

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **March 21, 2006**

RE: **Analysis Report**

| Balances As Of: | <u>3/15/06</u> | <u>3/9/05</u> |
|--|----------------|---------------|
| <u>GSD 4% RESERVE FUND</u> | *\$1,652,890 | \$12,353,275 |
| <u>CONTINGENCY ACCOUNTS</u> | | |
| GSD | - 0 - | - 0 - |
| USD | \$50,000 | \$50,000 |
| <u>GENERAL FUND</u> | | |
| GSD | \$26,413,198 | \$28,864,961 |
| USD | \$8,770,800 | \$5,003,020 |
| <u>GENERAL PURPOSE SCHOOL FUND</u> | \$17,566,775 | \$25,250,424 |

* Assumes estimated revenues in fiscal year 2006 in the amount of \$6,787,046

– RESOLUTIONS –

RESOLUTION NO. RS2006-1206 (FOSTER) – This resolution provides a proposed amendment to the Metropolitan Charter to make the offices of district councilman and councilman-at-large separate elected offices for the purposes of the charter term limit provision. The charter provision creating the Metropolitan county council includes both at-large members and district members in the same section. An argument can be made that the charter section creating the council makes at-large members and district members a single office. The term limit provision that was enacted by the voters in 1994 limits the service of members of elected offices “created or authorized by the charter” to two consecutive four-year terms. Thus, a legal question exists as to whether a term-limited district councilmember can serve during the next term as an at-large member, or vice versa. The department of law has opined that the office of at-large councilmember and district councilmember are separate offices for purposes of the term limit provision. This charter amendment would clarify the legal question by expressly making the two offices separate.

The council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. This resolution provides that the date for holding the referendum election on the Charter amendment is to be the August 3, 2006 general election. State election law requires that resolutions requiring the holding of elections on questions submitted to the people which are to be held at the regular election must be filed with the election commission not less than 60 days prior to the August election. Thus, this resolution should be deferred indefinitely and brought back as part of a larger Charter amendments package.

RESOLUTION NO. RS2006-1207 (BRILEY) – This resolution amends Substitute Resolution No. RS2005-927 to extend the deadline for the task force on telecommunications innovation to issue its report to the council until August 1, 2006. The council adopted Substitute Resolution No. RS2005-92 on October 4, 2005, which established a task force on telecommunications innovation to assist the Metropolitan Government in examining and evaluating the feasibility of and options for providing broadband technology, and advanced telecommunications and information services in Nashville. The task force was to report its findings to the Metropolitan Council within 180 days from the adoption of the resolution. However, the task force has requested additional time to complete its work before it issues a report.

RESOLUTION NO. RS2006-1208 (DREAD & GOTTO) – This resolution sets a public hearing for Ordinance No. BL2006-980 pertaining to the renewal and transferability of building and demolition permits for property located within historic overlay districts, which is currently on second reading. Since this ordinance is not an amendment to the zoning code, no public hearing is required by law for this ordinance. This resolution would set a public hearing for the April 18, 2006 council meeting to allow for public input regarding the ordinance.

RESOLUTION NO. RS2006-1209 (JAMESON) – This resolution approves a tree bank schedule promulgated by the urban forester. The zoning text provides for establishment of the tree bank when money is contributed when, due to soil type, topography, or unusual nature of the site, the growth of
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RESOLUTION NO. RS2006-1209 (continued)

trees could not be accomplished under the tree ordinance. Sites located in the CC, MUI or CF districts, or in any other district where there is not adequate required yard space to accommodate the total number of required replacement trees can utilize the tree bank provision. Funds received in the tree bank are utilized to purchase and plant trees on public land. The Metro Code provides for tree density units, which is based upon area and caliper of trees. The fee schedule begins at \$350.00 for one unit (two small trees) and extends to \$250.00 per tree density unit when more than 400 units of tree density are calculated.

RESOLUTION NO. RS2006-1210 (RYMAN) – This resolution approves an amendment to the contract for the employment of Donald W. Jones as Special Counsel and Director of the Council Office. The director intends to retire effective July 1, 2006, but desires to remain in the position of director and special counsel on a part-time basis. This amendment modifies the contract so that effective July 1, 2006, the director will continue employment as special counsel and director of the Council Office on a part-time basis, working approximately 16 hours per week but no more than 19 hours per week. The director will be compensated at the rate of \$115 per hour. The Council Office will no longer be charged the cost of benefits for the director, including health insurance. The amended contract may be terminated by the director or by the vice mayor and the executive committee of the Council upon thirty days notice.

