

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **April 19, 2011**

RE: **Analysis Report**

Balances As Of:	<u>4/13/11</u>	<u>4/14/10</u>
<u>GSD 4% RESERVE FUND</u>	* \$24,440,100	\$13,232,956
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$34,451,634	\$20,566,186
USD	\$24,263,010	\$22,180,965
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	\$27,099,790	\$27,354,569

* Balance does not reflect 4% appropriations that are the subject matter of Resolution No. RS2011-1618.

– RESOLUTIONS ON PUBLIC HEARING –

RESOLUTION NO. RS2011-1608 (HARRISON) – This resolution exempts S & T Grill located at 3101 Clarksville Pike, Suite 6, 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. RS2011-1609 (ADKINS) – This resolution sets the date for the 2011 State of Metro Address. The Charter requires the mayor to personally address the council regarding the state of the Metropolitan Government not later than May 25th of each year. This resolution sets the address for April 26, 2011, at 10:00 a.m. in the Hume-Fogg Academic High School auditorium located at 700 Broadway.

RESOLUTION NO. RS2011-1610 (ADKINS) – This resolution confirms the appointment of Francis S. Guess to serve on the board of directors for the convention center authority. State law provides that the convention center authority is to be governed by a board of directors of not less than seven registered voters of the municipality to serve staggered terms. The directors are to serve without compensation, and cannot be an elected official or employee of the municipality. Such directors are appointed by the mayor and confirmed by a resolution adopted by the council. The board is to be composed of members who are diverse in professional and educational background, ethnicity, race, gender, and area of residency within the municipality. At least one of the directors must be female and at least one must be a minority.

Mr. Guess will be filling the unexpired term of Darrell A. Drumwright, who resigned from the authority in February 2011. This term will expire on September 30, 2012.

RESOLUTION NO. RS2011-1611 (GILMORE, BARRY & LANGSTER) – This resolution approves an amendment to a lease agreement between the Metropolitan Government and Greensboro I, L.P. for the police department's domestic violence program. The original lease was approved by the council in 2005 for 7,200 square feet of office space located at 804 Second Avenue North. The lease was for a five year term, with an optional five year extension. Metro exercised the option for an additional five year term commencing February 14, 2011.

In addition to the office space, the 2005 lease included ancillary parking for the domestic violence program at the corner of Ash Street and Third Avenue. This amendment extends the auxiliary parking term for an additional five years to coincide with the lease term for the office space. Metro will be paying \$1,083.33 per month for the 0.39-acre parking area located at 712, 714, and 716 Third Avenue South. This lease amendment has been approved by the planning commission.

RESOLUTION NO. RS2011-1612 (FORKUM & BARRY) – This resolution approves a contract between the Metropolitan board of health and the state health department to provide for laboratory services for testing particulate matter and other environmental tests. The federal Clean Air Act requires local government testing for particulate matter 2.5 microns or greater in size using licensed testing facilities. The state's facility possesses the required license for these tests. The term of this contract is from July 1, 2011 through June 30, 2014. Pursuant to this contract, Metro will pay \$24 per test to be billed monthly. This is a continuation of a contract that has been in place for a number of years.

RESOLUTION NO. RS2011-1613 (FORKUM & BARRY) – This resolution approves a contract between the Metropolitan board of health and Meharry Medical College to provide internship opportunities for students. This agreement will provide internship opportunities for four students to work within the health department's family, youth, and infant health bureau for a total of 400 hours. The health department will pay Meharry \$4,800 for the students' services. The term of this contract is from February 1, 2011, through June 30, 2011.

Metro participates with several colleges and universities to provide clinical experience to students.

RESOLUTION NO. RS2011-1614 (BARRY & FORKUM) – This resolution approves a contract and an amendment to the contract between the Metropolitan board of health and Vanderbilt University for the health department's participation in the Tuberculosis Trials Consortium. Vanderbilt received a grant from the U.S. Centers for Disease Control and Prevention, through the U.S. Veteran Affairs Medical Centers, for this tuberculosis project. The health department's responsibilities under this contract will be to provide space and equipment for the project, as well as consultation and support services. The health department is to receive \$65,000 for its services. The term of this contract is from its effective date through September 30, 2014.

