

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **December 7, 2010**

RE: **Analysis Report**

Balances As Of:	<u>12/1/10</u>	<u>11/24/09</u>
<u>GSD 4% RESERVE FUND</u>	* \$29,959,990	\$24,450,556
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$34,798,409	Unavailable
USD	\$24,263,010	Unavailable
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	\$27,099,790	Unavailable

* Assumes estimated revenues in fiscal year 2011 in the amount of \$23,440,100

– RESOLUTIONS –

RESOLUTION NO. RS2010-1415 (BARRY & FORKUM) – This resolution approves a third amendment to a contract between the Metropolitan board of health and SysTech International, LLC, for operation of the automobile emission testing program. In December 2006, the council approved the contract with SysTech, thus ending the contractual relationship with Envirotech Systems, which had been operating the program since 1990. At the time of the expiration of the former contract, Envirotech was charging \$10.00 per test, with \$1.80 going to the Metro health department to fund the air pollution program. The initial contract with SysTech provided that Metro was to receive \$4.50 for each inspection, plus \$7.25 for every vehicle inspected that exceeds a 2% increase in the number of vehicles inspected in the previous year. If the contract was to be extended past the 2012 deadline, Metro was to receive \$5.00 per inspection under the terms of the original contract.

In June 2007, this contract was amended to reduce the inspection fee to \$9.00, which also reduced the payment to the health department by one dollar. Under the existing terms of the contract, Metro is to receive \$6.25 for every vehicle inspected that exceeds a 2% increase in the number of vehicles inspected in the previous year. The amendment also decreased the amount of the inspection fee after 2012 to \$4.00. The contract was again amended in 2008 to add a liquidated damages provision to protect Metro against SysTech's failure to fulfill certain contractual requirements that it was not in compliance with at the time.

This third amendment would extend the term of the contract through June 30, 2017, and would provide that Metro would continue to receive \$3.50 per inspected vehicle as opposed to \$4.00. However, SysTech has agreed to provide some additional services including extension of the Saturday hours at the Antioch location, opening the Dickerson Road station on Saturday, and adding hours to the mobile test vans. This amendment also provides if the vehicle inspection program is revised in such a manner that would result in a reduction in the number of vehicles inspected (currently approximately 500,000 annually) by more than ten percent, then the amount of the fee submitted to Metro by SysTech will be reduced accordingly.

RESOLUTION NO. RS2010-1455 (MITCHELL, HODGE & BARRY) – This resolution approves an agreement between the Metropolitan Government and the state department of transportation (TDOT) pertaining to the widening and relocation of three ramps at the interchange of I-40 with McCrory Lane in the Bellevue area, as well as a realignment and widening of McCrory Lane. The total cost of the project is estimated to be \$8,311,514, with the state providing \$4,000,000 and the developer, Nashville Biltmore, LP, providing the remaining funds. Metro will be acting as the local government project sponsor and contract manager but will not be contributing any funds for the project. This project must be completed not later than November 30, 2015.

Ordinance No. BL2010-791 on third reading approves a contract with Nashville Biltmore, LP pertaining to this project.

RESOLUTION NO. RS2010-1464 (STEINE & JAMESON) – This resolution appropriates \$12,000 as a supplemental appropriation from the undesignated fund balance of the community education enterprise fund to the community education commission to allow programming to continue at Cohn Adult Learning Center through the end of the fiscal year. The community education commission voted at their last meeting to request the council to appropriate this amount from the community education fund balance.

RESOLUTION NO. RS2010-1465 (CRAFTON) – This resolution removes the members of the board of fair commissioners. The Metropolitan Charter provides that members of boards and commissions may be removed by a three-fourths vote of the entire membership of the council. The current five members of the fair board are Ned Horton, Alex Joyce, Charles Sueing, Katy Varney, and James Weaver. Rule 44 of the council rules of procedure requires that a resolution removing a member of a board or commission state the reasons or grounds for such removal. The reason cited in this resolution for the removal of the fair board members is the board's decision concerning the discontinuation of the state fair and the other activities at the fairgrounds property.

Pursuant to Rule 44, this resolution must be deferred one meeting. Once deferred, each of the five fair board members will have the opportunity to appear before the rules committee on December 21 and to address the full council before a vote is taken on the resolution.

