

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **March 15, 2011**

RE: **Analysis Report**

Balances As Of:	<u>2/9/11</u>	<u>2/10/10</u>
<u>GSD 4% RESERVE FUND</u>	* \$23,996,590	\$13,232,956
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$34,451,559	\$25,160,041
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

– RESOLUTIONS ON PUBLIC HEARING –

RESOLUTION NOS. RS2011-1546 and RS2011-1557 – These two resolutions exempt two restaurants 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.

Resolution No. RS2011-1546 (Duvall, Coleman & Wilhoite) exempts Snap Stone’s Restaurant located at 5385 Mt. View Road from the minimum distance requirements for obtaining a beer permit.

Resolution No. RS2011-1557 (Jameson) exempts “No. 308” bar located at 407 Gallatin Avenue from the minimum distance requirements for obtaining a beer permit.

– RESOLUTIONS –

RESOLUTION NO. RS2011-1534 (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.

Each of the five fair board members has the opportunity to appear before the rules committee on March 15, 2011, and to address the full council before a vote is taken on the resolution.

An identical resolution was filed and withdrawn in December 2010.

RESOLUTION NO. RS2011-1558 (BARRY) – This resolution approves an application for a grant in the amount of \$199,882 from the U.S. department of justice to the state trial courts to reduce recidivism rates among felony offenders with mental health and substance abuse disorders. This continuation grant will be used to support the state trial courts’ community corrections program. This program provides alternative punishments for non-violent offenders (continued on next page)

RESOLUTION NO. RS2011-1558 (continued)

consisting of offender supervision, residential programs, and day reporting center programs. Specifically, these funds will be used to cover the salary of a social worker, a part-time counselor, training materials, computer equipment, travel, and cell phone expenses. There would be a required in-kind local match of \$39,976.40.

RESOLUTION NO. RS2011-1559 (MAYNARD & BARRY) – This resolution approves an amendment to a grant from the Friends of Centennial Park and the Parthenon to the Metropolitan parks department to provide funding for a full-time Metro parks employee. These funds are used to pay the salary for the position of President of the Conservancy. This amendment approves an amendment to increase the salary of the employee by \$7,500 for a new grant total of \$77,500. This also increases the amount of the local match by \$3,413, for a new total of \$28,599 to cover the fringe benefit cost associated with the position.

RESOLUTION NO. RS2011-1560 (MAYNARD & BARRY) – This resolution approves a grant in the amount of \$69,282.60 from Vanderbilt University to the board of parks and recreation to collaborate on the Growing Right Onto Wellness (GROW) program. This 7-year initiative will consist of a behavioral intervention to prevent childhood obesity. These funds will be used to provide personnel to participate on the study steering committee and to run the intervention. This will also cover transportation costs and materials.

RESOLUTION NO. RS2011-1561 (HOLLEMAN, MAYNARD & BARRY) – This resolution approves an amendment to a grant in the amount of \$30,000 from the Tennessee Stormwater Association to the Metropolitan parks department to assist with the cost of implementing green technology at the McCabe Park community center. This amendment extends the term of the grant through April 1, 2011.

RESOLUTION NO. RS2011-1562 (JAMESON, MAYNARD & BARRY) – This resolution approves an application for a grant in the amount of \$20,000 from the Metropolitan development and housing agency (MDHA) to the Metropolitan board of parks and recreation for summer enrichment programs for youth. MDHA has funding available for these activities as part of the federal community development block grant program. These funds will be used to provide recreational, educational, social, and cultural art activities for youth in the Kirkpatrick neighborhood between June 1 and August 18, 2011. There will be a required in-kind match of \$34,800.

RESOLUTION NO. RS2011-1563 (BARRY) – This resolution approves an application for a grant in the amount of \$274,640 from the U.S. department of homeland security to the Metropolitan Nashville fire department to purchase computer equipment and software for fire inspectors and surveillance equipment for arson investigators. This equipment will allow for the purchase of a voice stress analyzer and surveillance cameras. There will be a required local match of \$68,660 if the grant is awarded.

RESOLUTION NO. RS2011-1564 (BARRY) – This resolution approves an application for a grant in the amount of \$18,470 from the Memorial Foundation to the Davidson County sheriff's department, to build outdoor shelters for animals and a work shed to teach offenders vocational skills. This grant is to support the sheriff's office PAWS program, which teaches inmates to train and care for animals.

