

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **December 21, 2010**

RE: **Analysis Report**

Balances As Of:	<u>12/15/10</u>	<u>12/9/09</u>
<u>GSD 4% RESERVE FUND</u>	* \$29,959,990	\$24,450,556
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$34,801,459	\$25,156,861
USD	\$24,263,010	\$22,180,965
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	\$27,099,790	\$27,354,208

* Assumes estimated revenues in fiscal year 2011 in the amount of \$19,444,805

– RESOLUTION ON PUBLIC HEARING –

RESOLUTION NO. RS2010-1483 (HOLLEMAN) – This resolution exempts Park Cafe located at 4403 Murphy Road 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. RS2010-1465 (CRAFTON) – This resolution removes the members of the board of fair commissioners. The Metropolitan Charter provides that members of boards and commissions may be removed by a three-fourths vote of the entire membership of the council. The current five members of the fair board are Ned Horton, Alex Joyce, Charles Sueing, Katy Varney, and James Weaver. Rule 44 of the council rules of procedure requires that a resolution removing a member of a board or commission state the reasons or grounds for such removal. The reason cited in this resolution for the removal of the fair board members is the board’s decision concerning the discontinuation of the state fair and the other activities at the fairgrounds property.

Pursuant to Rule 44, each of the five fair board members will have the opportunity to address the full council before a vote is taken on the resolution.

RESOLUTION NO. RS2010-1484 (COLEMAN & BARRY) – This resolution determines to issue \$1,000,000 in GSD general obligation bonds to provide funding for the Metropolitan Government’s share of the land acquisition and construction of a Nashville State Community College campus in the Antioch area. State law allows local bond funds to be used for joint public works projects with the state. The state law definition of “public works project” includes all types of schools. This resolution will enable Metro to pledge up to \$1 million in commercial paper as matching funds for the project. This \$1 million match is contingent upon the approval of Nashville State’s application to receive \$7,078,742 in funding from the Tennessee Board of Regents for the project. If the state funding for the project fails to materialize, this capital project could be “de-authorized” by the council at any time.

As the council is aware, all capital improvements projects must be included as part of the capital improvements budget before any expenditure for the construction of the project can be authorized by the council. This project is not specifically provided for in the capital improvements budget, but the charter does provide a mechanism for amending the capital improvements budget during the fiscal year. The amendment must be initiated by the mayor and approved by a two-thirds vote of the council. This resolution is to be deferred until the second meeting in January, at which time an amendment to the capital improvements budget will be considered by the council. The state has confirmed that this delay will not impact the state funding for the new campus.

RESOLUTION NO. RS2010-1485 (BARRY & LANGSTER) – This resolution approves an intra-governmental loan in the amount of \$5 million from the Metropolitan Government to the Metropolitan development and housing agency (MDHA) for the We Are Home Program. As provided in Resolution No. RS2010-1487, the Metropolitan Government will be the recipient of \$10,731,831 in community development block grant funding that is to be used for this program. Due to the delay in the amount of time it will take to actually receive the federal funds, it is necessary that MDHA obtain a short-term loan to allow the We Are Home Program to continue to operate in the interim. This program, which is administered by the Housing Fund, provides grants and loans to flood victims to help them repair their flood-damaged homes. It is anticipated that the federal funds will be disbursed not later than February 2011.

Pursuant to this agreement, Metro will loan MDHA \$5 million from the undesignated fund balance of the general fund. MDHA agrees to repay the loan within 30 days of receiving the federal grant funds. MDHA is granting a security interest in the grant funds to secure repayment of the loan, to the extent permitted by federal law. This would be a no interest loan.

There is an amendment for this ordinance substituting the loan agreement to reflect a minor change in the pledge provisions.

RESOLUTION NO. RS2010-1486 (HARRISON, LANGSTER & OTHERS) – This resolution authorizes the mayor to submit the annual update to the 2010-2015 consolidated plan for housing and community development programs for the Metropolitan Government to the U.S. department of housing and urban development (HUD). The five year consolidated plan is prepared by the Metropolitan development and housing agency (MDHA) and is to be administered by MDHA. The plan includes the allocation of funds received from HUD for community development block grants (CDBG), the HOME investment partnerships program, the emergency shelter grant program (ESG), and the housing opportunities for persons with AIDS (HOPWA). The plan update provides the planned allocation of funding for program years 2011 and 2012 as follows:

CDBG funds are based on federal funding in the amount of \$5,393,336. The largest portion of the CDBG funds are to be spent on a neighborhood improvement program (\$800,000), a community economic development program (\$400,000), a community services program (\$735,000), and a homeowner emergency repair program (\$1,938,336). The actual expenditure of CDBG funds will be submitted to the council for approval by resolution.