RESOLUTION NO. RS2010-1466 (BARRY, HODGE & OTHERS) – This resolution authorizes the department of water and sewerage services (MWS) to acquire 81 properties in the Delray Drive and West Hamilton Avenue areas pursuant to a hazard mitigation grant program using federal and state funds. Ordinance No. BL2010-765 authorized such action to be taken once the funding was made available upon approval of a resolution receiving 21 affirmative votes. The federal emergency management agency (FEMA) has awarded Metro \$7,097,318, which represents 75% of the cost to acquire the homes. The remaining 25% will be split equally by the state and Metro.

These properties are located in the Richland Creek and Whites Creek floodways, which qualify them for assistance under the federal hazard mitigation assistance grant program. These federal pass-through funds will be used to acquire and demolish the homes. The properties will be maintained in the future by MWS as open space. Properties are only acquired under this program on a voluntary basis.

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

The funding to begin acquiring the properties will be from old stormwater funds that were appropriated prior to the implementation of the new stormwater user fee. The substitute budget ordinance for fiscal year 2010-2011 approved by the council included language authorizing the director of finance to provide funding approval to proceed with flood related projects where reimbursement is expected from the federal or state government. The grant contract between the state and Metro will be submitted to the council for approval by resolution in the same manner as all other grant contracts once the funds for the property acquisition are received by the state.

RESOLUTION NO. RS2010-1467 (BENNETT, BARRY & HODGE) – This resolution approves an amendment to the Safe Routes for Schools project agreement between the Tennessee department of transportation and the Metropolitan department of public works to construct sidewalks along Oakwood Avenue in the vicinity of Tom Joy Elementary School. This contract is funded through a federal pass-through grant program made available for the benefit of specific schools with infrastructure issues that act as an impediment to students safely walking and biking to school. This contract amendment adds some language pertaining to compliance with the Federal Funding Accountability and Transparency Act.

RESOLUTION NO. RS2010-1468 (ADKINS, HODGE & OTHERS) – This resolution approves an application for a Transportation Enhancement Program grant in the amount of \$1,961,000 from the state department of transportation to the department of public works for the construction of 4,800 linear feet of sidewalks on Harding Place from Nolensville Pike to Tampa Drive. If awarded, there will be a required local match of \$491,000 to be provided through capital funds approved for sidewalk projects.

RESOLUTION NO. RS2010-1469 (LANGSTER & BARRY) – This resolution approves a grant in the amount of \$1,085,285.75 from the Tennessee emergency management agency to the Metropolitan Government for homeland security preparedness activities. These funds will be used to conduct training programs and disaster exercises, as well as to purchase equipment, to implement the state homeland security strategy and national preparedness goal. The term of the grant is from August 1, 2010, through May 31, 2013.

RESOLUTION NO. RS2010-1470 (LANGSTER & BARRY) – This resolution approves a contract between the Metropolitan Government and Pro-Fire Equipment, LLC for the lease of two pumper tankers for the fire department. The equipment to be leased consists of a 1996 Pierce Saber Custom pumper with approximately 31,000 miles and a 2007 Velocity pumper with 17,500 miles. The lease is for a term of nine months with an option to extend for three additional one-month periods. The monthly lease payments will be \$16,500 for both units.

The Metropolitan Code provides that the lease of equipment in excess of \$5,000 per year must be approved by resolution of the council.

RESOLUTION NOS. RS2010-1471 & RS2010-1472 (LANGSTER & BARRY) – These two resolutions approve grants from the U.S. department of justice to the Metropolitan police department for the gang resistance education and training (GREAT) program. The GREAT program is a school-based curriculum taught by police officers to middle school students. The primary goal of GREAT is to prevent youth delinquency, violence and gang membership.

Resolution No. RS2010-1471 approves a grant in the amount of \$50,000 to continue providing the GREAT program in elementary and middle schools. These funds will be used to cover personnel costs and supplies for the program, as well as travel costs for two officers to attend the national GREAT conference in Los Angeles, CA. There is a required local cash match of \$45,582 for this grant.

