

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: **November 17, 2009**

RE: **Analysis Report**

Balances As Of:	<u>11/11/09</u>	<u>11/12/08</u>
<u>GSD 4% RESERVE FUND</u>	* \$24,450,556	\$31,079,382
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	Unavailable	Unavailable

\* Assumes estimated revenues in fiscal year 2010 in the amount of \$23,023,700

## – RESOLUTIONS –

**RESOLUTION NOS. RS2008-431, RS2009-989, RS2009-990 & RS2009-1020** – These four resolutions propose amendments to the Metropolitan Charter. The council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. The council has already used one of its two opportunities to place Charter amendments on the ballot this term.

Resolution No. RS2008-431 provides that the date for holding the referendum elections on the Charter amendment is to be the August 5, 2010 general election. The other resolutions include a special election date of January 14, 2010. The Charter provides that resolutions proposing amendments to the Charter must be filed at least 80 days prior to the election. State election law provides that resolutions requiring the holding of elections on questions submitted to the people must be adopted between 45 and 60 days prior to the election. Thus, these resolutions must be considered at the November 17<sup>th</sup> council meeting if the Charter amendments are to be placed on a special election ballot in January 2010.

**Resolution No. RS2008-431** (Gotto) proposes an amendment to the Charter to require council approval prior to the use of eminent domain to acquire interests in real property on behalf of the Metropolitan Government, or any of its departments, boards, commissions, or agencies. Technically, the council is already vested with the power of eminent domain, and no department can condemn property without the council's authorization. However, the council can and has delegated this authority to the Metropolitan development and housing agency (MDHA) through the adoption of redevelopment districts under state law.

Under this amendment, no Metro department or agency could commence condemnation proceedings after August 5, 2010, (the date of the next general election at which the amendment could be considered) unless the council specifically authorizes the use of eminent domain to acquire the particular property by ordinance. This requirement would apply to MDHA on a prospective basis to any redevelopment plan or urban renewal plan adopted after August 5, 2010. Each new redevelopment plan would be required to include a provision specifically reserving the power of eminent domain to the council. The amendment further provides that the council may adopt ordinances to further the intent of the charter amendment and to aid in its implementation.

This Charter amendment was deferred indefinitely by the charter revision commission at the request of the sponsor.

**Resolution No. RS2009-989** (Crafton) proposes two amendments to the Charter to require a referendum election prior to the issuance of bonds or pledging Metro revenue for capital projects in excess of \$250 million. The Charter currently provides that a referendum election can be held for general obligation bonds upon the filing of a petition signed by six percent of the registered voters protesting the issuance of the bonds. This is the method used to challenge the issuance of the debt for the Titans stadium, which was ultimately approved by the voters. The Charter also provides that the council may call an election "for the purpose of ascertaining the will of the qualified electors" with respect to the issuance of any Metropolitan

government bonds. However, no such mechanism for a referendum exists when the debt is to be in the form of revenue bonds issued by an instrumentality of the government, such as the sports authority or the convention center authority.

The first amendment included as part of this resolution would require a referendum prior to the issuance of any tax bonds or revenue bonds for the construction of an individual capital project with a total cost in excess of \$250 million. "Revenue" would include property taxes, sales taxes, hotel occupancy taxes, tourist accommodation taxes, and other fines and fees collected by Metro. This referendum requirement would not apply to the board of education, Nashville electric service, or for essential infrastructure projects of Metro water services or the department of public works.

The second amendment is broader than the first amendment in that it would require a referendum prior to the pledge of any Metro revenues for a capital project in excess of \$250 million, regardless of whether the Metropolitan Government is issuing the debt or not. The same exceptions as noted above would apply to this amendment.

There is a housekeeping amendment for one of the amendments correcting a typographical error.

Only one of the amendments should be submitted to the ballot, as they both deal with the same subject matter.

The charter revision commission recommended disapproval of these two proposed Charter amendments.

**Resolution No. RS2009-990** (Gotto), as amended, proposes an amendment to the Charter to require council approval of the pay plan for all of the executive and administrative employees of the electric power board (NES). The Charter grants extremely broad authority to the electric power board over the Nashville electric system. The Charter provides that neither the mayor nor the council can exercise any authority over the NES board except as specifically provided in the Charter.

This amendment would require NES to submit its proposed pay plan for all executive and administrative employees to the council for approval by a resolution receiving 21 affirmative votes before the plan could become effective. If the resolution failed to receive council approval, the plan would be submitted to the civil service commission to prepare a pay plan to be submitted to the mayor and council in the same manner as the pay plan for general government employees. The amendment defines "executive and administrative employees" as those employees whose primary duty involves the management, administration, and/or business operations of NES, and who are not represented as part of a collective bargaining agreement.

This Charter amendment was deferred indefinitely by the charter revision commission at the request of the sponsor.

**Resolution No. RS2009-1020** (Wilhoite) proposes an amendment to the Charter to prohibit the members of council elected to serve on the planning commission and the traffic and parking commission from serving more than one consecutive two-year term on the same commission. The Charter currently does not place any limits on the number of two-year terms a council member can serve in these positions.

The charter revision commission recommended disapproval of this proposed Charter amendment.

**RESOLUTION NO. RS2009-943** (HUNT & STEINE) – This resolution authorizes the Metropolitan Government to enter into a contract with the City of Brentwood for the acceptance and treatment of sewage flow from Brentwood’s sewage collection system. Metro has contracts with various other municipalities to transport and treat their sewage. The previous contract with the City of Brentwood has expired, and the Metropolitan Government has been involved in litigation with Brentwood regarding the rates it would pay Metro to treat its sewage. On June 19, 2007, the council enacted Ordinance No. BL2007-1441 to establish the rates Metro would charge to those cities we no longer had a valid contract with, including the City of Brentwood. The 2007 ordinance established the following rates per hundred cubic feet for the City of Brentwood:

<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
\$1.15	\$1.18	\$1.21	\$1.24

This new contract is for a term of ten years, but may be extended upon agreement of the parties. Under this new contract, Brentwood will pay \$1.17 per hundred cubic feet up to a maximum number of gallons for each point of connection. If the sewage flow exceeds the maximum level, the price will be 125% of this price for the excess amount of flow. The contract includes a built in annual adjustment for the price Brentwood will pay to have its sewage treated. For years two through five and seven through ten, the adjustment will be based upon the percentage increase or decrease in the service charge index published by the National Association of Clean Water Agencies. The adjustment in year six of the contract will be determined by a rate consultant mutually acceptable to both parties.