HOME funds are to be allocated for homeowner rehabilitation (\$350,000), rental rehabilitation (\$150,000), affordable housing program (\$1,415,718), community housing and development organizations (\$1,008,000), and general administration of the program (\$340,000).

ESG funds (\$218,915) are allocated to local homeless shelter providers to help cover operational expenses and essential services. Local matching funds required under this program must be provided by the local non-profits that participate in the program.

The **HOPWA** program (\$903,441) provides housing related assistance for low-income persons with AIDS and their families. The resolution expressly provides that none of these funds will be used for any property acquisition involving the use of eminent domain.

RESOLUTION NO. RS2010-1487 (HARRISON, HOLLIN & OTHERS) – This resolution authorizes the mayor to submit an action plan for community development block grant (CDBG) disaster recovery funds to assist with recovery needs as a result of the May floods. The U.S. department of housing and urban development (HUD) has made \$10,731,831 in funds from the 2010 federal supplemental appropriations act available to the Metropolitan Government for disaster recovery. In order to receive the funds, Metro must first submit an action plan describing how the funds will be used to address Metro’s housing, infrastructure, and economic revitalization needs as a result of the flood.

The Metropolitan development and housing agency (MDHA) will be the lead agency responsible for implementation of the action plan since it already administers the five year consolidated plan for housing and community development programs. The highest priority in the plan will be to help those who sustained home damage make the repairs needed for their homes. Funds will be available to persons who have identified needs that have not otherwise been met by federal funds or insurance. \$9,900,000 will be allocated for housing activities, which includes a reimbursement to Metro of the \$5,000,000 loan that is the subject matter of RS2010-1485. Assistance will be made available through the We Are Home Program in the form of (1) a \$10,000 grant; (2) a zero percent due on sale loan up to \$20,000; and/or (3) a low interest monthly payment loan. The plan also includes provisions for the long-term recovery of households, restoration of infrastructure, and economic revitalization.

RESOLUTION NO. RS2010-1488 (BARRY & LANGSTER) - This resolution appoints Dr. Amy R. McMaster as the medical examiner for the Metropolitan Government. Pursuant to state law, the medical examiner must be appointed by the mayor, subject to approval by the council. Dr. McMaster is taking the place of Dr. Bruce Levy, who resigned earlier this year after being arrested for drug possession. Dr. Levy had served as the Metro medical examiner since 1997. Like Dr. Levy, Dr. McMaster will not be an employee of the Metropolitan Government. Rather, she is employed by Forensic Medical Management Services, which is the private entity that has the contract for medical examiner services in Metro.

State law requires that a convention of physicians be formed to recommend the medical examiner to the mayor. A convention of physicians unanimously recommended that Dr. McMaster be appointed as the medical examiner, who has been serving in this capacity on an interim basis since the resignation of Dr. Levy. Dr. McMaster received her Doctor of Medicine degree from Meharry Medical College in 1996 and completed a fellowship in forensic pathology at the Miami/Dade County medical examiner’s office. She has worked in the Davidson County medical examiner’s office since 2002.

RESOLUTION NO. RS2010-1489 (BARRY) - This resolution approves a grant in the amount of \$4,595,038.04 from the state emergency management agency to the Metropolitan Government for the reimbursement of flood-related expenses. This is the first installment of federal funds the Metropolitan Government will be receiving through the state for flood repairs and replacement of equipment and facilities. The majority of these funds will be used to reimburse Metro for expenses incurred by the public works department as part of the initial clean-up effort after the flood. A copy of a spreadsheet detailing the amount of reimbursement for each department is attached to this analysis. There is a required local match of \$241,844.10. The term of the grant is from April 30, 2010 through April 29, 2015.

RESOLUTION NO. RS2010-1490 (LANGSTER & BARRY) – This resolution approves an amendment to a grant from the state board of probation and parole to the state trial courts to fund the Davidson County community corrections program. This program provides alternative punishments for non-violent offenders consisting of offender supervision, residential programs, and day reporting center programs. The goal of the grant is to limit the recidivism rate to 10% for those offenders completing the community corrections program. This amendment increases the amount of the grant by \$147,876 for a new grant total of \$4,245,336.

RESOLUTION NO. RS2010-1491 (LANGSTER & BARRY) - This resolution approves a grant in the amount of \$982,000 from the state department of correction to the state trial courts for the expenses of housing and treating non-violent felony offenders with mental health and substance abuse disorders. These funds will be used to support the state trial courts' drug court program. The majority of these funds will be used to fund the staff positions assigned to the program, with the remaining funds used for the housing costs of the program participants. The term of the grant is from July 1, 2010 through June 30, 2011.

