

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: **December 6, 2011**

RE: **Analysis Report**

Balances As Of:	<u>11/30/11</u>	<u>12/1/10</u>
<u>GSD 4% RESERVE FUND</u>	*\$25,836,951	\$29,959,990
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	Unavailable	\$34,798,409
USD	Unavailable	\$24,263,010
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	Unavailable	\$27,099,790

\* Assumes estimated revenues in fiscal year 2012 in the amount of \$24,098,500.

– RESOLUTIONS –

**RESOLUTION NO. RS2011-94** (MCGUIRE) – This resolution adopts the debt management policy promulgated by the department of finance in September 2011. In December 2010, the Tennessee State Funding Board adopted a statement regarding debt management and directed local governments and government entities that borrow money to draft their own debt management policies with certain mandatory provisions not later than December 31, 2011. The Metropolitan Government has had an official debt management policy in place since 2006 that meets the spirit of the state model policy. The finance department recently revised the Metro debt management policy to include the State Funding Board mandatory language relative to transparency, professionals, and conflicts. Although not required by law, the State Comptroller has suggested that the Metropolitan Council officially adopt Metro's debt management policy.

The purpose of the debt management policy is to establish parameters for issuing debt and for managing a debt portfolio that will meet Metro's needs and protect the government's credit rating. The policy restricts Metro from using speculative financial instruments. All bond resolutions must include a preliminary official statement to ensure the transparency of costs. Bonds are to be awarded by competitive sale, negotiated sale, or by private placement, whichever method is deemed to be in Metro's best interest. The policy provides that the preference of the Metropolitan Government is to issue bonds by competitive sale, though all but one of the bond issues over the past four years have been via negotiated sale.

The policy provides that the director of finance will provide the credit rating agencies with updates as to Metro's financial condition. The term of bonds should generally not exceed 20 years, but may extend to 30 years in certain circumstances. The preference in the policy is for fixed-rate debt with level debt service. Metro may issue variable rate debt, but the amount of variable rate debt cannot exceed 30% of Metro's total outstanding debt. All refunding bond issues must be within the term of the original debt, meaning Metro can refund bonds to achieve interest savings or restructure debt payments, but cannot extend the term of the bonds.

The policy also includes provisions specifying the types of professionals and consultants Metro will use and requires all of the consultants and advisors to be free from any conflict of interest. Consultants will be required to provide an annual affirmative statement that no conflicts of interest exist.

Although Metro's written debt management policy was promulgated in 2006, Metro has been operating under such a policy from a practical standpoint for the last 35 years.

**RESOLUTION NO. RS2011-95** (MCGUIRE) – This resolution approves the issuance of taxable public improvement revenue bonds in a principal amount not to exceed \$28 million to finance improvements to LP Field. The original bonds to finance the construction of LP Field were issued in 1996. The Titans have identified a number of capital improvements they believe are necessary to keep the facility comparable to other similar facilities. These improvements include the installation of a new sound system that distributes sound equally throughout the stadium, the replacement of the score boards with HD video screens, the installation of LED ribbon boards around the stadium, the replacement of the control room, installation of elevators to take fans from the ground level to the upper level, and the development of new areas within the facility for the benefit of fans.

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**RESOLUTION NO. RS2011-95** (continued)

The lease agreement between the sports authority and the Titans requires the Metropolitan Government to pay \$1 million annually for capital improvements to LP Field. The Titans are responsible for the day-to-day operating costs of the stadium, but the long-term capital needs are the responsibility of Metro. The lease requires Metro to make all capital improvements necessary to keep the stadium in a "First Class Condition", which means maintained in good condition and repair (normal wear and tear excepted), and having the level of improvements and new technology from time to time found at comparable facilities.

The total cost of these new projects will be approximately \$25 million. The estimated useful life expectancy for the improvements, averaging 18 years, is as follows:

- Elevators and Fan Hospitality Areas – 30-plus years
- Sound System – approximately 15 years
- Video Boards – approximately 15 years
- LED Ribbon Boards – approximately 15 years
- Control Room – approximately 10 years

(For the technology upgrades, some of the computer-based devices will need to be upgraded after approximately 8 years.)

In order to finance these projects, the administration is proposing that fixed-rate taxable bonds be issued with a final maturity of not more than 25 years (2037), and an average maturity of approximately 15 years. The bonds will be paid by the current \$2.00 ticket tax levied in 2009. Although the principal amount of these bonds is not to exceed \$28 million, it is anticipated that the principal will be more in the range of \$22.6 million. This will allow for a \$26.8 million package of stadium improvements when added to the amount of revenue collected from the current ticket tax. The current ticket tax generates approximately \$1.9 million annually and a total of \$3.5 million has accumulated since the tax went into effect last year.

The new bonds to be issued for the capital improvements will be taxable since they will be paid from the ticket tax revenue. The ticket tax revenue is collected primarily as a result of a private activity, which prohibits these revenue bonds from being tax exempt under the internal revenue code. The \$2 ticket tax should be sufficient to cover the debt service on the bonds. However, the Titans have advised Metro that the stadium seats will need to be replaced in 2018 at an estimated cost of \$15 million. In order to build a capital fund for future needs, the Titans have requested that the ticket tax be increased to \$3 effective for events scheduled on or after August 1, 2013, which is the subject matter of Ordinance No. BL2011-40 on third and final reading. This will allow funds to accumulate at a rate of approximately \$900,000 per year for future improvements. The council would need to issue additional bonds if and when the seat replacement project is initiated.