(continued on next page)

RESOLUTION NOS. RS2010-1471 & RS2010-1472 (continued)

Resolution No. RS2010-1472 approves a grant in the amount of \$310,000 to provide GREAT training to police officers from across the region. These grant funds will be used to pay the salaries of our police officers providing the training, as well as travel expenses, equipment and supplies.

RESOLUTION NO. RS2010-1473 (BARRY & FORKUM) – This resolution approves an annual grant in the amount of \$239,000 from the state department of health to the Metropolitan board of health to provide rapid HIV testing services. These federal pass-through funds will be used to pay the salaries of the health department personnel that provide the HIV testing in a clinical setting. The health department will be required to report positive HIV test results to the state within 24 hours, and provide counseling and referral services to those clients receiving a positive result. The term of the grant is from September 30, 2010 through September 29, 2011.

RESOLUTION NO. RS2010-1474 (BARRY & FORKUM) – This resolution approves a grant in the amount of \$250,000 from the state department of health to the Metro health department for the implementation of a diabetes project. The purpose of the grant is to reduce the risk of adolescent diabetes by focusing on obesity prevention through physical activity and exercise. The health department will coordinate the implementation of a “stepping” program at various community centers geared toward preventing Type 2 diabetes through physical activity and exercise for approximately 300 at-risk youth. The term of the grant is from October 1, 2010 through June 30, 2011.

RESOLUTION NO. RS2010-1475 (BARRY) – This resolution approves an amendment to a grant from the state department of labor and workforce development to the Nashville career advancement center for the incumbent worker training program to increase the amount of the grant by \$15,850 for a new grant total of \$179,850. These federal funds are used to train employees of businesses that apply for and receive the training assistance. The term of the grant is from July 1, 2010 to June 30, 2011.

RESOLUTION NOS. RS2010-1476 through RS2010-1480 (BARRY) – These five resolutions approve grants from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to prepare adults, youth, 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.

Resolution No. RS2010-1476 approves a grant in the amount of \$1,644,373 to establish programs and deliver services to dislocated workers. The term of the grant is from October 1, 2010, through June 30, 2012.

Resolution No. RS2010-1477 approves a grant in the amount of \$81,250 in state incentive funds for various programs offered by NCAC. The funds will be used to conduct a workforce summit, add a mobile career lab, continue the “Concrete” program for youth, and increase available funds for participant tuition and fees. The term of the grant is from October 1, 2010, through June 30, 2011.

(continued on next page)

RESOLUTION NOS. RS2010-1476 through RS2010-1480 (continued)

Resolution No. RS2010-1478 approves a grant in the amount of \$57,250 to cover administrative costs for NCAC associated with providing programs and services to assist dislocated workers, adults, and youth facing barriers to employment. The term of the grant is from October 1, 2010, through June 30, 2011.

Resolution No. RS2010-1479 approves a grant in the amount of \$1,145,000 to provide training opportunities for dislocated workers. The term of the grant is from October 1, 2010, through June 30, 2011.

Resolution No. RS2010-1480 approves a grant in the amount of \$1,605,598 to establish programs and deliver services to adult workers. The term of the grant is from October 1, 2010, through June 30, 2012.

RESOLUTION NO. RS2010-1481 (BARRY) – This resolution authorizes the department of law to compromise and settle the lawsuit brought by Joseantonio Melton and Teresa Patterson-Melton against the Metropolitan Government for the amount of \$80,000. On December 6, 2007, a Metro police officer was traveling on Interstate 40 while in the course and scope of his employment when he failed to notice that traffic was stopped in front of him. The police officer struck the rear of the Melton's vehicle causing a chain reaction four car collision. Mr. Melton sustained injuries to his neck, back, chest, and wrist, incurring medical bills totaling \$21,005.10. Ms. Patterson-Melton accrued medical expenses totaling \$12,359.27 for the treatment of neck, back, and shoulder pain.