This resolution has been approved by the Council executive committee.

RESOLUTION NO. RS2006-1211 (RYMAN, MCCLENDON & DOZIER) – This resolution approves an interlocal agreement between the Metropolitan Government and the City of Goodlettsville for law enforcement assistance. The Metropolitan Government currently provides law enforcement services to the portion of Goodlettsville that lies in Davidson County. Goodlettsville also has its own police department that serves the city. Pursuant to this agreement, the Goodlettsville police department will be notified of all 911 calls received by the Metro emergency communications center (ECC) requesting police assistance within the Goodlettsville city limits. The ECC will dispatch a Metro officer and notify the Goodlettsville police department, who will choose whether or not to dispatch one of its own officers as well. The Goodlettsville police department may cancel the Metro dispatch only if a Goodlettsville officer is the first to arrive at the scene. The term of this agreement is for a period of five years.

RESOLUTION NO. RS2006-1212 (DOZIER) – This resolution approves an interlocal agreement between the Metropolitan Government and Nashville Electric Service (NES) and the City of Berry Hill relative to access to the 800-MHZ emergency radio dispatch and response system. The Metropolitan Government and NES jointly own and operate the emergency radio dispatch and radio response system utilizing 800-MHZ radio frequencies licensed by the Federal Communications Commission (FCC). This system was jointly funded by Metro and NES, with Metro now maintaining the system and NES contributing funds to maintain the system. Berry Hill, which is an incorporated city within the Metropolitan Government, wishes to continue having access to our emergency radio dispatch and response system. By transferring the frequencies, Berry Hill will be able to utilize our system. The term of this agreement begins upon approval by the council and extends through June 30, 2010. The prior contract with Berry Hill for access to our emergency radio dispatch and response system was approved by the council in 2001.

RESOLUTION NO. RS2006-1213 (MCCLENDON & WALLS) – This resolution approves an additional loan from the Metropolitan Government to the Hospital Authority in the amount of \$6,748,700 to allow General Hospital to remain open through June 30, 2006. In June of 2005, the council appropriated an additional \$16,488,200 to the Hospital Authority as part of the fiscal year 2006 operating budget, for a total supplement to the Hospital Authority of \$44,322,600. This increased supplement was in part to enable the Hospital Authority to repay its large outstanding debt to the Metropolitan Government. The recitals of the resolution state that the Hospital Authority currently owes Metro \$13.7 million, after \$50 million of the debt was “repaid” during the current fiscal year. Substitute Ordinance No. BL2005-663, the operating budget of the Metropolitan Government for fiscal year 2006, gave the finance director the authority to transfer \$50 million from the unreserved fund balance of the GSD debt service fund for the purposes of reducing General Hospital’s debt. Thus, \$50 million of the loan owed by the Hospital Authority to the Metropolitan Government was for all practical purposes forgiven, not repaid. Since the Hospital Authority has not received state and federal funding at a level it anticipated to survive as a going concern, General Hospital needs an additional \$6.7 million, in addition to the state essential access funding it anticipates receiving this fiscal year, to stay open until June 30, 2006.

This resolution approves an additional secured loan in the amount of \$6,748,700 to the Hospital Authority, for a total outstanding loan of \$20,548,700. This loan is to be secured by the receivables of the Hospital Authority and is to be repaid by June 30, 2006. However, the resolution also provides that the director of finance is authorized to extend the reimbursement date or enter into a new loan for the same amount for the fiscal year beginning July 1, 2006. Thus, there is no guarantee the loan will be repaid by the end of the fiscal year, and the council would have no further opportunity to approve any extension or renewal of the loan for next fiscal year.

According to the recitals in this resolution, General Hospital’s accounts receivable are sufficient to support this additional \$6.7 million loan. The Council Office would point out that the 2005 Comprehensive Annual Financial Report (CAFR), the annual certified audit of the Metropolitan Government, notes that General Hospital may be unable to continue as a going concern due to its lack of sufficient cash flow. The CAFR notes that General Hospital had a net deficit as of June 30, 2005 in the amount of \$40.8 million. The CAFR further notes that General Hospital will continue to be dependent upon the Metropolitan Government to subsidize current and future operations. General Hospital has secured funding from HCA to hire a consultant to assist the hospital in developing a plan to allow it to continue as a going concern.

