

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **August 2, 2011**

RE: **Analysis Report**

Balances As Of:	<u>7/27/11</u>	<u>7/28/10</u>
<u>GSD 4% RESERVE FUND</u>	*\$35,171,398	\$36,199,512
<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 2012 in the amount of \$24,098,500

– RESOLUTIONS –

RESOLUTION NO. RS2011-1765 (ADKINS) – This resolution elects a person to fill a vacancy on the health and educational facilities board. Pursuant to state law, the council is responsible for electing members to this board. Two persons have been nominated to fill this vacancy: Sara Rosson and Shirley A. Fitzgerald Corry. The election will be held at the August 2, 2011 council meeting. The person elected will serve through September 30, 2016. A substitute will be offered for this resolution filling in the name of the person elected.

RESOLUTION NO. RS2011-1766 (BARRY) – This resolution authorizes a temporary boundary modification for foreign trade zone #78 and authorizes the hiring of a consultant. The mayor's office of economic and community development is the local agency that manages foreign trade zone #78 in the Nashville area. These zones are established under federal law for the purpose of stimulating and expediting international commerce by exempting goods from the payment of U.S. customs tariffs while they are in the zone. Such zones are designated by the U.S. department of commerce and must be within 60 miles or 90 minutes driving time from a U.S. customs and border protection port of entry. There is no cost to the Metropolitan Government for administering the foreign trade zone program, as all costs are borne by the private companies operating the zones. Metro actually receives monthly payments from the private companies. Nashville's foreign trade zone #78 was established in 1983.

The U.S. department of commerce has recommended that foreign trade zone #78 be modified temporarily for the purpose of establishing the parameters necessary for the trade zone to reorganize as an alternate site framework zone. The purpose of this modification is to include the Gap, Inc. distribution center in Gallatin, TN within the foreign trade zone.

This resolution authorizes the submission of a temporary boundary modification for foreign trade zone #78 as a preliminary step in the reorganization of the zone. The resolution also approves the hiring of a consultant to assist in the reorganization of the zone as an alternate site framework zone. The fees for the consultant will presumably be paid by Gap. The council office is waiting on confirmation from the mayor's office of economic development regarding the consultant's fee source and the revised zone boundaries.

RESOLUTION NO. RS2011-1767 (BARRY) – This resolution approves an application for a grant in the amount of \$20,800 from the Tennessee Literary Coalition to the community education commission. If the funds are received, the community education commission will select a full-time AmeriCorps program volunteer to work with the commission for one year. The volunteer will assist the commission in developing an electronic database to increase contact with past participants and will help rebuild the commission's volunteer base.

RESOLUTION NO. RS2011-1768 (BARRY) – This resolution approves an amendment to a grant from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to make resources available for Keystone Automotive in Davidson County. The council approved a state grant in the amount of \$66,000 in September 2010 to provide employee recruitment, initial applicant screening, and on-the-job training for the benefit of Keystone while they were in the process of expanding their Nashville facility, creating 188 new jobs. This resolution approves a \$66,352 increase in the amount of the grant and extends the term through December 31, 2011.

RESOLUTION NO. RS2011-1769 (BARRY & TOLER) – This resolution approves the waiver of pension benefit overpayments made to 35 pensioners caused by employee benefit board staff errors. The Metropolitan Code permits the benefit board, subject to council approval, to waive such overpayments provided that the beneficiary was without fault or knowledge of the error and would be deprived of income for living expenses if forced to repay the amount of overpayment. The employee benefit board has approved these waivers based upon the recommendation of the benefit board staff. The amounts of the overpayments range from \$3.82 to \$4,801.80.

In the event pensioners are underpaid, the back payments are automatically paid without council approval.

RESOLUTION NO. RS2011-1770 (FORKUM & BARRY) – This resolution approves a contract between the Metropolitan social services commission and Second Harvest Food Bank of Middle Tennessee to provide food assistance to eligible citizens. Pursuant to this agreement, Second Harvest will provide nutritional food assistance, nutrition education, and will accept Metro social services referrals to the emergency food box program. Second Harvest will be paid \$100,000 to provide these services. The term of the contract is from July 1, 2011, through June 30, 2012.