RESOLUTION NO. RS2010-1492 (BARRY, WILHOITE & LANGSTER) - This resolution approves a grant in the amount of \$250,000 from the Southeast Energy Efficiency Alliance to the mayor's office of environment and sustainability to increase residential energy building retrofits. These funds will be used to design a marketing and community outreach plan to increase awareness about the Tennessee Valley Authority's in-home energy evaluation program. This program allows homeowners to obtain an energy evaluation at a subsidized rate of \$150, which is reimbursed if the recommended improvements totaling at least \$150 are made by the homeowner. Metro will use these grant funds to subsidize the upfront cost to the homeowner for the energy evaluation. After the evaluation of the in-home program, the mayor's office of environment and sustainability will use the grant funds to determine the feasibility of implementing a similar program in the commercial sector. The term of the grant is from June 1, 2010 through June 2, 2013.

RESOLUTION NO. RS2010-1493 (BARRY) – This resolution approves a contract between the Metropolitan board of health and Tennessee State University (TSU) to provide funding for consultation and data collection related to the Communities Putting Prevention to Work grant. Nashville was one of 44 communities to receive this federal grant, with a purpose of implementing a campaign to facilitate healthy eating and active living. The health department will contract with TSU to provide consultation on survey questions, sampling design, and data collection for the healthy eating/active living campaign. This will include training interviewers to conduct the surveys. TSU will be paid an amount not to exceed \$57,134 for its services. The term of the contract is from August 1, 2010 through July 31, 2012, but can be terminated by Metro without cause with 30 days written notice to TSU.

RESOLUTION NO. RS2010-1494 (BARRY & LANGSTER) - This resolution appropriates \$5,963,400.00 from the general fund reserve fund (4% fund) to eight departments. Four percent funds may only be used for the purchase of equipment and repairs to buildings. These projects were included as part of the mayor's capital spending plan, but held until adequate funding was in place. The balance in the general fund reserve fund as of December 15, 2010, was \$29,959,990. This consists of unrealized revenue for fiscal year 2010 in the amount of \$19,444,805. The resolution provides that "The Director of Finance may schedule acquisitions authorized herein to ensure an appropriate balance in the Fund." Copies of the supporting information sheets required by Ordinance No. O86-1534 are attached to this analysis. The following departments and agencies are to receive funding:

Finance - \$2,500,000 for various building and property repairs and replacement equipment as a result of the May flood.

Fire - \$700,000 for miscellaneous equipment and facility maintenance.

General Services - \$200,000 for replacement equipment for the office of fleet management.

Juvenile Court Clerk - \$300,000 for new document scanning equipment.

Parks and Recreation - \$1,180,000 for various roofing and building repairs, equipment, repair of the Rose Park swimming pool, and a cooling tower, restroom upgrades, and parking lot lighting at the Nashville Zoo.

Police - \$700,000 for new and replacement equipment and supplies.

Public Defender - \$8,400 for new laptop computers

Public Library - \$375,000 for various new equipment and supplies.

RESOLUTION NOS. RS2010-1495 through RS2010-1498 – These four resolutions authorize the installation and maintenance of aerial encroachments within the Metropolitan Government right-of-way. The applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachments, and are 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. RS2010-1495 (Bennett) authorizes U.S. Bancorp to install, construct, and maintain an awning extending six feet over a pedestrian easement at 4601 Gallatin Pike.

Resolution No. RS2010-1496 (Langster) authorizes HCA, Inc., to install, construct, and maintain an overhead walkway connector extending over the right-of-way at Murphy Avenue for Centennial Medical Center. The resolution also approves a canopy extending over the 23rd Avenue right-of-way. These encroachments are necessary for the construction of a new 140,000 square foot medical office building at 2222 Murphy Avenue. The overhead walkway will span Murphy Avenue between 22nd and 23rd Avenue North.

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RESOLUTION NOS. RS2010-1495 through RS2010-1498 (continued)

Resolution No. RS2010-1497 (Jameson) authorizes Rick's Ranchwear (Boot Country) to install, construct, and maintain a sign extending sixty inches into the right-of-way at 304 Broadway. The sign will consist of a three dimensional painted fiberglass boot mounted on the wall nine feet above the sidewalk.