RESOLUTION NO. RS2006-1214 (MCCLENDON & DOZIER) – This resolution approves an amendment to a grant in the amount of \$150,000 from the state emergency management agency to the mayor’s office of emergency management to conduct training exercises to prepare emergency first responders for a terrorist attack. The original grant was approved in December 2003, and was to expire October 30, 2005. These funds are to be used for realistic exercises to prepare first responders for weapons of mass destruction terrorism incidents involving chemical, biological, radiological, nuclear, or explosive devices. The focus of the exercise to be conducted by Metro will be the response to an explosion at a local hospital resulting in mass casualties and the relocation of patients to other hospitals.

The training exercise for which these funds were to be used was delayed due to hurricane Katrina. This resolution simply extends the term of the grant until July 31, 2006.

RESOLUTION NOS. RS2006-1215 THRU RS2006-1217, AND RS2006-1219 THRU RS2006-

1221 – These six resolutions approve grants between the Metropolitan board of health and three nonprofit organizations to provide community prevention intervention services for children in Davidson County. The program seeks to reduce teen substance use, pregnancy, violence, and school dropout rates. These grants are for a six month term, commencing January 1, 2006 and ending June 30, 2006.

Resolution No. RS2006-1215 (Jameson, Cole & Others) approves a grant agreement in the amount of \$40,000 between the Metropolitan board of health and Center for Youth Issues to provide community prevention intervention services for children in the Planning Area 5 (East) region of Davidson County. These grant funds will be used to implement the STARS (Students Taking a Right Stand) program at Dalewood Middle School and Bailey Middle School.

Resolution No. RS2006-1216 (Walls, McClendon & Others) approves a grant agreement in the amount of \$40,000 between the Metropolitan board of health and Center for Youth Issues to provide community prevention intervention services for children in the Planning Area 8 (North) region of Davidson County. These grant funds will be used to implement the STARS program at W.A. Bass Middle School, McKissack Middle School and Bellevue Middle School.

Resolution No. RS2006-1217 (Walls, McClendon & Wilhoite) approves a grant agreement in the amount of \$40,000 between the Metropolitan board of health and Center for Youth Issues to provide community prevention intervention services for children in the Planning Area 11 (South) region of Davidson County. These grant funds will be used to implement the STARS program at Cameron Middle School.

Resolution No. RS2006-1219 (McClendon & Walls) approves a grant agreement in the amount of \$40,000 between Centerstone Community Mental Health Centers, Inc., and the Metropolitan board of health for the "Project STAR" program. This program provides prevention services to children between the ages of 10 and 16 in the Maplewood and Stratford clusters to address maternal and infant health, substance abuse, community health, and tobacco use. The program focuses on helping youth and their families apply skills in order to maintain a healthy lifestyle.

Resolution No. RS2006-1220 (Walls & McClendon) approves a grant agreement in the amount of \$40,000 between the Metropolitan board of health and New Vision, Inc., for a therapeutic mentoring program. This program will be marketed to the juvenile court, Jere Baxter Alternative School, Bailey Middle School, Jere Baxter Middle School, Stratford High School, and Maplewood High School to obtain referrals.

Resolution No. RS2006-1221 (Walls & McClendon) approves a grant agreement in the amount of \$40,000 between the Metropolitan board of health and Oasis Center to provide in-school prevention intervention services to students at Bailey Middle School. The purpose of this program is to help youth learn ways to build positive relationships, be involved in extra-curricular activities, and to decrease favorable attitudes toward problem behavior.

RESOLUTION NO. RS2006-1218 (WALLS & MCCLENDON) – This resolution accepts a \$15,000 grant from the U.S. Environmental Protection Agency to the Metro board of health for a program to reduce asthma among children. The term of this grant is from October 1, 2005 through September 30, 2007. These funds will be used to conduct inspections and distribute educational materials to educate asthmatic children and their parents about identifying and reducing exposure to asthma triggers.

RESOLUTION NOS. RS2006-1222 through RS2006-1224 (LORING & MCCLENDON) – These three resolutions approve grants to the planning commission for an ozone action program and the implementation of rideshare promotion.

Resolution No. RS2006-1222 approves a grant in the amount of \$159,200 from the state department of transportation for an ozone action program. These funds will be used for marketing, advertising, telephone surveys, rideshare incentives, and the printing of outreach materials regarding Air Quality Action Days in the middle Tennessee region.

