

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: **November 15, 2011**

RE: **Analysis Report**

Balances As Of:	<u>11/9/11</u>	<u>11/10/10</u>
<u>GSD 4% RESERVE FUND</u>	*\$35,787,151	\$29,959,991
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$50,000	Unavailable
USD	\$50,000	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. Balance does not reflect 4% appropriations that are the subject matter of Resolution No. RS2011-89.

– RESOLUTIONS –

**RESOLUTION NO. RS2011-28** – (STANLEY, HUNT & MCGUIRE) This resolution authorizes the acquisition of additional easements or other property rights necessary for an upgrade to the Munn Road Pump Station. Ordinance No. BL2011-947, approved in July 2011, authorized the acquisition of a 100 square foot utility easement for this project. The ordinance also provided that the acquisition of additional easements for this same project may be approved by resolution. This resolution authorizes the acquisition of two easements located on Munn Road.

**RESOLUTION NO. RS2011-59** (LANGSTER & MCGUIRE) – This resolution approves a contract between the Metropolitan board of health and Corinthian Missionary Baptist Church to upgrade the church’s kitchen facilities and to promote community gardens in North Nashville. The funds for this contract are from the federal stimulus grant the health department received to promote healthy living. These funds will be used to provide nutrition education, as well as to purchase a dishwasher, install kitchen sinks, purchase a new refrigerator, and purchase kitchen utensils for the church. Corinthian Missionary Baptist Church was selected through a request for proposals issued by the health department seeking community partners to promote healthy living. The church is to receive \$24,275 in federal stimulus pass-through funds under this contract. The term of the contract is from the date of approval through March 18, 2012.

This health department contract incorrectly identifies the name of contractor. The contract designates “Good Food for Good People” as the contractor instead of Corinthian Missionary Baptist Church.

The council office recommends that this contract be amended to correct the name of the contractor and to include language specifying that none of the Metro funds will be used for a religious purpose. The Establishment Clause of the First Amendment to the U.S. Constitution has been interpreted by the courts to prohibit the use of governmental funds for programs that have the primary effect of advancing religion. A program may have the primary effect of advancing religion if it leads to religious indoctrination that could be attributable to the government, or if the recipient of government funds diverts any of the funds to further its religious mission. *American Atheists, Inc. v. City of Detroit Downtown Development Authority*, 567 F.3d 278 (6th Cir. 2009). Although promoting healthy eating habits is clearly a secular purpose, this contract includes language that could arguably lead to the advancement of religion. The Scope of Services in the contract provides that the church will use the funds to provide nutrition classes “as part of their regular church activities” and to incorporate time for health improvement “as part of the church’s ministry”. The council office suggests that the scope of services be revised to remove any reference to the ministry activities of the church and to specify that the programs are open to everyone regardless of religious affiliation. The department of law has prepared a substitute lease agreement addressing these issues.

**RESOLUTION NO. RS2011-77** (MCGUIRE, JERNIGAN & OTHERS) - This resolution authorizes the director of public property administration to exercise an option to purchase the J.C. Penney building and surrounding property at Hickory Hollow Mall for use as a community/recreation center, public library, storage, and conversion of the existing parking area to a recreational area. In December 2010, the council considered legislation that would have leased space at (continued on next page)

**RESOLUTION NO. RS2011-77** (continued)

Hickory Hollow Mall, including the J.C. Penney building. The proposed lease of the J.C. Penney included rental payments of \$690,945 per year. The proposed lease also had an option to purchase the building for \$4,000,000 after the first year, which amount was to be reduced by approximately 3.5 percent each year thereafter. The legislation approving the lease agreements was subsequently withdrawn at the request of the administration after concerns were raised about some of the lease terms.

The current owner of the property is Hickory Hollow SB, LLC, which is a subsidiary of CBL & Associates Properties, Inc. Metro will be paying \$3,250,000 to purchase this property totaling 12.3 acres, including the 140,000 square-foot J.C. Penney building constructed in 1981. The purchase price is based upon a professional appraisal obtained by Metro real property services. CBL acquired the property in 2006 at a purchase price of \$3,125,000, which is listed as the assessed value on the assessor of property's website. The Mayor's 2011 capital spending plan approved by the council included \$18,000,000 for a community recreation center, library relocation, and public health center in southeast Davidson County.