RESOLUTION NO. RS2011-1771 (FORKUM & BARRY) – This resolution approves an annual grant in the amount of \$112,700 from the state department of health to the Metropolitan board of health for food safety services. These federal pass-through funds are to be used to pay the salary of an environmental specialist in the food safety division of the health department and to pay for a survey. The term of the grant is from July 1, 2011, through June 30, 2012.

RESOLUTION NO. RS2011-1772 (FORKUM & BARRY) – This resolution approves an annual grant in the amount of \$894,700 from the state department of health to the Metropolitan board of health to provide family planning services. Local health departments are required by state law to provide family planning services consisting of contraceptive supplies and information to all persons eligible for free medical services. The term of the grant is from July 1, 2011 through June 30, 2012. This grant award consists of \$854,600 in federal funds and \$40,100 in state funds.

RESOLUTION NO. RS2011-1773 (FORKUM & BARRY) – This resolution approves a grant in the amount of \$745,672, with a local in-kind match of \$90,116, from the U.S. department of health and human services to the Metropolitan board of health for the Healthy Start initiative. The purpose of the Healthy Start program is to provide a variety one-stop service center for pregnant and parenting women to provide assistance regarding child health. These funds will be used to provide access to adequate prenatal and well child healthcare, and to promote child development. The term of the grant is from June 1, 2011 through May 31, 2011.

RESOLUTION NO. RS2011-1774 (TODD & BARRY) – This resolution approves an amendment to an agreement between the state department of transportation and the board of parks and recreation for the implementation of the Warner Park Trails Linkage Improvement project. The contract is for phase one of the project, which will include construction of a 10-foot wide asphalt trail, pedestrian tunnel, retaining wall, ADA accessibility, landscaping, and pedestrian amenities. Metro will be responsible for the construction work, which has an estimated cost of \$1,565,339.75. Metro will receive reimbursement from the state using federal pass through funds totaling \$1,252,271.80, which represents 80% of the costs.

This amendment modifies the local match provisions as a result of a recent federal highway administration ruling that in-kind services can no longer be counted toward the applicable local match. The required local match will be a hard cash match of \$313,067.95.

RESOLUTION NO. RS2011-1775 (MATTHEWS & BARRY) – This resolution approves a memorandum of understanding between the Metropolitan Government, the board of parks and recreation, the Metropolitan Nashville airport authority, the federal aviation administration, and the Friends of Bells Bend related to the construction of a wetland at Bells Bend Park. The purpose of this wetland is to provide a compensatory mitigation site as a result of other airport development. Pursuant to this agreement, the airport authority will provide \$51,000 to the Friends of Bells Bend to fully fund the construction and maintenance of the 1.2 acre wetland. The parks department will be responsible for completing the construction of the wetland. The agreement will terminate once the state department of environment and conservation certifies that the mitigation is successful.

RESOLUTION NO. RS2011-1776 (LANGSTER & BARRY) – This resolution approves a grant in the amount of \$182,000 from the Tennessee emergency management agency to the Mayor's office of emergency management to subsidize Metro's emergency management program. These federal pass-through funds are used to pay for training exercises, planning, and equipment purchases. The term of the grant is through December 31, 2011.

RESOLUTION NO. RS2011-1777 (BARRY & LANGSTER) – This resolution approves an application for the Edward Byrne Memorial Justice Assistance grant in the amount of \$666,280 from the U.S. department of justice to the Metropolitan police department for technology purchases and to enhance the advanced records management system. These grant funds will be used to upgrade and improve the technologies used by various Metro departments. Specifically, the grant funds would be used as follows:

