

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **January 18, 2011**

RE: **Analysis Report**

Balances As Of:	<u>1/12/11</u>	<u>1/13/10</u>
<u>GSD 4% RESERVE FUND</u>	* \$23,996,590	\$24,150,556
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$34,801,459	\$25,156,761
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 \$23,440,100

– BILL ON SECOND READING AND PUBLIC HEARING –

ORDINANCE NO. BL2010-820 (MOORE, BARRY & OTHERS) – This ordinance amends the Metropolitan Code to assign certain duties to the board of fair commissioners (“fair board”) related to the operation of the fairgrounds property. In 1909 the Tennessee general assembly enacted a private act 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 another private act 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”. In addition to the annual state fair, which is the primary purpose for the existence of the fair board, the fairgrounds property has long been used for expo center functions and auto racing. The current racetrack grandstands were constructed in 1970, upon approval of the fair board, at a cost of \$800,000. The Tennessee attorney general has opined that there are no deed restrictions on the property pertaining to use, so the present uses of the property are not legally required to be continued absent some action by the council.

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 first directs the fair board to negotiate with the recently-formed Tennessee State Fair Association to hold a State Fair in 2011 at the existing fairgrounds site. Any agreement between the Fair Board and the Tennessee State Fair Association must provide that the Metropolitan Government will not be liable for any losses associated with the operation of the fair. The ordinance also requires the fair board to continue the operation of the expo center at the existing fairgrounds site until another suitable location has been identified and the site has been approved by the council by resolution. Finally, the ordinance requires the fair board to oversee the demolition of the race track and grandstands and then transfer control of this area and the floodplain area along Brown’s Creek to the board of parks and recreation for the development and operation of a public park.

This ordinance does not provide any additional funding for the operation of the fairgrounds. However, the ordinance does provide that it is the intent of the council that the expo functions operate only on the revenues generated by such functions. In the event revenues are insufficient for the operation and maintenance of the facilities, the State Fair’s fund balance would be used to make up the shortfall.

(continued on next page)

ORDINANCE NO. BL2010-820 (continued)

The council office would point out that legislative action is not legally required in order for the fair board to take the actions provided for in this ordinance in its present form. The fair board has the authority to determine the use of the property while it is under their control. Thus, the fair board on its own initiative can vote whether to continue the operation of the fair, expo center, and/or race track. However, an ordinance approved by the council directing the fair board to perform certain functions would remove the board's discretionary authority and would obligate the board to operate in a manner consistent with the provisions of the ordinance.

– RESOLUTIONS –

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 ordinance should be deferred one more meeting to allow time for the planning commission to consider the amendment to the capital improvements budget.

RESOLUTION NO. RS2011-1507 (BARRY) – This resolution approves an application for a grant from IBM Corporation to the Metropolitan Government to provide technical assistance to coordinate existing community resources in furtherance of the Mayor's Child and Youth Master Plan released last year. These funds will be used to develop a countywide data system to help coordinate children and youth services provided by various government agencies and community partners. Metro is seeking an award of \$250,000 to \$400,000 through this grant application.

RESOLUTION NO. RS2011-1508 (BARRY & LANGSTER) – This resolution accepts a donation of \$425.26 from Fred's Inc., for the benefit of the Metropolitan fire department. These funds are being donated for public fire safety education programs. Ordinance No. BL2006-1015 provides that donations of less than \$5,000 may be approved by resolution.

RESOLUTION NO. RS2011-1509 (BARRY & LANGSTER) – This resolution approves a grant in the amount of \$15,000 from the Community Foundation of Middle Tennessee to the Metropolitan police department for the EI Protector program. This is the police department's Hispanic outreach program that includes educational presentations and informational materials to engage the Hispanic community.

RESOLUTION NO. RS2011-1510 (BARRY & LANGSTER) – This resolution approves an intergovernmental agreement between the Metropolitan police department, the Tennessee bureau of investigation (TBI), and the Tennessee department of safety regarding the police department's participation in the Tennessee fusion center. This is an initiative of the state office of homeland security and the TBI to establish an intelligence unit to assist in the detection, prevention, and apprehension of persons involved in terrorist activities. The center shares law enforcement crime information components from all participating state and local public safety agencies to help defend against terrorist activities. The police department agrees to appoint a person to serve as the project liaison and will ensure that the appropriate personnel are available for the training regarding the use of the software. The police department will be allowed to access the computer network to search for particular information about a subject. The department will also be able to enter vehicle and property queries.

State law allows intergovernmental agreements to be approved by resolution of the council.

