authorize the CCA to provide a donation or loan to the CVB to assist with the expenses incurred by the CVB as part of its post-flood efforts. The amendment provides that any contract providing for a loan of the funds is to stipulate that no hotel occupancy taxes received from the Metropolitan Government for tourism promotion and marketing are to be used for repayment of the loan.

RESOLUTION NO. RS2009-1445 (BARRY & LANGSTER) – This resolution approves an annual grant in the amount of $126,216 from the state commission on children and youth to the juvenile court for juvenile accountability incentive block grant program services to enhance court staffing. These funds are federal pass through dollars that are used to fund two full-time community-based probation officers and partial funding for an intake probation officer in the juvenile court's diversion program. The term of the grant is from October 1, 2010, through September 30, 2011.

The juvenile court will be required to provide a cash match of $14,024 from its operating budget.

RESOLUTION NO. RS2010-1446 (LANGSTER & BARRY) – This resolution approves a bulletproof vest partnership grant in the amount of $33,902.85 from the U.S. department of justice to the Metropolitan Government. The grant funds will reimburse the police department for 138 bulletproof vests, to be divided among the police department, sheriff's office, parks department, and juvenile court. There is no contract associated with this grant. Rather, the grant consists of an email from the department of justice notifying Metro of the award.

RESOLUTION NO. RS2009-1447 (BARRY & LANGSTER) – This resolution approves the amount of the application fee required for non-taxi passenger vehicles for hire. In June 2010, the council enacted Ordinance No. BL2010-685 to regulate the use and operation of non-taxi vehicles for hire. The ordinance requires all companies operating non-taxi passenger vehicles for hire, as well as their drivers, to obtain licenses through the Metropolitan transportation licensing commission (MTLC), much in the same manner as taxicab companies and drivers are licensed. The ordinance, as amended, enabled the MTLC to set a permit fee subject to approval by resolution of the council.

The MTLC has established a nonrefundable fee for the certificate of public convenience and necessity of $200 for companies operating one to five vehicles, and $250 for companies operating more than five vehicles. This resolution simply ratifies the fee established by the commission.

RESOLUTION NOS. RS2010-1448 (BARRY & FORKUM) – This resolution appropriates additional grant funds from the Tennessee department of health and human services to the Metropolitan action commission (MAC) to provide meals and snacks for head start students. The budget ordinance appropriated $900,137 in state funds for this program as part of MAC's budget. However, the state has awarded an additional $17,854 to MAC, which must be appropriated by the council by resolution.

RESOLUTION NO. RS2010-1449 (BARRY & FORKUM) – This resolution approves an amendment to a low income home energy assistance program grant from the state department of human services to the Metropolitan action commission (MAC) to provide financial assistance with heating costs to eligible recipients. This resolution increases the amount of the grant by $1,950,897 for a new grant total of $4,952,278.

RESOLUTION NO. RS2010-1450 (BARRY & FORKUM) – This resolution approves a contract between the Metropolitan board of health and Vanderbilt University Medical Center to provide medical professionals to distribute antibiotics, vaccines, and antivirals (mass prophylaxis) in the event of a public health emergency. The health department will be responsible for obtaining the mass prophylaxis from the state and deliver it to Vanderbilt during a public health emergency. Vanderbilt will be responsible for distributing the prophylaxis, and will not receive any form of compensation for providing these services. Vanderbilt agrees to indemnify the Metropolitan Government from claims arising out of its performance of the contract. This contract is for a term of two years, but may be extended for two additional one-year terms.

RESOLUTION NOS. RS2010-1451 (FORKUM) – This resolution approves a business associate agreement between the board of health and Belmont University School of Pharmacy to prevent the disclosure of protected health information. This is the standard business associate agreement that all health department contractors enter in order to comply with HIPPA.

RESOLUTION NO. RS2010-1452 (MAYNARD & BARRY) – This resolution approves a grant in the amount of $7,000 from the state arts commission to the Metropolitan board of parks and recreation to supplement the Big Band dance program in Centennial Park. This program provides free big band dances to the public. The parks will use this funding for the purpose of continuing the dance program this year. There is a required local in-kind match of $7,000 to be provided by the parks department.