In the event the ticket tax revenues are insufficient to pay the debt service on these revenue bonds, Metro is pledging its non-tax revenues. These revenues include, but are not limited to, permit fees; franchise fees (cable, gas, and telephone); fines; court clerk fees; forfeitures and penalties; charges for services; and revenues from the sale of surplus property. This is the same backstop revenue pledge for the convention center debt. However, the pledge of the non-tax revenues for the convention center bonds is subordinate to the pledge to the sports  
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**RESOLUTION NO. RS2011-95** (continued)

authority for stadium and arena revenue bonds. Further, this resolution provides that the additional one dollar tax levied by Ordinance No. BL2011-40 effective in 2013 would be used to pay any debt service deficiency before the non-tax revenues are used.

The current Titans lease will expire in 2028, which is prior to the final maturity date of these bonds. However, the existing debt for the construction of the stadium will be paid off in 2026, so these new bonds would not present an additional financial burden to Metro if the Titans chose to leave in 2028.

This resolution also authorizes the director of finance to prepare and distribute a preliminary official statement for the bonds, which is a document used by the underwriter to sell the bonds to investors.

Ordinance No. BL2011-40 eliminating the 10-year cap on the ticket tax and increasing the amount of the tax must be taken out of order and considered before this bond resolution may be considered since the ticket tax is the funding source for the bonds.

**RESOLUTION NO. RS2011-96** (MCGUIRE) – This resolution approves the issuance of taxable public facility revenue refunding bonds to refinance a portion of the bonds that were issued in 1998 to fund the inducement payment made to the Nashville Predators. The 1998 bonds, with an original principal amount of \$20,700,000, financed the lump sum payment to the Nashville Hockey Club Limited Partnership to induce the team to play in the Nashville arena. This resolution approves the sports authority's issuance of bonds to refund the 1998 bonds maturing on or after July 13, 2013. The principal amount for the refunding bonds is anticipated to be \$10.5 million, although the resolution does not provide a set amount. The bonds will ultimately mature on July 1, 2018. These bonds will be backed by the non-tax revenues of the Metropolitan Government to the extent the current ticket tax at the arena is insufficient to cover the debt service. This is the same basket of revenues pledged for the 1998 bonds being refunded.

The purpose of the refunding bonds is to lower the amount of interest paid by Metro by approximately \$1 million. Although this savings would not be enough to justify a standalone bond issue, authorizing it at the same time as the stadium improvement bonds will economize the costs of issuance.

**RESOLUTION NO. RS2011-97** (MITCHELL & MCGUIRE) – This resolution approves an application for a grant in the amount of \$662,595.17 from the Tennessee emergency management agency to the Metropolitan Government for homeland security preparedness activities. These federal pass-through funds would be used to implement the state homeland security strategy and the national preparedness goals through the purchase of equipment and training activities.

**RESOLUTION NO. RS2011-98** (MITCHELL & MCGUIRE) - This resolution approves a grant in the amount of \$399,888.60 from the state department of transportation to the Metro police department for the continuation of an enhanced DUI enforcement initiative. The purpose of the grant is to reduce traffic related crash fatalities by focusing on alcohol or drug impaired drivers. These federal pass-through funds will be used by the police department for two safety initiatives geared toward reducing impaired driving.

The first initiative involves an enhanced enforcement team working Thursday through Sunday nights and on the six holidays associated with heavy alcohol consumption: St. Patrick's Day, Cinco de Mayo, Memorial Day, Independence Day, Labor Day, and New Year's Eve. The second initiative consists of strategically placed sobriety checkpoints or roadblocks.

The term of the grant is from October 1, 2011 through September 30, 2012.

**RESOLUTION NO. RS2011-99** (LANGSTER, MCGUIRE & WEINER) – This resolution accepts a grant in the amount of \$1,589,107 from the U.S. department of health and human services to the Metropolitan board of health to create a comprehensive strategy to address issues and barriers to responsible fatherhood. This grant has been awarded under the federal Pathways to Responsible Fatherhood grant program. The grant will fund 17 positions in the health department consisting of a program manager, a program evaluator, two lead facilitators, a case management supervisor, six case managers, a referral and resource manager, four outreach workers, a Teen Father Programming Lead, and a financial management specialist. The health department will also subcontract with several community health providers and resource centers to implement the program. The term of the grant is from September 30, 2011 through September 29, 2012.

**RESOLUTION NOS. RS2011-100 and RS2011-101** (MCGUIRE) – These two resolutions approve grants from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to prepare adults and dislocated workers for re-entry into the labor force, and to provide training for those facing serious barriers to productive employment. These grants provide part of the operating funding for the NCAC. The terms of the grants are from October 1, 2011, through June 30, 2013.

**Resolution No. RS2011-100** approves a grant in the amount of \$2,426,244 to establish programs and deliver services to dislocated workers.

**Resolution No. RS2011-101** approves a grant in the amount of \$1,871,493 to establish programs and deliver services to adult workers.

**RESOLUTION NO. RS2011-102** (HUNT & MCGUIRE) – This resolution authorizes the acquisition of additional easements or other property rights necessary for an upgrade to the Munn Road Pump Station. Ordinance No. BL2011-947, approved in July 2011, authorized the acquisition of a 100 square foot utility easement for this project. The ordinance also provided that the acquisition of additional easements for this same project may be approved by resolution. This resolution authorizes the acquisition of two easements located on Munn Road.

An identical resolution was withdrawn at the November 15, 2011 council meeting.

**RESOLUTION NO. RS2011-103** (MCGUIRE & HUNT) – This resolution approves a contract between the Metropolitan Government and Red River Ranch, LLC for the processing, disposal, and recycling of brush and yard waste at the County Hospital Road compost facility. Specifically, the contract will be for the services, labor, equipment, materials, and supplies for the grinding of wood and yard waste into mulch, for disposing or recycling the material, and for the day-to-day operation of the compost facility. Red River Ranch was selected through a request for proposals (RFP) process, as required by the Metro procurement code. Six companies submitted proposals, and Red River’s proposal was substantially less than the other proposals.