The option contract incorporates an assignment and assumption of the operating agreement among the property owners, including CBL, Sears, Macy's and Dillard's. This document acknowledges a third amendment to the operating agreement to provide for Metro's intended use of the property. Metro will be responsible for paying maintenance expenses for the common facilities in the amount of \$0.25 per square foot in the first year (\$34,547.25), \$0.50 per square foot in year two (\$69,094.50), \$0.75 per square foot in year three (\$103,641.75), and \$1.00 per square foot each year thereafter (\$138,189) with an automatic three percent annual increase. This maintenance includes striping of the parking areas, parking lot lighting, and landscaping. Metro will be permitted to operate exterior amenities such as a playground, soccer field, skate park, water feature, and a MTA bus stop shelter.

The option to purchase this property is set to expire 120 days after November 4, 2011, or within a reasonable time thereafter necessary to obtain the required documents for closing.

Pursuant to the Metropolitan Code, the director of public property administration is authorized to negotiate for the purchase of property for government purposes and to seek to obtain an option to sell from the owner. Such option is subject to approval of the council by resolution.

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

**RESOLUTION NO. RS2011-78** (MATTHEWS & MCGUIRE) - This resolution authorizes the director of public property administration to exercise an option to purchase approximately 3 acres of property, located at 3715 Old Clarksville Pike in Joelton, to be used for a new fire station. The option contract provides that Metro can purchase this property for \$19,000 per acre within 120 days of obtaining option, although the option itself is not dated. The current property owner, Ronald Reeder, will be responsible for paying the pro-rated amount of this year's property taxes.

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**RESOLUTION NO. RS2011-78** (continued)

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. This resolution has been approved by the planning commission.

The council office is of the opinion that this resolution should be withdrawn or substituted, as the caption purports to authorize the acquisition of the property by negotiation or condemnation instead of authorizing the exercise of the option. Condemnation authority may only be granted by ordinance.

**RESOLUTION NO. RS2011-79** (MATTHEWS, DUVALL & OTHERS) – This resolution approves an application for a grant from the state department of environment and conservation to the Metro board of parks and recreation, acting in partnership with the Southern Off Road Bicycling Association (SORBA), for the construction of two mountain bike trails in Cane Ridge and Bells Bend Parks. The grant would provide 80% of the funding of the project (\$38,858.69), with the remainder (\$9,714.67) to be provided by SORBA. If awarded, the parks department will work with SORBA to construct the trails.

**RESOLUTION NO. RS2011-80** (MCGUIRE & MITCHELL) – This resolution approves an interlocal agreement between the Metropolitan Government and the emergency communications district (ECD) to provide financing for an upgrade to the 800MHZ radio system. This upgrade is expected to improve the scope and efficiency of the 911 services provided to the residents of Davidson County. This agreement, which is for a term beginning on July 1, 2011 and expiring on June 30, 2021, provides that the emergency communications district will make a \$7 million dollar initial payment and subsequent varying yearly payments to finance the project. The total amount of the agreement is \$25,910,000. The funds for this contract are from the 911 surcharge paid by customers as part of their phone bills.

This agreement has been approved by the ECD board.

**RESOLUTION NO. RS2011-81** (MCGUIRE) - This resolution approves the waiver of pension benefit overpayments made to Michael Lankford, which was caused by an employee benefit board staff error. As a result of this staff error, Mr. Lankford received a total of \$8,894.76 in pension benefits over a one year period in excess of what he was entitled. The Metropolitan Code permits the benefit board 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 this waiver.

The council office would point out that in the event pensioners are underpaid, the back payments are automatically paid without council approval.

**RESOLUTION NO. RS2011-82** (LANGSTER & MCGUIRE) - This resolution approves a grant in the amount of \$183,162 from the state department of human services to the Metro social services commission for adult homemaker services. The services to be provided include assistance with personal care, help with simple healthcare routines, assistance in obtaining medical care, the performance of essential shopping and household tasks, meal preparation, and caregiver assistance and instruction. The homemaker program is for elderly persons and adults with mental and/or physical disabilities who need assistance in performing daily living activities. The term of this grant is from October 1, 2011, through June 30, 2012. There is a required local match of \$45,790.50 to be provided from the operating budget of the department of social services.