The council approved this same grant in September 2010, but apparently the state did not execute the previous contract.

RESOLUTION NO. RS2010-1453 (HODGE, BARRY & LANGSTER) – This resolution approves an agreement between the Metropolitan Government and the U.S. Department of the Army for a flood preparedness study. The study is to include interim flood inundation mapping of the Cumberland River and the development of flood preparedness information for the Mill Creek, Richland Creek, Whites Creek, Browns Creek, and the Harpeth River watersheds. The study is to result in the development of products that will assist in defining flooded areas and to relate flood forecasts to other points within a particular watershed. The total cost of the study is estimated to be $340,000, with the Department of the Army providing one-half of the cost and Metro providing the other half in the form of cash or in-kind contributions.

RESOLUTION NO. RS2010-1454 (BARRY & HODGE) – This resolution approves a cooperative agreement between the department of water and sewerage services and the U.S. department of interior – geological survey for an expanded streamflow monitoring program for fiscal years 2011 and 2012. Metro has participated with the federal government in this program for a number of years. The most recent extension of the program was approved by the council in May 2010 to provide streamflow monitoring at six sites and continuous water-quality monitors at four sites within the area of the Metropolitan Government.

Pursuant to this contract, Metro and the federal government will each contribute $102,360 for the expanded project. This will allow for the installation and monitoring of additional gauges in order to obtain better readings within the secondary waterways to help with our flood protection efforts. New gauges will be installed along the Cumberland River at Lock #2, K.R. Harrington, Dry Creek, and Whites Creek. Rain gauges will also be placed at select areas on Mill Creek and Seven Mile Creek, as well as the watersheds of Whites Creek, Browns Creek, Richland Creek, and either Dry or Mansker Creek. The project will also include $100,000 for interpretative mapping work. The term of the contract is from November 1, 2010, through October 31, 2011.

RESOLUTION NO. RS2010-1455 (HODGE & BARRY) – This resolution approves an agreement between the Metropolitan Government and the state department of transportation (TDOT) pertaining to the widening and relocation of three ramps at the interchange of I-40 with McCrory Lane in the Bellevue area, as well as a realignment and widening of McCrory Lane. The total cost of the project is estimated to be $8,311,514, with the state providing $4,000,000 and the developer, Nashville Biltmore, LP, providing the remaining funds. Metro will be acting as the local government project sponsor and contract manager but will not be contributing any funds for the project. This project must be completed not later than November 30, 2015.

Ordinance No. BL2010-791 on second reading approves a contract with Nashville Biltmore, LP pertaining to this project.

RESOLUTION NO. RS2010-1456 (JAMESON) – This resolution authorizes Corner Partnership, LLC, to install, construct, and maintain two signs over the right-of-way at 322 Broadway. The first sign will measure thirteen feet in height and extend four feet, three inches over the right of way. The second sign will extend five feet, four inches into the public right-of-way, with a total height of sixteen feet, five inches. The signs will advertise "Jimmy Buffett Margaritaville Restaurant & Bar". Corner Partnership has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the sign, and is required to post a $1 million certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party. Ordinance No. O87-1890 authorizes aerial encroachments to be approved by resolution rather than by ordinance.

RESOLUTION NO. RS2010-1457 (BARRY) – This resolution authorizes the department of law to compromise and settle the personal injury claim of Connie Powell against the Metropolitan Government for the amount of $9,000. On June 30, 2010, a Metro public works employee struck the rear of Ms. Powell's vehicle while she was stopped on Old Hickory Boulevard near Gallatin Road. Ms. Powell sustained a cervical strain, incurring medial bills totaling $4,177.99. The property damage portion of the claim in the amount of $2,756.17 has already been paid.

RESOLUTION NO. RS2010-1458 (BARRY) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government's property damage claim against Sally A. Deane for the amount of $9,921.73. On July 28, 2010, a Metro police officer was traveling north on Rivergate Parkway when Ms. Deane turned left into the side of his patrol car. This resolution accepts the full amount of the property damage to the 2008 Chevrolet Impala patrol car.