RESOLUTION NO. RS2011-1565 (BARRY) – This resolution approves a grant in the amount of \$52,250 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to provide skills shortage training to 200 workers through Associated Builders and Contractors, Inc. This training will include OSHA requirements, maintaining green building sites, blueprint reading, rigging, and hazardous communication. The term of the grant is from February 1, 2011, through December 31, 2011.

No Metropolitan Government funds will be used for this training program.

RESOLUTION NO. RS2011-1566 (BARRY & FORKUM) – This resolution approves a second amendment to a grant from the U.S. environmental protection agency (EPA) to the Metropolitan board of health to achieve established ambient air quality standards. These funds are used to collect data and to monitor the ambient air concentrations for ozone, fine particulate matter, regional haze, sulfur dioxide, carbon monoxide, and mercury. The Metro health department is responsible for air quality monitoring within Nashville and Davidson County on behalf of the EPA. The amendment increases the grant amount by \$219,296 for a new grant total of \$620,534.

RESOLUTION NOS. RS2011-1567 & RS2011-1568 – These two resolutions approve amendments to grants from the U.S. department of health and human services to the Metro board of health to basically transfer \$141,320 between the grants.

Resolution No. RS2011-1567 (Forkum & Barry) approves a third amendment to a previous year's grant to provide for a \$141,320 decrease in grant funds.

Resolution No. RS2011-1568 (Barry & Forkum) approves a second amendment to a grant to enhance access to community-based care for low income individuals and families with HIV. These grant funds are used to provide a number of medical and support services for HIV patients. This resolution approves an increase in the grant amount by adding \$141,320 in unspent grant funds from a previous grant to the current grant, for a new grant total of \$4,753,047.

RESOLUTION NO. RS2011-1569 (BARRY & FORKUM) – This resolution approves an amendment to a grant from the U.S. department of health and human services to the Metropolitan board of health for the Healthy Start initiative. The purpose of the Healthy Start program is to provide a one-stop service center for pregnant and parenting women to give assistance regarding child health. The grant funds are used to provide access to adequate prenatal and well child healthcare, and to promote child development. This amendment transfers \$171,918 of unspent funds from year one of the grant to year two.

RESOLUTION NO. RS2011-1570 (BARRY & FORKUM) – This resolution approves an amendment to a contract between the Metropolitan board of health and Vanderbilt University for the health department's participation in the Tuberculosis Trials Consortium. This resolution simply approves a modification of the indemnification provisions in the contract.

RESOLUTION NO. RS2011-1571 (BARRY & FORKUM) – This resolution approves a contract between the Metropolitan board of health and Meharry Medical College for the Historically Black Colleges and Universities Wellness project. The health department received a grant in the amount of \$170,636 from the state department of finance and administration to create a team of health ambassadors from each of the five historically Black colleges and universities in Tennessee. These teams consist of four students each from Fisk University, Meharry Medical College, Knoxville College, Lane College, and LeMoyne-Owen College. This resolution approves the contract with Meharry to assure compliance with the project protocols and requirements, and to identify the student health ambassadors. Meharry will be paid \$11,000 for performance of the contract in fiscal year 2011.

RESOLUTION NOS. RS2011-1572, 1573 & 1575 (BARRY & FORKUM) – These resolutions approve amendments to existing contracts and a renewal of another contract between the Metropolitan health department and the United Way of Metropolitan Nashville to arrange for assistance in the planning, development and delivery of services for individuals infected with or affected by HIV/AIDS. Under the terms of these contracts, the United Way provides a number of planning, administrative, and direct HIV/AIDS services under the provisions of the Ryan White Treatment Modernization Act of 2006. The funds paid to United Way under these contracts are federal pass-through funds provided for the program.

Resolution No. RS2011-1572 approves the renewal of a contract for services provided to individuals infected with or affected by HIV/AIDS. The contract renewal is for a term of March 1, 2011 through February 28, 2012. The United Way will be paid \$1,476,022 to provide these services.

Resolution No. RS2011-1573 approves a third amendment to a contract for services under the Minority Aids Initiative. The amendment increases the amount United Way is to be paid to \$290,642.

Resolution No. RS2011-1575 approves a ninth amendment to a contract for services provided to minority individuals infected with or affected by HIV/AIDS. The amendment increases the amount United Way is to be paid to \$3,976,318 for providing the services.