Since the officer was clearly at fault, the department of law recommends settling this lawsuit for \$80,000. This will include reimbursement for \$33,364.37 in medical expenses, plus \$46,635.63 in compensation for pain and suffering. This amount is likely less than a jury would award if the case went to trial.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2010-734 (HOLLEMAN, JAMESON & COLE) – This ordinance amends the Metropolitan Code to provide free parking at parking meters for environmentally friendly vehicles. The Mayor's green ribbon committee on environmental sustainability 2009 report recommended that Metro provide free parking for clean technology vehicles, including those powered by electricity, electric hybrid, and biofuel. In an effort to implement this recommendation, this ordinance would provide free parking for any vehicle that has a certain minimum environmental performance score from the U.S. environmental protection agency (EPA). A vehicle's environmental performance score can easily be obtained by inputting the vehicle's information into the green vehicle guide located on the EPA's website.

This ordinance would require the county clerk to issue a sticker to vehicles eligible for the free parking upon the payment of a \$4.00 processing fee. The county clerk's office will determine the vehicle's eligibility by using the guide on the EPA website. Vehicles possessing the sticker would be allowed to park for free for up to three hours at any parking meter in Nashville.

There is a proposed substitute for this ordinance that makes a number of changes to the bill. First, the substitute would clarify that the sticker must be obtained annually. Second, the annual sticker fee is increased to \$10.00 and the ordinance specifies that the funds are to be divided among the county clerk and public works department to offset the expenses associated with the issuance of the sticker and enforcement. Third, the substitute specifies that vehicles cannot park longer than the maximum time limit stated on the meter. Finally, the substitute delays the effective date of the program until July 1, 2011, and adds a two-year sunset provision.

ORDINANCE NO. BL2010-792 (COLEMAN, BARRY & OTHERS) – This ordinance approves three lease agreements between the Metropolitan Government and Hickory Hollow Mall Limited Partnership and Hickory Hollow/SB, LLC, for the lease of space in Hickory Hollow mall.

The three leases contain several of the same boilerplate provisions that are likely found in all of the Hickory Hollow mall tenant leases. All three leases provide that Metro agrees to accept the property "as is". In addition, the mall will not be liable for any injury or damage on the property, even on the property under the control of the mall, unless the injury is caused by the willful misconduct or negligence of the mall. There is no similar provision indemnifying Metro. Further, the leases and all rights of Metro are subordinate to any mortgage lien on the property. The leases include form subordination agreements as attachments that do include provisions prohibiting successors in interest through a foreclosure sale from cancelling the leases unless Metro is in default. The parking provisions in the leases state that Metro is to be granted non-exclusive use of all of the mall parking spaces. However, another provision in each of the lease agreements governing the use of the common area states that the mall can restrict parking by tenants and enforce parking charges. The common areas will be under the exclusive control of the mall, and Metro agrees to pay an additional common area maintenance fee for the Dillard's and J.C. Penny buildings of twenty-five cents per square foot for year one, fifty cents per square foot for year two, seventy-five cents per square foot for year three, and one dollar per square foot thereafter.

(continued on next page)

ORDINANCE NO. BL2010-792 (continued)

A summary of the three separate leases is as follows:

Interior Mall Space for Medical Clinic

This agreement approves the lease of 15,531 square feet of space within the interior portion of the mall for use as an out-patient medical clinic. The term of the lease is for 15 years. The annual rent for the first year is \$184,212, and is to increase by two percent every year thereafter. Metro will consolidate five spaces in the mall and complete the remodel of the interior at its own expense. After the clinic opens to the public, all alterations to the space must be done with the mall's consent. The mall will be responsible for all major maintenance of the leased space. Metro will be responsible for the payment of all utilities. Metro will have the right to terminate the lease with thirty days written notice if funding for the lease payments is discontinued by Metro.

Dillard's Building

Metro would be leasing 200,000 square feet of space for use as an expo event center. The lease is for a term of ten years, with an option to purchase the property after the fourth year. The mall agrees to renovate the space, up to a cost of \$2.5 million, to allow for the retrofitting of the space for use as an expo center. Metro agrees to make no alteration to the premises without the mall's consent, but cannot make alterations to the space between October 15th and January 5th of the following year. Prior to the renovation, Metro would pay rent in the amount of \$600,000 per year (\$50,000 per month). After the renovation, the rent would increase to \$1,000,000 per year (\$83,333.33 per month). The lease provides that the mall will not be responsible for any real or personal property taxes on the leased premises. While the space Metro leases will be exempt from property taxes, the language used in the lease could be interpreted broadly. Metro will be responsible for all utilities. The mall has the right to collect an "environmental charge" as additional rent if the mall supplies electricity to the facility. Metro will be responsible for all repairs and maintenance to the facility, including structural walls, roof, foundation, plumbing, and windows. Metro can either choose to provide its own janitorial service or utilize the mall's janitorial service at an annual cost of \$2.50 per square foot.