RESOLUTION NO. RS2010-1459 (BARRY) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government's claim against Dennis Hudson for the amount of $1,940.53. On January 15, 2010, a Metro health department employee was driving her personal vehicle while on Metro business. The Metro employee was stopped at a red light on Nolensville Road at the intersection of Allied Drive when she was struck in the rear by a vehicle owned by Mr. Hudson. The Metro employee was treated for a muscle strain in her lower back resulting in medical expenses and injury-on-duty (IOD) payments totaling $1,940.53. This resolution accepts the full amount of the medical and IOD expenses incurred by Metro.

RESOLUTION NO. RS2010-1460 (BARRY) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government's property damage claim against Shelly Murphy for the amount of $5,856.40. On January 11, 2010, a Metro police officer was stopped on an interstate exit ramp investigating a previous traffic accident when his patrol car was struck as part of a five car chain reaction collision initiated by Ms. Murphy. This resolution accepts the full amount of the property damage to the 2007 Chevrolet Impala patrol car, which sustained extensive damage to both of the rear quarter panels, the trunk, and the rear bumper.

RESOLUTION NO. RS2010-1461 (BARRY) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government's property damage claim against Natasha Ralston for the amount of $5,534.71. On May 21, 2010, a Metro fire department employee was driving a Metro SUV on Haywood Lane when Ms. Ralston pulled out in front of the Metro vehicle at the intersection with Haywood Court causing damage to the hood, fenders, and grill. This resolution accepts the full amount of the property damage to the Chevrolet Tahoe.

RESOLUTION NO. RS2010-1462 (BARRY) – This resolution authorizes the department of law to accept $8,648.28 in compromise and settlement of the Metropolitan Government's property damage claim against UtiliQuest. Metro has a contract with UtiliQuest to provide utility location services for the Tennessee One Call system. Under state law, anyone about to engage in any digging or excavation work must notify Tennessee One Call of their intent to dig. Tennessee One Call then notifies all utilities in the area of the request. The utility has 72 hours to locate the underground utilities in the area and mark them to prevent damage from the excavation.

UtiliQuest incorrectly marked an 8-inch sewer main located at 4210A Harding Place, which resulted in a contractor drilling into the line. The failure to identify the line caused $8,648.28 in damage. This settlement recoups the full amount of the damages incurred by Metro water services.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2010-734 (HOLLEMAN, JAMESON & COLE) – This ordinance amends the Metropolitan Code to provide free parking at parking meters for environmentally friendly vehicles. The Mayor's green ribbon committee on environmental sustainability 2009 report recommended that Metro provide free parking for clean technology vehicles, including those powered by electricity, electric hybrid, and biofuel. In an effort to implement this recommendation, this ordinance would provide free parking for any vehicle that has a certain minimum environmental performance score from the U.S. environmental protection agency (EPA). A vehicle's environmental performance score can easily be obtained by inputting the vehicle's information into the green vehicle guide located on the EPA's website.

This ordinance would require the county clerk to issue a sticker to vehicles eligible for the free parking upon the payment of a $4.00 processing fee. The county clerk's office will determine the vehicle's eligibility by using the guide on the EPA website. Vehicles possessing the sticker would be allowed to park for free for up to three hours at any parking meter in Nashville.

There is a proposed substitute for this ordinance that makes a number of changes. First, the substitute would clarify that the sticker must be obtained annually. Second, the annual sticker fee is increased to $5.00 and the ordinance specifies that the funds are to be divided among the county clerk and public works department to offset the expenses associated with the issuance of the sticker and enforcement. Third, the substitute specifies that vehicles cannot park longer than the maximum time limit stated on the meter. Finally, the substitute delays the effective date of the program until January 1, 2011, and adds a sunset provision.