RESOLUTION NO. RS2011-1511 (BARRY) – This resolution approves a grant in the amount of \$192,500 from the state department of economic and community development to the Nashville career advancement center to provide funding for on-the-job and classroom training of new and existing employees. The term of the grant is from July 1, 2010, through June 30, 2013.

RESOLUTION NO. RS2011-1512 (FORKUM & BARRY) – This resolution approves an amendment to an annual grant in the amount of \$550,000 from the state department of health to the Metropolitan board of health for implementation of the state immunization program. The term of this grant is from January 1, 2010, through December 31, 2011. This grant, comprised of \$131,900 in state funds and \$418,800 in federal pass-through funds, is used to pay the salaries and benefits of health department employees who provide the immunization services. This amendment makes a number of technical modifications to the scope of services.

RESOLUTION NO. RS2011-1513 (FORKUM & BARRY) – This resolution approves a contract between the Metro health department and the National Step Show Alliance for the implementation of a diabetes project. The health department recently received a state grant to reduce the risk of adolescent diabetes by focusing on obesity prevention through the implementation of a "stepping" program at various community centers. The health department desires to engage a subcontractor to implement the grant. The contractor will provide 30 step team coaches to work a minimum of 10 hours per week and will provide four one-week step camps at selected community centers. The contractor will be paid an amount not to exceed \$106,000 for their services between October 1, 2010 and June 30, 2011.

RESOLUTION NO. RS2011-1514 (FORKUM & BARRY) – This resolution approves a grant in the amount of \$857,025 from the Greater Nashville Regional Council to the Metropolitan social services commission for meal delivery services to eligible senior citizens. These funds will be used to provide nutritious meals to eligible seniors through meal delivery services and congregate meal sites. The term of this grant is from October 1, 2010 through June 30, 2011. There is a required local match of \$67,616.67 to be provided through the social services commission operating budget.

RESOLUTION NO. RS2011-1515 (GILMORE & BARRY) – This resolution appropriates \$10,000 in grant funds from the state department of agriculture to the Nashville farmers' market for promotion of the farmers' market. These grant funds will be used for signage, print media advertising, and promotion of a "talking market" enhancement at the farmers' market. The term of the grant is from December 1, 2010, through May 31, 2011.

RESOLUTION NO. RS2011-1516 (MAYNARD & BARRY) – This resolution approves a third amendment to a grant from the Nashville Public Library Foundation to the public library to fund the Totally Outstanding Teen Advocates for the Library (T.O.T.A.L.) program. This program consists of a leadership team of five youth who are charged with developing and implementing a program to promote the benefits of the public library system to other teens. This amendment increases the amount of the grant by \$95,200 to extend the program through fiscal year 2011, for a new grant total of \$325,200.

RESOLUTION NO. RS2011-1517 (MAYNARD & BARRY) – This resolution approves an amendment to an annual grant from the state department of state to the Nashville public library system to assist persons that have difficulty using the library. These funds are for general library services, library services to the hearing impaired, materials for the disadvantaged, and to purchase library materials to be used in the interlibrary loan process. This amendment increases the amount of the grant by \$88,000 for a new grant total of \$275,822.

RESOLUTION NO. RS2011-1518 (MAYNARD & BARRY) – This resolution approves a grant in the amount of \$10,000 from the Institute of Museum and Library Services to the Nashville public library. This grant was made in conjunction with the library receiving a National Medal for Library Service from the organization. These funds are to be used to address the changing needs of the community as it pertains to library services.

RESOLUTION NO. RS2011-1519 (MAYNARD, BARRY & MATTHEWS) – This resolution authorizes the mayor to sign a notice of limitation of use pursuant to a grant agreement between the state and Friends of Beaman Park for the construction of walking trails in Beaman Park. The agreement for the \$85,000 state grant provides that the Metropolitan board of parks and recreation will make an in-kind contribution of \$12,500 in the form of staffing and materials. The notice of limitation of use provides that Metro will not use the property for anything other than outdoor recreation uses without the approval of the state and federal governments.

RESOLUTION NO. RS2011-1520 (MAYNARD) – This resolution approves an agreement between the state department of transportation and the board of parks and recreation for the implementation of the Warner Park Trails Linkage Improvement project. This contract is for phase one of the project, which will include construction of a 10-foot wide asphalt trail, pedestrian tunnel, retaining wall, ADA accessibility, landscaping, and pedestrian amenities. Metro will be responsible for the construction work, which has an estimated cost of \$1,565,339.75. Metro will receive reimbursement from the state using federal pass through funds totaling \$1,252,271.80, which represents 80% of the costs. This project is to be completed not later than August 31, 2015.