Resolution No. RS2010-1498 (Jameson) authorizes Sedona Sun, LLC, to install, construct, and maintain a 3'4" x 9'4" blade projection sign over the right-of-way at 423 Broadway for Troubadours. The sign will have a neon illumination with a steel and aluminum double-faced frame.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2010-768 (STANLEY) – This ordinance amends the official street and alley acceptance and maintenance map to accept Hoggett Ford Road as a public road. A portion of Hoggett Ford Road in council district 14 is currently a private street serving several residential properties that, according to the recitals of the ordinance, have inadequate water service. The purpose of this ordinance is to make this a public street so that Metro water services would have the authority to consider upgrading the water service in the area if it chose to do so.

The Metropolitan code includes a process for having private streets accepted for public maintenance. The code requires that the following criteria be satisfied before accepting a private street by ordinance:

1. An adequate right-of-way with a minimum width of 50 feet be dedicated and recorded by plat to the Metropolitan Government, free of all encumbrances.
2. A level roadway pavement course at least 22 feet in width has been laid and is in good condition.
3. Adequate drainage facilities must be in place to maintain safe vehicular travel conditions. Plans certified as to location by a registered land surveyor and as to design and construction by a professional engineer must be submitted and approved by the department of public works prior to acceptance of the road.
4. The road must be a minimum of 600 feet in length.
5. The road must serve a minimum of six (6), and a maximum of twenty (20) residences; and all such residences must be single family homes or duplexes.
6. The road must meet design standards for "local rural roads" specified in the edition of the "Policy on Geometric Design of Highways and Streets" of the American Association of State Highway and Transportation Officials current as of the date of acceptance of the road by the Metropolitan Government.
7. The road must have only one terminus on an existing public road as of the date of acceptance.
8. The director of the department of public works must determine that the acceptance is consistent with the health, safety and welfare of the citizens of Davidson County and consistent with acceptable engineering standards of practice.
9. Adequate funding for the maintenance of the road and for appropriate signage must have been appropriated.

Hoggett Ford Road meets some, but not all of the criteria set forth above. This ordinance would accept the roadway as a public street notwithstanding the requirements of the Metro code to the contrary. The ordinance provides that the council deems it to be in the best interest of the Metropolitan Government of Nashville and Davidson County that Hoggett Ford Road be accepted as public roadway in its present condition.

The director of finance has refused to certify that funds are available for this ordinance due to its precedent setting nature and that the "potential financial impact to the City of action would be significant and greatly exceed funds available for general road maintenance."

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2010-795 (EVANS & BAKER) – This ordinance accepts a contribution in an amount up to \$200,000 from The Parkes Companies, Inc., for traffic calming and beautification projects in the Annex Avenue and Hillwood neighborhoods. As part of the planned unit development (PUD) approved in 2005 for the Nashville West project located on Charlotte Pike, the developer deposited \$50,000 in escrow to be used for traffic calming and beautification projects affecting Annex Avenue and \$150,000 to be used for traffic calming and beautification within the affected areas of the Hillwood neighborhood. The Parkes Companies, Inc., now desires to transfer the funds held in escrow to the department of public works so that these traffic calming and beautification projects can be completed. Future amendments to this ordinance may be approved by a resolution receiving twenty-one affirmative votes.

ORDINANCE NO. BL2010-806 (BARRY) – This ordinance amends the Metropolitan code provisions pertaining to economic and community development incentive grants. As part of the Dell Corporation incentives approved in 1999, the council enacted an ordinance that established an economic and community development incentive program to provide financial incentives to companies that meet certain criteria. The amount of the grant is not to exceed \$500 per full time equivalent employee of the business annually. Under the existing incentive program, the grants are only available for a corporate headquarters that will bring at least 1,000 jobs within five years or a technology company that will bring at least 2,000 jobs within five years. The Metro grant funds are paid to the industrial development board (IDB), who in turn uses the funds to acquire, improve, maintain, extend, equip and furnish real and personal property owned by the IDB and used for the benefit of the private company. All such incentive grant agreements are to be administered by the IDB and are subject to approval of the council by resolution. While any qualifying company is eligible to apply for these grants, Dell Corporation is the only entity that has obtained the grants to date.

This ordinance makes a significant change in the economic development policies of the Metropolitan Government. The ordinance adds a new section to the code to authorize the mayor's office of economic and community development, as opposed to IDB, to make economic and community development (ECD) grants for a corporate headquarters or a technology firm that will create at least 500 jobs. This will increase the pool of businesses that may be eligible to obtain the grants. Unlike the existing incentive program, there will be no set formula in the code for calculating the maximum amount of the grant. Rather, the amount of the grant is to be determined by taking into account the number of jobs created and the amount of revenue Metro is expected to generate from the new corporate location. State law allows county governments to appropriate government funds for community and economic development purposes.

This ordinance would also allow the delegation of authority to the IDB for payment-in-lieu-of-tax (PILOT) agreements to be approved by resolution rather than ordinance. Once a PILOT agreement has been negotiated by the IDB, it would be required to be approved by resolution, as well.