- **District attorney:** \$65,949.95 to pay the salary and benefits for a part-time case assistant DA or victim advocate;
- **Public defender:** \$10,792.10 to employ a part-time intervention specialist to assist attorneys assigned to the Juvenile Division;
- **Juvenile court:** \$20,260.80 for broadband access to satellite probation offices;
- **JIS:** \$32,873.03 to purchase hardware, operating systems, and backup equipment;
- **Sheriff:** \$82,755.39 to fund the salary and benefits for the director of community outreach;
- **Police:** \$226,036.04 for technology upgrades and equipment;
- **Schools:** \$74,781.20 to install additional closed-circuit television cameras in schools;
- **Parks:** \$11,436.41 to purchase equipment to implement the automated record management system in a parks police vehicle;
- **Drug Court:** \$97,370.69 for the operational costs of their current drug treatment program

RESOLUTION NO. RS2011-1778 (JERNIGAN, BARRY & HODGE) – This resolution approves a cooperative agreement between the Metropolitan Government and U.S. department of agriculture for a stream bank stabilization project on the Cumberland River adjacent to the Waterford subdivision in Old Hickory. After the May 2010 flood, part of the Cumberland River bank next to this subdivision collapsed into the river. The federal government has approved a \$6,000,000 project for rock riprap stabilization and archeological protection of approximately 2,300 linear feet of stream bank. Metro will be responsible for \$600,000 of the project costs as a local cash match.

RESOLUTION NO. RS2011-1779 (BARRY) – This resolution authorizes the department of law to compromise and settle the lawsuit against the Metropolitan Government brought by Steven D. Albright and Kathy D. Albright, on behalf of the estate of Shellie Albright Hernandez, for the amount of \$150,000. This lawsuit is the result of a murder committed by Michael Williams while he was under the supervision of the Davidson County community corrections program. The community corrections program is a form of probation available to some felony offenders allowing them to remain out of jail as long as they meet the requirements of the program.

On November 4, 2008, Michael Williams, while in the community corrections program, was arrested for aggravated assault after threatening to shoot and kill his girlfriend, Shellie Hernandez. After making bond, he was arrested again on November 6, 2008 for repeatedly calling Ms. Hernandez in violation of an order of protection. Mr. Williams was able to post a new bond on December 1, 2008 and was released while still under the supervision of the community corrections program. Ms. Hernandez agreed to meet Mr. Williams the next day, in (continued on next page)

RESOLUTION NO. RS2011-1779 (continued)

violation of the order of protection. Later that day, Michael Williams shot Ms. Hernandez in the head at close range outside her apartment. Mr. Williams was convicted of first degree murder in October 2010.

Pursuant to community corrections policies, a case officer is required to notify the court whenever a community corrections program participant is arrested again or violates the conditions of the program. The case officer assigned to Michael Williams never notified the court despite his numerous community corrections program violations. If the court had received a community corrections violations report, the judge could have revoked Mr. Williams's probation, which may have prevented this tragedy. The community corrections case officer was terminated as a result of her failure to submit notice of the probation violations.

Steven and Kathy Albright, the administrators of Ms. Hernandez's estate, filed a wrongful death suit against the Metropolitan Government on December 29, 2009. While local governments are typically immune from liability for criminal acts committed by third parties, Tennessee case law provides an exception to this immunity when a government employee acted recklessly in performing or failing to perform her duties, and if it was foreseeable that a third party could commit a criminal act.

The department of law recommends settling this case for \$150,000 to be paid out of the self-insured liability fund. Under the Tennessee Governmental Tort Liability Act, Metro's maximum exposure in this lawsuit is \$300,000. If the case went to trial, Metro would argue that it should not be held responsible because Ms. Williams voluntarily agreed to meet with Mr. Hernandez on the day he shot her. Metro would also argue that even if it has some liability, Ms. Hernandez should be assigned the majority of the fault. However, given the facts and circumstances surrounding this case, the court would likely award the plaintiffs more than the amount of the agreed upon settlement.