ORDINANCE NO. BL2010-763 (GILMORE) – This ordinance amends the Metropolitan Code regarding the application of the noise ordinance to two small areas of downtown Nashville. The noise ordinance was amended by Ordinance No. BL2008-259 in September 2008 to add a "plainly audible" standard for determining violations and adding certain restrictions pertaining to motor vehicle noise. However, Ordinance No. BL2008-259 retained the exemption for the downtown area from the noise ordinance restrictions. Subsequently, a new noise ordinance for downtown was adopted pursuant to Ordinance No. BL2008-306. The new downtown noise ordinance established some restrictions on exterior speakers and set a decibel limitation on pre-recorded music, but exempted live music from the noise restrictions.

This ordinance would impose the "plainly audible" standard for properties within the following two zones:

- Zone 1 would include those properties located within the boundaries of Sixth Avenue North to the west, Union Street to the north, Fifth Avenue North to the east, and Church Street to the south.

- Zone 2 would include those properties located within the boundaries of Korean Veterans Boulevard to the north, Third Avenue South to the east, Lea Avenue to the south, and Fourth Avenue South to the west.

ORDINANCE NO. BL2010-770 (DOMINY, DUVALL & OTHERS) – This ordinance amends the Metropolitan Code to assign certain duties to the board of fair commissioners ("fair board") that would essentially require the fair board to continue to hold a state fair and other current uses at the fairgrounds.

The fairgrounds property is a 128-acre site located at 300 Rains Avenue in Council District 17. In 1909 the Tennessee general assembly enacted Chapter 490 to create a state fair board to manage property that had been conveyed to Davidson County. This property was leased to the state in 1911 for a 99 year term. However, in 1923, the general assembly enacted Chapter 112 to authorize the termination of the lease and to authorize the board of fair commissioners to use the property for a "fair or exposition for the benefit of the people". The Tennessee attorney general has opined that there are no deed restrictions on the property pertaining to use. Thus, the Metropolitan Government has fee simple title to the fairgrounds property.

When the city and county governments were consolidated in 1963, the Metropolitan Charter essentially re-established the board of fair commissioners and vested it with the power to perform all duties imposed on the board in the 1909 and 1923 state acts. The Charter further provides that the council can "assign duties" to the fair board by ordinance. This is the same language that is used throughout the Charter for various departments and agencies, including the auditorium commission, farmer's market, and the agricultural extension board. No additional "duties" have been assigned to the fair board to date, and the council office has been unable to locate any other prior ordinances that assigned duties to these other similarly situated commissions.

This ordinance would require the fair board to continue to hold a state fair at the existing fairgrounds site at least once a year for a minimum of six days. The ordinance would also require the fair board to allow the use of the property for recurring and occasional events including a monthly flea market, annual lawn and garden show, annual gem show, annual car show, motorsports, and other activities that took place at the fairgrounds during fiscal year 2009-2010. The ordinance further states that the fair board would be prohibited from selling or leasing the fairgrounds property unless other suitable property is acquired by the board and adequate facilities have been constructed on the new site for the fair and all of the other events held at the current fairgrounds, including an expo center and race track. If the fair board is unable to continue its responsibility to hold a state fair, it must subcontract with a nonprofit organization subject to the approval of the Council.

This ordinance does not provide a mechanism for funding these fairgrounds operations in the event the revenues generated by the facilities are insufficient to cover the expenses. Presumably, the council would need to make a supplemental appropriation from the undesignated fund balance of the general fund in the event of a shortfall at the fairgrounds once the fairgrounds reserve fund has been depleted. The ordinance does make reference to a property tax that was authorized in the 1923 act for the sole purpose of holding a state fair. This property tax levy was increased in 1925 to "two-tenths of a mill". To calculate this property tax, the assessed value of the property would be multiplied by the mill rate and then divided by 1,000. According to the assessor's office, this would generate approximately $3.5 million per year for the fair. Since the charter specifies the property taxation method for the Metropolitan Government and provides that only the council can set the tax levy, the fair board (continued on does not have the authority to re-instate the tax. To the extent the fair tax is still a viable taxation mechanism, it would require additional council action before such a tax could be collected. Further, assuming the fair board identified another site to move the fairgrounds (continued on next page)

ORDINANCE NO. BL2010-770 (continued)

activities as contemplated by the ordinance, there are currently no capital funds available to acquire the property or to construct the race track and expo center, and these projects are not currently included in the capital improvements budget.