The contract also provides that Brentwood will make a retroactive payment to Metro for wholesale sewer treatment service rendered from July 1, 2007, to the present. The payment for the period from July 1, 2007, through June 1, 2009, will be at the rate of \$0.83 per 1,000 gallons of flow. The rate for services rendered from June 1, 2009, through the effective date of this contract will be \$1.17 per hundred cubic feet of flow. The payment is to be made in a lump sum after deducting the actual amounts paid by Brentwood during the period the rates were in dispute.

The contract also includes a provision regarding the operation of the Brentwood pumping station. Metro agrees to operate and maintain the pumping station, and Brentwood agrees to reimburse Metro for all costs associated with its operation and maintenance.

Finally, Metro agrees to dismiss its lawsuit against Brentwood filed in 2007 regarding the disputed charges upon execution of this contract and receipt of the lump sum retroactive payment by Brentwood.

This contract was approved by the City of Brentwood Board of Commissioners on August 10, 2009.

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

**RESOLUTION NO. RS2009-979** (STEINE & BAKER) – This resolution, as amended, authorizes the director of public property administration to exercise an option to purchase 6.14 acres of property located at 5500 Charlotte Avenue for the relocation of the west police precinct and construction of the new crime lab. This property, owned by Leonard M. Miller, Trustee for the Robert Frensey Family Trust, is the former location of the Performance Ford automobile dealership. The option contract provides that Metro can purchase this property for \$4.2 million (subject to a supporting appraisal) on or before October 30, 2009, or within a reasonable time after performing its due diligence, including an appraisal, environmental site assessments, survey, and inspection. The property assessor's website lists the assessed value of this property as being \$2,912,100.

The Metro Code allows for the acquisition of property through the exercise of a negotiated option to sell at a fixed price, which is subject to approval of the council by resolution. In early October, Metro obtained an extension for the option through October 14, 2009 prior to the council's deferral of the resolution. The council office recommends that a new option contract be submitted as a result of the council's deferral.

This resolution has been approved by the planning commission.

**RESOLUTION NO. RS2009-992** (STEINE) – This resolution appropriates \$4,137,000 from the general fund reserve fund (4% fund) to twelve departments. Four percent funds may only be used for the purchase of equipment and repairs to buildings. These projects were included as part of the mayor's capital spending plan, but held until adequate funding was in place. The total amount of the resolution is \$4,137,000. The balance in the general fund reserve fund as of November 11, 2009, was \$24,450,556. This consists of unrealized revenue for fiscal year 2009 in the amount of \$21,198,094. 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 – \$100,600 for miscellaneous office equipment.
- Bordeaux long-term care – \$211,400 for a nurse call system, a bulk oxygen system, computer upgrades and mattresses.
- Fire Department – \$300,000 for computer hardware and software to be used in suppression vehicles.
- General Hospital – \$654,900 for miscellaneous equipment and computer hardware.
- General Services Department – \$260,000 for water and backflow devices, universal keying system, and E911 mechanical equipment replacement.
- Information Technology Services Department – \$890,000 for miscellaneous computer hardware and software, and replacement equipment.
- Knowles Home – \$57,500 for a Direct TV system, heat and air conditioning units, and an oven.
- Municipal Auditorium – \$200,000 for new portable flooring, replacement scoreboard, and dressing room renovation.
- Parks and Recreation Department – \$518,000 for new force main sewer system at Percy Warner golf course, fitness equipment and flooring at Centennial Sportsplex, roofing and building repairs, tennis court repairs, miscellaneous golf course maintenance equipment, and miscellaneous equipment for bike share project.

- Police Department – \$294,300 for computer equipment, projectors, screens, and speakers.
- Public Library – \$300,000 for fire alarm systems at various branch libraries, security cameras at branch libraries, an upgrade of the security camera recorder at the main library, carpet replacement at the Bordeaux branch, and microfilm readers/tables.
- Public Works Department – \$350,300 for replacement parking meters, replacement mowers for alley crews, and new waste wood grinder.

**RESOLUTION NO. RS2009-1021** (STEINE & BAKER) – This resolution approves 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. These funds will be used to support the state trial courts’ community corrections program. This program provides alternative punishments for non-violent offenders consisting of offender supervision, residential programs, and day reporting center programs. Specifically, these funds will be used to add a community treatment team, medication management, as well as out-patient mental health services. The grant will fund a full-time social worker position, a part-time counselor, drug tests, medication, and housing costs. There is a required in-kind local match of \$39,976.40 to be provided primarily through office space. The term of the grant is from October 1, 2009 through September 30, 2011.

**RESOLUTION NOS. RS2009-1022 & RS2009-1023** – These two resolutions approve federal stimulus grants in the amount of \$8,100 from the Tennessee administrative office of the courts to the general sessions court and the juvenile court for interpreter services to work in civil order of protection hearings. The terms of the grants are from October 1, 2009, through June 30, 2011.

**Resolution No. RS2009-1022** (Baker & Steine) approves a grant in the amount of \$4,900 to the juvenile court to provide court interpreters in order of protection hearings.

**Resolution No. RS2009-1023** (Steine & Baker) approves a grant in the amount of \$3,200 to provide interpreters to assist non-English speaking persons in domestic violence order of protection cases.

**RESOLUTION NO. RS2009-1024** (STEINE) – This resolution approves an annual grant in the amount of \$50,585 for the Arts Build Communities program, as well as a housekeeping amendment to the grant. These funds will be used to make grants to non-profit organizations for community arts projects. These funds are provided in conjunction with the \$1,900,000 in the fiscal year 2010 operating budget to provide arts grants. There is a required local match in the amount of \$50,585 to be provided from the Metro arts commission budget. The term of the grant is from July 1, 2009, through June 30, 2010.

**RESOLUTION NO. RS2009-1025** (STEINE & BAKER) – This resolution approves a bulletproof vest partnership grant in the amount of \$25,121 from the U.S. department of justice to the Metropolitan Government. The grant funds are to provide one-half of the cost of 86 bulletproof vests, to be divided among the police department, sheriff’s office, and juvenile court. A local match of \$25,121 is required for this grant.