**RESOLUTION NO. RS2011-83** (LANGSTER & MCGUIRE) - This resolution approves a fourth amendment to a grant from the U.S. environmental protection agency (EPA) to the Metropolitan board of health to achieve established ambient air quality standards. These funds are used to collect data and to monitor the ambient air concentrations for ozone, fine particulate matter, regional haze, sulfur dioxide, carbon monoxide, and mercury. The Metro health department is responsible for air quality monitoring within Nashville and Davidson County on behalf of the EPA. The amendment increases the grant amount by \$113,102 for a new grant total of \$873,428.

**RESOLUTION NO. RS2011-84** (LANGSTER & MCGUIRE) – This resolution approves a tenth amendment to a contract for services between the Metropolitan health department and the United Way of Metropolitan Nashville to arrange for assistance in the planning, development and delivery of services for individuals infected with or affected by HIV/AIDS. Under the terms of the contract, the United Way provides a number of planning, administrative, and direct HIV/AIDS services under the provisions of the Ryan White Treatment Modernization Act of 2006. The funds paid to United Way under these contracts are federal pass-through funds provided for the program. The amendment increases the amount United Way is to be paid for providing these services by \$244,266, for a new total of \$4,220,584.

**RESOLUTION NO. RS2011-85** (LANGSTER & MCGUIRE) – This resolution approves a contract between the Metro board of health and the Vanderbilt Center for Health Services to provide college students, through the Communities and Students Together for Learning-enhanced Services (CASTLES) Program, to become community health workers to improve pediatric health outcomes. The CASTLES program is designed to make physical activity, nutrition education, and anti-obesity initiatives available to at-risk youth as part of after-school programs. The Vanderbilt Center for Health Services will provide college students and instructional supplies for the purpose of implementing children's health and nutrition programming.

Metro will pay \$25,000 for these services, which is through the Communities Putting Prevention to Work federal grant. There is an additional \$32,534 of funding pending from other sources.

**RESOLUTION NO. RS2011-86** (LANGSTER & MCGUIRE) – This resolution approves a contract between the Metro health department and the National Step Show Alliance for continuation of a diabetes project. The health department has received a state grant to reduce the risk of adolescent diabetes by focusing on obesity prevention through the implementation of a “stepping” program at various community centers. The health department desires to continue using the National Step Show Alliance as the subcontractor to implement the grant. The contractor will provide 26 step team coaches to work a minimum of 10 hours per week. The contractor will also provide quarterly step show events, training for the coaches, and an end-of-year residential camp. The contractor will be paid an amount not to exceed \$150,655 for their services between October 1, 2011 and June 30, 2012.

**RESOLUTION NO. RS2011-87** (LANGSTER & MCGUIRE) - This resolution approves an amendment to an annual grant from the state department of health to the Metropolitan board of health for implementation of the state immunization program. The term of this grant is from January 1, 2011, through December 31, 2011. These funds are used to pay the salaries and benefits of health department employees who provide the immunization services. This amendment decreases the amount of state funding by \$20,000 to \$111,900, for a new grant total of \$530,000, inclusive of the federal funding.

**RESOLUTION NO. RS2011-88** (MCGUIRE & LANGSTER) - This resolution approves an amendment to a contract between the Metropolitan board of health and Matthew Walker Comprehensive Health Center for a mobile clinic to provide early periodic screening diagnosis and treatment exams to middle school children. This amendment decreases the maximum liability of Matthew Walker Comprehensive Health Center to \$79,500.00. Under this contract, the health department provides the mobile clinic unit, as well as the driver of the unit and coordinator of the program.

**RESOLUTION NO. RS2011-89** (MCGUIRE) – This resolution appropriates \$9,950,200.00 from the general fund reserve fund (4% fund) to seventeen departments. Four percent funds may only be used for the purchase of equipment and repairs to buildings. The balance in the general fund reserve fund as of November 9, 2011, was \$35,787,151. This consists of unrealized revenue for fiscal year 2012 in the amount of \$21,009,897. 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:

Arts Commission - \$25,000 for maintenance and repairs to Metro art projects.