The resolution also approves an amendment to the contract to modify the indemnification provisions. This amendment was actually approved by the council in March 2011. However, it was subsequently discovered that the original contract was never submitted for council approval. This resolution ratifies the contract and the amendment.

RESOLUTION NO. RS2011-1615 (COLE & BARRY) – This resolution approves a grant in the amount of \$72,547 from the state department of environment and conservation (TDEC) to the Metro board of parks and recreation for the Riverside Drive connector trail. This 550-foot trail section would connect the Shelby Bottoms greenway with neighborhoods to the north. There is a required local match of \$18,137 to be provided through bond funds allocated for the construction of greenways. The term of the grant is from June 1, 2011 through May 31, 2014.

RESOLUTION NO. RS2011-1616 (BARRY & GOTTO) – This resolution accepts a donation of \$1,965 from the Community Foundation to the Metropolitan historical commission for the commission’s annual preservation awards program. This donation will be used to purchase the plaques for the awards. Ordinance No. BL2006-1015 provides that donations of less than \$5,000 may be approved by resolution.

RESOLUTION NO. RS2011-1617 (HODGE & BARRY) – This resolution approves a contract between the state department of transportation and the Metropolitan Government for a traffic incident response system along arterial roadways in Davidson County. Phase 1A of this project was approved by the Council in 2003 to provide improvements to traffic signals at 10 intersections on Charlotte Avenue and West End Avenue. This contract approves phase 1B of the project to install a traffic detection and monitoring system along Gallatin Pike, Murfreesboro Pike, and the downtown area connecting the West End/21st Avenue South corridors. The cost for the project is estimated to be \$1,640,000, which funds will be provided by the federal government. This project is to be completed by December 31, 2014.

RESOLUTION NO. RS2011-1618 (BARRY) – This resolution appropriates \$12,143,100 from the general fund reserve fund (4% fund) to nineteen departments. Four percent funds may only be used for the purchase of equipment and repairs to buildings. The balance in the general fund reserve fund as of April 13, 2011, was \$23,440,100. This consists of unrealized revenue for fiscal year 2011 in the amount of \$4,378,540. 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:

Assessor of Property - \$75,000 for new and replacement office equipment.

Criminal Court Clerk - \$18,500 for new court file folders and a new office security alarm system.

Criminal Justice Planning - \$3,000 for a computer software upgrade.

Sheriff– \$75,000 for courthouse security equipment.

Codes Administration – \$25,000 for new equipment and tablet computers for inspectors.

General Services – \$7,367,800 for new and replacement vehicles, damage replacements, shop equipment, business continuity/disaster recovery, and major maintenance.

Fire - \$750,000 for replacement personal protective equipment.

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RESOLUTION NO. RS2011-1618 (continued)

Information Technology Services – \$1,338,000 for replacement desktop and laptop computers as part of the technology revolving fund.

Justice Integration Services – \$150,000 for the replacement of computer servers, software and hardware.

Metro Council - \$800 for a replacement printer.

Historical Commission - \$5,000 for new GIS mapping licenses.

Health - \$75,000 for new and replacement medical equipment and supplies.

Sports Authority - \$400,000 for replacement of tempered glass panels around the ice rink with Plexi-glass panels to comply with National Hockey League requirements.

Trustee - \$10,000 for new and replacement office equipment.

Parks & Recreation - \$250,000 for new furniture and equipment for McCabe Center, and maintenance and repairs to all parks.

Planning - \$100,000 for new aerial mapping.

Police - \$250,000 for a replacement horse trailer and miscellaneous equipment and accessories.

Public Library - \$1,200,000 for books, periodicals and library materials.