It is also important to note that the 2010-2011 capital spending plan approved by the council in September 2010 through the adoption of Resolution No. RS2010-1363 included $2 million for the initial development of a park on a 40-acre portion of the fairgrounds site, a portion of which is currently used for parking. Although the appropriation of this funding does not obligate the administration to construct the park, Metro has the legal authority to commence work on the project notwithstanding the provisions of this ordinance.

There are a number of legal and technical problems with this ordinance in its present form. First, it would be more appropriate for this ordinance to be codified in the Metro Code title applicable to boards and commissions rather than the streets, roads, and public places section. The second issue concerns the requirement in the ordinance that the fair board "lease all or part" of the fairgrounds property to make the property available for the ancillary uses such as the flea market, garden show, etc. While the 1923 act uses the word "lease" in describing how the property could be used for other amusement purposes, the fair board does not actually enter into lease agreements for these purposes. Rather, the fair board enters into license agreements with vendors. Third, the ordinance would prohibit the fair board from leasing or selling the fairgrounds property unless property of a similar size, location, and value is acquired by the fair board in fee simple ownership. This is problematic because the fair board, unlike the sports authority and the convention center authority, does not and cannot actually own property in fee simple ownership. Rather, all such property must be owned in the name of the Metropolitan Government pursuant to the Metro Charter. Even the 1923 state act references the fairgrounds property as only being under the control of the fair board. Further, the fair board does not have the authority to sell or transfer the fairgrounds property in the manner contemplated in this ordinance. Only the council can authorize the sale or transfer of government-owned property.

These issues should be addressed by amendment prior to the bill being approved on second reading.

The director of finance has refused to certify that funds are available for this ordinance. A copy of the finance director's letter is attached to this analysis.

ORDINANCE NO. BL2010-784 (HOLLIN, CLAIBORNE & OTHERS) – This ordinance amends the zoning code to allow for the relocation of nonconforming uses upon approval by the BZA. The version of the bill as filed would have potentially led to a number of unintended consequences, as there was no clear guidance given to the BZA to determine whether a nonconforming use should move, and no limitation on whether a new nonconforming use could move to a site a previous nonconforming use had moved from. In order to address these issues, the planning department prepared a substitute bill prior to consideration by the planning commission.

The substitute ordinance considered by the planning commission provides that nonconforming uses within a zoning district requiring a final site plan (i.e., specific plan districts, downtown code district, and certain overlay districts) may be relocated elsewhere within the same zoning district if: (1) the BZA determines that the relocation is necessary to facilitate redevelopment of the

(continued on next page)

ORDINANCE NO. BL2010-784 (continued)

current location of the nonconforming use; (2) the property owner commits to preventing any use on the current property that is not in conformance with the zoning standards in effect at the time of the relocation; (3) the new location is no less compatible with surrounding land uses than the existing location; and (4) the new location conforms to all the standards of the current zoning other than use. The property owner would be required to record a deed restriction with the register of deeds to this effect prior to the issuance of any permits.

The council office would point out that this ordinance is a significant change in land use policy. The ordinance would essentially grant additional rights to nonconforming uses beyond what even the generous state law provisions allow. However, the council office sees no problem with the concept of the ordinance from a legal standpoint.

This ordinance has been approved by the planning commission, as substituted. However, the council office is of the understanding that the planning department is working on another version of the ordinance. This ordinance may need to be referred to the planning commission, depending on the extent of the changes between the substitute considered by the planning commission and the substitute submitted to the council.