Bordeaux Long-Term Care - \$85,000 for mattresses, shower carts, a Viking lift, an automated external defibrillator, and a main condensate return tank.

Criminal Court Clerk - \$32,600 for office renovations, office equipment and training software.

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**RESOLUTION NO. RS2011-89** (continued)

Finance Department– \$25,000 for office equipment and file cabinets.

Fire Department - \$300,000 for personal protective equipment.

General Hospital – \$389,900 for new and replacement medical equipment.

General Services – \$5,000,000 for replacement vehicles. There is a spreadsheet attached to this analysis detailing the vehicles to be purchased.

General Sessions Court – \$88,000 for replacement courtroom digital recording software.

Information Technology Services – \$1,800,300 for the replacement desktop and laptop computers and a new Microsoft Enterprise agreement.

Knowles Home - \$25,100 for HVAC wall units, recliners, and stacking chairs.

Municipal Auditorium - \$450,000 for HVAC recommission, door replacements, roll-up door, water pipe replacement, air intake louvers, ice rink repair, and a paved area addition to the backstage exterior.

Parks and Recreation - \$715,000 for maintenance equipment, Rose Park picnic shelters, wave pool repairs, Centennial Sportsplex pool repairs, McCabe Driving Range, Shelby Cart Barn, and property improvements to Grassmere Park.

Police - \$321,000 for new desktop computers and related hardware and software for Madison and West precincts.

Public Works - \$350,000 for road salt.

Sheriff - \$197,000 for replacement hot water heaters in CJC.

Social Services - \$136,400 for replacement client tracking software.

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

**RESOLUTION NO. RS2011-90** (MCGUIRE) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government’s property damage claim against Kamilah S. Hatcher for the amount of \$13,496.24. On July 20, 2010, a Metro police officer was parked in a construction area at I-24 West and Old Hickory Boulevard when his vehicle was struck in the rear by a vehicle operated by Kamilah S. Hatcher. Ms. Hatcher had been drinking and was not paying attention to the traffic. The 2008 Chevrolet Impala driven by the police officer was deemed to be a total loss. This settlement accepts the fair market value of the Metro vehicle at the time of the accident.

The officer was injured as a result of this accident and Metro has a pending injury-on-duty subrogation claim.

**RESOLUTION NO. RS2011-91** (MCGUIRE) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government’s property damage claim against Van Tu for the amount of \$7,706.24. On February 19, 2011, a Metro police officer had slowed down to assist with a traffic accident on I-65 South near Old Hickory Boulevard when his vehicle was struck in the rear by a vehicle operated by Thuan Do. The 2004 Chevrolet Impala driven by the police officer was deemed to be a total loss. This settlement accepts the fair market value of the Metro vehicle at the time of the accident.

The officer was injured as a result of this accident and Metro has a pending injury-on-duty subrogation claim.

**– BILLS ON SECOND READING –**

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

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

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

This ordinance amends the code to allow athletic fields and associated facilities used for recreational purposes to be constructed in the floodway if the facilities would not have an adverse impact on downstream properties. These facilities would include dugouts, bleachers, concession stands, and storage buildings. The ordinance also specifies that the stormwater management committee will be responsible for determining whether a proposed structure will have an adverse impact or not.

There is a proposed amendment to allow Metro water services to determine whether a proposed structure would have an adverse impact without having to go to the stormwater management committee for each decision.

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

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

**ORDINANCE NO. BL2011-16** (BAKER) – This ordinance renames Centennial Place as “Wayne Wise Place”. This road extends from Centennial Boulevard to its terminus at the John C. Tune Airport property. Mr. Wise was the founder of Western Express, whose headquarters is located on this road.