ORDINANCE NO. BL2010-807 (GILMORE & MOORE) – This ordinance amends the Metropolitan Code to create a food policy council. The purpose of the food policy council would be to study the food system in Nashville and to make recommendations to the Metropolitan Government regarding ways to improve access to healthy foods, encourage healthy eating, (continued on next page)

ORDINANCE NO. BL2010-807 (continued)

promote the community garden concept, improve the availability of fresh produce in the public schools, and attract supermarkets in underserved, low-income areas. The council will consist of eleven members that would be appointed as follows:

1. Six members appointed by the mayor representing stakeholders from various diverse segments of the local food system, including farmers, nutritionists, educators, anti-hunger advocates, and representatives from the food industry.
2. Two members of council appointed by the vice mayor.
3. One member appointed by the director of health to serve as his representative.
4. One member shall be appointed by the director of schools to serve as his representative.
5. One member shall be appointed by the executive director of the farmer's market to serve as his representative.

The food policy council would be advisory only and would not have any authority to establish policies for the Metropolitan Government.

ORDINANCE NO. BL2010-808 (WILHOITE) – This ordinance amends the metropolitan ethics code to allow members of council to act as non-compensated representatives for constituents before Metropolitan Government departments, agencies, boards, and commissions. The current ethics code approved by the Council in 2007 prohibits “employees”, which includes members of council, from personally representing or appearing on behalf of the private interest of another before the council, or any board or department of the Metropolitan Government. There are exceptions to this general prohibition for lobbyists and attorneys serving on boards and commissions, but no such exception exists for members of council. While council members frequently appear before the planning commission, traffic and parking commission, and the board of zoning appeals on behalf of their constituents, they are typically not considered to be acting as a personal representative. However, a literal reading of the ethics code could cause such an appearance to be an issue.

This ordinance would allow a member of council to represent a constituent or constituents before any department, agency, board, or commission, including civil service matters, as long as the member of council does not receive any compensation for acting in such representative capacity.

ORDINANCE NO. BL2010-809 (GOTTO, CRADDOCK & CLAIBORNE) – This ordinance amends the Metropolitan Code to require the police department to provide an honor guard and/or funeral escort for the funerals of retired and active police officers at the request of the officer’s family. Such honor guard and police escort would be provided at no cost to the family. The police escort would consist of a minimum of two police cars from the place of the funeral to the cemetery, provided such locations are within the area of the Metropolitan Government. The family must make a written request for the services to the chief of police at least 24 hours prior to the funeral. The ordinance would give the police chief the authority to promulgate necessary rules and regulations to implement the ordinance.

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ORDINANCE NO. BL2010-809 (continued)

Funeral escorts in Tennessee, whether public or private, are governed both by common law and by state statute. The somewhat confusing statute provides that funeral escorts have the right-of-way on any road in which they travel provided they follow certain requirements, such as the leading vehicle must obey all traffic control signals and the procession must yield the right-of-way to emergency vehicles with their emergency equipment activated.

In addition to the statutory requirements, the government is subject to the same standard of care as private funeral escort services when the police department is undertaking an escort. The government has the duty to provide adequate personnel to ensure that the escort is conducted properly under the circumstances. This will obviously depend on the particular route involved and the driving conditions. In 1998, the Tennessee Court of Appeals found the City of Chattanooga to be negligent for only providing one officer for a police funeral escort on a route containing multiple intersections. Thus, if this ordinance is enacted, it will impose a duty upon the police department to ensure that the funeral escorts are provided in a prudent and safe manner under the given circumstances. As written, the police department would have no discretion in whether to provide the escort or not, regardless of the route involved.

This ordinance should be amended to clarify the issue concerning the use of emergency equipment to ensure consistency with state law. There is a state statute that restricts the use of blue lights and sirens except when the officer is actually responding to an emergency call or in pursuit of a suspect. A funeral procession would obviously not fit within this statutory limitation.

ORDINANCE NO. BL2010-810 (HOLLIN) – This ordinance amends the Metropolitan Code to require lobbyists to file a notice of withdrawal once their lobbying services are complete. The code requires all lobbyists to register with the Metropolitan Clerk annually and pay a \$25 filing fee. The code defines a lobbyist as a person that communicates, directly or indirectly, with any official in the legislative branch or executive branch for pay or for any consideration for the purpose of influencing any legislative action or administrative action. This ordinance would require lobbyists to file a written notice of withdrawal with the metropolitan clerk within days following the termination of a lobbying employment agreement. The notice of withdrawal is to be retained by the Metropolitan clerk for five years and posted on the clerk's website.