As a result of this tragic incident, the community corrections program has implemented additional procedures to ensure that offenders assigned to the program are strictly monitored for new arrests and to provide instant notification when an offender in the program is released from jail. In addition, all community corrections participants are entered into the police department's automated reporting system, which provides immediate notification to community corrections whenever one of their participants has any contact with a police officer.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2011-951 (ADKINS, RYMAN & FORKUM) – This ordinance amends the Metropolitan Code to require Metropolitan Government departments, agencies, boards, and commissions to notify the public and allow public comment whenever administrative rules or regulations are being considered for adoption. This would apply both to new rules and amendments to existing rules. The ordinance would allow public input in one of two ways. The proposed new rule or rule amendment could be provided to the Metropolitan clerk in electronic format for publication on the clerk’s website for 30 days prior to consideration of the rule. In the alternative, the department, agency, board, or commission would be required to advertise a public meeting at which the public could appear and speak for or against the proposed rule. These requirements would not be applicable for rules adopted as a result of a declared emergency, such as the May 2010 floods.

The ordinance also requires that all new rules and rule amendments be published at a centralized location on the nashville.gov website within five days of adoption.

There is a proposed amendment for this ordinance that would delay its effective date to allow the clerk’s office and Metro ITS to develop the necessary website and to inform all affected departments, agencies, boards, and commissions.

ORDINANCE NO. BL2011-952 (WILHOITE) – This ordinance, as amended, amends the public art financing provisions in the Metro Code to specify that public art funds can be used for the commissioning and installation of statues, memorials, and monuments. 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 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, 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 public art ordinance, guidelines, and the rules governing the expenditure of the public art funds do not expressly prohibit the use of these funds for statues, memorials, and monuments to commemorate a historic person, place, or event. However, the code does not specifically include them within the definition of “public art project”. This ordinance would amend the definition to include the commissioning and installation of statutes, memorials, and monuments to honor, recognize, or commemorate a historic place or event, or to honor a person of historical significance. The arts commission would be required to collaborate with the historical commission regarding the appropriate events to commemorate and the site where the artwork is to be located.

The council office would point out that this ordinance is, and can only be, permissive in nature. That is, the council can grant the arts commission the *authority* to procure a monument using the public art funds, but cannot mandate that the arts commission select a specific historic event or location. The arts commission would continue to follow its policies and procedures for the selection of artists, artwork, and sites.

ORDINANCE NO. BL2011-956 (MCGUIRE) – This ordinance amends the Metropolitan Code to make significant changes to the requirements applicable to non-taxi passenger vehicles for hire. Ordinance No. BL2010-685 (as amended), approved by the council on June 15, 2010, established a mechanism for the regulation of non-taxi vehicles for hire. The Code requires all companies operating such vehicles, as well as their drivers, to obtain licenses through the Metropolitan transportation licensing commission (MTLC), much in the same manner as taxicab companies and drivers are licensed.

This ordinance would delete a number of the key requirements applicable to livery services, which requirements were designed to distinguish livery services from taxicabs. Although this ordinance applies to all passenger vehicles for hire carrying fewer than fifteen passengers, the changes seem to primarily impact livery services (limo companies). First, the ordinance would allow livery services to be operated on call or demand, and would allow livery services to engage in cruising. This would enable livery services to pick up passengers on demand from the street in the same manner as taxicabs. Second, this ordinance essentially eliminates the “pre-arrangement” requirement, which requires passengers to first contact the livery service before the vehicle is dispatched to pick up the passenger. Although some of the pre-arrangement provisions would still remain in the code, this ordinance basically makes them ineffective by deleting the requirements from the definition of “pre-arrangement”.

One of the most significant changes in this ordinance is the elimination of the minimum fee. Ordinance No. BL2010-685 requires livery services to charge a minimum of \$45 per trip, regardless of the duration or mileage of the trip. The MTLC recommended the inclusion of a minimum fee provision, but wanted the authority to set the amount themselves. The designated amount of the \$45 minimum charge added by amendment was recommended by the Tennessee Livery Association, which is an association representing limo companies.

Other changes being made by this ordinance include allowing livery vehicles to be leased, deleting the age limitation on vehicles being brought into service, and deleting much of the information required to be obtained from customers that pre-arrange transportation services. In addition, this ordinance would delete the requirement that vehicles be dispatched from the central place of business approved in the certificate of public convenience and necessity issued by the MTLC.