This contract is for a five year term commencing upon its approval by the council. The contract has an estimated maximum value of \$2.5 million. Red River Ranch will be paid a certain amount per ton of material processed depending on the payment option chosen by Metro. The three options are as follows:

- Option A – Red River will grind the brush and yard waste and Metro will own all of the ground material. Metro would pay \$13.06 per ton in the first year, escalating annually to \$13.59 per ton in the fifth year.
- Option B – Red River will grind the material and will own all ground material. The price per ton would be \$9.24 in the first year increasing annually up to \$9.62 in the fifth year.
- Option C – Red River will grind the waste and process it into a recyclable product, such as mulch or boiler fuel. Red River would own the material, but Metro would have the option to keep up to 200 tons per month for its own use. Including the revenue sharing from the sale of the material, the net cost per ton paid by Metro would be \$10.93 in the first year increasing to \$11.50 per ton in the fifth year.

It is anticipated that public works will use option C since that is basically the method currently being used. However, the new contract will provide pricing flexibility as circumstances dictate.

The contract includes the standard indemnification provisions and insurance requirements found in other similar contracts. Metro would be entitled to cancel the contract for any reason upon 30 days written notice to Red River. The Metropolitan Code provides that all contracts related to solid waste collection and disposal in excess of \$500,000 must be approved by resolution of the council receiving at least 21 affirmative votes.

**RESOLUTION NO. RS2011-104** (GILMORE) This resolution authorizes Edward Smith to install and maintain an aerial sign encroachment for Hats and Boots located at 121 3rd Avenue South. This double-faced neon sign will be sixteen feet tall and seven feet wide. 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.

**RESOLUTION NO. RS2011-105** (BEDNE & HUNT) – This resolution approves a utility relocation contract between the department of water and sewerage services and the state department of transportation (TDOT) to relocate certain department of water and sewerage services’ facilities required by TDOT’s project along Concord Road between Sunset Road and Nolensville Pike. The total cost of the utility relocation project is estimated to be \$114,825, with Metro being responsible for approximately \$101,046 (88%) of the costs. The 88% portion Metro will be paying represents the percentage of the utility facilities located within the public right-of-way.

**RESOLUTION NO. RS2011-106** (HUNT & MCGUIRE) – This resolution approves a utility relocation contract between the department of water and sewerage services and the state department of transportation (TDOT) to relocate certain water and sewer lines necessitated by TDOT's Westlawn Drive bridge project. The total cost of the utility relocation project is estimated to be \$19,050, with Metro being responsible for 100% of the costs.

**RESOLUTION NO. RS2011-107 & RS2011-108** (MCGUIRE) – These two resolutions authorize the department of law to compromise and settle two personal injury claims against the Metropolitan Government arising out of an accident involving a Metro employee. On April 11, 2011, a Metro ambulance driver struck the rear of a vehicle owned and operated by Tonya Ringer. The ambulance driver reported being temporarily blinded by the sun which caused her to not see Ms. Ringer's vehicle. Ms. Ringer sustained soft tissue injuries to her neck, lower back, chest, and abdomen resulting in medical expenses of \$19,379.84 and lost wages of \$3,000. Kelly Cox, a passenger in Ms. Ringer's vehicle, suffered injuries to her head, neck, back, and right elbow resulting in medical expenses of \$9,406.09. She also incurred \$1,200 in lost wages.

The department of law recommends settling Ms. Ringer's personal injury claim for \$40,000 and Ms. Cox's claim for \$20,000 in light of the injuries received and the damages sustained. The Metropolitan Government has already paid Ms. Ringer \$1,200 for the full value of her 1998 Chevrolet Cavalier. These amounts will be paid from the self-insured liability fund.

The employee involved received disciplinary action consisting of a verbal reprimand.

**Resolution No. RS2011-107** approves the settlement of Kelly Cox's personal injury claim for the amount of \$20,000.

**Resolution No. RS2011-108** approves the settlement of Tonya Ringer's personal injury claim for the amount of \$40,000.

**– BILLS ON SECOND READING –**

**ORDINANCE NO. BL2011-4** (STANLEY) – This ordinance amends the Metro Code to require the director of Metro water services (MWS) to submit a quarterly stormwater report to the council and mayor. In 2007, the council enacted an ordinance to codify the MWS stormwater division, and to lay the groundwork for a separate stormwater user fee to act as a funding mechanism for the storm water division. The stormwater user fee was approved by the council in March 2009. Part of the 2007 ordinance required the director of MWS to submit an annual report to the council providing an update on the status of the storm water program, the fee structure imposed to fund the program, long-range plans to implement this ordinance, and the status of on-going projects to control storm water runoff. Further, the 2009 ordinance implementing the storm water user fee included a requirement that MWS submit a report to the council not later than October 15<sup>th</sup> of each year outlining a list of the properties exempted from the fee or granted an adjustment, as well as a list of all storm water projects completed within the previous year for each council district broken down by priority category.

This ordinance amends the 2007 ordinance to require the reports to be submitted quarterly instead of annually. The quarterly report would be required to include a list of completed, pending, and proposed storm water projects by council district, including the estimated cost of each project.

**ORDINANCE NO. BL2011-32** (TYGARD) – This ordinance amends the Metropolitan procurement code to require contractors for Metropolitan Government construction projects to present proof of a valid business tax license before receiving payment for performance or partial performance of the contract. The code was amended in 2006 to expressly require such contractors to obtain a Metro business tax license unless exempted by state law. State law requires that businesses operating within the area of the Metropolitan Government register with the county clerk and obtain a business privilege tax license. There is an exception to this state requirement for businesses domiciled outside of Davidson County that receive less than \$50,000 of compensation from contracts within Davidson County. This ordinance would simply require proof of the business tax license before the contractor gets paid.