**RESOLUTION NO. RS2009-1026** (STEINE & BAKER) – This resolution approves a second amendment to a grant from the state department of finance and administration, office of criminal justice programs, to the Metropolitan police department for the Internet Crimes Against Children unit. This grant funds the salary and benefits for an investigator and two detectives, as well as technology and equipment for a functioning internet crime lab. This program is modeled after a program instituted by the Knoxville police department with the purpose of targeting internet child predators.

This resolution approves a \$60,000 reduction in the amount of the grant, for a total grant award of \$890,000. The term of the grant extends through June 30, 2010.

**RESOLUTION NO. RS2009-1027** (BAKER & STEINE) – This resolution approves an application for a grant from the U.S. department of homeland security to the Metropolitan Nashville fire department to purchase equipment for fire inspectors and investigators. The fire department is seeking \$238,392 in federal funds to purchase the following equipment:

- Computer and software to conduct inspections and generate violation reports in the field.
- Surveillance equipment for arson investigators.

There will be a required local match of \$59,598 to be provided through the fire department's operating budget if the grant is awarded.

**RESOLUTION NOS. RS2009-1028** (TYGARD & STEINE) – This resolution appropriates additional grant funds from the U.S. department of health and human services to the Metropolitan action commission (MAC) for the head start program. The federal government has awarded an additional \$236,880 for the head start program to be used as follows:

- \$101,880 to purchase video surveillance systems for all head start classrooms
- \$48,000 for door entry safety systems at four head start centers
- \$87,000 for a new bus

The resolution provides that there will be a required in-kind match of \$59,219 for the receipt of these additional funds. This appropriation brings the total grant award to \$11,001,495.

**RESOLUTION NO. RS2009-1029** (TYGARD & STEINE) – This resolution approves a grant in the amount of \$233,251 from the Greater Nashville Regional Council to the Metropolitan social services commission for meal delivery services to eligible senior citizens. These federal pass-through funds will be used to provide meals at congregate sites. The term of the grant is from April 1, 2009 through September 30, 2010.

**RESOLUTION NO. RS2009-1030** (STEINE & TYGARD) – This resolution approves an annual grant in the amount of \$223,800 from the state department of health to the Metro health department for the commodity supplemental food program. This is a federal program that provides nutritious food to eligible low-income clients who are vulnerable to inadequate nutrition. The majority of these federal funds are used to pay the salaries and benefits of the

health department employees in the commodity food program. The term of the grant is from October 1, 2009, through September 30, 2010.

**RESOLUTION NO. RS2009-1031** (STEINE & MATTHEWS) – This resolution approves a grant in the amount of \$16,050 from the Nashville Public Library Foundation to the public library to fund a part-time position to initiate partnerships with local colleges and universities to recruit volunteers for use throughout the library system. The purpose of this position is to help offset budget and staff reductions in the library system through the use of college students as volunteers. The goal of this program is to increase the number of volunteers in the library system by ten percent. There were 482 volunteers in fiscal year 2008. This grant will be paid in one lump sum for fiscal year 2010.

**RESOLUTION NO. RS2009-1032** (MATTHEWS & STEINE) – This resolution approves an annual grant in the amount of \$278,000 from the state department of state to the Nashville public library system to assist persons that have difficulty using the library. These funds are for general library services, library services to the hearing impaired, and materials for the disadvantaged. The term of this grant is for one year beginning July 1, 2009, and extending through June 30, 2010.

**RESOLUTION NO. RS2009-1033** (STEINE & MATTHEWS) – This resolution approves an amendment to a contract between the state department of transportation (TDOT) and the Metropolitan department of public works for the receipt of federal stimulus funds for infrastructure projects in Davidson County, including \$1,000,000 for the Tennessee State University connector for the Cumberland River greenway. This amendment simply adds some language required by the American Recovery and Reinvestment Act of 2009. The amendment does not affect the amount of the funding to be received.

**RESOLUTION NO. RS2009-1034** (JAMESON, COLE & OTHERS) – This resolution approves an application for a transportation enhancement grant in the amount of \$2,433,600 from the state department of transportation (TDOT) to the Metro board of parks and recreation to link the Cumberland River greenway with downtown Nashville. If awarded, these federal pass-through funds would be used to construct a 3,500 linear foot pedestrian/bicycle trail from the Shelby Bottoms greenway running along the Cumberland River to the Davidson Street entrance at Shelby Park.

Pedestrians and bicyclists desiring to go from the Shelby Bottoms greenway to downtown currently must use a high traffic section of Shelby Park to get to Davidson Street. This project will extend the greenway from the current Shelby Bottoms entrance to the park entrance. The new path will have a 12-foot-wide asphalt path and a 12-foot-wide wooden boardwalk. There will be a required match of \$608,400 to be provided through future capital funds if the grant is awarded.

**RESOLUTION NO. RS2009-1035** (STEINE) – This resolution approves a grant in the amount of \$24,710 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to make training and recruitment resources available to Bedrug to support its existing employees and to create new jobs. Bedrug is a company in Davidson County that makes carpeted bed liners for pickup trucks. Under the terms of this

federal pass-through grant, the Tennessee Career Center, which is operated by NCAC, will manage the recruitment campaign for Bedrug based upon a hiring schedule of 47 new jobs. The term of the grant is from October 1, 2009 through June 30, 2010.

**RESOLUTION NOS. RS2009-1036 & RS2009-1037** (STEINE) – These two resolutions approve annual 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. The grant terms are from October 1, 2009 through June 30, 2011. These grants provide part of the operating funding for the NCAC.

**Resolution No. RS2009-1036** approves an adult worker grant in the amount of \$1,503,558.

**Resolution No. RS2009-1037** approves a dislocated worker grant in the amount of \$1,735,193.

**RESOLUTION NO. RS2009-1038** (STEINE) – This resolution approves a grant of kitchen appliances valued at \$12,445 from KitchenAid to the farmers' market for use in the demonstration kitchen. The appliances to be furnished include a dishwasher, double oven, gas cooktop, refrigerator, and ice maker. KitchenAid will also offer a substantial discount on small appliances should the farmers market competitively procure such appliances in the future. The farmers' market agrees to allow KitchenAid to have a sign with its logo in the demonstration kitchen, to provide an opportunity for a KitchenAid representative to participate in cooking classes, and to include KitchenAid in promotional materials. The term of this agreement is for five years.