State Trial Courts - \$50,000 for hardware and software technology improvements.

RESOLUTION NO. RS2011-1619 (BARRY) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government's property damage claim against Taxi USA of Tennessee, LLC for the amount of \$9,290.67. On December 13, 2010, a Metro fire department employee was turning off the I-24 West exit ramp onto Harding Place when the ambulance she was driving was struck by a Taxi USA vehicle. The taxi driver was unable to stop due to the ice and snow conditions. The accident caused damage to the left compartment and wheel well area of the ambulance resulting in repair costs of \$9,290.67. Both Metro employees were injured in the accident, but this resolution only settles the property damage portion of the claim.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2011-869 (HOLLIN) – This ordinance readopts the juvenile curfew ordinance, which technically expired on June 30, 2010. The juvenile curfew ordinance, in its most recent form, was adopted in 1999 and included a five year sunset provision. The ordinance was extended by resolution in 2005. However, the ordinance was not extended prior to the June 2010 sunset deadline, and thus technically became null and void.

This ordinance simply readopts the juvenile curfew ordinance without a sunset provision. The ordinance makes it unlawful for any person under the age of 18 to be on public property or private property without the consent of the owner between the hours of eleven p.m. and five a.m., Sunday through Thursday, and twelve midnight to five a.m. Friday and Saturday during the months of September through May. The curfew for the months of June through August is twelve midnight to five a.m. seven days a week. The curfew ordinance also provides that parents may be cited for knowingly permitting their child to violate the curfew and be subject to a fifty-dollar fine.

ORDINANCE NO. BL2011-870 (LANGSTER) – This ordinance amends the public notification requirements in the Metropolitan Code applicable to the transportation licensing commission to allow notice by posting on the commission's website. The code currently requires that notification for public hearings to review applications for taxicab certificates of public necessity and for modification of the emergency wrecker zones be published in a newspaper of general circulation. This ordinance would require the commission to give "due notice" of the hearing, which would include publication on the commission's website. This ordinance is expected to save the transportation licensing commission approximately \$2,000 per year.

There is currently state legislation pending to create a pilot program in Knox County that would allow all government legal notices to be posted on the county's website.

ORDINANCE NO. BL2011-871 (MOORE, BARRY & HODGE) – This ordinance approves a wire and cable license agreement with Nashville and Eastern Railroad. Metro received a \$560,000 grant from the state department of transportation in 2004 to provide communication links to signalized intersections. Part of this project will require the installation of fiber optic cable over the railroad right-of-way. This contract will require Metro to pay the railroad's expenses associated with protecting the tracks and maintaining traffic while the cable is being installed, and will pay the railroad a one-time \$500 license fee. In addition, Metro will reimburse the railroad (using the TDOT grant funds) for the replacement of flashing lights at the railroad crossing, which is estimated to be \$13,675.

ORDINANCE NO. BL2011-872 (LANGSTER) – This ordinance approves a memorandum of understanding between the mayor's office of emergency management (OEM), Clear Channel Communications, Inc., and Warning Systems, Inc., regarding the dissemination of emergency alert messages. OEM will be responsible for purchasing the emergency alert equipment and conducting monthly tests. OEM will also have the responsibility for deciding when to activate the emergency alert system and what the message will be. These messages will be in addition to those disseminated by the National Weather Service and the TBI.

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ORDINANCE NO. BL2011-872 (continued)

Clear Channel Communications had agreed to provide space at the WSIX radio station for the installation of the required emergency alert equipment and to disseminate the messages on behalf of Metro. Warning Systems, Inc. will maintain the equipment and provide technical support to OEM and Clear Channel Communications.

This agreement can be terminated at any time upon thirty days written notice.

ORDINANCE NOS. BL2011-874 through BL2011-877 – These four ordinances abandon water and sewer lines and easements that are no longer being used by the department of water and sewerage services. These ordinances have been approved by the planning commission.