The council office would point out that even though this would be a requirement of the procurement code, a contractor would still have an equitable claim for compensation if they performed the work specified in the contract.

**ORDINANCE NO. BL2011-49** (BLALOCK) – This ordinance amends the Metro Code to remove the minimum fee imposed on limousine services, allow the use of leased livery vehicles and to adjust the minimum requirements for vehicles to be used for livery services. In June 2010, the council enacted Ordinance No. BL2010-685 in order to have specific regulations applicable to non-taxi passenger vehicles for hire. In that ordinance, vehicles and services are divided into three categories: livery, shuttle, and special-purpose passenger vehicles for hire. The regulations in the 2010 ordinance included, in part, a minimum \$45 fee for livery services, a prohibition on the use of leased vehicles, and age/mileage restrictions.

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**ORDINANCE NO. BL2011-49** (continued)

This ordinance would first remove the current \$45 minimum fee that livery vehicles are required to charge. Second, this ordinance would amend the related vehicle permit process so that the providers are not required to hold the title to the vehicle in order to obtain a permit. This would allow providers to lease the vehicles that they use. The third portion of this ordinance adjusts the minimum requirements for vehicles used as a passenger vehicle for hire. Currently, vehicles past a certain age cannot be used as passenger vehicles for hire. Effective January 1, 2012, a vehicle could not begin service if it is more than five years old. Vehicles could not remain in service if they are more than seven or ten years old, depending on the category of the vehicle. This ordinance would remove the age limitation and rely solely upon the mileage limitation currently in the code. Under this limitation, vehicles cannot exceed 350,000 miles on their odometer. Finally, the ordinance adds a specific minimum time requirement of fifteen minutes for pre-arrangement of services.

The council office would point out that there is ongoing litigation regarding the subject matter of this ordinance. In February of this year, Metro Livery, Inc., among others, sued Metro alleging that the various restrictions in BL2010-865 are unconstitutionally arbitrary and are irrational regulations designed to eliminate competition. The challenged regulations are the minimum fee, the requirement that businesses must hold title to the vehicles, the requirement that they dispatch solely from their place of business, and the minimum age requirement, which is basically the entire subject matter of this ordinance.

**ORDINANCE NO. BL2011-50** (MCGUIRE & BARRY) – This ordinance authorizes the Purchasing Agent and the Metro Employee Benefit Board to extend the current medical plan contracts with BlueCross BlueShield of Tennessee and Connecticut General Life Insurance Company for up to two years. Metro currently offers two self-insured health insurance options for Metro employees: the Blue Cross/Blue Shield PPO and the Cigna Choice Fund account-based plan. Cigna is a subsidiary of Connecticut General Life Insurance Company. The current five year contract is set to expire on December 31, 2012.

Given the uncertainty of federal healthcare reform, the Metro employee benefit board is seeking the authority to extend these medical plan contracts for up to two years. Specifically, the benefit board would like additional time to allow for more clarity and direction on certain issues including retiree health care benefits and pharmacy benefits. The Metro procurement code limits the term of Metro contracts to five years without council approval.

**ORDINANCE NO. BLS011-51** (STANLEY, MCGUIRE & JERNIGAN) - This ordinance approves two agreements related to the acquisition of the Ravenwood Country Club property for use as a public park and open space. This property, consisting of 180.95 acres, is located behind the Stones River greenway. The fiscal year 2011 mayor's capital spending plan established a parks open space revolving fund in the amount of \$5,000,000 to acquire and preserve open space in Davidson County. In May 2011, the council approved the acquisition of the 135-acre Cornelia Fort Airport property for a purchase price of \$1,215,000 from this revolving fund for use as part of the Shelby Bottoms greenway.

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**ORDINANCE NO. BLS011-51** (continued)

The first agreement to be approved is an option contract for the purchase of the property. The property was purchased by Ravenwood Country Club, LLC, owned by David Watkins, in 2008 for \$642,992. Metro will be purchasing the property for \$2,800,000. The current value of the property as determined by the assessor of property is \$4,037,780. Mr. Watkins will continue to manage the club until December 31, 2013 as a result of a contractual obligation he made to the club membership when he acquired the property. Metro will pay Mr. Watkins \$200,000 in each of the next two years for the operation of the club as long as he fulfills his obligations under the contract. Mr. Watkins will also be entitled to all of the revenues from the club during this period, but will be responsible for all operating and maintenance expenses. The club will be open to the public at usage rates not to exceed what is currently being charged. Mr. Watkins will also be required to maintain liability and property insurance coverage in an amount to be determined by the Metro director of insurance. The option to purchase this property is set to expire 90 days after the execution date. However, the execution date was not filled in on the option document, so its expiration date is not easily ascertainable.

The second agreement is between Metro and Eddie Phillips for the conveyance of certain property and the reimbursement of expenses associated with the pool and tennis facilities. Mr. Phillips, operating as Phillips Builders, owns a residential development next to the Ravenwood property called the Reserve at Stone Hall. Mr. Phillips contributed \$266,000 toward the improvements made by Mr. Watkins to the Ravenwood pool and tennis courts for use by the residents of the Reserve. This agreement provides that Metro will reimburse Mr. Phillips \$266,000 not later than January 30, 2012.

The agreement with Mr. Phillips also provides for a modification of the declaration of restrictive covenants for the Reserve. The covenants currently provide that the homeowners are entitled to a free one-year golf membership at Ravenwood. Pursuant to this contract, Mr. Phillips agrees to modify the restrictive covenants to provide that these golf memberships will not extend past December 31, 2013, regardless of the date the home is purchased. Further, Mr. Phillips will require the Reserve homeowners to pay \$30 per month for use of the pool and tennis courts until December 31, 2013.