**ORDINANCE NO. BL2011-31** (TYGARD, A. DAVIS & CLAIBORNE) – This ordinance amends the “meal ban” provisions in the Metro ethics code to allow elected officials, employees, and members of boards and commissions to accept free food or drink up to a value of \$25 from a single source in any calendar year. In 2005, the council adopted the current version of the ethics code applicable to council members, which was recommended by an independent task force. The law was expanded in 2007 to cover all elected officials, employees and members of boards and commissions, as required by state law in the wake of the Tennessee Waltz scandal involving members of the Tennessee General Assembly. Although not recommended by the ethics task force, the council adopted a meal ban as part of the 2005 ordinance prohibiting members of council from accepting any free food or drink from anyone that has had, currently has, or is likely to have matters pending before Metro. The meal ban was carried over to the 2007 comprehensive ethics ordinance by amendment to prohibit the acceptance of any gratuitous food or beverages from any individual, entity or organization that (1) is currently performing services or has performed services in the past for the Metropolitan Government for compensation; (2) is seeking to enter into a contractual relationship with the Metropolitan Government to perform services for compensation; (3) currently has a matter pending with the Metropolitan Council or other Metropolitan board or commission; (4) has had a matter pending with the Metropolitan Council or other board or commission in the past; or (5) is likely to have a matter pending with the Metropolitan Council or other board or commission in the future.

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**ORDINANCE NO. BL2011-31** (continued)

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

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

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

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

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

There is a housekeeping amendment that should be adopted prior to this ordinance being approved on second reading.

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

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

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

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

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

This ordinance approves the acquisition of easements for the following properties:

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

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**ORDINANCE NO. BL2011-36** (continued)

This ordinance has been approved by the planning commission.

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

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

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

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

**ORDINANCE NO. BL2011-39** (MITCHELL & MCGUIRE) – This ordinance approves a contract with United Road Towing (URT) for the administration and operation of the Metro impound lot. The impound lot (frequently referred to as the "tow-in lot") was established by ordinance in 1972 for the purpose of providing a place to take motor vehicles which are required to be removed from the streets because of violations of the law, are recovered stolen vehicles, or have been abandoned. The tow-in lot has been losing money for several years. The tow-in lot is an enterprise function within Metro, meaning it is supposed to operate on the revenues it generates. In 2006, the council increased the storage fee for vehicles at the tow-in lot and also established a flat rate of \$200 per item stored at the lot, excluding stolen vehicles. The purpose of the \$200 fee was to prevent the tow-in lot from having to be subsidized by the general fund. However, as a result of a decline in the number of vehicles taken to the lot in recent years, the tow-in lot has accumulated a deficit of approximately \$3 million. The reason for the recent decline in the number of vehicles taken to the impound lot is in part due to the discretion given (continued on next page)

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

to police officers by the policy to use "alternative actions" when a vehicle owner or operator, even when arrested, is able to make arrangements for the vehicle to be picked up or parked without obstructing traffic or endangering the public. In order to impound the vehicle, the policy requires the officer to show the impoundment is "reasonable and necessary under the existing circumstances and that there was no other reasonable alternative."

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

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

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

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

The payment provisions in the contract are somewhat complicated. URT will operate the facility for a fixed payment of \$375,000 per year from Metro, plus the impound and storage fee revenues. URT will be responsible for all costs associated with operating the lot. URT also agrees to spend \$100,000 during the first year of the contract to make capital improvements to the facility such as new fencing and security measures. As compensation to Metro for the exclusive rights to the abandoned vehicle auction, URT will make an initial \$500,000 payment to Metro, plus \$475,000 every year thereafter. Further, URT will share the auction revenues with Metro if the revenues exceed \$1 million in a given year. Vehicles left at the impound lot are (continued on next page)

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

currently sold through Metro's online eBid auction system. Thus, the department of general services will lose an estimated \$146,000 per year that it otherwise would collect from the online auction.

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

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

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

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

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

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

All of the proceeds from the ticket tax must be used exclusively to defray the cost of “constructing, operating, renovating, expanding, or improving” the stadium, or for the payment of debt service on the bonds issued to construct the stadium. The current tax generates approximately \$1.9 million annually and a total of \$3.5 million has accumulated since the tax went into effect last year. The lease agreement between the sports authority and the Titans requires the Metropolitan Government to pay \$1 million annually for capital improvements to LP Field. The Titans are responsible for the day-to-day operating costs of the stadium, but the long-term capital needs are the responsibility of Metro. The lease requires Metro to make all capital improvements necessary to keep the stadium in a “First Class Condition”, which means maintained in good condition and repair (normal wear and tear excepted), and having the level of improvements and new technology from time to time found at comparable facilities. The current Titans lease will expire in 2028. The bonds issued for the construction of the stadium have a maturity date of 2026.