The lease also provides that Metro will not allow any food concession vendors that would "typically be found in a shopping center food court or in-line space." If this provision was interpreted narrowly by the mall, it could prohibit the expo center from offering common snack foods such as popcorn, pretzels, and ice cream since these foods are commonly found in mall food courts.

As stated above, Metro will have the option to purchase the property after the fourth year of the lease and at the end of each year thereafter. Metro must provide at least twelve months written notice of its intent to exercise the option. The option price to purchase the mall will be \$5 million after the fourth year, and will decrease by \$200,000 each year thereafter.

(continued on next page)

ORDINANCE NO. BL2010-792 (continued)

J.C. Penny Building

The agreement provides for the lease of 138,189 square feet of space for use as a community center, library, library archives, K-5 charter school, health clinic, and storage. The term of this lease is also for ten years, with an option to purchase after the second year. The rental amount in the lease is \$690,945 per year (\$57,578.75 per month). As with the Dillard's lease, Metro will be responsible for all utilities and janitorial services, as well as the payment of an environmental charge if the mall elects to supply the electricity. In addition, the mall will have the right to impose a surcharge on any electrical utility construction paid for by the mall. Metro will be responsible for all maintenance and repairs to the building and must keep the premises in a condition that is compatible with a "first class regional Shopping Center", such that the property is in no worse condition than at the commencement of the lease. Metro will be responsible for the build out of the premises at its own expense, but no work can be done between October 15th and January 5th of the following year.

If Metro elects to purchase the property, the purchase amount will be as follows:

- \$4,000,000 after the second year
- \$3,861,811 after the third year
- \$3,723,622 after the fourth year
- 3,585,433 after the fifth year
- \$3,477,244 after the sixth year
- \$3,309,055 after the seventh year
- \$3,170,866 after the eighth year

Concerns

The council office has several concerns with some of the language in the leases, as follows:

1. The Dillard's lease provides that it does not become effective until Macy's acquiesces to the lease and the mall acquires the property from Dillard Tennessee Operating Limited Partnership. The council office recommends that the council receive assurances that these two conditions will be satisfied in the near future before it approves the lease on final reading.
2. The tax provisions in the Dillard's and J.C. Penny leases should be amended to better clarify the mall's responsibility.
3. The council office recommends that a termination for lack of funding provision be added to the Dillard's and Penny's leases. The lease for the interior space in the mall does include such a provision.
4. The provision regarding the type of concession vendors allowed at the expo center should be clarified.
5. The indemnification language in the leases should be modified to include Metro's standard indemnification language, as is found in Metro's lease agreement for the department of law's use of the Washington Square building, for example.
6. The provisions governing the common area should be amended to remove the provision allowing the mall to charge for parking, based on statements made by the mall's management at the special joint committee informational meeting.

ORDINANCE NO. BL2010-793 (BARRY & LANGSTER) – This ordinance makes a number of technical amendments to various sections of the Metropolitan Code to essentially consolidate the fine and penalty provisions and to clarify the amount of the fines. As the council is aware, the Tennessee constitution limits the amount of the fines the Metropolitan Government can assess to \$50.00 without having a jury trial. For many years, the Metropolitan Government frequently assessed fines greater than \$50.00, and several of the penalty provisions in the code still provide for fines in excess of \$50.00. However, the Tennessee Supreme Court ruled in 2001 that the constitution essentially means what it says, and only a jury can assess fines in excess of \$50.00. A subsequent attempt to amend this constitutional provision failed.