Since Mr. Phillips will be required to construct new amenities for the Reserve homeowners, Metro is agreeing to transfer 4.9 acres of developable property to Mr. Phillips so that he can construct a new pool and tennis courts on other property within the development. The agreement also contemplates a future exchange of property with Metro if Mr. Phillips acquires additional property from Mr. Watkins. Such future exchange would be subject to approval of the council. Finally, Metro is agreeing to convey a storm water drainage easement to Mr. Phillips to allow him to use the existing ponds on the Ravenwood property for the benefit of the Reserve development.

This acquisition has been approved by the board of parks and recreation and by the planning commission.

**ORDINANCE NO. BL2011-52** (MCGUIRE & HUNT) - This ordinance accepts a combined contribution in the amount of \$60,000 from Hillsboro Plaza Retail Partners III, LLC and Davis Street Land Company of Tennessee, LLC toward the cost of signal improvements at the intersection of Abbott Martin Road and Hillsboro Pike in Green Hills. The new signals will match the system currently installed in front of the Hill Center.

**ORDINANCE NO. BL2011-53** (GILMORE & HUNT) - This ordinance authorizes the acceptance of a right-of-entry and easement from Grand Ole Opry, LLC for property located at 166 Opry Place. This easement is needed for the Ryman Alley refurbishment and fire hydrant project. The acquisition of additional or different easements for this same project may be approved by resolution.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2011-54** (TODD, MCGUIRE & HUNT) - This ordinance authorizes the acquisition of an easement for property located at 900 Old Hickory Boulevard for an upgrade to the Hillview water pumping station. The estimated acquisition cost for the easement is \$2,000, which is to be paid from the water and sewer extension and replacement fund. The acquisition of additional or different easements for this same project may be approved by resolution.

Section 1 of the ordinance actually grants the authority for the collective acquisition of the easement and property, although the diagram attached to the ordinance only shows a 4,000 square foot easement. The council office recommends the ordinance be amended to clarify the property interest needed.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2011-55** (HUNT) - 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.

– BILLS ON THIRD READING –

**ORDINANCE NO. BL2011-2** (BARRY) – This ordinance amends the victim-offender mediation litigation tax provisions to authorize the funds to be used for other community mediation services, as provided by state law. The council enacted a \$1.00 litigation tax in 2004 for all cases in the general sessions and juvenile courts to provide funds that must be used exclusively for victim mediation centers duly certified under state law. At the time, state law allowed local governments to impose such a tax as long as all of the revenue is distributed monthly to qualified victim-offender mediation centers. The 2004 ordinance provided that the district attorney would be responsible for developing guidelines for the administration of the funds in consultation with judicial officials and the Nashville Bar Association.

The state enabling legislation for this litigation tax was recently amended to allow the tax to be used for the purpose of handling other community mediation matters in addition to victim-offender mediation. This ordinance simply modifies the Metro Code provision to incorporate the new state law language. The amount of the tax will remain the same.

**ORDINANCE NO. BL2011-3** (TYGARD) – This ordinance, as amended, amends the stormwater provisions in the Metro Code to allow recreational athletic facilities to be constructed within the floodway under certain conditions. In December 2010, the council enacted an ordinance to prohibit development from having an adverse impact as it relates to flooding, which included a prohibition on the construction of any new structure within the floodway. A structure that is already located in the floodway may be repaired in the event of a casualty loss up to fifty percent of the appraised value of the property. The code was subsequently amended in June 2011 to give the stormwater division of Metro water services the ability to allow the construction of certain types of structures within the floodway as long as the structure is designed and constructed so as to have no adverse impact on other properties along the same waterway and will not result in a rise in flood elevation. The structures for which a variance may be granted include surface parking lots, temporary structures less than 100 square feet in size that are not used as a dwelling unit, water-related features (such as bridges, wharfs, docks, and boat ramps), and water/sewer infrastructure.

This ordinance amends the code to allow athletic fields and associated facilities used for recreational purposes to be constructed in the floodway if the facilities would not have an adverse impact on downstream properties. These facilities would include dugouts, bleachers, concession stands, and storage buildings. The MWS stormwater division will have the authority to determine whether a proposed structure will have an adverse impact or not, which decision may be appealed to the stormwater management committee.

**ORDINANCE NO. BL2011-31** (TYGARD, A. DAVIS & CLAIBORNE) – This ordinance amends the “meal ban” provisions in the Metro ethics code to allow elected officials, employees, and members of boards and commissions to accept free food or drink up to a value of \$25 from a single source in any calendar year. In 2005, the council adopted the current version of the ethics code applicable to council members, which was recommended by an independent task force. The law was expanded in 2007 to cover all elected officials, employees and members of  
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**ORDINANCE NO. BL2011-31** (continued)

boards and commissions, as required by state law in the wake of the Tennessee Waltz scandal involving members of the Tennessee General Assembly. Although not recommended by the ethics task force, the council adopted a meal ban as part of the 2005 ordinance prohibiting members of council from accepting any free food or drink from anyone that has had, currently has, or is likely to have matters pending before Metro. The meal ban was carried over to the 2007 comprehensive ethics ordinance by amendment to prohibit the acceptance of any gratuitous food or beverages from any individual, entity or organization that (1) is currently performing services or has performed services in the past for the Metropolitan Government for compensation; (2) is seeking to enter into a contractual relationship with the Metropolitan Government to perform services for compensation; (3) currently has a matter pending with the Metropolitan Council or other Metropolitan board or commission; (4) has had a matter pending with the Metropolitan Council or other board or commission in the past; or (5) is likely to have a matter pending with the Metropolitan Council or other board or commission in the future.