The Titans have identified a number of capital improvements they believe are necessary to keep the facility in a first class condition. These improvements include the installation of a new sound system that distributes sound equally throughout the stadium, the replacement of the score boards with HD video screens, the installation of LED ribbon boards around the stadium, the replacement of the control room, installation of elevators to take fans from the ground level to the upper level, and the development of new areas within the facility for the benefit of fans. The total cost of these projects is estimated to be approximately \$25 million. The estimated useful life expectancy for the improvements, averaging 18 years, is as follows:

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

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

In order to finance these projects, the administration is proposing that bonds be issued with a final maturity of not more than 25 years, and an average maturity of approximately 15 years. A resolution authorizing the issuance of such bonds will be filed for the December 6 council meeting. The estimated principal for the bonds will be approximately \$22.6 million, which with the amount of revenue from the current ticket tax, will allow for a \$26.8 million package of stadium improvements.

The current \$2 ticket tax should be sufficient to cover the debt service on the bonds. However, the Titans have advised Metro that the stadium seats will need to be replaced in 2018 at an estimated cost of \$15 million. In order to build a capital fund for future needs, the Titans have requested that the ticket tax be increased to \$3 effective for events scheduled on or after August 1, 2013. This will allow funds to accumulate at a rate of approximately \$900,000 per year for future improvements. The council would need to issue additional bonds if and when the seat replacement project is initiated.

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

This ordinance increases the amount of the ticket tax to \$3 and eliminates the durational limit on the tax. The new bonds to be issued for the capital improvements will be taxable since they will be backed by the ticket tax revenue, which are paid as a result of a private activity. Since the new bonds will be taxable, we will not be jeopardizing the tax exempt status of the existing stadium debt by increasing the amount of the tax and removing the durational limit.

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

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

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

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

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

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

There is a housekeeping amendment for this ordinance to correct a mistake in one of the recital clauses. The recitals state that Metro will not be responsible for the cost of the relocation, but the contract provides that Metro will, in fact, be responsible for the cost.

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

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

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

1. 501 Mainstream Drive
2. 431 Great Circle Road

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

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

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

This ordinance has been approved by the planning commission.

**– BILLS ON THIRD READING –**

**ORDINANCE NO. BL2011-5** (GILMORE) – This ordinance names the Nashville municipal auditorium as the “Musicians Hall of Fame and Museum at the Nashville Municipal Auditorium”. The 9,600-seat municipal auditorium was built in 1962 to accommodate a variety of events. The municipal auditorium commission recently approved an agreement with the Musicians Hall of Fame and Museum for lease of approximately 35,000 square feet of the basement floor level (the Exhibit Hall) of the municipal auditorium facility. The lease agreement contemplates a “co-branding” of the facility as the Musicians Hall of Fame and Museum at the Nashville Municipal Auditorium. The museum will have the authority, at its own expense, to remove the large red municipal auditorium sign on the outside of the building and replace it with a new sign using the co-branded name. The museum will also have the authority to replace other signage on the premises.

The Metropolitan Code provides that no building of the Metropolitan Government may be named except pursuant to an ordinance duly adopted by the Metropolitan Council.

**ORDINANCE NO. BL2011-6** (MOORE, MCGUIRE & MITCHELL) – This ordinance authorizes the director of public property administration to acquire four parcels of property required for the construction of a new police precinct on 12<sup>th</sup> Avenue South. The following properties are to be acquired totaling 0.81 acre: 1433, 1441, 1441B, and 1505 12<sup>th</sup> Avenue South. The fiscal year 2011 capital spending plan included \$6 million for land acquisition and construction of a new police precinct.

This ordinance has been approved by the planning commission.

**ORDINANCE NOS. BL2011-7, BL2011-8 & BL2011-11** – These three ordinances abandon water and sewer lines and easement rights that are no longer needed by Metro water services. These ordinances have been approved by the planning commission.