This ordinance would clarify in the code that \$50.00 is the maximum penalty that can be assessed for the violation of any Metro ordinance. This ordinance would also specify that a failure to answer a citation for violating a Metro ordinance within 45 days or the failure to appear at a scheduled court date will result in the amount of the fee being increased to \$50.00 for each violation. The ordinance also consolidates a number of the penalty provisions into one section of the code, and provides an increase in amount of fees for several first offense violations. The fines to be increased include the following:

1. The first offense fine for violations of the newly-enacted non-taxi vehicle for hire ordinance is being increased from \$25.00 to \$50.00.
2. The first offense fine for parking where prohibited is also increased from \$25.00 to \$50.00.
3. The first offense fine for a non-moving traffic violation is increased from \$25.00 to \$35.00.

This ordinance also codifies the circuit court clerk's nullification program. This program allows the clerk's office to nullify citations for certain non-moving offenses, such as a broken taillight, when the defect is corrected within 45 days of the citation being issued. There would be a required \$12.00 fee to pay to the court clerk's office to obtain the nullification. In keeping with state law, the ordinance also provides that citations for violation of the state financial responsibility laws may be dismissed if proof is provided to the court clerk's office that insurance was actually in effect at the time of the citation.

The provisions of this ordinance will not take effect until January 1, 2011.

ORDINANCE NO. BL2010-794 (JERNIGAN, JAMESON & OTHERS) – This ordinance amends the stormwater provisions in the Metro Code pertaining to low impact development practices, "no adverse impact" design, and related development incentives. This ordinance is in response to the catastrophic flooding event that occurred in May 2010, and is intended to further reduce the likelihood that future development will contribute to flooding conditions. In March 2003, the council enacted an amendment to the zoning code to require that all development on property encumbered by a natural floodplain or floodway preserve at least fifty percent of the floodplain and all of the floodway plus fifty feet on each side of the waterway. While the existing ordinance has resulted in less development within the floodplain, it has not necessarily prevented water flow resulting from the development from impacting adjacent properties.

This ordinance amends the Metro code to prohibit development from having an adverse impact as it relates to flooding. First, the ordinance would prohibit a new structure from being constructed within the floodway, period. A structure that is already located in the floodway (continued on next page)

ORDINANCE NO. BL2010-794 (continued)

would be allowed to be repaired in the event of a casualty loss up to fifty percent of the appraised value of the property. Second, all new development would have to be engineered in such a manner so as to prevent a rise in the 100 year base flood elevations.

This ordinance would also require the department of water and sewerage services to develop an amendment to the stormwater manual not later than August 1, 2011, to address incentives and best practices for green/low impact stormwater infrastructure. Green infrastructure is an approach to stormwater management that incorporates methods and technologies that promote infiltration and the capture and reuse of stormwater. The amendment to the stormwater manual to incorporate this approach is to include:

1. The use of wetlands, floodplain storage, and environmental features;
2. The concept of "no adverse impact" for site design;
3. Removing administrative and regulatory barriers to the utilization of low impact design;
4. "In-lieu of" programs that might increase overall low impact design utilization on development projects; and
5. Minimum floor elevation requirements for residential and nonresidential development.

The stormwater manual amendment must also establish a stakeholder committee comprised of professional engineers, environmental structural design professionals, Metro water services employees, a representative of the mayor, and three members of council. All meetings of the stakeholder committee would be open to the public and advertised in accordance with the Tennessee Open Meetings laws. Metro water services would also be required to provide monthly progress reports to the Metropolitan Council until the low impact design manual is complete.

There is a housekeeping amendment for this ordinance.

ORDINANCE NO. BL2010-795 (EVANS & BAKER) – This ordinance accepts a contribution in an amount up to \$200,000 from The Parkes Companies, Inc., for traffic calming and beautification projects in the Annex Avenue and Hillwood neighborhoods. As part of the planned unit development (PUD) approved in 2005 for the Nashville West project located on Charlotte Pike, the developer deposited \$50,000 in escrow to be used for traffic calming and beautification projects affecting Annex Avenue and \$150,000 to be used for traffic calming and beautification within the affected areas of the Hillwood neighborhood. The Parkes Companies, Inc., now desires to transfer the funds held in escrow to the department of public works so that these traffic calming and beautification projects can be completed. Future amendments to this ordinance may be approved by a resolution receiving twenty-one affirmative votes.