This ordinance would allow the acceptance of meals, beverages, and food of a value not to exceed \$25 from a single source in any calendar year. The acceptance of the free food or drink would be required to be disclosed on the annual benefit disclosure statement filed with the Metropolitan clerk. The provisions in the ethics ordinance regarding the acceptance of promotional items not to exceed \$25 in value and the acceptance of tickets to events not to exceed \$100 in value from a single source in a given year are not changed by this ordinance.

**ORDINANCE NO. BL2011-33** (HUNT) – This ordinance, as amended, amends the provisions of the Metropolitan Code regarding procurement assistance to certain businesses. The 1992 procurement code established a policy to assist small and disadvantaged businesses in learning how to do business with the metropolitan government and to ensure that a fair proportion of government purchases be made from small and disadvantaged businesses. The procurement standards board is required to annually determine the amount of the fair proportion to be purchased from small businesses. The current code directs the purchasing agent to assist small and disadvantaged businesses in contracting with the Metropolitan Government. The purchasing agent is also required to offer special training programs to assist small and disadvantaged businesses in learning how to do business with the metropolitan government.

This ordinance basically adds service-disabled veteran owned businesses as a class of businesses that is to receive assistance from the purchasing agent. The ordinance adds a definition for “service-disabled veteran” and “service-disabled owned business” modeled after the state purchasing law provisions. The ordinance defines “service-disabled veteran” as any person who served honorably on active duty in the Armed Forces of the United States with at least a 20% disability that was incurred or aggravated in the line of duty in the active military, naval, or air service. A “service-disabled veteran owned business” would be defined as a Davidson County business that is at least 51% owned by a service-disabled veteran.

**ORDINANCE NO. BL2011-34** (HUNT, GLOVER & OTHERS) – This ordinance amends the Metro Code prohibition on high grass, weeds, and debris to conform to state law. The current excessive growth ordinance provides that all exterior property areas shall be maintained free from weeds in excess of twelve inches. “Weeds” are defined as all grasses, annual plants and vegetation, other than trees, shrubs, cultivated flowers, ornamental grasses, and gardens. The current excessive growth ordinance provides an exemption from these requirements for owner-occupied residential property because state law had not authorized enforcement against those types of property at the time the ordinance was enacted.

This ordinance reflects the 2007 amendment to T.C.A. § 6-54-113 through which the state authorized enforcement of the ordinance and collection of costs against owner-occupied residential property. Costs are imposed by placing a lien on the property. Under this ordinance, consistent with state law, the costs must equal or exceed \$500 before the lien is placed upon owner-occupied property.

Also, consistent with state law, the ordinance provides for the collection of costs against any owner in the same manner that property taxes are collected. Finally, if the owner fails to pay the costs, the costs may be collected at the same time and manner as delinquent property taxes are collected.

**ORDINANCE NO. BL2011-35** (CLAIBORNE) - This ordinance adopts the property identification maps for the Metropolitan Government identifying property as of January 1, 2011, as the official maps for the identification of real estate for tax assessment purposes. These maps are adopted on an annual basis.

**ORDINANCE NO. BL2011-36** (JERNIGAN, MCGUIRE & HUNT) - This ordinance authorizes the acquisition of fourteen easements for the Lakewood Laterals and Rehabilitation project. The acquisition of additional or different easements or property rights for this same project may be approved by resolution. This ordinance approves the acquisition of easements for the following properties:

1. 2208 Elliot Drive
2. 109 24th Street
3. 107 24th Street
4. 105 24th Street
5. 2411 Old Hickory Blvd
6. 2409 Old Hickory Blvd
7. 103 26th Street
8. 105 26th Street
9. 109 26th Street
10. 100 Park Circle
11. 100 B-Park Circle
12. 2915 Lawrence Court
13. 2919 Lawrence Court
14. 2923 Lawrence Court

This ordinance has been approved by the planning commission.

The council office would point out that the last three properties are incorrectly identified in the ordinance as being located on “Lawrance” Court instead of “Lawrence” Court.

**ORDINANCE NO. BL2011-37** (MCGUIRE) - This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2011-2012. This is an extension of the same program from last fiscal year. State law provides that funds shall be appropriated from the state general fund to qualifying low-income taxpayers 65 years of age or older to pay or reimburse such taxpayers for all or part of their local property taxes. In addition, state law allows county legislative bodies to appropriate funds for the purpose of providing assistance to low-income elderly residents of the county and to establish guidelines for participation in the program and the disbursement of such funds. The council appropriated \$2,100,000 in the current fiscal year's operating budget for a property tax relief program for the elderly.

This ordinance authorizes the Metropolitan trustee to establish rules and procedures for implementation of the program and directs the trustee to disburse the funds accordingly to all eligible taxpayers. All persons who qualify for the state property tax relief program and whose income does not exceed \$26,830 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2012.

**ORDINANCE NO. BL2011-38** (MCGUIRE) – This ordinance approves an agreement for the indefinite loan of artwork to the Metropolitan Government. Duthie Associates, Inc., on behalf of artist Graham Duthie, desires to loan a 1995 painting of Nashville done by Mr. Duthie for display in a government building. There is no cost to the Metropolitan Government as long as the art is displayed in a Metro building and accessible to the public. The art will be covered under Metro's fine arts insurance policy. Any amendments, renewals, or extensions of the terms of the agreement may be approved by resolution.