There are two proposed amendments for this ordinance. The first amendment would reduce the amount of the minimum trip charge from \$45 to \$30 instead of eliminating the fee entirely. The second amendment, which may be offered in the form of a substitute, is a comprehensive re-write of the bill. A summary of the changes to the bill made by the second amendment are as follows:

- Modifies the minimum trip fee provisions to allow livery services to charge any rate at their discretion.
- Reinstates the prohibition on livery services engaging in cruising. This is a major distinction between limos and taxicabs under the existing code. However, the language in the pending bill would basically allow instantaneous pre-arrangement, which would limit the MTLC’s ability to effectively enforce the cruising ban.

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ORDINANCE NO. BL2011-956 (continued)

- Modifies the trip ticket requirements to require the tickets to be obtained “before the trip begins” as opposed to “in advance of the scheduled pick-up time”.
- Deletes the restriction that the driver may arrive at the point of origin no earlier than thirty minutes prior to the requested pick-up time.
- Includes a provision to allow hotels to enter into agreements with livery services to park on-site and wait for business instead of having to be dispatched from a central location. The amendment retains the existing exception for hotels operating their own livery services, thus allowing them to operate from the hotel property.
- Modifies the definition of “pre-arrangement” in the existing code to remove the requirement that a non-taxi passenger vehicle for hire service be contacted prior to being dispatched. Instead, it would only require registration into the service’s system before rendering any transportation service, including loading luggage.
- Eliminates the requirement that the rates charged in time unit increments be for a minimum of one hour, which would enable livery services to provide short-distance transportation.
- Modifies the provisions in the code governing temporary service permits allowing permit holders to associate with out-of-town limo companies for special events. The amendment increases the maximum duration of such temporary permits from seven to fourteen days, and requires the MTLC staff to provide automatic administrative approval of the permit within 24 hours upon proof that the out-of-town limo service is properly licensed in its home jurisdiction.

ORDINANCE NO. BL2011-957 (TOLER) – This ordinance amends the Metropolitan Code to specify the method for the metering of water consumption and sewer use by commercial class customers of the department of water and sewerage services. In 2006, the council enacted Ordinance No. BL2006-1095 to implement a series of revenue enhancements for the water department. One of these revenue enhancements was the elimination of the “evolution rate”. The evolution rate basically charged businesses served by more than one water meter as though the water was received through a single meter. After the elimination of the evolution rate, and the subsequent water rate increase, Metro water services began billing commercial customers having multiple meters at the rate established in the code for each meter.

A customer’s sewer bill is based upon the amount of water consumption. In order to ensure customers are not being billed sewer charges for water not entering the sewer, the code allows these customers to install additional meters to measure the water that is not entering the sewer system (such as for the operation of a cooling tower). There are approximately 2,400 commercial customer accounts that have multiple meters. This ordinance would require the water department to charge multiple-metered customers as if they had only one meter.

First, this ordinance would require the water department to classify customers based upon the water usage measured by the customer’s main meter, or in the case of customers with multiple meters, by the meter closest in line to the water services connection. Second, the ordinance would specify that commercial class customers’ bills will be based on the readings of the main meter or the meter closest in line to the connection for customers with multiple meters.

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ORDINANCE NO. BL2011-957 (continued)

The director of finance was unable to sign this ordinance as to availability of funds due to the uncertainty of the financial impact upon the water department. On July 19, 2011, the council public works committee requested the water department to provide a list of the 2,400 accounts that would be impacted along with an estimate as to the amount each customer's bill would be increased or decreased.

ORDINANCE NO. BL2011-962 (TYGARD) – This ordinance amends the Metropolitan Code provisions pertaining to the placement of signs within the right-of-way to add the department of public works as an enforcement agency. In 2009, the Council enacted Ordinance No. BL2009-433 modeled after a law in Charlotte, NC to not only make the persons that actually place the illegal signs responsible, but to make the ordinance enforceable against the business being advertised. Under the 2009 law, "responsible persons" for the placement of illegal signs include:

1. The person, business, company or other entity hosting the advertised event or selling the services/products being advertised.
2. The person or business responsible for the placement of the illegal signs.
3. The political candidate whose candidacy is supported by the sign.
4. The president of a committee for a campaign for or against a ballot measure being promoted.
5. The person, business, or company whose phone number, address, or e-mail address appears on the sign.