ORDINANCE NO. BL2010-787 (GILMORE, JAMESON & MAYNARD) – This ordinance approves a vacant property exchange between the Metropolitan development and housing agency (MDHA) and the Metropolitan board of parks and recreation to facilitate the use of the property located behind Lockeland Design Center on Woodland Street as a public park. MDHA currently owns the property behind the school located at 1810 Woodland Street. In order to obtain this property for park purposes, this ordinance would permit the transfer of William Edmonson Park, located at 1642 Charlotte Avenue, to MDHA who has agreed to maintain the park property as green space for a minimum of fifty years. In turn, MDHA will convey the Woodland Street property to Metro for use by the board of parks and recreation.

Future amendments to this ordinance may be approved by resolution. This ordinance has been approved by the board of parks and recreation and the planning commission.

ORDINANCE NO. BL2010-788 (MAYNARD, JAMESON & OTHERS) – This ordinance amends the Metropolitan Code to provide a discount for development permit fees for workforce housing developments. This ordinance, modeled after a program in the City of Oak Ridge, would provide a limited incentive to developers who choose to construct single and multifamily units to be sold or rented at a certain price point. As written, the ordinance would provide a twenty-five percent discount or credit on water/sewer capacity charges and electrical, plumbing, gas/mechanical, and building permit fees. The ordinance defines workforce housing as housing that is either (1) sold at or below 2 ½ times 95% of the median family income for Davidson County as established by the U.S. department of housing and urban development $64,025; or (2) housing rented at an annual rental amount for at least five years that is at or below 30% of 95% of the median family income as established by the U.S. census bureau. The median family income according to HUD is currently $64,025. The median family income is for Davidson County is $59,614 based on the census bureau 2008 figures. This means that the current price point to obtain the fee reductions under this ordinance would be not more than $152,059, or a monthly rental not to exceed $1,400.
(continued on next page)

ORDINANCE NO. BL2010-788 (continued)

There is an amendment for this ordinance that reduces the rental price point and deletes the provisions applicable to the water/sewer capacity fees. Providing a discount for water/sewer fees would likely violate the covenants of the bonds issued for improvements to the system.

ORDINANCE NO. BL2010-789 (FORKUM & RYMAN) – This ordinance amends the Metropolitan Code to require that street name changes be submitted to the Metropolitan historical commission for review prior to consideration by the council. The code currently provides that street name change ordinances must be submitted to the planning commission and the emergency communications district to obtain a written recommendation approving or disapproving of the name change. This ordinance would require street name change ordinances to also be referred to the historical commission for review as to whether there is any historical significance associated with the existing street name. The historical commission is to provide a written report to the council at least one week prior to consideration of the ordinance on third reading.

ORDINANCE NO. BL2010-790 (HODGE & BARRY) – This ordinance continues the current ten percent user surcharge to fund the operations, capital improvements, and debt obligations of the department of water and sewerage services related to improvements and extensions of the water and sewer system. Ordinance No. 70-1266, approved by the council in November 1970, authorized the Metropolitan Government to enter into contracts with the state of Tennessee to secure federal and state funds for the purposes of making improvements to Metro's sewer system. As contemplated by state law at the time, Ordinance No. 70-1266 also authorized a ten percent "state sewer user fee" to be charged to sewer customers. This sewer user fee enabled Metro to participate in a sewage treatment works loan program administered by the state.

Resolution Nos. RS2010-1442 and RS2010-1443 would authorize the issuance of new and refunded debt that would essentially pay off the outstanding state loans and negate our participation in the state sewage treatment works loan program. Therefore, it is necessary that this user surcharge be continued by ordinance if the department is to continue to have this source of revenue. Under this ordinance, the ten percent fee will continue to be charged to the same customers that are currently paying the fee, but the permitted use of the revenues is broadened to include the funding of all water and sewer operations, capital improvements, and debt obligations related to improvements, alterations, and extensions of the water and sewer systems.