**ORDINANCE NO. BL2011-39** (MITCHELL & MCGUIRE) – This ordinance approves a contract with United Road Towing (URT) for the administration and operation of the Metro impound lot. The impound lot (frequently referred to as the "tow-in lot") was established by ordinance in 1972 for the purpose of providing a place to take motor vehicles required to be removed from the streets because of violations of the law, recovered stolen vehicles, and abandoned vehicles. The tow-in lot is an enterprise function within Metro, meaning it is supposed to operate on the revenues it generates. However, the tow-in lot has been consistently losing money for several years. In 2006, the council increased the storage fee for vehicles at the tow-in lot and also established a flat rate of \$200 per item stored at the lot, excluding stolen vehicles. The purpose of the \$200 fee was to prevent the tow-in lot from having to be subsidized by the general fund.

As a result of a decline in the number of vehicles taken to the lot in recent years, the tow-in lot has accumulated a deficit of approximately \$3 million. The reason for the recent decline in the number of vehicles taken to the impound lot is in part due to the discretion given to police officers by the police department's policy to use "alternative actions" when a vehicle owner or operator, even when arrested, is able to make arrangements for the vehicle to be picked up or parked without obstructing traffic or endangering the public. In order to impound the vehicle, the policy requires the officer to show the impoundment is "reasonable and necessary under the existing circumstances and that there was no other reasonable alternative."

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**ORDINANCE NO. BL2011-39** (continued)

This tow-in lot deficit is expected to increase to \$5.4 million by the end of fiscal year 2016 if additional measures are not taken. According to information provided by the police department, the \$200 storage fee would need to be increased to \$500 in order for the police department to close the gap and continue to operate the lot.

The administration is proposing the privatization of the tow-in lot in order to help reduce the deficit and provide ongoing funding stability. An RFP was issued last year for the privatization of the program and URT was selected for the contract award. URT is the nation's largest towing company. According to Bloomberg Businessweek, the company was founded in 1997 and is based in Mokena, Illinois. URT has locations in Arizona, California, Connecticut, Florida, Illinois, Indiana, Massachusetts, Nevada, Tennessee, and Texas. URT currently owns West Nashville Wrecker Service operating in the Nashville market.

The privatization of the tow-in lot will result in the elimination of 29 FTE positions. The 20 existing impound lot employees will be transferred to other vacant positions in the police department. The police department will need \$188,900 from the general fund in next fiscal year's budget in order to cover the impound lot evidence cost and operations. Section 4.12.095 of the Metropolitan Code requires that any contract privatizing governmental services with a contract amount of more than \$100,000 that would result in the loss of one or more Metro employees, or that would eliminate one or more vacant positions must be approved by the council by ordinance.

Under the contract, URT will have the responsibility for the complete operation, maintenance, and improvement of the impound lot. The term of the contract is for five years, but Metro may terminate at any time with 30 days written notice. URT agrees to indemnify Metro for any claims arising from its negligent or intentional acts or omissions, and agrees to pay Metro's attorney fees in the event Metro prevails in any legal action against URT. Further, URT must maintain a workers compensation, personal injury, and property damage insurance policy in the amount of \$1 million, as well as employer's liability insurance of \$100,000, naming the Metropolitan Government as additional insured. The indemnification and insurance requirements in this contract are the same as those in essentially all other Metro contracts.

The payment provisions in the contract are somewhat complicated. URT will operate the facility for a fixed payment of \$375,000 per year from Metro, plus the impound and storage fee revenues. URT will be responsible for all costs associated with operating the lot. URT also agrees to spend \$100,000 during the first year of the contract to make capital improvements to the facility such as new fencing and security measures. As compensation to Metro for the exclusive rights to the abandoned vehicle auction, URT will make an initial \$500,000 payment to Metro, plus \$475,000 every year thereafter. Further, URT will share the auction revenues with Metro if the revenues exceed \$1 million in a given year. Vehicles left at the impound lot are currently sold through Metro's online eBid auction system. Thus, the department of general services will lose an estimated \$146,000 per year that it otherwise would collect from the online auction. The net "loss" to the Metro general fund as a result of this contract over the five year term, not counting any future revenue from the sale of abandoned vehicles, will be approximately \$1.5 million. Compared to the projected increase in the deficit over five years of \$2,400,000 under the current operation, this contract will be a \$900,000 financial benefit to Metro.

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**ORDINANCE NO. BL2011-39** (continued)

This contract will not result in a modification of the police department's policy regarding the tow-in lot. The department's policy is basically that only vehicles that have no registration or are impounded as a result of criminal activity must be taken to the police impound lot. All other towed vehicles may be taken to private lots operated by other towing firms. In addition, this contract will not change any of the existing zones assigned to the various wrecker companies by the transportation licensing commission.

As required by the Metro Code, documentation providing a justification and cost-benefit analysis for the privatization is attached to this analysis.

There is a proposed amendment for this contract resulting from the public safety committee meeting on November 28, 2011. The amendment to the contract would specify that the management for the impound lot will not report to any individual with management responsibilities over West Nashville Wrecker Service. The rules will need to be suspended in order for this amendment to be considered since the bill is on third reading.

**ORDINANCE NO. BL2011-40** (WESTERHOLM, TYGARD & MCGUIRE) – This ordinance amends the Metro Code to increase the ticket tax on tickets sold for events at LP Field and to remove the maximum duration for the ticket tax. In 1977, the Tennessee General Assembly enacted a law to allow the Metropolitan Government to impose a ticket tax for the privilege of attending events at a "municipal stadium" in an amount not to exceed 10% of the amount charged to spectators attending the event. The state law defines "municipal stadium" as a structure built after 1977 using general obligation or revenue bonds with a seating capacity of at least 30,000 spectators used primarily for sporting events. This law became effective in Metro upon the approval of Ordinance No. O77-711 by more than the required two-thirds majority vote of the council. The state statute was subsequently amended to cap the amount of the tax at \$3.00 per ticket.