The 2009 ordinance identified the department of codes administration as the agency that would be responsible for issuing citations for violations of the law, although the department of public works and Metro water services employees were given the express authority to remove signs found in violation of the ordinance. This ordinance would allow the public works department to actually issue citations in addition to picking up the illegal signs.

ORDINANCE NO. BL2011-963 (TYGARD) – This ordinance names the bridge on Newsom Station Road over the Harpeth River in memory of Danny Tomlinson. Mr. Tomlinson lost his life in the May 2010 flood when the vehicle he was riding in was overtaken by the Harpeth River flood waters covering Newsom Station Road. The Metropolitan Code provides that no Metropolitan Government building or structure may be named except pursuant to an ordinance enacted by the council. The council has named two other bridges in honor of persons that lost their lives in the May 2010 flood.

ORDINANCE NO. BL2011-964 (RYMAN) – This ordinance authorizes the director of public property administration to donate the former Goodlettsville library property to the City of Goodlettsville. Since the new Goodlettsville library is now open, the Metropolitan Government has no need of the former facility located at 106 Old Brick Church Pike. This ordinance requires that the deed transferring the property include a reversionary clause specifically requiring that the property not be sold, leased, or transferred, and that the use of the property be limited to a public purpose benefitting the citizens of the City of Goodlettsville.

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ORDINANCE NO. BL2011-964 (continued)

While Metro can include a reversionary clause pertaining to the use of the property, prohibiting any future transfer of the property would likely be considered an unlawful restraint on alienation. The council office recommends that this ordinance be amended to provide that the property will revert to Metro if it ceases to be used for a public purpose by the City of Goodlettsville or any subsequent grantee/lessee.

ORDINANCE NO. BL2011-965 (BARRY & HODGE) – This ordinance approves an agreement between the Metropolitan Government and Creative Outdoor Advertising of America (COA) to provide a public right-of-way recycling and waste collection system within the urban services district. COA will supply and maintain trash and recycling containers at no cost to Metro in exchange for advertising rights on the containers. Metro public works currently collects the trash at these receptacles, and does not provide separate recycling receptacles at these locations. COA will also be responsible for the collection of trash in their receptacles. Metro will receive between 2.5% and 8% of all of COA's gross advertising revenues resulting from the waste receptacles, and the department of public works will be allowed at least 10% of the advertising space for promoting environmental messages. The public works department will have the authority to add or remove locations where the receptacles are to be located. The term of this agreement is for five years beginning September 1, 2011.

The contractor's response to the request for proposals (RFP) resulting in this contract includes pictures of the containers and of sample advertisements. The department of public works will have material available at the public works and budget and finance committee meetings showing their appearance. The RFP and the contractor's response to the RFP, both of which are incorporated into the contract, include provisions requiring public works approval of advertisements before they are placed on the receptacles, and allowing public works to remove advertisements deemed to be objectionable. Specifically, advertisements will be prohibited if they:

- Contain inaccurate or deceptive claims or statements;
- Present products prohibited from sale to minors in such a way as to appeal particularly to persons under legal age;
- Present demeaning or derogatory portrayals of individuals or groups;
- Take a stand on controversial societal issues;
- Exploit violence or sexuality; or
- Promote tobacco products

The council office would point out that section 6.04.020 of the Metropolitan code expressly prohibits the placement of advertisements within the public right-of-way. If this ordinance approving the advertising agreement is enacted, section 6.04.020 should be amended at the beginning of the next council term to allow such advertisements with the permission of the Metropolitan Government.