ORDINANCE NO. BL2010-811 (JAMESON) – This ordinance amends the Metropolitan noise ordinance applicable to the downtown area to prohibit the use of personal sound amplification equipment on the public right-of-way. The downtown noise ordinance was amended by Substitute Ordinance No. BL2008-306 in February 2009 to set an 85 decibel limitation on prerecorded music in the downtown area. However, live music was exempted from this decibel limitation. Nashville's ordinance is the only noise ordinance the council office is aware of that specifically exempts live music.

This ordinance would further restrict the downtown noise ordinance to make it unlawful for any person to operate personal sound amplification equipment on any public right-of-way. The ordinance defines 'personal sound amplification equipment' as a radio, tape player, compact disc player, digital audio player, bullhorn, television, electronic audio equipment, musical instrument, sound amplifier, or other mechanical or electronic sound-making device that produces, reproduces, or amplifies sound.

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ORDINANCE NO. BL2010-811 (continued)

The free speech protections contained in the U.S. Constitution often come into play when local governments attempt to regulate sound in public places. On its face, this ordinance is a content neutral noise restriction that prohibits the use of all personal sound amplification equipment, regardless of the message or the messenger. However, the fact that the downtown noise ordinance includes an exemption for live music emitted from the honky tonks and bars could make this ordinance subject to challenge on the grounds that a speaker would not be able to compete with the bar noise in trying to get his/her message across.

The sponsor intends to defer this ordinance until all potential constitutional issues have been resolved.

ORDINANCE NO. BL2010-812 (TYGARD, GARRETT & OTHERS) – This ordinance names the Metropolitan Council Chamber located in the historic Metro courthouse in honor of former vice mayor David Scobey. Mr. Scobey was elected as a councilmember-at-large in 1963 to become a charter member of the first Metropolitan Council after the consolidation of the city and county governments. He was elected vice mayor in 1971, a position which he held until 1995. Mr. Scobey presided over six councils and served with four mayors during his tenure. This ordinance names the chamber the “David Scobey Council Chamber” and directs the department of general services to erect the proper signage designating the space as such.

ORDINANCE NO. BL2010-813 (HOLLIN, HODGE & BARRY) – This ordinance approves a construction agreement between the Metropolitan Government and CSX Transportation, Inc., pertaining to the replacement of the bridge decking on Cleveland Avenue over the CSX railroad. This contract is basically to allow Metro to perform the work over the railroad tracks and to provide for the reimbursement of CSX’s expenses. All plans must be approved by CSX before work can begin. Metro agrees to reimburse CSX for its flagging and engineering costs, estimated to be approximately \$165,000. All work is to be completed not later than December 31, 2011.

ORDINANCE NO. BL2010-814 (LALONDE, BARRY & HODGE) – This ordinance approves an agreement between the department of water and sewerage services (MWS) and Vanderbilt University for a pilot program to install wind and solar power generating facilities on the Love Circle Reservoir property. MWS maintains the reservoir at the top of Love Circle, which is located on one of the highest points in Nashville, approximately 740 feet above sea level. The purpose of this pilot program is to demonstrate the feasibility of setting up alternative energy power generation facilities for remote areas. Under the terms of this agreement, MWS agrees to fund the \$97,000 cost of installing wind and solar power generating facilities on the reservoir property, and to maintain the facilities. Metro will assist in obtaining all necessary building and land use permit approvals at no cost to Vanderbilt. The university will supervise the purchase and installation of the wind turbine, solar panels, monitoring display, and fencing. Vanderbilt also agrees to maintain a website to provide information to the public regarding the amount of power generated at the facility. Aside from the initial installation costs, Vanderbilt will be donating its engineering and research services for this project.

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ORDINANCE NO. BL2010-814 (continued)

It is estimated that the facilities placed on the property will generate approximately 30 kilowatts of power per day, which is the average daily electricity consumption per household in the U.S. Metro will be the sole beneficiary of all power generated on the property. While the dollar for dollar cost of the project is obviously greater than the cost of purchasing coal produced electricity, the purpose of the project is to determine whether it would be feasible in the future to use solar and/or wind power to help power some of these facilities.

The term of this contract is for five years. Future amendments to this agreement are to be approved by the council by resolution. The codes department has confirmed that the Love Circle location meets all of the criteria set forth in the zoning code applicable to small wind energy facilities.

ORDINANCE NO. BL2010-815 (FORKUM, BARRY & HODGE) – This ordinance authorizes the acquisition of utility easements and three parcels of property by negotiation or condemnation for the Pierce Road stormwater project. The estimated cost for this acquisition is \$250,000, which is to be paid from stormwater capital funds. The acquisition of additional easements for this same project may be approved by resolution.