RESOLUTION NO. RS2011-1521 (BARRY) – This resolution approves an agreement between the state and the Metropolitan Government for the repair of an underground concrete vault at the intersection of Charlotte Avenue and 7th Avenue North. This vault is part of the state tunnel network and is currently used by the state for fiber optic communication lines. The Metro district energy system (DES) also uses the vault to house steam and chilled water lines that provide heat and cooling to certain downtown buildings. The repairs to the vault will include the installation of another state fiber optics communications line and the replacement of the vault's roof, construction of two new walls, and installation of a new access ladder. The state will be relocating most if its fiber optic equipment, which will enable the state to abandon the majority of the cables within this vault. DES will be responsible for the vault repairs at a cost of approximately \$90,000, but this amount is to be reimbursed by the state.

RESOLUTION NO. RS2011-1522 (JAMESON) – This resolution authorizes St. Cloud Development Company, LLC to install and maintain an aerial sign encroachment at 500 Church Street for Puckett's Grocery & Restaurant. The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachment, 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.

- BILLS ON SECOND READING -

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.

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.

There is a substitute for this ordinance that would essentially reinstate the role of the IDB regarding economic development incentive grants and would remove all of the language in the bill concerning PILOT agreements. The authorization for all PILOT negotiations would have to be approved by the council by ordinance, which is the current requirement. The substitute provides that upon being contacted by a qualified company, the mayor's ECD office may recommend that Metro make an incentive grant to the IDB for the purposes of reimbursing the company for expenditures related to: (1) the acquisition, preparation, or occupancy of office space or other facilities; (2) relocation costs; and/or (3) employee training. As is the case presently, all such incentive grants would be subject to approval of the council by a resolution receiving twenty-one affirmative votes. These incentive grants would likely be made in conjunction with incentives provided by the state.

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 (continued on next page)

ORDINANCE NO. BL2010-808 (continued)

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.

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. BL2010-811 (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.

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.

This ordinance should be deferred until all potential First Amendment issues have been addressed.

ORDINANCE NOS. BL2010-821 & BL2010-822 – These two ordinances amend the Metropolitan code provisions pertaining to lobbyists. 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.

Ordinance No. BL2010-821 (Hollin) amends the Metropolitan Code to increase the annual filing fee for the registration of lobbyists. The \$25 filing fee has not been increased since the lobbyist registration requirements were enacted in 1991. This ordinance would increase the lobbyist registration fee to \$50. The metropolitan clerk has confirmed that this increase will not result in the total amount of fees collected being higher than cost of providing the service.

Ordinance No. BL2010-822 (Hollin, Crafton & Craddock) amends the Metropolitan Code to prohibit persons that serve on boards or commissions from engaging in any lobbying activity at the local level. The ethics code currently allows lobbyists and attorneys serving on boards and commissions to continue to represent clients before the council or other Metropolitan Government departments and boards/commissions, provided they do not represent clients before the specific board or commission they serve on. This ordinance would delete this lobbyist exception in the ethics code.

ORDINANCE NO. BL2010-824 (WILHOITE & BARRY) –This ordinance extends the deadline for the waiver of fees for permits issued by the department of codes administration for property owners that sustained damage as a result of the flooding in May 2010. The council enacted Ordinance No. BL2010-689 in June 2010 to retroactively waive the fees for building, electrical, plumbing, and gas/mechanical permits for a total maximum fee waiver of \$1,300 as long as the permits were obtained prior to July 30, 2010. This deadline was extended by the council in August 2010 until December 31, 2010. The director of the department of codes administration has recommended that this deadline be extended once again until June 30, 2011.

ORDINANCE NO. BL2010-825 (TYGARD) – This ordinance amends the Metropolitan Code to provide free parking at parking meters within the downtown central business improvement district for vehicle owners that purchase carbon offset credits. This ordinance was filed in response to Ordinance No. BL2010-734, approved in December 2010, allowing free parking for environmentally friendly vehicles. This ordinance would require the department of public works to issue an annual sticker for passenger vehicles if the vehicle owner provides proof he/she purchased carbon offsets from a nonprofit organization that uses the funds for carbon counterbalance projects in Nashville. The vehicle owner would be required to present a certificate from the nonprofit organization evidencing that the amount of credits purchased coincides with the carbon footprint of the vehicle for which the parking permit is sought. The council office's research indicates that nonprofit organizations offering carbon offsets online charge between \$40 and \$72 for a typical mid-sized sedan.

The free parking sticker would only be valid during the calendar year the sticker was obtained, but would be renewable by mail upon providing a copy of a new carbon offset credit.

The director of finance has refused to sign this ordinance as to availability of funds given the inability to ascertain the financial impact it will have on the Metropolitan Government.