ORDINANCE NO. BL2011-966 (HODGE & BARRY) – This ordinance approves a lease between the Metropolitan Government and the state department of transportation (TDOT) in relation to the construction and maintenance of a berm. Metro will be leasing a portion of the Interstate 65 right-of-way between the Cumberland River and Third Avenue North for this berm. The term of the lease is from July 1, 2011 through June 30, 2026, but may be terminated by either party with sixty days written notice. All improvements to the property will be subject to the prior written approval of TDOT.

ORDINANCE NOS. BL2011-967 & BL2011-968 – These two ordinances authorize the installation and maintenance of underground and aerial encroachments within the Metropolitan Government right-of-way. The applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the encroachments, and are required to provide a \$1 million certificate of public liability insurance naming the Metropolitan Government as an insured party. These ordinances have been approved by the planning commission.

Ordinance No. BL2011-967 (Baker) authorizes Innophus, Inc. to install active warning devices on the industrial railroad spur crossing in front of its facility at 4600 Centennial Boulevard. The purpose of this upgrade is to increase public safety.

Ordinance No. BL2011-968 (Moore) authorizes Nashville Data Link, Inc. to install and maintain approximately 1.24 miles of fiber optic from Murfreesboro Road, to Elm Hill Pike, to Orr Avenue, to Rundle Road, and ending at 505 Fesslers Lane. Nashville Data Link, Inc. is to pay all costs related to the construction and maintenance of the cable. The plans and specifications for the cable must be submitted to and approved by the director of public works. The mayor and the council reserve the right to repeal this ordinance at any time, and Nashville Data Link, Inc. would be required to remove the cable at its own expense.

ORDINANCE NO. BL2011-969 (BARRY & HODGE) – This ordinance approves a lease between the Metropolitan Government and the state department of transportation (TDOT) for the Gateway to Heritage streetscape improvements. The public works department received a \$608,000 grant in 2008 from the state department of transportation (TDOT) for these streetscape improvements, which were to include new landscaping, directional signage, and an irrigation system. In June 2011, the council approved an agreement by and among the Metropolitan Government, Tennessee State University (TSU), Meharry Medical College, and Jefferson Street United Merchants Partnership for the maintenance of these streetscape improvements along I-40 at Jefferson Street and 28th Avenue North. TSU has agreed to contribute \$447,576 in federal funds to transform the Jefferson Street I-40 underpass into a public plaza. MDHA has also pledged funding for this project.

This lease is for the state right-of-way needed to complete the streetscape project. The term of the lease is for 20 years commencing August 1, 2011, but may be terminated by either party with sixty days written notice. All improvements to the property will be subject to the prior written approval of TDOT.

ORDINANCE NO. BL2011-970 (BARRY, HODGE, & DUVALL) – This ordinance accepts a contribution in the amount of \$50,000 from Centex Homes for road improvements at the intersection of Hamilton Church Road and Mt. View Road.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2008-351 (GOTTO) – This ordinance amends the Metro Code to set maintenance standards for railroad bridges. The code currently gives the traffic and parking commission the authority to survey all railroad crossings and to require the railroads to take corrective action to prevent accidents. The code also sets maximum speeds for trains operating within the area of the Metropolitan Government. Further, the code requires railroad bridges built over the Metro right-of-way to be constructed according to plans approved by the director of public works. However, the code includes no standards for the ongoing maintenance of railroad bridges.

This ordinance would require railroads owning and/or maintaining bridges within the area of the Metropolitan Government to keep the bridges in good structural condition and to paint all metal surfaces to inhibit rust and corrosion. All existing surfaces with rust or corrosion must be stabilized and painted to prevent future rust or corrosion.

State law requires that all ordinances affecting railroads be submitted to the commissioner of the Tennessee department of transportation, and that no such ordinance is to be effective until fifteen days after the registered agent of the railroad has been served with a copy of the ordinance.

The council office would point out that this ordinance is likely preempted by federal law. Railroads engage in interstate commerce, and as such fall within the jurisdiction of the U.S. Congress under the Commerce Clause of the United States Constitution. Further, two federal statutes expressly preempt state and local regulation of railroads in the areas of safety and rail facility operations. The state Supreme Court of South Carolina held in February 2011 that a Cayce, South Carolina ordinance requiring railroads to paint their bridges is preempted by federal law.