RESOLUTION NO. RS2011-1574 (BARRY & FORKUM) – This resolution approves a contract between the Metropolitan board of health and the United Way of Metropolitan Nashville to improve and enhance the IT infrastructure capacity to collect and report data. Metro received a grant from the U.S. department of health and human services last year to pay for these services. United Way is to be paid \$86,895, which will be used for the purchase of equipment and the engagement of IT consultants. The term of the contract is from December 1, 2010, through August 31, 2011.

RESOLUTION NO. RS2011-1576 (FORKUM & BARRY) – This resolution approves a business associate agreement between the board of health and Meharry Medical College to prevent the disclosure of protected health information. This is the standard business associate agreement that all health department contractors enter in order to comply with HIPPA.

RESOLUTION NO. RS2011-1577 (MCGUIRE, HOLLEMAN & OTHERS) – This resolution approves a third application for a hazard mitigation grant from the Tennessee Emergency Management agency and authorizes the department of water and sewerage services (MWS) to acquire 63 homes within various floodways/floodplains in Davidson County. Ordinance No. BL2010-765 authorized such action to be taken upon approval of a resolution receiving 21 affirmative votes once the funding was made available. The Tennessee emergency management agency is accepting additional grant applications for the home buyout program in an amount not to exceed \$13,472,873.75, with a local match of \$1,924,686.25. The federal emergency management agency has already awarded Metro \$7,097,318 to acquire 81 homes in the Delay Drive and West Hamilton Avenue areas, which was the subject matter of Resolution No. RS2010-1466 approved in December 2010. In February, 2011, the council approved another grant application for \$4,358,242.50 to acquire 41 additional homes.

This new grant is to consist of \$11,548,177 in federal funds representing 75% of the costs to acquire the homes. The remaining 25% would be split equally by the state and Metro. Once the funds are guaranteed, MWS will take the action necessary to acquire and demolish these homes to be maintained as permanent green space. There is no obligation for the homeowners to participate in this home buyout program.

The Metro Code provides that the director of public property administration must first negotiate an option to purchase property at a fixed price subject to the approval of the council by resolution prior to the acquisition of real property for any purpose other than as Metro right-of-way. Ordinance No. BL2010-765 created an exception to the option requirement for this flood buyout since MWS had already determined the amount the government will pay for each property and this amount had been relayed to the property owners. A list of the properties to be acquired with the corresponding purchase amount is attached to this analysis.

RESOLUTION NO. RS2011-1578 (MATTHEWS & HODGE) – This resolution approves amendments to agreements between the Metropolitan Government and the state department of environment and conservation (TDEC) regarding the maintenance of closed solid waste facilities. State law requires that all owners of closed landfills either put up a performance bond or execute a contract agreeing to pay a penalty if the site is not adequately maintained. The Metropolitan Government has entered into contracts with TDEC in lieu of a performance bond as assurance of financial responsibility for our solid waste facility maintenance duties. The ordinance approves a decrease in the financial responsibility amounts, as follows:

- Bordeaux sanitary landfill – decrease from \$5,273,616 to \$4,993,455;
- Thermal ash monofill – decrease from \$1,121,599 to \$1,109,253;
- Due West Superfund site – decrease from \$1,358,161 to \$1,314,586.

The resolution also approves an amendment increasing the amount of the financial responsibility for the composting/mulching site from \$89,623 to \$101,532. These amounts would only be paid if Metro failed to adequately maintain the sites. Ordinance No. BL2010-719 allows such amendments to be approved by resolution receiving 21 affirmative votes.

RESOLUTION NO. RS2011-1579 (HODGE) – This resolution is an annual housekeeping matter required by state law that classifies all public roads in Davidson County. By adoption of this resolution, those roads and alleys listed on the street and alley acceptance and maintenance map under Ordinance No. BL2009-829, including any changes since the adoption of the map, will be officially classified as public roads.

RESOLUTION NO. RS2011-1580 (BARRY) – This resolution authorizes the department of law to compromise and settle the lawsuit brought by Gary Bernard Sanders against the Metropolitan Government for the amount of \$22,500. On June 10, 2008, a Metro fire department employee struck the rear of Mr. Sanders' vehicle at the intersection of Old Hickory Boulevard and Edmonson Pike, after Mr. Sanders slowed when a vehicle turned in front of him. Mr. Sanders sustained injuries to his back and incurred \$14,750.80 in medical expenses. The \$22,500 settlement is to be paid from the self-insured liability fund.

The Metro employee involved in the accident received disciplinary action consisting of an oral reprimand.