**RESOLUTION NO. RS2009-1039** (STEINE & HUNT) – This resolution approves an intergovernmental agreement 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 to reconstruct Central Pike from Lebanon Road to Stoner's Creek Bridge. The total cost of the utility relocation project is estimated to be \$474,765 with Metro being responsible for 75% of the costs (\$356,073.75), which will be paid from the water and sewer extension and replacement fund. The state will be responsible for the remaining \$118,691.25.

This is a typical agreement entered into by Metro and TDOT for the relocation of utilities associated with TDOT improvement projects, although relocation contracts are usually approved by ordinance rather than resolution. However, since state law allows intergovernmental contracts to be approved by resolution, Metro water services is asking that this contract be approved by resolution, as time-sensitive federal stimulus funds will be used for the Central Pike reconstruction project.

**RESOLUTION NO. RS2009-1040** (STEINE & HUNT) – This resolution approves a grant in the amount of \$20,000 from the Tennessee department of agriculture to the department of public works to determine tree density throughout Davidson County. The first phase of the project will be a tree canopy assessment conducted in cooperation with the University of Vermont and the U.S. Forest Service. The second phase is an Urban Forestry Effects analysis of the trees within Nashville's urban core to calculate the value of our urban forest and its effects on air quality, water quality, energy use, and carbon storage. It will also help us determine what

types of trees to plant in specific areas. There is a local required match of \$20,000. The term of the grant is from September 1, 2009, through September 30, 2010.

**RESOLUTION NO. RS2009-1041** (BENNETT, MATTHEWS & OTHERS) – This resolution authorizes the director of public property administration or his designee to exercise options to purchase three flood prone properties. This purchase is part of the department of water services' on-going program to purchase flood prone properties using federal grant funds. Metro has acquired options to purchase the following properties for the following amounts:

- 923 Delmas Avenue \$78,000
- 3821 Creekwood Circle \$130,000
- 5113 Hunters Point Lane \$137,000

This resolution has been approved by the planning commission.

**RESOLUTION NO. RS2009-1042** (STEINE) – This resolution authorizes the department of law to settle the lawsuit brought by Teen Challenge International, Nashville Headquarters against the Metropolitan Government in the amount of \$750,000. This lawsuit was a result of actions taken by the council and the Metropolitan Government that effectively denied Teen Challenge's ability to use property it purchased at 2165 Baker Road as a rehabilitation services establishment. Teen Challenge purchased the Baker Road property in June 2006 for \$799,000 for the purpose of building a residential drug and alcohol rehabilitation facility. The property is zoned AR2a (agricultural with minimum 2-acre lots), which allowed rehabilitation services as a use permitted by right. The zoning code defines rehabilitation services as the treatment for addictive, mental or physical disabilities on either a twenty-four hours a day or an outpatient basis. After Teen Challenge filed its permit application with Metro, the council enacted Ordinance No. BL2006-1250 in February 2007, deleting rehabilitation services as a permitted use in the agricultural zoning districts. Teen Challenges alleges that it faced a number of obstacles in obtaining a permit from Metro codes and the health department, and that the council's action to remove rehabilitation services as a permitted use in the AR2a district violated federal law. As a result of these actions, Teen Challenge abandoned its plans to build a rehabilitation services facility and sold the property at auction in June 2007, for \$675,000, which was a loss of \$124,000.

Teen Challenge filed suit in June 2007, along with three individual plaintiffs, alleging that the Metropolitan Government violated the federal Fair Housing Act (FHA), the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Americans with Disabilities Act (ADA), and the Equal Protection Clause of the 14<sup>th</sup> Amendment. In its complaint, Teen Challenge sought compensatory damages of \$500,000 (plus any other relief it was entitled to), and \$50,000 for each of the three individual plaintiffs.

Subsequent to the filing of the Teen Challenge lawsuit, the U.S. department of justice (DOJ) initiated an investigation of the Metropolitan Government and its land use policies. After concluding its investigation, the department of justice filed suit against the Metropolitan Government seeking injunctive relief, monetary damages and civil penalties for violations of the FHA and RLUIPA. The complaint alleged that Metro discriminated against Teen Challenge on the basis of the disabled status of the participants in Teen Challenge's program through the delay and subsequent denial of the application for a building permit. The complaint further alleged that the council's removal of rehabilitation services as a permitted use in the AG and AR2a districts was a violation of the FHA and RLUIPA.

In July 2008, the council approved Ordinance No. BL2008-243 restoring rehabilitation services as a permitted use in the AG and AR2a zoning districts. Subsequently, the council approved a consent decree in January 2009 settling the DOJ lawsuit, as well as the claims of the three individual Teen Challenge plaintiffs, which included a civil penalty of \$20,000 payable to the federal government and an aggregate payment of \$50,000 to the individual plaintiffs.

A jury trial was held in September 2008 for the Teen Challenge lawsuit. The scope of the trial was limited to damages only, since it had previously been acknowledged that Metro had indeed violated the FHA and the Equal Protection provisions of the U.S. Constitution. Teen Challenge presented evidence at the trial that it had sustained \$886,724 in damages through June 30, 2008, plus an additional \$404,268 in future damages. This included a \$121,000 loss on the disposition of the property, \$195,500 in additional housing costs, \$446,000 in lost revenue, \$71,265 in additional personnel costs, and \$400,000 to acquire replacement property. The jury awarded damages to Teen Challenge in the amount of \$967,995. The U.S. District Court also awarded attorney's fees and costs of \$135,664, plus pre- and post-judgment interest. The Metropolitan Government appealed the amount of the award to the 6<sup>th</sup> Circuit Court of Appeals. If upheld by the 6<sup>th</sup> Circuit, the total amount of the award (figuring in the anticipated interest amount) would be in excess of \$1,180,000, not including the additional attorney fees incurred by Teen Challenge on appeal. The 6<sup>th</sup> Circuit suggested that this case be resolved through a mediation process, which resulted in this proposed settlement.

The department of law recommends that this case be settled for a total payment from Metro of \$750,000. The settlement would be broken down as follows:

- o \$563,610.47 in damages to Teen Challenge (close to \$400,000 less than the jury award)
- o \$135,664.58 in attorney fees and court costs (as determined by the court)
- o \$50,724.95 in interest (likely \$30,000 less than the court would award)

If the jury award was upheld on appeal, the Metropolitan Government would likely pay at least \$350,000 more than the \$750,000 proposed settlement amount.