**Ordinance No. BL2011-7** (Harrison & Hunt) abandons 86 linear feet of an 8-inch sanitary sewer line and easement on a portion of property located at 3308 John Mallette Drive between Manchester Avenue and S. Hamilton Road.

**Ordinance No. BL2011-8** (Hunt) abandons 240 feet of a 102-inch combination sewer main and accepts 400 feet of a relocated combination sewer main on property located at 220 25<sup>th</sup> Avenue North at the Brandau Place intersection.

**Ordinance No. BL2011-11** (Pridemore & Hunt) abandons 100 feet of an 8-inch sanitary sewer line and easement and accepts the relocation of 120 feet of a relocated line and easement on property located at 306 Gallatin Pike south of Duling Avenue.

**ORDINANCE NO. BL2011-9** (HUNT & BEDNE) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with First Citizens National Bank for the operation and maintenance of a public pressure sewer extension at Cambridge Park. First Citizens will be responsible for constructing 1,071 linear feet of a 4-inch sanitary sewer force main and pump station at its own expense. Once construction is complete, First Citizen will pay \$150,000 to Metro water services for the operation and maintenance costs associated with the pump station and force main.

**ORDINANCE NO. BL2011-10** (LANGSTER) – This ordinance approves an agreement between Vanderbilt University and the Metropolitan Government for clinical training of Vanderbilt medical students and residents. Pursuant to these agreements, the students and medical residents will receive clinical training under the fire department's first responder and ambulance and rescue programs. The term of the program, which has no cost to Metro, will continue through June 30, 2015. Vanderbilt will be required to maintain professional liability insurance coverage for all residents and medical students participating in this program. The agreement may be terminated by either party upon 30 days written notice.

This is a continuation of a clinical training relationship with Vanderbilt that has been in place for a number of years.

**ORDINANCE NOS. BL2011-12 through BL2011-15** – These four ordinances abandon sections of right-of-way no longer needed by the Metropolitan Government. These ordinances have been approved by the planning commission and traffic and parking commission. Consent of the affected property owners is included as an attachment to the ordinances.

**Ordinance No. BL2011-12** (Harrison & Langster) abandons a portion of Clay Street from Alley No. 202 to Rosa L. Parks Boulevard, and abandons a portion of 5<sup>th</sup> Avenue North, 6<sup>th</sup> Avenue North, and Alley No. 207 from Clay Street to Interstate 65. This closure has been requested by Barge Cauthen & Associates to facilitate a new development. The ordinance also abandons all existing utility easements.

**Ordinance No. BL2011-13** (Langster) abandons a portion of Alley No. 908 from Murphy Avenue to Alley No. 308. This closure has been requested by Littlejohn Engineering for a Centennial medical office building. The ordinance also abandons all existing utility easements.

**Ordinance No. BL2011-14** (Glover) abandons an unbuilt portion of John Hagar Road right-of-way totaling 10,439 square feet. This portion of right-of-way is no longer needed as a result of the construction of New John Hagar Road. All easements are being retained.

**Ordinance No. BL2011-15** (Allen) abandons a portion of Alley No. 436 from Wedgewood Avenue to the private drive portion of Acklen Avenue on Belmont University's campus, and abandons an unnumbered alley from 15<sup>th</sup> Avenue South to Alley No. 436. This closure has been requested by Littlejohn Engineering on behalf of Belmont University who owns all of the adjacent property. All easements are being retained.

**ORDINANCE NO. BL2011-27** (CLAIBORNE) – This ordinance amends the zoning code to change how a minimum lot size is determined when a right-of-way dedication is required. The zoning code includes bulk standards that establish minimum lot sizes for the various zoning districts. The mayor established a Complete Streets Policy in 2010 to support and encourage multiple modes of transportation. Accordingly, the planning commission adopted the 2011 update to the Main and Collector Street Plan (MCSP), which in part established right-of-way dedication requirements when property is subdivided. Since the right-of-way dedication area is subtracted from the lot size, subdivision of the lot could result in the property falling below the minimum lot size requirement. This ordinance would allow the lot area prior to the dedication of right-of-way to be used to meet the minimum lot standards. The newly created lots would still be required to meet all of the other applicable bulk standards in the zoning code.

This ordinance has been approved by the planning commission.