RESOLUTION NO. RS2011-1581 (JAMESON) – This resolution authorizes the installation and maintenance of an aerial encroachment within the Metropolitan Government right-of-way at 420 Broadway for "The Second Fiddle". This sign will measure 8'6" x 6' and will extend six feet over the right-of-way. 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. BL2010-822 (HOLLIN, CRAFTON & CRADDOCK) – This ordinance 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. 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. BL2011-836 (RYMAN & FORKUM) – This ordinance amends the vehicle emissions testing provisions of the Metropolitan Code to exempt vehicles that are two years old and newer from the testing requirements. The code grants the authority to the board of health to establish rules regarding the inspection and maintenance of motor vehicles. Such rules or regulations are subject to ratification by resolution of the council. The current version of the light-duty vehicle emissions testing program in Metro was established in 1985 in order to comply with the federal Clean Air Act. The current health board rules governing emissions testing require that all vehicles in Davidson County be inspected annually for compliance with the emissions performance standards.

The rules currently exempt vehicles older than 1975, as well as new vehicles being registered for the first time. This ordinance would extend this exemption to include any vehicle that is two years old or newer. Vehicle owners electing to take advantage of this exemption would still be required to pay the \$3.00 portion of the inspection fee that is used by the health department for air quality control and monitoring purposes.

The current emissions testing contract with Systech International provides that if Metro modifies its emissions testing program in a manner that would reduce the number of vehicles required to be tested by more than ten percent, then the percentage of the fee Metro retains is to be reduced. There were approximately 517,000 vehicles that were tested by Systech in 2010. The council office asked the health department some weeks ago to identify how many of these were two years old or newer, but never received this information. It is anticipated that exempting vehicles that are two years old will not result in a decrease of more than ten percent that would trigger the additional payment to Systech.

The sponsors have indicated that this bill is to be deferred indefinitely.

ORDINANCE NO. BL2011-855 (CRAFTON) – This ordinance amends the metropolitan code to prohibit former members of council from serving as a non-civil service Metro employee for two years after leaving office. This provision, known as a “cooling off” requirement, is frequently applied to lobbying activity by former legislators, usually at the state level. Since the Metropolitan Charter provides that the civil service commission has the authority to set the policy governing the hiring of employees in the classified service, this ordinance only applies to positions in the non-classified service, which includes the council office and the mayor’s office. This ordinance does request the civil service commission to adopt a similar provision prohibiting former members of council from serving as a civil service Metro employee for two years.

ORDINANCE NOS. BL2011-860 and BL2011-861 (MITCHELL) – These two ordinances adopt a plan of services and approve the extension of the boundaries of the urban services district (USD) to include five parcels of property along Highway 70 South in the Bellevue area (the Bellevue Kroger complex). The Metropolitan Charter provides that general services district property may be annexed into the urban services district, in accordance with state law annexation procedures, whenever such areas come to need urban services. State law requires that a plan of services be considered by the planning commission and then be adopted by the council before an ordinance to extend the boundaries of the urban services district can be approved on final reading. The planning commission approved the plan of services at its January 27, 2011, meeting.

These parcels of property already receive additional police protection, fire protection, water and sewer service, street lights street cleaning services. The properties also receive the same level of water and sewer service from the Harpeth Valley Utility District that properties served by Metro water services within the USD receive. Thus, the department of public works has determined that there will be no additional cost to the Metropolitan Government for implementation of the plan of services.

State law requires that the council hold a public hearing on both the plan of service and the annexation ordinance prior to their adoption on third and final reading.

Similar ordinances were approved in October 2010 to annex approximately 960 individual parcels in the Bellevue area located along Old Hickory Boulevard between Interstate 40 and Highway 70 South.

Ordinance No. BL2011-860 adopts the proposed plan of services for the annexation of these five parcels.

Ordinance No. BL2011-861 extends the boundaries of the urban services district to include these properties.

ORDINANCE NO. BL2010-862 (GILMORE) – This ordinance amends the recently-adopted Metropolitan Code provisions pertaining to economic and community development incentive grants to require that certain demographic information be submitted by the qualifying company before receiving any grant funds. The council enacted a modification to the economic and community development incentive grant program in February 2011 to allow a corporate headquarters or technology firm relocation/expansion that will create at least 500 jobs over a five year period to qualify for an incentive grant. This ordinance would add a new requirement that such companies submit certain demographic information regarding the company's employees working in Davidson County. This information is to include the ethnicity, race, sex, county of residence, and salaries of the existing employees, as well as a description of the existing jobs. In addition, such qualified company must provide a description of the future jobs to be created during the term of the agreement, including the estimated salaries. No resolution approving the grant could be considered by the council unless and until this demographic information is provided.