**– BILLS ON SECOND READING –**

**ORDINANCE NO. BL2009-547** (MITCHELL & STEINE) – This ordinance amends the Metro Code regarding the parking of vehicles near fire hydrants. The code currently prohibits parking within 15 feet of a fire hydrant. However, some fire hydrants are set back further from the street than 15 feet. Thus, vehicles may be legally parked in front of some fire hydrants, which can impede emergency access to the hydrant. In addition to the existing 15-foot prohibition, this ordinance would prohibit parking within a “fire hydrant clear zone,” which is defined as the area 15 feet to either side of a line extending perpendicular from the road to the hydrant.

**ORDINANCE NO. BL2009-568** (TYGARD, DUVALL & OTHERS) – This ordinance amends the public art financing provisions in the Metro Code to require that a portion of the bond proceeds set aside for public art be spent throughout Nashville and Davidson County. In 2000, the council enacted BL2000-250 to establish the “one percent for public art” program, which requires that one percent of all general obligation bonds issued by the Metropolitan Government for construction projects be set aside to fund public art. The definition of “construction project” in the ordinance includes the erection of new public buildings or structures, as well as the reconstruction or repairs to existing buildings and facilities where the value of the improvement exceeds fifty percent of the value. The 2000 ordinance required the arts commission to develop public art guidelines that include criteria for accepting donations or gifts (both of money and art), a procedure for the selection of artists or public art projects, and for placement of public art projects. The arts commission was also required to develop rules and regulations for the expenditure of the public art funds to be approved by a resolution of the council. The resolution approving the rules and regulations was adopted by the council in September 2001.

The one percent for public art program adopted in 2000 envisioned the incorporation of public art into new Metro buildings or facilities at the time they are constructed. The code specifically requires the arts commission to consult with the department responsible for a particular construction project regarding the design and placement of a public art project in connection with such construction project. However, some Metro facilities are not appropriate for public art, such as the new Metro water services biosolids facility. And individual construction projects may not generate sufficient funds for stand-alone public art projects. For these reasons, the code allows the percent for public art proceeds to accumulate until they are sufficient to fund a public art project.

In addition to the one percent for public art program, the council has appropriated a total of approximately \$21,300,000 to the arts commission since 2000 as part of the annual operating budgets, which is used to make grants to various arts organizations throughout Nashville and Davidson County.

Since 2000, the only public art project to be completed using the one percent for public art funds is the *Ghost Ballet for the East Bank Machineworks* located next to LP Field on the East Bank of the Cumberland River in downtown Nashville. The arts commission has commissioned two artists for two public art projects at the Courthouse Public Square, but these projects have yet to begin. The budget for these two projects, including lighting and maintenance, is estimated to be \$515,000. Further, the arts commission, working with the department of public works, has issued a request for proposals from interested artists to design bicycle racks for installation in the downtown area and adjacent neighborhoods. The current balance in the one percent for public art fund is approximately \$2,450,000.

This ordinance would require that one-half of the general obligation bond proceeds set aside for public art be allocated equally among the nine school districts for public art projects within those districts. The public art projects to be completed using this portion of the fund would be distributed among various types of Metro property, including parks, schools, libraries, other government buildings frequented by the public, and public rights-of-way. The arts commission would be required to amend its public art regulations to include a method for making recommendations to the council for public art projects within the nine school districts, and to create a committee to make such recommendations to the council on an annual basis. Members of council residing within each of the nine school districts would be given the opportunity to suggest possible art projects and/or locations within their district. Each project would have to be approved by the council by resolution prior to the expenditure of any funds.

The remaining one-half of the one percent for public art proceeds would be used for public art projects anywhere within the area of the Metropolitan Government in conformance with the public art guidelines already in place, provided that these funds could be combined with funds set aside for the nine school districts at the discretion of the arts commission.

The director of finance has declined to sign this ordinance as to availability of funds on the grounds that this is a policy decision rather than a financial one.

There may be a proposed substitute for this ordinance that would require seventy-five percent of the public art funds to be allocated equally among the nine school districts, but would remove the requirement that the council approve the public art projects.

**ORDINANCE NO. BL2009-569** (JERNIGAN) – This ordinance amends the Metro Code to require that notice be sent to the district councilmember upon the filing of a special events permit application with the mayor's office of film and special events. This office was created in 1997 in part for the purpose of providing consistency in the issuance of special events permits and coordinating the approval of the various Metro departments involved. For example, a recommendation must be received from the police department and public works department before a street or alley can be closed for a special event.

The Code defines special event as "a temporary outdoor public gathering reasonably expected to attract more than 75 participants and spectators, and which involves one or more of the following on public property or on private property where otherwise prohibited: (1) closing a street; (2) restricting access to public property; (3) sale of merchandise, food, or beverage; (4) erection of a tent larger than four hundred square feet; (5) installation of a stage, band shell, grandstand, bleacher, trailer, van or portable toilets for public use." As evidenced in the definition, an event on private property can be considered a special event if the event meets one of the above criteria. However, the Code only specifically requires a permit if the event involves the use of public property or impacts the public right-of-way.

This ordinance would require the district councilmember to be notified within three days after the special events permit application is filed. The councilmember would have five days in which to submit written comments or concerns about the proposed event and its impact on the community.

**ORDINANCE NO. BL2009-570** (TYGARD, STEINE & MAYNARD) – This ordinance approves a lease agreement between the Metropolitan Government and Hickory Hollow Mall Limited Partnership for space to enable the health department to operate a federal women, infants and children (WIC) program clinic at the mall. Metro is leasing 2,809 square feet of space at a monthly rental cost of \$1,872.67. The space is being leased “as is”, though that the mall will be responsible for the maintenance of the HVAC system. Metro will be responsible for janitorial services within the leased premises, as well as providing maintenance for the space. Utilities will be provided by the mall, but Metro is responsible for paying its share of utilities in the amount of \$578.81 per month, which amount is to increase by ten percent each year. The term of the lease is through October 31, 2012, but may be extended for two additional one-year terms.

This lease agreement has been approved by the planning commission. Future amendments to the lease may be approved by resolution.