This ordinance approves the acquisition of easements for 35 properties on Pierce Road, Sylvia Drive, Snow Avenue, and Shannon Avenue. The ordinance also authorizes the acquisition of three properties located at 1220, 1221, and 1225 Pierce Road.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2010-816 (JERNIGAN, BARRY & HODGE) – This ordinance authorizes the acquisition of 45 easements by negotiation or condemnation for a streambank stabilization project on the Cumberland River adjacent to the Waterford subdivision in Old Hickory. The U.S. department of agriculture has awarded funding to Metro for the purpose of surveying, designing, and constructing this streambank stabilization project. After the May flood, part of the Cumberland River bank adjacent to the Waterford subdivision literally collapsed. This ordinance will allow Metro water services to acquire the necessary construction easements for this project. This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2010-817 (TYGARD & CRAFTON) – This ordinance names the bridge on Old Harding Pike over the Harpeth River in memory of Joseph & Bessie Formosa and Mary Jane McCormac. These three individuals were Bellevue residents who lost their lives during the May flood. This ordinance names the bridge the “Formosa/McCormac Memorial Bridge”. The Metropolitan Code provides that no Metropolitan Government building or structure may be named except pursuant to an ordinance enacted by the council.

ORDINANCE NOS. BL2010-818 and BL2010-819 – These two ordinances abandon portions of rights-of-way that are no longer needed for government purposes. Metro will retain all easements. Consent of the affected property owners is included as an attachment to the ordinances. These ordinances have been approved by the planning commission and the traffic and parking commission.

Ordinance No. BL2010-818 (Harrison) abandons a portion of Alley #2007 from Weakley Avenue to its terminus between Brick Church Pike and Bessie Avenue. This closure has been requested by R.C. Calligan and RCC, LLC, the adjacent property owners.

Ordinance No. BL2010-819 (Jameson) abandons an 8-foot-wide portion of Lakehurst Drive located along the eastern property line of 1812 Ordway Place. This closure has been requested by S. Mitchell Hodge on behalf of North Egg Ventures, LLC, one of the adjacent property owners.

– **BILLS ON THIRD READING** –

SUBSTITUTE ORDINANCE NO. BL2010-734 (HOLLEMAN, JAMESON & COLE) – This ordinance amends the Metropolitan Code to provide free parking at parking meters within the downtown central business improvement district 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 an annual sticker for passenger vehicles eligible for the free parking upon the payment of a \$10.00 processing fee. The fee would be divided equally between the county clerk and the department of public works to offset the issuance and enforcement costs. 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 the maximum time limit stated on the meter.

The provisions of this ordinance will not become effective until July 1, 2011, and the program will sunset after two years unless it is continued by a resolution adopted by the council.

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 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.

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ORDINANCE NO. BL2010-784 (continued)

This ordinance has been approved by the planning commission, as substituted. This ordinance may need to be re-referred to the planning commission, depending on the extent of the changes between the substitute considered by the planning commission and the substitute approved by the council.

ORDINANCE NO. BL2010-793 (BARRY & LANGSTER) – This ordinance makes a number of technical amendments to various sections of the Metropolitan Code to essentially consolidate the fine and penalty provisions and to clarify the amount of the fines. As the council is aware, the Tennessee constitution limits the amount of the fines the Metropolitan Government can assess to \$50.00 without having a jury trial. For many years, the Metropolitan Government frequently assessed fines greater than \$50.00, and several of the penalty provisions in the code still provide for fines in excess of \$50.00. However, the Tennessee Supreme Court ruled in 2001 that the constitution essentially means what it says, and only a jury can assess fines in excess of \$50.00. A subsequent attempt to amend this constitutional provision failed.

This ordinance would clarify in the code that \$50.00 is the maximum penalty that can be assessed for the violation of any Metro ordinance. This ordinance would also specify that a failure to answer a citation for violating a Metro ordinance within 45 days or the failure to appear at a scheduled court date will result in the amount of the fine being increased to \$50.00 for each violation. The ordinance also consolidates a number of the penalty provisions into one section of the code, and eliminates the distinction between first and subsequent offenses regarding the amount of the fine. The only increases in the amount of fines are as follows:

1. The fine for violations of the newly-enacted non-taxi vehicle for hire ordinance is being increased from \$25.00 to \$50.00.
2. The fine for a particular parking offense within safety zones is increased from \$25.00 to \$50.00. All other parking offenses will still result in a \$10.00 or \$15.00 fine, depending on the particular offense.
3. The first offense fine for a non-moving traffic violation is increased from \$25.00 to \$35.00.