Private companies are typically reluctant to disclose the information required by this ordinance. However, since the ordinance is only applicable to companies seeking an incentive grant from Metro, the council office sees no legal problem with this requirement.

ORDINANCE NO. BL2011-863 (GILMORE) – This ordinance amends the Metropolitan Code to exempt artisan distilleries from certain location restrictions for the sale of liquor. Artisan distilleries were added to the zoning code in 2009 to allow smaller-scale distilleries in the downtown area to serve as tourist attractions. The code requires all establishments engaged in the retail sale of liquor to meet certain location restrictions, which technically includes artisan distilleries selling commemorative bottles of alcoholic beverages produced on site. These location restrictions include required access to a major street, location on the ground floor with at least one main entrance opening to a public street, and an unobstructed view from the street of the interior of the space where liquor is sold. In addition, liquor stores cannot be located within 50 yards of a private residence or library, 100 yards of a church, or 200 yards of a school or another liquor store.

This ordinance would exempt artisan distilleries from all of the location restrictions noted above except for the distance requirements from residences, churches, and schools.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2007-71 (JAMESON & COLE) – This ordinance declares Metropolitan Government-owned property located at 217 South 10th Street to be surplus, and authorizes the director of public property administration to sell the property in accordance with the standard procedures for the disposition of surplus property. The Metropolitan action commission has determined that it no longer needs this property for its program services. The proceeds of the sale will be credited to the GSD general fund unappropriated fund balance.

On March 1, 2011, the department of general services claimed this property, which under the Metro code prohibits it from being disposed of as surplus property at this time.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2010-754 (STANLEY & DUVALL) – 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 approved by the planning commission.

ORDINANCE NO. BL2010-827 (HOLLIN) – This ordinance amends the zoning code to delete the definitions for “check cashing”, “title loan”, “pawnshops”, and “cash advance” establishments. The zoning code was amended in 2008 to add definitions for these establishments. Prior to the 2008 ordinance, the zoning code made no distinction between these uses. Rather, check cashing, title loan, and cash advance establishments were all considered “financial institutions”, and pawn shops were considered retail establishments.

The planning commission deferred this text change indefinitely at the request of the sponsor.

ORDINANCE NO. BL2011-838 (JAMESON, GILMORE, HOLLIN & OTHERS) – This ordinance, as amended, amends the Metropolitan procurement code to prohibit Metropolitan Government contractors from discriminating on the basis of sexual orientation or gender identity in their employment practices. In September 2009, the council enacted Ordinance No. BL2009-502 to prohibit the government itself from discriminating on the basis of sexual orientation or gender identity in employment practices. However, Ordinance No. BL2009-502 did not apply to any employer in the private sector.

The Metro procurement code currently prohibits contractors that provide services or supplies to the Metropolitan Government from discriminating on the basis of race, creed, color, national origin, age sex, or disability. Contractors are also prohibited from subscribing to any personnel policy that allows such discrimination. The code further requires the purchasing agent to include a provision in the bid specification or request for proposals that no contract will be entered into unless the successful bidder submits an affidavit stating that the company’s employment policy does not allow for such discrimination.

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ORDINANCE NO. BL2011-838 (continued)

This ordinance would add sexual orientation and gender identity to the list of protected classes as it pertains to the employment practices of Metro contractors that have fifteen or more employees. This discrimination prohibition would also apply to private entities that enter into lease agreements with the Metropolitan Government having a term of greater than six months. In order to ensure compliance with the First Amendment to the U.S. Constitution, the ordinance includes a provision exempting religious entities, organizations, and institutions from the prohibition on sexual orientation and gender identity discrimination if such actions are in furtherance of the organization's religious beliefs. Further, the ordinance provides that the provisions prohibiting discrimination on the basis of sexual orientation or gender identity would not apply to any group or organization if such prohibition would significantly burden the freedom of expression of the group or organization.

As the council is aware, questions have recently been raised regarding the constitutionality of this ordinance. Specifically, an argument has been made that the ordinance violates the commerce clause of the U.S. Constitution because it would require companies doing business with Metro to agree not to subscribe to an employment policy that allows discrimination on the basis of sexual orientation or gender identity anywhere it is doing business. It is alleged that this is an unlawful attempt to regulate interstate commerce, which would make it per se unconstitutional, or that it at least poses a burden on interstate commerce. While this argument poses an interesting legal question, the council office is of the opinion that the existing ordinance language would be upheld.