Ordinance No. BL2011-874 (BAKER & HODGE) abandons and relocates 1,725 linear feet of sanitary sewer line located on the Reostone Quarry and state prison property located along Robertson Avenue and Annex Avenue. This will also include the acceptance of an inverted siphon structure and easement.

Ordinance No. BL2011-875 (CLAIBORNE & HODGE) abandons 110 feet of an 8-inch sanitary line and accepts a fire hydrant assembly on property located at 420 Donelson Pike.

Ordinance No. BL2011-876 (JERNIGAN & HODGE) abandons 596 linear feet of an 8-inch water main and easement, and 843 linear feet of an 8-inch sanitary sewer line and easement on property located on Robinson Road for the Old Hickory Skilled Nursing Facility. The ordinance also accepts 640 linear feet of new water main and two fire hydrant assemblies.

Ordinance No. BL2011-877 (LANGSTER & HODGE) abandons 500 linear feet of a 10-inch sewer main and easement, and accepts 1,003 linear feet of a relocated sewer main and easement for properties located on 31st Avenue North and Long Boulevard.

– **BILLS ON THIRD READING** –

ORDINANCE NO. BL2010-808 (WILHOITE) – This ordinance, as amended, amends the metropolitan ethics code to allow members of council to appear before Metropolitan Government departments, agencies, boards, and commissions to express the wishes of his/her constituents. 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 appear in a non-representative capacity before any department, agency, board, or commission on behalf of his/her constituents, as long as the member of council does not receive any compensation for such appearance.

ORDINANCE NO. BL2011-859 (CRAFTON) – This ordinance, as amended, amends the metropolitan solid waste code to allow Davidson County residential property owners residing outside the county to pay the same fee at the Metro solid waste convenience centers as Davidson County residents. The solid waste code provides that all tip fees and charges are to be doubled when waste or refuse is transported to a disposal or collection site in a vehicle bearing a license tag issued by a county other than Davidson County. This ordinance would allow the lower in-county rate to be charged to owners of single or two-family residential property that either have a Davidson County license plate or present proof of ownership of property in Davidson County. The lower fee would not apply to the disposal of used tires.

ORDINANCE NO. BL2011-865 (TOLER & BARRY) – This ordinance approves a second extension to the term of the cable television franchise held by Comcast. The original franchise was granted to Viacom in 1995, which was subsequently transferred to Intermedia and then Comcast. The term of the 1995 franchise agreement, which was set to expire on May 5, 2010, was extended for one year in order to allow the CATV special committee to negotiate a new franchise agreement with Comcast. The parties continue to negotiate regarding this matter and the CATV special committee has recommended an additional one year extension.

This ordinance approves an extension of the cable franchise through May 5, 2012. Comcast has agreed to make a \$100,000 contribution for public, educational and governmental (PEG) access support, which is the annual contribution amount Comcast has been making under the existing franchise agreement. The recitals to the ordinance state that the CATV committee is in the process of reviewing Comcast’s performance under the initial agreement and wishes to explore the possibility of informal franchise renewal that would require approval of the council by ordinance.

ORDINANCE NO. BL2011-866 (BARRY, LANGSTER & FORKUM) – This ordinance approves an agreement between the Metropolitan Government and Hospital Corporation of America (HCA) for the exchange of property and construction of a new public health center. It has been previously determined that the Lentz public health center located on 3.7 acres of property at 311 23rd Avenue North is inadequate to meet the needs of the health department and the community. In fact, construction of a new public health center has been contemplated in at least two capital spending plans.

HCA owns a 3.5 acre parcel of property (HCA tract) as part of a larger 14.7 acre tract located at 2512 Charlotte Avenue. In order to construct a new public health center quicker, and likely cheaper, HCA and Metro have agreed to swap the HCA tract for the current Lentz property, and for HCA to construct a new health center on the HCA tract for the benefit of Metro. The construction cost for the new health center is not to exceed \$28.5 million, and is to be completed within 30 months after work commences.