The contract between the Tennessee Titans and the Metropolitan Government for the use and operation of the stadium prohibited Metro from imposing a ticket tax until after the 10<sup>th</sup> season of professional football played in the stadium. In November 2009, the council enacted Ordinance No. BL2009-545 to impose a \$2 ticket tax upon the privilege of attending most events at the stadium between June 14, 2010, and December 31, 2020. If the \$2.00 tax exceeds ten percent of the face value of the ticket, then the amount of the tax is limited to ten percent of the ticket price. Per state law, the ticket tax does not apply to tickets to Tennessee State University football games. The ordinance also provided that the promoter of the event may deduct up to two percent of the tax collected as an administrative fee.

The 2009 ordinance included a \$2 cap for a period of 10 years to ensure that the bonds issued for the construction of the stadium would remain tax exempt. Bonds issued by local governments to finance facilities that have significant non-governmental use cannot be tax exempt if more than ten percent of the debt service is provided in connection with the non-governmental use. Since LP Field is used primarily for Titans football games (a significant non-governmental use), the amount of the ticket tax is treated as a private payment, subject to the ten percent cap.

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**ORDINANCE NO. BL2011-40** (continued)

All of the proceeds from the ticket tax must be used exclusively to defray the cost of “constructing, operating, renovating, expanding, or improving” the stadium, or for the payment of debt service on the bonds issued to construct the stadium. The current tax generates approximately \$1.9 million annually and a total of \$3.5 million has accumulated since the tax went into effect last year.

This ordinance increases the amount of the ticket tax to \$3 and eliminates the durational limit on the tax. The ticket tax revenues will be used to pay the debt service on the stadium improvement bonds that are the subject matter of Resolution No. RS2011-95.

As owner of LP Field, it is important to remember that the Metropolitan Government is ultimately responsible for the maintenance of the facility. It is estimated that approximately sixty percent of the Titan's season ticket holders live outside of Davidson County. Increasing the ticket tax will allow those persons using the stadium to help pay for its maintenance, as opposed to the general tax dollars of the Metropolitan Government.

State law requires that this ordinance be approved by 27 affirmative votes of the council on third reading in order to become effective.

**ORDINANCE NO. BL2011-41** (GARRETT) - This ordinance would amend the Metropolitan Code to require applicants for a retail liquor store license to either have lived in Davidson County for the past two years or at any point for ten consecutive years. State law requires that a “certificate of compliance” be obtained from the local government before a state retailer's liquor license can be issued. The Metro Code includes a residency requirement for liquor store owners in order to obtain a certificate of compliance from the mayor. An applicant must have been a resident of the area of the Metropolitan Government for at least two years before applying. The code also provides that if the application is for a corporation, then all of the capital stock must be owned by individuals who have been a resident of the area of the Metropolitan Government for at least two years, and no stock may be transferred to any person that has not been a Davidson County resident for two years.

The state law, on the other hand, only requires such applicants to have been a resident of the state of Tennessee for at least the past two years or at any point for at least 10 consecutive years. Apparently, the Metro requirements have acted as a barrier in the estate planning of certain liquor store owners who want to leave the store to their adult children who currently live out of county but who lived in Davidson County for at least ten consecutive years in one point during their lives.

This ordinance would amend the Metro residency requirements to mirror the state concept. Under this ordinance, the applicant (or stockholders if the applicant is a corporation) would have to either have been a resident of Davidson County for the previous two years or a resident of Davidson County at any point for ten consecutive years regardless of current residency. The ordinance would also apply the same revised residency requirements in the event of a transfer in stock ownership for the store. Applicants would be required to furnish adequate proof of residency.

**ORDINANCE NO. BL2011-42** – (TODD, MCGUIRE & HUNT) - This ordinance, as amended, approves a utility relocation contract between the department of water and sewerage services and the state department of transportation (TDOT) to relocate certain department of water and sewerage services' facilities required by TDOT's Battery Lane bridge project over West Fork Brown's Creek. The total cost of the utility relocation project is estimated to be \$218,375, with Metro being responsible for 100% of the costs.

**ORDINANCE NOS. BL2011-43, 44 and 46** – These three ordinances authorize the acquisition of easements for Metro water services projects. The acquisition of additional or different easements or property rights for this same project may be approved by resolution. These ordinances have been approved by the planning commission.

**Ordinance No. BL2011-43** (Evans, McGuire & Hunt) authorizes the acquisition of an easement for property located at 826 Cammack Court for the West Meade Reservoir project. The estimated cost for this acquisition is \$2,000, which will be paid from the water and sewer extension and replacement fund.

**Ordinance No. BL2011-44** (Harrison, Hunt & McGuire) authorizes the acquisition of easements for an upgrade to the Metro Center pump station. This ordinance approves the acquisition of easements for the following properties:

1. 501 Mainstream Drive
2. 431 Great Circle Road

The estimated cost for this acquisition is \$15,000, which will be paid from the stormwater fund.

**Ordinance No. BL2011-46** (Hunt) authorizes the acquisition of an easement for property located at 7158 Old Hickory Boulevard for the Whites Creek Streambank Stabilization Project.

**ORDINANCE NO. BL2011-45** (HUNT & ALLEN) – This ordinance abandons 825 feet of a 6-inch water main and 110 feet of an 8 inch sanitary sewer line located at Bernard Circle, west of 12<sup>th</sup> Avenue South. The ordinance also accepts the relocation of 765 feet of a 10 inch water main, 12 feet of an 8 inch water main, 1 fire hydrant, and 1 manhole at the property. Amendments to this ordinance may be approved by resolution.

This ordinance has been approved by the planning commission.