The commerce clause provides that the U.S. Congress has the power to regulate commerce among the states. The basic principle behind the commerce clause is to avoid economic protectionism. States and local governments are not allowed to enforce regulations to benefit their own economic interests at the exclusion or expense of other states. By inference, the courts have held that since the power to regulate interstate commerce is delegated to Congress, then the states do not have the power to impose regulations that burden interstate commerce. This is known as the "negative" or "dormant" commerce clause.

A key argument supporting the constitutionality of this ordinance is what is known as the "market participant" exception. This doctrine basically means that Metro can choose who it wants to do business with, and under what conditions, without violating the commerce clause because it is directly participating in the market. Thus, as a player in the game, Metro can choose who it wants to play ball with and what game to play. An argument against the applicability of the market participant exception is the fact that this ordinance implicitly requires Metro contractors to abide by the nondiscrimination provisions everywhere they conduct business, not just in Tennessee, which would ostensibly turn Metro into a market regulator as opposed to a market participant. While Metro can choose who it wants to play ball with, it arguably cannot require players outside Tennessee to play Metro's style of game when the contractors are playing different teams on a different court.

However, even if the market participant exception was deemed not to be applicable to this ordinance as it is currently worded, the council office does not believe this would impact its constitutionality. This ordinance is not an economic protectionist measure, meaning it does not favor in-state firms over out-of-state firms. The ordinance requires compliance with the nondiscrimination policy while treating all private companies the same.

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ORDINANCE NO. BL2011-838 (continued)

Since the ordinance likely would not be deemed to discriminate against interstate commerce, the analysis shifts to whether any effect on interest commerce is outweighed by a legitimate local interest. As long as Metro has a legitimate governmental interest, in this case prohibiting discrimination, any incidental burden on interstate commerce would likely be outweighed by this interest. The courts have held that prohibiting discrimination is a legitimate governmental interest. The ordinance may “effect” the operation of contractors outside Tennessee, but this does not automatically make it an undue burden on interstate commerce, especially since laws favoring governmental interests are given more deference by the courts than laws favoring private businesses over their competitors.

The council office cannot find where any similar ordinances pertaining to government contractor nondiscrimination have been struck down on commerce clause grounds. A number of local governments across the country have adopted essentially the same provisions contained in this ordinance, including King County (Seattle), WA; Kansas City, MO; and San Diego, CA. Given the lack of cases on point and the very limited impact this ordinance would have on interstate commerce, Metro would likely prevail in court if challenged. If the council so chooses, the rules could be suspended to offer a minor amendment on third reading clarifying that the requirements of the ordinance are only applicable to the performance of services for the Metropolitan Government. However, the council office is of the opinion that the ordinance is constitutional whether an amendment is offered or not.

ORDINANCE NO. BL2011-842 (JAMESON, LANGSTER & PAGE) – This resolution approves an amendment to the lease agreement between the Metropolitan Government and Square Investment Holdings, L.P., for the lease of office space in the Washington Square building for the district attorney's office. Metro has been leasing space in this building for the district attorney's office since 1993. A new lease agreement was approved in 2008 adding 18,800 square feet for the department of law in addition to the space for the district attorney. The term of this lease extends through November 2018. The base annual rent under the lease is \$14.85 per square foot for the first three years, \$15.85 per square foot for years 2012 and 2013, and \$17.85 per square foot thereafter. The 2008 lease agreement included a provision allowing Metro to lease adjacent space as it becomes available.

As a result of the May 2010 flood, the district attorney's juvenile court staff was forced to relocate. The district attorney desires to lease an adjacent suite on the fourth floor consisting of 2,858 square feet. Pursuant to the original lease agreement, the lessor will build out the new area and will add a connecting stairway from the fourth floor to the fifth floor. This amendment will result in an increased annual rental amount of \$42,441.30.

This lease agreement has been approved by the planning commission.

ORDINANCE NO. BL2011-843 (HARRISON) – This ordinance renames a portion of Summit Avenue northeastwardly from Clarksville Pike as “West Summit Avenue”. This name change was requested by the district councilmember since there have been problems with emergency services locating properties on the two different ends of the street.

This name change has been approved by the planning commission and the historical commission, and has been referred to the ECD board.