ORDINANCE NO. BL2010-796 (BARRY & HODGE) – This ordinance approves an agreement with CCBC Operations, LLC (Coca-Cola) regarding a recycling promotional program called "Recycle and Win!". Under the terms of the agreement, the department of public works will provide Coca-Cola with a list of mailing addresses of all residences that have access to the Metro recycling program. This list will include addresses only, not resident names. Coca-Cola will send a participation sticker and an educational mailer to each of the residences. Residents choosing to participate in the program will place the sticker on their recycling bin. A public
(continued on next page)

ORDINANCE NO. BL2010-796 (continued)

works employee will be driving around in a specially-marked Toyota Prius (the “prize patrol”) on recycling collection days and will randomly select bins to inspect to determine if the appropriate materials are being recycled. Those selected that meet the requirements will receive a \$50 Kroger gift card. Coca-Cola has agreed to provide gift cards to a minimum of 260 program winners.

This agreement also provides for the rental of the prize patrol Prius to Metro at a cost of one dollar. The vehicle must be used exclusive in connection with the Recycle and Win! program. Metro will be responsible for all ordinary maintenance of the vehicle. The term of this agreement is through July 30, 2011.

ORDINANCE NO. BL2010-797 (BAKER, HODGE & BARRY) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Rogers Group, Inc., to provide improved public sewer service through the construction of the Basswood and Cockrill Bend trunk sewer line relocation project in the Richland Creek area of West Nashville. Pursuant to this agreement, Rogers Group will contract for and oversee the construction of the new sewer main, which is to be completed by April 30, 2011. The Metropolitan Government will be responsible for the ongoing maintenance of the sewer main. Metro agrees to contribute \$1,725,000 from the water and sewer extension and replacement fund toward the cost of the project.

There is a housekeeping substitute for this ordinance correcting a misspelling of the name of the contractor.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2010-784 (HOLLIN, CLAIBORNE & OTHERS) – This ordinance amends the zoning code to allow for the relocation of nonconforming uses upon approval by the BZA. The version of the bill as filed would have potentially led to a number of unintended consequences, as there was no clear guidance given to the BZA to determine whether a nonconforming use should move, and no limitation on whether a new nonconforming use could move to a site a previous nonconforming use had moved from. In order to address these issues, the planning department prepared a substitute bill prior to consideration by the planning commission.

The substitute ordinance considered by the planning commission provides that nonconforming uses within a zoning district requiring a final site plan (i.e., specific plan districts, downtown code district, and certain overlay districts) may be relocated elsewhere within the same zoning district if: (1) the BZA determines that the relocation is necessary to facilitate redevelopment of current location of the nonconforming use; (2) the property owner commits to preventing any use on the current property that is not in conformance with the zoning standards in effect at the time of the relocation; (3) the new location is no less compatible with surrounding land uses than the existing location; and (4) the new location conforms to all the standards of the current zoning other than use. The property owner would be required to record a deed restriction with the register of deeds to this effect prior to the issuance of any permits.

The council office would point out that this ordinance is a significant change in land use policy. The ordinance would essentially grant additional rights to nonconforming uses beyond what even the generous state law provisions allow. However, the council office sees no problem with the concept of the ordinance from a legal standpoint.

This ordinance has been approved by the planning commission, as substituted. This ordinance may need to be re-referred to the planning commission, depending on the extent of the changes between the substitute considered by the planning commission and the substitute approved by the council.

ORDINANCE NO. BL2010-787 (GILMORE, JAMESON & MAYNARD) – This ordinance approves a vacant property exchange between the Metropolitan development and housing agency (MDHA) and the Metropolitan board of parks and recreation to facilitate the use of the property located behind Lockeland Design Center on Woodland Street as a public park. MDHA currently owns the property behind the school located at 1810 Woodland Street. In order to obtain the property for park purposes, this ordinance would permit the transfer of William Edmonson Park, located at 1642 Charlotte Avenue, to MDHA who has agreed to maintain the park property as green space for a minimum of fifty years. In turn, MDHA will convey the Woodland Street property to Metro for use by the board of parks and recreation.

Future amendments to this ordinance may be approved by resolution. This ordinance has been approved by the board of parks and recreation and the planning commission.