Resolution No. RS2006-1223 accepts grant funds in the amount of \$32,474.95 from multiple sources to the planning commission for the Ozone Action Day/Outreach program, which is the subject matter of Resolution No. RS2006-1222 . This resolution accepts grants from the following sources in the following amounts:

| | |
|---|-------------|
| TN Department of Environment and Conservation | \$19,900.00 |
| Williamson County, TN | \$3,900.00 |
| Rutherford County, TN | \$2,078.87 |
| Wilson County, TN | \$1,694.67 |
| Sumner County, TN | \$1,613.51 |
| Hendersonville, TN | \$1,222.66 |
| Gallatin, TN | \$699.22 |
| Lebanon, TN | \$600.00 |
| Mt. Juliet, TN | \$372.22 |
| Portland, TN | \$254.59 |
| Goodlettsville, TN | \$139.21 |

Resolution No. RS2006-1224 approves a grant in the amount of \$450,000 from the state department of transportation for implementation of a rideshare program. These funds will be used for advertising about the use of ridesharing to improve air quality through the placement of billboards along interstates and radio advertisements targeting commuters.

RESOLUTION NO. RS2006-1225 (MCCLENDON & DOZIER) – This resolution approves a grant in the amount of \$77,417 from the Community Foundation of Middle Tennessee to the office of the district attorney general to provide personnel to review, coordinate, and prosecute firearms cases. These federal pass-through funds will be used to pay the salary of an assistant district attorney to review and prosecute serious gun related crimes. The term of the grant is from October 1, 2005 through September 30, 2006.

RESOLUTION NO. RS2006-1226 (FORKUM & MCCLENDON) – This resolution approves a grant in the amount of \$6,500 from the state department of state to the public library to purchase library management software. The term of the grant is from February 1, 2006 through August 4, 2006.

RESOLUTION NOS. RS2006-1227 THRU RS2006-1230 (MCCLENDON) – These four resolutions approve amendments to four grants from the state department of labor workforce and development to the Nashville career advancement center to prepare adults and dislocated workers for re-entry into (continued on next page)

RESOLUTION NOS. RS2006-1227 THRU RS2006-1230

the labor force, and to offer training to those facing serious barriers to unemployment. These resolutions simply reallocate the funding among the grants. The total net amount of the four grants will not change.

Resolution No. RS2006-1227 amends an adult worker grant by increasing the grant amount by \$141,909 for a new grant award of \$416,749.20.

Resolution No. RS2006-1228 amends an adult worker grant by increasing the grant amount by \$348,542 for a new grant award of \$1,408,490.90.

Resolution No. RS2006-1229 amends a dislocated worker grant by decreasing the grant amount by \$141,909 for a new grant award of \$331,121.

Resolution No. RS2006-1230 amends an adult worker grant by decreasing the grant amount by \$348,542 for a new grant award of \$813,265.30.

RESOLUTION NO. RS2006-1231 (MCCLENDON) – This resolution approves a grant in the amount of \$83,000 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to provide temporary employment and workforce development services to persons who were forced to evacuate their homes as a result of hurricane Katrina. NCAC has hired a reintegration counselor to provide outreach to evacuees in the Middle Tennessee area. These funds will be used to assist an estimated 300 persons in finding jobs in the Middle Tennessee area or to assist them in returning to the gulf coast and finding jobs in that area.

RESOLUTION NO. RS2006-1232 (MCCLENDON) – This resolution approves an amendment to a grant in the amount of \$121,495 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) for programs and services to train surgical assistants. These grant funds are being used to train 17 surgical technologists and preoperative nurses. This training is coordinated through St. Thomas Health Services and the program will utilize Nashville State Technical Community College for some of the classes. The initial term of this grant was from August 30, 2004 through June 30, 2006. The resolution extends the term of the grant until July 31, 2007.

RESOLUTION NO. RS2006-1233 (MCCLENDON) – This resolution approves a grant in the amount of \$110,000 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to establish a recruitment campaign for Embraer Air in Davidson County. This is the result of collaboration between the state departments of economic and community development and labor and workforce development to assist Embraer Air in recruiting and training 160 employees. NCAC will be responsible for managing the recruitment campaign and will provide continued assistance with additional hiring needs.