This ordinance also codifies the circuit court clerk's nullification program. This program allows the clerk's office to nullify citations for certain non-moving offenses, such as a broken taillight, when the defect is corrected within 45 days of the citation being issued. There would be a required \$12.00 fee to pay to the court clerk's office to obtain the nullification. In keeping with state law, the ordinance also provides that citations for violation of the state financial responsibility laws may be dismissed if proof is provided to the court clerk's office that insurance was actually in effect at the time of the citation.

The provisions of this ordinance will not take effect until January 1, 2011.

SUBSTITUTE ORDINANCE NO. BL2010-794 (JERNIGAN, JAMESON & OTHERS) – This ordinance amends the stormwater provisions in the Metro Code pertaining to low impact development practices, "no adverse impact" design, and related development incentives. This ordinance is in response to the catastrophic flooding event that occurred in May 2010, and is intended to further reduce the likelihood that future development will contribute to flooding (continued on next page)

SUBSTITUTE ORDINANCE NO. BL2010-794 (continued)

conditions. In March 2003, the council enacted an amendment to the zoning code to require that all development on property encumbered by a natural floodplain or floodway preserve at least fifty percent of the floodplain and all of the floodway plus fifty feet on each side of the waterway. While the existing ordinance has resulted in less development within the floodplain, it has not necessarily prevented water flow resulting from the development from impacting adjacent properties.

This ordinance amends the Metro code to prohibit development from having an adverse impact as it relates to flooding. First, the ordinance would prohibit a new structure from being constructed within the floodway, period. A structure that is already located in the floodway would be allowed to be repaired in the event of a casualty loss up to fifty percent of the appraised value of the property. Second, all new development would have to be engineered in such a manner so as to prevent a rise in the 100 year base flood elevations.

This ordinance would also require the department of water and sewerage services to develop an amendment to the stormwater manual not later than August 1, 2011, to address incentives and best practices for green/low impact stormwater infrastructure. Green infrastructure is an approach to stormwater management that incorporates methods and technologies that promote infiltration and the capture and reuse of stormwater. The amendment to the stormwater manual to incorporate this approach is to include:

1. The use of wetlands, floodplain storage, and environmental features;
2. The concept of “no adverse impact” for site design;
3. Removing administrative and regulatory barriers to the utilization of low impact design;
4. “In-lieu of” programs that might increase overall low impact design utilization on development projects; and
5. Minimum floor elevation requirements for residential and nonresidential development.

The stormwater manual amendment must also establish a stakeholder committee comprised of professional engineers, environmental structural design professionals, Metro water services employees, a representative of the mayor, and three members of council. All meetings of the stakeholder committee would be open to the public and advertised in accordance with the Tennessee Open Meetings laws. Metro water services would also be required to provide monthly progress reports to the Metropolitan Council until the low impact design manual is complete.

ORDINANCE NO. BL2010-796 (BARRY & HODGE) – This ordinance approves an agreement with CCBC Operations, LLC (Coca-Cola) regarding a recycling promotional program called “Recycle and Win!”. Under the terms of the agreement, the department of public works will provide Coca-Cola with a list of mailing addresses of all residences that have access to the Metro recycling program. This list will include addresses only, not resident names. Coca-Cola will send a participation sticker and an educational mailer to each of the residences. Residents choosing to participate in the program will place the sticker on their recycling bin. A public works employee will be driving around in a specially-marked Toyota Prius (the “prize patrol”) on recycling collection days and will randomly select bins to inspect to determine if the appropriate materials are being recycled. Those selected that meet the requirements will receive a \$50 Kroger gift card. Coca-Cola has agreed to provide gift cards to a minimum of 260 program winners.

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ORDINANCE NO. BL2010-796 (continued)

This agreement also provides for the rental of the prize patrol Prius to Metro at a cost of one dollar. The vehicle must be used exclusive in connection with the Recycle and Win! program. Metro will be responsible for all ordinary maintenance of the vehicle. The term of this agreement is through July 30, 2011.

SUBSTITUTE ORDINANCE NO. BL2010-797 (BAKER, BARRY & HODGE) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Rogers Group, Inc., to provide improved public sewer service through the construction of the Basswood and Cockrill Bend trunk sewer line relocation project in the Richland Creek area of West Nashville. Pursuant to this agreement, Rogers Group will contract for and oversee the construction of the new sewer main, which is to be completed by April 30, 2011. The Metropolitan Government will be responsible for the ongoing maintenance of the sewer main. Metro agrees to contribute \$1,725,000 from the water and sewer extension and replacement fund toward the cost of the project.