SUBSTITUTE ORDINANCE NO. BL2010-788 (MAYNARD, JAMESON & OTHERS) – This ordinance amends the Metropolitan Code to provide a discount for development permit fees for workforce housing developments. This ordinance, modeled after a program in the City of Oak Ridge, would provide a limited incentive to developers who choose to construct single and multifamily units to be sold or rented at a certain price point. The ordinance would provide a twenty-five percent discount on electrical, plumbing, gas/mechanical, and building permit fees. The ordinance defines workforce housing as housing that is either (1) sold at or below 2 ½ times 95% of the median family income for Davidson County as established by the U.S. department of housing and urban development (HUD); or (2) housing rented at an annual rental amount for at least five years that is at or below 30% of 70% of the median family income as established by the U.S. census bureau. The median family income according to HUD is currently \$64,025. This means that the current price point to obtain the fee reductions under this ordinance would be not more than \$152,059, or a monthly rental not to exceed approximately \$1,100.

ORDINANCE NO. BL2010-789 (FORKUM & RYMAN) – This ordinance amends the Metropolitan Code to require that street name changes be submitted to the Metropolitan historical commission for review prior to consideration by the council. The code currently provides that street name change ordinances must be submitted to the planning commission and the emergency communications district to obtain a written recommendation approving or disapproving of the name change. This ordinance would require street name change ordinances to also be referred to the historical commission for review as to whether there is any historical significance associated with the existing street name. The historical commission is to provide a written report to the council at least one week prior to consideration of the ordinance on third reading.

ORDINANCE NO. BL2010-790 (HODGE & BARRY) – This ordinance continues the current ten percent user surcharge to fund the operations, capital improvements, and debt obligations of the department of water and sewerage services related to improvements and extensions of the water and sewer system. Ordinance No. 70-1266, approved by the council in November 1970, authorized the Metropolitan Government to enter into contracts with the state of Tennessee to secure federal and state funds for the purposes of making improvements to Metro's sewer system. As contemplated by state law at the time, Ordinance No. 70-1266 also authorized a ten percent "state sewer user fee" to be charged to sewer customers. This sewer user fee enabled Metro to participate in a sewage treatment works loan program administered by the state.

Resolution Nos. RS2010-1442 and RS2010-1443, approved on November 16, 2010, authorized the issuance of new and refunded debt that would essentially pay off the outstanding state loans and negate our participation in the state sewage treatment works loan program. Therefore, it is necessary that this user surcharge be continued by ordinance if the department is to continue to have this source of revenue. Under this ordinance, the ten percent fee will continue to be charged to the same customers that are currently paying the fee, but the permitted use of the revenues is broadened to include the funding of all water and sewer operations, capital improvements, and debt obligations related to improvements, alterations, and extensions of the water and sewer systems.

ORDINANCE NO. BL2010-791 (MITCHELL, HODGE & BARRY) – This ordinance approves a contract between the Metropolitan Government and Nashville Biltmore, LP pertaining to the widening and relocation of three ramps at the interchange of I-40 with McCrory Lane in the Bellevue area, as well as a realignment and widening of McCrory Lane. The total cost of the project is estimated to be \$8,311,514. Metro will be acting as the local government project sponsor and contract manager but will not be contributing any funds for the project. This agreement references another contract between Metro and the state department of transportation (TDOT), which is the subject matter of Resolution No. RS2010-1455, that would provide \$4 million of the project cost in state and federal funds. Nashville Biltmore would be responsible for providing the remainder of the project funding and will be required to provide a revolving account with a total deposit over the life of the project of \$8,311,514. Once Metro receives the state and federal portion of the funding, it will deposit said amounts into the revolving account. Nashville Biltmore will also be required to provide Metro with an irrevocable letter of credit in the amount of \$4,311,514 to secure the company's share of the project costs. In the event the state or federal funds are ever reclaimed, Nashville Biltmore agrees to hold the Metropolitan Government harmless as to any claims seeking such funds. Nashville Biltmore will also be required to employ a construction engineering and inspection services team that is agreeable to both Metro and TDOT, and will dedicate all right-of-way necessary for the project.

The term of the contract is from its effective date until November 30, 2015, or the project completion date, whichever is sooner.