**ORDINANCE NO. BL2009-571** (STEINE, BAKER & MAYNARD) – This ordinance approves the annual contract for services performed by the Metropolitan Government for the emergency communications district (ECD) relative to operation of the enhanced-911 service for fiscal year 2009-2010. The contract specifies certain services to be provided by the emergency communications center, the department of public works and the department of general services. The department of public works will maintain an updated Master Street Address Guide, and the department of general services will provide day-to-day staff and support services for operation of the enhanced-911 emergency communications systems. Metro also agrees to handle the procurement of goods and services upon request by the ECD through our purchasing division. Metro will also be responsible for training the Metro employees who will operate the system. ECD is to reimburse the Metropolitan Government in the amount of \$4,900 for the services provided by the department of public works provided in the 2009-2010 fiscal year, plus the reimbursement of certain training costs, telephone expenses and equipment costs.

**ORDINANCE NO. BL2009-572** (HUNT) – This ordinance abandons an 8-inch and 10-inch water line and easement, and accepts a replacement 10-inch line and easement at the Belmont University Residence Hall No. 4 located on East Belmont Circle at 1900 Belmont Boulevard and 1515 Wedgewood Avenue. This ordinance has been approved by the planning commission. Future amendments to this ordinance may be approved by resolution.

**ORDINANCE NO. BL2009-573** (HUNT) – This ordinance amends the recently adopted 2006 edition of the International Fire Code (IFC) pertaining to the fire flow requirements for existing bars with live entertainment. On August 6, 2009, the council enacted Substitute Ordinance No. BL2008-350 to adopt the International Fire Code with certain local amendments in place of the National Fire Prevention Association (NFPA) fire code and life safety code.

Substitute Ordinance No. BL2008-350 included some special exemptions from the more stringent fire-flow requirements for certain existing building lots, as well as bars and nightclubs with an occupancy of less than 200 persons. Bars and nightclubs with an occupancy of more than 200 persons would have until September 2012 to retrofit with sprinklers unless they have

a history of violations for overcrowding or unpermitted pyrotechnics, whereby they would be required to retrofit upon being ordered to do so by the fire marshal.

This ordinance would exempt all bars with live entertainment from the sprinkler retrofitting requirement.

Local governments that enforce their own fire codes have the authority under state law to adopt a code that is at least as restrictive as the state standards.

**ORDINANCE NO. BL2009-574** (STEINE & GARRETT) – This ordinance grants a telecommunications franchise to DukeNet Communications, LLC, in accordance with the Metro Code. DukeNet is a North Carolina-based company that develops and manages fiber optic telecommunications systems in several southeastern states. DukeNet desires to use approximately 60 miles of existing fiber optic cable that it will lease from Nashville Electric Service for the purpose of providing telecommunications services for cell tower sites in Davidson County. The company will have a fifteen year franchise and will be required to pay five percent of its gross revenues to the Metropolitan Government as consideration for granting the franchise.

DukeNet is also required to provide a bond in the amount of \$500,000 guaranteeing the company's performance of its obligations under the franchise, as well as a \$1,000,000 certificate of liability insurance naming the Metropolitan Government as additional insured.

The application for this franchise has been approved by the planning commission.

**ORDINANCE NO. BL2009-575** (MITCHELL) – This ordinance renames Old River Road Pike, extending between two sections of River Road Pike, as "Horton Hollow Lane". The realignment of River Road Pike caused several sections of Old River Road Pike to remain. This name change was requested by a resident in the area because visitors and delivery vehicles often have difficulty locating property on Old River Road Pike, and the residents are concerned that this could cause a delay in emergency services.

This name change has been approved by the traffic and parking commission.

**ORDINANCE NO. BL2009-576** (GOTTO, HUNT & STEINE) – This ordinance authorizes the acquisition of two permanent utility easements and five temporary easements for the Rockwood water and sewer project. The estimated cost for this acquisition is \$1,000, which is to be paid from the water and sewer extension and replacement fund. The acquisition of additional easements for this same project may be approved by resolution.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2009-577** (CLAIBORNE, LALONDE & STEINE) – This ordinance approves a lease agreement between the Metropolitan Nashville public schools (MNPS) and Simon Youth Foundation for space at Opry Mills Mall for the operation of an adult high school program known as the Academy at Opry Mills. The Academy at Opry Mills is a program specifically to

serve young adults that dropped out of high school in their senior year. The program enables these students to continue outside employment while working toward obtaining their high school diploma in a non-traditional school setting.

The Simon Youth Foundation is a nonprofit organization that establishes and operates education resource centers within shopping malls owned by Simon Property Group, L.P. The Mills properties, which include the Opry Mills Mall, are owned by Simon Property Group. Pursuant to this lease agreement, the Simon Youth Foundation will not charge MNPS any rent for use of the 3,356 square feet of space that was formerly used as a career center. MNPS will be required to provide quantitative and qualitative data annually to the Simon Youth Foundation about The Academy. Scholarship opportunities will be provided by the Simon Youth Foundation to graduating students at its discretion. The Simon Youth Foundation will also make capital improvements to the property based upon a set schedule, and has already made a \$25,000 cash contribution toward preparation of the school facility. The term of the agreement is for one year, which will be automatically renewed unless terminated by either party upon 60 days written notice.

This lease agreement has been approved by the planning commission. Future amendments to the lease may be approved by resolution.

**– BILLS ON THIRD READING –**

**ORDINANCE NO. BL2009-535** (MCGUIRE, GOTTO & HODGE) – This zoning text change amends the definitions of “family” and “residence for handicapped, more than eight individuals” in the zoning code to conform to the state law definitions. In addition to the traditional definition of “family”, meaning persons related by blood, marriage or law, the zoning code currently allows up to three unrelated persons, group homes for the disabled of not more than eight individuals (including persons being treated for drug and/or alcohol dependency), and group homes for up to eight elderly persons to be considered a single family. The current definition of family excludes the mentally ill, although courts have interpreted the Fair Housing Amendments Act of 1988 (FHAA) to include protections for persons that are mentally ill, thus requiring local governments to make reasonable accommodations in their ordinances to afford such persons an equal opportunity to use a dwelling.