ORDINANCE NO. BL2010-826 (ADKINS) – This is a routine ordinance that readopts the Metropolitan Code prepared by Municipal Code Corporation to include all ordinances enacted on or before August 17, 2010. Municipal Code Corporation has the contract with Metro to codify all ordinances enacted by the council, as well as to update and maintain the on-line version of the code. The council periodically readopts the code to make sure the printed and online versions are kept up to date.

ORDINANCE NO. BL2010-828 (HODGE, BARRY & MATTHEWS) – This ordinance authorizes the acquisition of utility easements and/or property for improvements to the Whites Creek wastewater pumping station. The estimated cost for this acquisition is \$95,000, which is to be paid from the water and sewer extension and replacement fund. The acquisition of additional easements or properties for this same project may be approved by resolution.

This ordinance approves the acquisition of interests in two parcels of property located on Ashland City highway and East Stewarts Lane in conjunction with this project. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2010-829 (GOTTO & HODGE) – This ordinance approves the routine adoption of the additions, deletions, and/or other amendments to the Official Street and Alley Acceptance and Maintenance Map for the Metropolitan Government made during the previous year. These amendments are submitted annually by the department of public works. The map shows the dedicated streets and alleys that were either accepted or abandoned for public maintenance by Metro.

This ordinance has been approved by the planning commission.

ORDINANCE NOS. BL2010-830 and BL2010-831 – These two ordinances abandon portions of rights-of-way that are no longer needed for government purposes. Consent forms signed by the affected property owners are included as attachments to the ordinances. These ordinances have been approved by the planning commission and the traffic and parking commission.

Ordinance No. BL2010-830 (Todd) abandons an unnamed right-of-way located between 4509 and 4511 Harpeth Hills Drive. This closure has been requested by French Christian Patterson & Associates. Metro will retain all easements.

Ordinance No. BL2010-831 (Page) abandons a portion of Alley No. 1916 and an unnumbered alley between Veritas Street and Allied Drive. This closure has been requested by Dale & Associates on behalf of Churches of Christ Disaster Relief Effort, Inc. Metro will not be retaining any utility easements.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2010-754 (STANLEY) – This ordinance, as amended, amends the zoning code to allow cosmetology and barber shops as a permitted accessory use in residential districts. The current home occupation provisions in the zoning code currently prohibit customers from coming onto the property. This ordinance would allow cosmetology and barber shops to operate in residential districts as long as they only have one chair available to service customers and no more than two customers are allowed on the premises at any one time. Further, only a resident titleholder of the property upon which such home occupation cosmetology or barbershop is located would be permitted to work upon the premises.

This ordinance has been re-referred to the planning commission.

SUBSTITUTE ORDINANCE NO. BL2010-784 (HOLLIN) – This substitute ordinance amends the zoning code to allow for the relocation of nonconforming uses. The state law nonconforming use grandfather statute allows certain existing nonconforming businesses to continue operation and to rebuild or expand their operations after a change in local zoning regulations. The purpose of the nonconforming use grandfathering statute is to prevent a hardship to existing property owners that were in compliance with the applicable laws at the time a new zoning restriction was enacted. This ordinance would allow such nonconforming uses located within a zoning district requiring a final site plan (i.e., specific plan districts, downtown code district, and certain overlay districts) to relocate to another property within the same zoning district if: (1) the relocated use would have been permitted at the new location prior to the enactment of the new zoning; and (2) the BZA determines that the relocation will facilitate redevelopment of the current location of the nonconforming use and is no less compatible with surrounding land uses than the existing location.

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 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. BL2010-796 (BARRY & HODGE) – This ordinance approves an agreement with CCBCO 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.

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.

There is an amendment to this ordinance changing the start and end date of the agreement to allow the program to operate in warmer weather. The council rules need to be suspended in order to allow this amendment to be offered on third reading.

ORDINANCE NO. BL2010-798 (CRAFTON) – This ordinance amends the sign provisions in the zoning code to exempt tri-face billboards from the distance requirements applicable to electronic signs. The zoning code was amended in 2009 to impose a sliding scale for the height of electronic signs based upon the distance from any agriculturally or residentially-zoned property. Signs four feet or less in height cannot be less than 100 feet from such property. Each additional foot in height requires an additional 25-foot setback.

A relatively new sign technology uses triangular louvers that automatically rotate to allow three different sign messages to be shown on the same time. Since the above-referenced ordinance applies to any sign that changes by electronic or mechanical means, tri-face billboards fall within the height restrictions. This ordinance would add a definition for tri-face billboard, and would exempt them from these distance requirements. This would essentially treat tri-face billboards in the same manner as standard billboards.

This ordinance has been approved by the planning commission.

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. BL2010-812 (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.

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 United States. 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 & DOMINY) – 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 No. 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.