RESOLUTION NO. RS2006-1234 (TOLER & MCCLENDON) – This resolution approves an amendment to a contract between the Metropolitan Government and the state department of transportation (TDOT) for reevaluation of the environmental impact statement for the portion of the Shelby Street/Demonbreun Street corridor from 4th Avenue South to I-40 West. The total project cost is \$937,500, with Metro paying 20% of the costs. This resolution approves an amendment to the contract to designate Metro as the manager of the project.

RESOLUTION NOS. RS2006-1235 THRU 1243 (MCCLENDON) – These nine resolutions appropriate funds from the general fund reserve fund (4% fund) to various departments. Four percent funds may only be used for the purchase of equipment and repairs to buildings. These projects were included as part of the mayor’s capital spending plan, but held until adequate funding was in place. The total amount of these seven resolutions is \$20,703,873. The balance in the general fund reserve fund as of March 15, 2006, was \$1,652,890. This assumes unrealized revenue for fiscal year 2006 in the amount of \$20,703,873. The resolutions provide 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.

Resolution No. RS2006-1235 appropriates \$173,600 from the general fund reserve fund for tablet computers, a digital copier, fax machines, recorders, laserjet printers, and scanners for the codes administration department.

Resolution No. RS2006-1236 appropriates \$2,890,000 from the general fund reserve fund for miscellaneous firefighting equipment, furniture and office equipment for the fire department.

Resolution No. RS2006-1237 appropriates \$11,886,473 from the general fund reserve fund for replacement vehicles, general building repairs, and preventative maintenance for the general services department.

Resolution No. RS2006-1238 appropriates \$137,500 from the general fund reserve for miscellaneous office equipment, computers, and furniture fund for the health department.

Resolution No. RS2006-1239 appropriates \$3,000,000 from the general fund reserve fund for hardware, software, and police mobile data computers for the department of information technology services.

The council office would point out that Section 1 and the caption of the resolution appropriate these funds for the “Information Systems Department”. The correct name of the department is the department of information technology services, and the resolution should be amended to reflect this.

Resolution No. RS2006-1240 appropriates \$250,000 from the general fund reserve for miscellaneous equipment and office furniture fund for the parks and recreation department.

Resolution No. RS2006-1241 appropriates \$469,800 from the general fund reserve fund for training equipment, hardware and software, computer upgrades, and office furniture for the police department.

Resolution No. RS2006-1242 appropriates \$1,787,900 from the general fund reserve fund for miscellaneous books, office furnishings and equipment for the public library.

Resolution No. RS2006-1243 appropriates \$108,600 from the general fund reserve fund for repairs and maintenance, safety equipment, body armor, and breathing equipment for the sheriff’s department.

RESOLUTION NO. RS2006-1244 (TYGARD, DOZIER & OTHERS) – This resolution appropriates \$1.8 million from the unappropriated fund balance of the general fund of the general services district to Nashville Alliance for Public Education, Inc., to provide funding for the purchase of technology and science equipment for use in public schools. Nashville Alliance for Public Education, Inc., is a 501(c)(3). nonprofit organization with the mission of raising money for Metro public schools.

In February 2006, the council approved the assignment of the Renaissance Hotel lease. As part of the lease assignment, the Metropolitan Government received a twenty percent share of the anticipated profit from the assignment, which resulted in a payment to Metro of \$2,234,000. This resolution relies on this share of the profit from the assignment to bolster the unappropriated fund balance of the general fund of the GSD to fund this appropriation. However, the director of finance has stated that he has been advised by the legal department that this appropriation would violate an ordinance enacted by the council in 1990, which requires that such funds go to the Metropolitan Development and Housing Agency (MDHA) for affordable housing opportunities and economic development activities. In addition, the director of finance states that the department of law has raised concerns that this appropriation may violate the Charter prohibition requiring that the general funds of the Metropolitan Government be kept separate from the schools, and that it may violate state laws granting the sole authority to the school board for determining how school funds are to be expended. Therefore, the director of finance has refused to certify that funds are available for this appropriation. A copy of the director of finance’s memorandum is attached to this analysis.

The Council Office would point out that not all of the required documentation has been provided by Nashville Alliance for Public Education, Inc., in order for them to be eligible to receive grant funding from the Metropolitan Government. The Metropolitan Code of Laws requires that certain information be provided by nonprofits prior to receiving grant funds from Metro. This includes a copy of the organization’s charter, a copy of the letter from the Internal Revenue Service certifying that the agency is tax exempt, a copy of the organization’s audit, a statement of the proposed use of funds, and the proposed budget for the organization. Nashville Alliance for Public Education, Inc., has not provided a proposed budget or a statement of the proposed use of funds.