State law excludes mentally ill from the definition of “mentally handicapped” only if the person’s mental illness poses a threat of serious harm or if the person has been convicted of a serious crime related to the mental illness. Metro’s existing definition of family is in conflict with the state law definition since it excludes all persons who are mentally ill. This ordinance simply amends these provisions to reflect the state law definitions.

The council office would point out that failure to enact this ordinance could subject the Metropolitan Government to further Fair Housing Act litigation and could jeopardize the Metropolitan Government’s consent decree with the U.S. Department of Justice.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2009-537** (JAMESON & TYGARD) – This zoning text change amends the zoning code to allow artisan distilleries in the commercial core (CC), core frame (CF), and industrial zoning districts. Prior to 2008, the zoning code considered the manufacturing of alcoholic beverages as a “medium manufacturing” use, which is only permitted in the industrial zoning districts. In September 2008, the zoning code was amended to create a new use called “microbrewery”, which would be permitted by right in the CF, IR (industrial restrictive) and IG (industrial general) zoning districts. The code defines “microbrewery” as the production of beer in quantities not to exceed 5,000 barrels per month. This definition does not extend to the production of other alcoholic beverages such as wine and whiskey.

This ordinance creates “artisan distillery” as a new use, which would be permitted in the CC, CF, and industrial zoning districts. In order to qualify as an artisan distillery, the operator would be limited to producing alcoholic beverages in quantities not to exceed 1,000 barrels per month, with one barrel holding 55 gallons. The purpose of this ordinance is to allow smaller-scale distilleries in the downtown area to serve as tourist attractions.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2009-538** (GOTTO, PAGE & OTHERS) – This zoning text change amends the definitions pertaining to adult or sexually-oriented video and book stores. The zoning code currently defines these establishments as those that have a majority of its floor space or stock in trade devoted to sexually-oriented materials. Establishments classified as sexually-oriented businesses must be located within the adult entertainment overlay (primarily the downtown area) and receive approval from the sexually-oriented business licensing board. The department of codes administration has interpreted the phrase “majority of its stock in trade or a majority of its floor space” as being 50% or more. Thus, a book or video store that has less than one-half of its floor space or stock in trade devoted to sexually-oriented material is considered a “retail” use and, therefore, is allowed anywhere retail uses are allowed, which includes the mixed-use and commercial zoning districts that extend throughout the county. A recent decision by the U.S. Court of Appeals for the Sixth Circuit upheld Knox County, Tennessee’s ordinance that includes a threshold of 35% in adult material as being the determinative factor as to whether an establishment can be considered a sexually-oriented business for purposes of local regulations to diminish the adverse secondary effects to the community.

The purpose of this ordinance is to prevent the secondary effects associated with sexually-oriented businesses. Numerous studies from across the country have concluded that sexually-oriented businesses are associated with a wide variety of negative secondary effects, including personal and property crimes, prostitution, potential spread of disease, illegal drug use, reduction in property values, urban blight, and sexual exploitation.

Since adult entertainment is a protected form of free speech under the First Amendment to the U.S. Constitution, regulations of such establishments must pass constitutional muster. The U.S. Supreme Court has held that regulations upon the location of adult entertainment establishments are constitutional provided that reasonable alternative avenues of communication are left open. Further, the courts have held that local governments have a substantial interest in controlling the adverse secondary effects of sexually-oriented businesses and that the adverse effects noted above are indeed adverse secondary effects of these establishments. The courts have also held that local governments are not required to conduct their own studies as to the adverse secondary effects, but may rely on studies produced by other cities, as well as previous judicial decisions, that are reasonably believed to be relevant. Studies have shown that off-site and retail-only sexually oriented businesses produce these adverse secondary effects. Copies of the adverse secondary effect studies relied on in this ordinance are on file in the council office.

First, this ordinance would amend the definitions for sexually-oriented/adult bookstore and sexually-oriented/adult video store to provide that these establishments are those offering, as one of their principal business purposes, sexually-oriented material. Second, and most importantly, the ordinance adds a definition for “principal business purpose” to include any one of the following:

1. At least 35% of the business's displayed merchandise consists of books, magazines, periodicals, photographs, films, videos, etc., that are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" as defined in the code;
2. At least 35% of the wholesale or retail value of the business's displayed merchandise consists of the foregoing items;

3. At least 35% of the business's revenues derive from the sale or rental of the foregoing items;
4. At least 35% of business's interior business space is used for the display, sale, or rental of the foregoing items; or
5. The business regularly features the foregoing items, prohibits access by minors to the premises, and advertises itself as offering "adult" or "XXX" or "x-rated" or "erotic" or "sexual" or "pornographic" material on signage visible from a public right-of-way.

As evidenced from the definition of "principal business purpose", this ordinance would not only reduce the threshold of adult material to 35%, but would expand the criteria for determining whether an establishment is a sexually-oriented business. Instead of just looking at floor space and stock in trade, the department of codes administration would also look at the value of the merchandise and the revenues derived from the sale of adult material. Further, a business that has signs visible from the public right-of-way advertising itself as offering adult material and prohibiting access to minors would be considered a sexually-oriented business, regardless of the percentage of inventory, revenue, or floor space.

According to the planning department staff analysis, there are currently 13 adult entertainment uses within the adult entertainment overlay district. There are 721 properties upon which an adult entertainment establishment could possibly locate within the adult entertainment overlay, which leaves ample alternative avenues of communication for new book or video stores that would qualify as sexually-oriented businesses under this new ordinance.

All existing establishments selling adult material that are currently classified as a retail use would be allowed to continue operation as a legal nonconforming use under current state law.

There is an amendment for this ordinance correcting a typographical error and referencing a number of more recent adverse secondary effect studies.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2009-545** (COLE & STEINE) – This ordinance amends the Metro Code to authorize a ticket tax on tickets sold for events at LP Field. 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 the "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. This state statute was amended this year 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 coliseum requires the Metropolitan Government to pay \$1 million annually for capital improvements to LP Field. This contract also provides that a special tax cannot be imposed on tickets until after the 10<sup>th</sup> season of professional football played in the stadium.

This ordinance would impose a \$2.00 privilege tax upon the privilege of attending any event at LP Field between June 14, 2010, and December 31, 2020. If the \$2.00 tax would exceed ten

percent of the face value of the ticket, then the tax will be limited to ten percent of the ticket price. This tax will not apply to tickets to Tennessee State University football games. The ordinance provides that the promoter of the event may deduct up to two percent of the tax collected as an administrative fee. The ordinance also provides that taxes collected by the promoter that are not remitted by the due date are subject to a penalty of one percent each month the taxes are delinquent, plus interest of eight percent per year.