Given the substantial costs involved in painting railroad bridges, enactment of this ordinance would most certainly result in litigation.

This ordinance will automatically be deferred until the August 16th council meeting pursuant to Rule 22.

ORDINANCE NO. BL2011-953 (WILHOITE) – This ordinance adopts the 2011 edition of the National Electrical Code to make it a part of Metro’s building code. This ordinance has been recommended by the director of the department of codes administration. The Metropolitan Government adopts the various building codes as they are amended from time to time by the national code organizations, which is typically every three years. Metro is currently operating under the 2005 edition of the National Electrical Code. State law requires Metro to adopt a version of the National Electric Code that is current within seven years of its publication date.

The new Electrical Code includes chapters governing solar photovoltaic systems, fuel cell systems, electric vehicle charging systems, and small wind systems, which have recently been topics of local interest. These topics are not thoroughly addressed in the 2005 version.

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ORDINANCE NO. BL2011-953 (continued)

The codes department published three newsletters describing the changes and requesting comments. These newsletters were sent to all contractors registered to do business in Davidson County. Copies of the newsletters are available in the council office or on the codes department's website under "E-Newsletters for Professionals".

This ordinance also includes certain amendments to the National Code to reflect urban standards and to assure safety features.

ORDINANCE NO. BL2011-954 (MCGUIRE & JERNIGAN) – This ordinance abandons a portion of Crestview Drive right-of-way from the current dead end to the northern property line of 3706 and 3707 Crestview Drive. This abandonment has been requested by David Lipscomb University to allow for an expansion of its campus.

This ordinance has been approved by the planning commission and the traffic and parking commission. Consent of the affected property owners is included as an attachment to the ordinance.

ORDINANCE NO. BL2011-955 (ADKINS) – This is a routine ordinance that readopts the Metropolitan Code prepared by Municipal Code Corporation to include all ordinances enacted on or before March 22, 2011. Municipal Code Corporation has the contract with Metro to codify all ordinances enacted by the council, as well as to update and maintain the on-line version of the code. The council periodically readopts the code to make sure the printed and online versions are kept up to date.

ORDINANCE NO. BL2011-958 (GILMORE & HODGE) – This ordinance abandons water and sewer lines on properties located on Rosa Parks Boulevard, Commerce Street, 7th Avenue North, and Church Street, and accepts a new sanitary sewer line and easement. Specifically, the ordinance abandons nine water service lines, 407 linear feet of a 10" sanitary sewer line, 279 linear feet of a 15" sewer line, 252 linear feet of an 18" sewer line, and 89 linear feet of an 8" sewer line. These lines are no longer being used by the department of water and sewerage services. The ordinance also accepts 384 linear feet of a 12" sewer and easement. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2011-959 (HODGE) – This ordinance authorizes the director of public works to file a notice of land use restriction with the register of deeds for the Old Due West landfill site. This 46-acre site located at 801 Old Due West Avenue has been closed since the 1970's. The site has been remediated, and the Tennessee department of environment and conservation (TDEC) has determined that filing the land use restrictions is an appropriate additional remedial action. Prior to any invasive activity on the property and/or prior to the use of any part of the property as a residence, daycare, school, or church, evidence must be submitted to TDEC showing that the proposed action will not pose a danger to the public or to the environment. These restrictions will run with the land in perpetuity unless cancelled by TDEC.

ORDINANCE NO. BL2011-960 (MOORE & HODGE) – This ordinance abandons a drainage easement on a portion of property located at 830 Gale Lane. This drainage easement is no longer needed by the department of water and sewerage services. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2011-961 (TOLER) – This ordinance abandons a portion of unimproved Trousdale Drive right-of-way between 5400 Hearthstone Lane and 300 Seven Springs Way. Metro will retain all easements. This ordinance has been approved by the planning commission and the traffic and parking commission. Consent of the affected property owners is included as an attachment to the ordinance.