RESOLUTION NO. RS2006-1245 (FOSTER & TOLER) – This resolution authorizes the director of public property administration to exercise option agreements to purchase seven flood prone parcels of property. The Metropolitan Government has received federal and state funding to fund a substantial part of this program, which allows for the purchase and demolition of properties that have either been vacated or are in danger of flooding due to their proximity to a floodplain. The properties to be acquired and the cost for each are as follows:

- 4804 Blackman Court \$208,000
- 5010 Suter Drive \$170,000
- 5016 Suter Court \$148,000
- 505 Paragon Mills Road \$216,000
- 497 Paragon Mills Road \$220,000
- 4947 Edmonson Pike \$112,000
- 281 Elysian Fields Road \$132,000

RESOLUTION NO. RS2006-1246 (JAMESON) – This resolution authorizes Cumberland Partners to install, construct and maintain a sign encroachment in the right-of-way approximately four feet deep by ten feet tall hanging above the sidewalk at 555 Church Street. Cumberland Partners has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the sign, and is required to post a \$300,000 certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party. Ordinance No. O87-1890 authorizes aerial encroachments to be approved by resolution rather ordinance.

This resolution has been approved by the planning commission.

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- BILLS ON SECOND READING -

ORDINANCE NO. BL2005-861 (CRAFTON) – This ordinance amends the building code provisions of the Metro Code of Laws to prohibit the issuance of a building permit if the applicant or property owner has violated a stop work order within the past year. The building code provides that the director of codes administration may issue a stop work order in writing if work on any building or structure is being done contrary to the building code or in a dangerous or unsafe manner. When an emergency exists, the director is not required to give written notice of the stop work order. This ordinance would prohibit any applicant from obtaining a building permit if they have been found by a court to have violated a stop work order within the past twelve months.

There is a proposed amendment that would limit the application of this ordinance to the property for which the stop work order was issued. Thus, it would not prevent an applicant who violated a stop work order from obtaining a permit for another property.

ORDINANCE NO. BL2005-922 (DOZIER) – This ordinance amends the Metropolitan Code of Laws to provide for reimbursement of customer overpayments for water and sewer services. The Metro Code sections regarding water rates and charges provide for the classification of customers into four classes for the purpose of billing. These four classes are described as follows:

1. Residential – Up to 2 housing units on a common meter
2. Small commercial – Up to 1,600 cubic feet per month
3. Intermediate commercial and industrial – 1,600 to 200,000 cubic feet per month
4. Large commercial and industrial – Over 200,000 cubic feet per month.

Pursuant to this ordinance, if the director of water and sewerage services determines that a customer has been overcharged because of an inaccurate classification, based upon the previous 12-month water usage period, then the customer shall be reimbursed for the overpayment. The reimbursement would be for a period of 36 months prior to the date the error was discovered, unless a certain date for the error can be established that is less than 36 months prior to the discovery date. A similar ordinance was withdrawn by the council in 2003.

The council office would point out that this ordinance would apply retroactively, meaning that reimbursements would have to be made for any overcharge that occurred prior to the effective date of this ordinance. The council office and the department of law have raised concerns regarding whether such a retroactive provision is authorized under Tennessee law. As a result of the retroactive application of this ordinance, the director of finance has refused to certify the availability of funds. A copy of the finance director's letter is attached to this analysis.

ORDINANCE NO. BL2006-936 (MURRAY) – This ordinance amends the building code to place additional requirements in order to obtain a demolition permit for a historic structure. State law provides that no residential structure may be demolished without approval by the local legislative body if the structure was (1) constructed before 1865; (2) is repairable at a reasonable cost; and (3) the structure has a historical significance besides age itself. This ordinance would add a procedure to the code for determining whether a structure falls within the state law provisions requiring council approval prior to demolition, and would require that the demolition of all historic structures first be approved by the executive director of the historic commission. Before a demolition permit for a
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ORDINANCE NO. BL2006-936 (continued)

residential structure constructed prior to 1865 could be issued, the applicant would be required to present a report to the director of codes administration and the executive director of the historical commission prepared by a qualified historic restoration consultant that states the following:

1. The qualifications of the person making the report. (The consultant must be a professionally licensed architect or general contractor with a specialty in historic buildings.)
2. The structural condition of the building to be demolished.
3. An estimated cost to repair the structure.
4. A valuation from a qualified historic properties real estate appraiser of the structure to be demolished.