The ordinance further provides that all of the proceeds from this 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.

Although state law allows a ticket tax of up to \$3.00 per ticket, bond counsel has advised that the amount of the tax and the duration it is imposed must be limited in order for the bonds issued for the construction of the stadium to 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 will be treated as a private payment, subject to the ten percent cap. Bond counsel and Metro’s financial advisor have advised Metro that a \$2.00 per ticket tax that sunsets in 2020 will not cause private payments to exceed the ten percent limit and, therefore, will not adversely affect the tax exempt status of the stadium bonds.

As owner of LP Field, it is in the best interest of the Metropolitan Government that this ticket tax be approved. It is estimated that approximately sixty percent of the Titan’s season ticket holders live outside of Davidson County. Imposing this 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.

**ORDINANCE NO. BL2009-546** (MOORE, TYGARD & BAKER) – This ordinance amends the Metro Code pertaining to the storage and disposal of scrap tires. The code currently prohibits the storage of tires in a manner where stagnant water may collect, and requires persons storing tires to take the necessary measures to prevent the breeding or harborage of insects, rodents and other pests. The code also requires commercial trucks used in the collection or transporting of used tires to include the name and phone number of the owner on the side or rear of the vehicle. Further, state law requires all new tire dealers to collect a tire disposal fee from the customer. However, the Metro Code does not directly address the storage and disposal of used tires.

This ordinance would expressly put the burden upon a property owner or occupier of property to ensure the responsible handling and disposal of scrap tires. No more than five scrap tires would be allowed on any property in a residential zoning district. A dealer of new or used tires would be required to keep all scrap tires in a covered or enclosed area up to a maximum of 500 tires on the property. The ordinance would also require tire dealers to maintain records regarding the disposal of scrap tires including the name, address, phone number and vehicle identification number of the waste tire transporter and the number of tires transported.

This ordinance would be enforceable by the police department, the department of public works, the department of codes administration, and the department of health. A person found in violation of the ordinance would be subject to a \$50.00 fine per violation, with each unlawfully disposed scrap tire being considered a separate violation. In addition to the monetary penalty,

the court would have the authority to order the violator to clean up the property and could enter an injunction preventing the further accumulation of scrap tires. The ordinance gives Metro the authority to suspend the issuance of permits until the property owner comes into compliance.

**ORDINANCE NO. BL2009-548** (STEINE, DOMINY & OTHERS) – This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2009-2010. State law allows county legislative bodies to appropriate funds for a tax relief program and establish guidelines for participation in the program and the disbursement of such funds. The council appropriated \$2,047,700 in the current fiscal year's operating budget for a property tax relief program for the elderly, which is the same amount as the previous fiscal year.

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 \$25,360 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2010.

This tax relief program, which is separate from the tax freeze for seniors, has been in place for a number of years.

**ORDINANCE NO. BL2009-549** (STEINE & HUNT) – This ordinance approves a new contract in lieu of a performance bond between the Metropolitan Government and the state department of environment and conservation regarding the maintenance of the closed thermal ash monofill solid waste facility. 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 amounts of the financial responsibility are adjusted on an annual basis as a result of inflation or reductions in post-closure costs.

Metro first entered into a contract with the state for the maintenance of the thermal ash monofill phase 2 in 1993. The phase 3 agreement was approved in 1997. Both of these agreements have been amended a number of times, and Metro and the state desire to combine the two amended agreements into one contract. Combining these contracts will better enable the department of public works to monitor the correct annual adjustment amounts for the financial assurance. This new agreement simply provides that Metro will continue to maintain the site and monitor for environmental hazards. Metro would be subject to a monetary penalty in the amount of \$1,177,567.76 only if it failed to adequately maintain the site.

**ORDINANCE NO. BL2009-550** (MATTHEWS & HOLLEMAN) – This ordinance approves an agreement between the Metropolitan Government and Dennis and Tammy Roth pertaining to easement rights for McCabe Park property located adjacent to 4906 Colorado Avenue. Metro has permitted the Roths access across the park property for a number of years. Metro is now in the process of constructing a greenway and installing a fence next to this property. This agreement grants the Roths an exclusive easement for ingress and egress across the Metro property to 4906 Colorado Avenue, and grants an easement for the purpose of parking or

landscaping on the Metro property. This agreement will terminate if 4906 Colorado Avenue is ever redeveloped. The Roths agree to indemnify the Metropolitan Government from any liability associated with the use of the easement. Amendments to this ordinance may be approved by resolution. This ordinance has been approved by the parks board and by the planning commission.

**ORDINANCE NO. BL2009-551** (MATTHEWS) – This ordinance authorizes the director of public property administration to accept a quitclaim deed to an old steel truss bridge on Lebanon Road crossing the Stones River. The state has agreed to donate this bridge and the land the bridge sits on for the benefit of the parks department. This bridge will be used as part of the Stones River greenway. This ordinance has been approved by the board of parks and recreation and the planning commission.

**ORDINANCE NO. BL2009-552** (CLAIBORNE) – This zoning text would allow residential development as part of an adaptive reuse of existing buildings within the downtown Donelson urban zoning overlay. In 2005, the council enacted Ordinance No. BL2004-492 to allow the redevelopment/reuse of certain commercial property within the urban zoning overlay district for residential purposes. The commercial zoning districts currently prohibit residential uses unless the property satisfies the requirements of the adaptive reuse code provisions. Thus, developers seeking to redevelopment commercial property for residential uses in commercial zoning districts located outside of the urban zoning overlay must have the property rezoned by the council.

The downtown Donelson urban design overlay district (UDO) envisions various mixed-use developments. But since the Donelson area is outside of the urban zoning overlay district, mixed-use development in commercial areas of Donelson is not permitted without rezoning the property. This ordinance would add a provision to the zoning code to specifically allow the adaptive reuse of commercial properties within the downtown Donelson UDO as residential properties, provided the conditions in the adaptive reuse code section are satisfied. These conditions include a requirement that at least 40% of the building's floor area be devoted to residential uses and that the building's entrance be oriented to an arterial street.

This ordinance has been approved by the planning commission.