HCA will be responsible for obtaining bids for the architectural, engineering, and construction services associated with the construction of the new health center. If no bids are received that are less than the \$28.5 million maximum construction price, Metro will have the opportunity to (1) seek approval from the council for an increase in price; (2) terminate the agreement and reimburse HCA for the expenses it incurred; or (3) revise the scope of work to lower the cost. Metro representatives will be allowed to observe the procurement process and to reject any bid “considered not responsible under Metro’s procurement rules and regulations.” This means that although HCA will not be required to follow all of Metro’s procurement laws and requirements, Metro will have veto power over a bid if Metro determines that the contractor is not qualified under Metro rules and regulations.

Metro will have unrestricted access to the HCA property during construction of the health center. Metro will also have the right to make changes to the project plans. The agreement includes a “covenant not to sue” whereby Metro agrees that it will not pursue any claims against HCA for faulty construction after the closing. All such claims could only be brought against the contractor.

This agreement also includes provisions governing parking at the new health facility. Five parking spaces are to be available for each 1,000 square feet of the facility, which is consistent with the zoning code requirements. HCA will be allowed to use the health center parking for its own benefit if it decides to construct additional facilities around the new health center, provided HCA makes additional parking areas available to Metro within ¼ mile of the facility. If HCA constructs a parking garage near the facility, Metro will be allowed use of the garage parking to the extent that all available parking is equal to five spaces per 1,000 square feet, not to exceed 491 spaces.

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ORDINANCE NO. BL2011-866 (continued)

In order to compensate HCA for financing the construction costs of the new health center, Metro will pay interest at the rate of three percent of the total construction costs plus a one-time \$50,000 fee. Once construction is completed, the parties will swap ownership of the two properties. At the time of closing, Metro will pay HCA an amount based upon the following formula:

	Total Construction Cost
+	HCA Architectural Costs
+	Appraised Value of the HCA Tract
--	<u>Appraised Value of the Lentz Property</u>
	Total Amount Paid by Metro at Closing

The agreement will not become effective until HCA and Metro have agreed on the appraised value of both properties. Preliminary appraised values have not been provided to the council. The value of the entire 14.7 acre HCA tract according to the assessor of property is \$6.4 million, but this transaction only includes 3.5 acres of the tract. The assessor's office has appraised the Lentz property at \$2.25 million. The council office would recommend that the council at least obtain preliminary outside appraisal amounts for the two properties before approving this ordinance on third reading.

It is not anticipated that HCA will use the Lentz property immediately after becoming owner of the property. As an additional incentive to HCA, the contract provides that HCA may obtain a tax abatement in the form of a payment in lieu of tax (PILOT) agreement through the industrial development board (IDB). Such PILOT agreement is to provide a 100% tax abatement for the first five years, and a 50% abatement for the next five years. The IDB authority to negotiate a PILOT agreement with HCA would be subject to approval of the council by ordinance. If HCA chooses not to enter into a PILOT agreement, HCA would have the legal right to sell the property to a third party at any time.

An additional benefit to Metro by having HCA construct the new health center is the ability to delay the issuance of debt until the building is complete, given Metro's current bonding capacity. As the council is aware, Metro has taken on a considerable amount of debt in recent years. In fiscal year 2008, the ratio of Metro's outstanding indebtedness compared to the operating budget was approximately 1.4:1, or 140%. That ratio increased in fiscal year 2010 to 1.63:1, or 163%. The debt restructuring plan approved by the council in May 2010 reduced the debt service budget for fiscal year 2011 from \$162 million to \$77.2 million in order to free up more operating funds. However, the debt restructuring will result in higher debt payments in fiscal years 2014 through 2020.

This ordinance has been approved by the planning commission. However, this ordinance must be deferred one meeting to allow time for the planning commission to consider the corresponding amendment to the capital improvements budget. Although the fiscal year 2010-2011 capital improvements budget includes a \$30 million project for the renovation of the Lentz health center, an amendment is needed to allow for the construction of a new health center.