ORDINANCE NO. BL2010-791 (MITCHELL, HODGE & BARRY) – This ordinance approves a contract between the Metropolitan Government and Nashville Biltmore, LP pertaining to the widening and relocation of three ramps at the interchange of I-40 with McCrory Lane in the Bellevue area, as well as a realignment and widening of McCrory Lane. The total cost of the project is estimated to be $8,311,514. Metro will be acting as the local government project sponsor and contract manager but will not be contributing any funds for the project. This agreement references another contract between Metro and the state department of transportation (TDOT), which is the subject matter of Resolution No. RS2010-1455, that would provide $4 million of the project cost in state and federal funds. Nashville Biltmore would be responsible for providing the remainder of the project funding and will be required to provide a revolving account with a total deposit over the life of the project of $8,311,514. Once Metro (continued on next page)

receives the state and federal portion of the funding, it will deposit said amounts into the revolving account. Nashville Biltmore will also be required to provide Metro with an irrevocable letter of credit in the amount of $4,311,514 to secure the company's share of the project costs. In the event the state or federal funds are ever reclaimed, Nashville Biltmore agrees to hold the Metropolitan Government harmless as to any claims seeking such funds. Nashville Biltmore will also be required to employ a construction engineering and inspection services team that is agreeable to both Metro and TDOT, and will dedicate all right-of-way necessary for the project.

The term of the contract is from its effective date until November 30, 2015, or the project completion date, whichever is sooner.

– BILLS ON THIRD READING –

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.

This ordinance has been approved by the planning commission.

SUBSTITUTE ORDINANCE NO. BL2010-762 (HUNT) – This ordinance amends the Metro Code prohibition on high grass, weeds, and debris to eliminate the requirement that the health department send a notice of violation for repeat offenders. The current excessive growth ordinance provides that all exterior property shall be maintained free from weeds in excess of twelve inches. "Weeds" are defined as all grasses, annual plants and vegetation, other than trees, shrubs, cultivated flowers, ornamental grasses and gardens.

One major issue impacting the enforcement of the high grass code provisions stems from the fact that it is often difficult to serve owners of vacant property or out-of-town property owners. This substitute ordinance provides that in the event notice is served on a property that appears vacant, abandoned, or the owner is otherwise unable to be found or refuses to accept service, and the condition has not been remedied within ten days (or more than one violation has been committed within thirty days), Metro would have the authority to re-inspect the property and make a determination that there has been a repeat violation. Any repeat violation found will qualify as an ongoing public nuisance and the department of health, department of codes, or the metropolitan beautification and environment commission would be authorized to forego the issuance of notice and immediately seek judicial relief.

ORDINANCE NO. BL2010-769 (COLEMAN, GILMORE & BARRY) – This ordinance approves a license agreement between the Metropolitan Nashville public schools (MNPS) and Hickory Hollow Mall Limited Partnership for the use of 6,486 square feet of space to serve as the temporary location for the Academy at Opry Mills for the 2010-2011 school year. In December 2009, the council approved a lease for space at Opry Mills Mall for the operation of an adult high school program known as the Academy at Opry Mills. The Academy at Opry Mills is a program specifically to serve young adults that dropped out of high school in their senior year. The program enables these students to continue outside employment while working toward obtaining their high school diploma in a non-traditional school setting.

(continued on next page)

ORDINANCE NO. BL2010-769 (continued)

Since Opry Mills was substantially damaged by the May 2010 flooding, it was necessary for MNPS to secure a temporary location for the school during the 2010-2011 school year. Pursuant to this license agreement, MNPS will be able to use this space for the school until May 31, 2011. MNPS will not be charged any rent for the premises, but will be responsible for making monthly utility payments of $884 and HVAC payments of $1,549.

This agreement has been approved by the planning commission. Future amendments to the agreement may be approved by resolution.

ORDINANCE NO. BL2010-782 (GOTTO) – This amendment to the Metro zoning code would expand the number of zoning districts in which personal care services are permitted by right. Personal care services include fitness centers, spas, tanning salons, beauty and barber care, and dry cleaning and laundry services. These uses are currently permitted by right in the ORI (office and residential intensive), mixed-use, commercial, and shopping center districts, and as an accessory use in two industrial districts. This ordinance would expand personal care services as a permitted use in the office neighborhood (ON), office limited (OL), office general (OG), and office residential (OR) zoning districts.

This ordinance has been approved by the planning commission.