Upon receipt of the report, the historic zoning commission will make a determination at a public meeting as to whether the structure meets the criteria set out in the state law described above. If the structure does meet the criteria, the commission will initiate legislation for consideration by the council.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-979 (RYMAN, DOZIER & OTHERS) – This ordinance names the Howard Office Complex the “Richard H. Fulton Complex”. The Metro Code of Laws provides that no building of the Metropolitan Government may be named except pursuant to an ordinance enacted by the council. Richard H. Fulton was mayor of the Metropolitan Government from 1975 through 1987, after serving as a senator in the Tennessee General Assembly and a member of the U.S. House of Representatives. Mayor Fulton’s accomplishments include the construction of the Nashville Convention Center and Riverfront Park, the first use of tax increment financing through the Metropolitan Development and Housing Agency, the creation of the Arts Commission and the Historical Zoning Commission, the construction of nine new community centers, and the opening of 21 new parks.

ORDINANCE NO. BL2006-980 (DREAD & GOTTO) – This ordinance amends the Metropolitan Code of Laws to allow building and demolition permits for property located within historic overlay districts to be renewable every six months and to be transferable from one property owner to another. The building code currently limits the validity of building permits to six months. Demolition permits are valid for 30 days after their issuance. This ordinance would add an exception to the general permit expiration provisions for property within historic zoning overlays. Pursuant to this ordinance, building and demolition permits issued for property located within historic overlays could be automatically renewed every six months upon request by the applicant, without paying any type of renewal fee, for a total period not to exceed 3½ years. These permits would only be renewable if the permit was obtained within 90 days of the effective date of the historic overlay district. Thus, a property owner could obtain a permit at the time an overlay goes into effect, but would not have to spend money to commence construction within six months, as would ordinarily be required for building permits.

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ORDINANCE NO. BL2006-980 (continued)

This ordinance would also make building and demolition permits transferable from one property owner or contractor to another property owner or contractor. The building code currently provides that permits are not transferable from one contractor, job site, or location to another.

There is a proposed amendment for this ordinance that would clarify that permits could not be transferred from one parcel to another, and would make the ordinance inapplicable to historic overlays currently in effect at the time of the enactment of the ordinance.

In the event the resolution setting the public hearing for this ordinance (RS2006-1208) is adopted, this ordinance should be deferred until the April 18, 2006, council meeting.

ORDINANCE NO. BL2006-981 (GILMORE) – This ordinance amends the Metropolitan Code of Laws to prohibit construction noise in residential areas between the hours of 9:00 p.m. and 7:00 a.m. The code currently prohibits construction noise in excess of 70 Db(A) in residential areas between the hours of 9:00 p.m. and 6:00 a.m. This ordinance simply expands the hours to 7:00 a.m.

ORDINANCE NOS. BL2006-982 through BL2006-984 – These three ordinances abandon portions of Metro Government rights-of-way that are no longer needed for governmental purposes. Metro will retain all easements encumbering these areas. These ordinances have been approved by the planning commission.

Ordinance No. BL2006-982 (Summers) abandons a 110-foot portion of Cambridge Avenue right-of-way. This closure has been requested by Dr. Ronald Gilmer, who is the owner of the adjacent properties.

Ordinance No. BL2006-983 (Wallace) closes Alley #380 and Alley # 381 in the vicinity of the intersection of West End Avenue and 17th Avenue North. This closure has been requested by Littlejohn Engineering for the purpose of consolidating parcels to construct a mixed-use high rise building.

Ordinance No. BL2006-984 (Wallace) abandons a portion of 13th Avenue North between Alley #611 and Interstate 40. This closure has been requested by MDHA. This roadway will be re-routed to connect 17th Avenue North and Jo Johnston Avenue.

ORDINANCE NO. BL2006-985 (TOLER) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with the Jones Company to provide public sewer service to phase 5 of the Bridgeton Park subdivision in Williamson County. The Jones Company has agreed to contribute \$44,000 toward the cost of the project in aid of construction for a total of 22 single-family home connections. These funds are to be deposited into the water and sewer extension and replacement fund. This is a typical participation agreement entered into by the Metropolitan Government, acting through the department of water and sewerage services, whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

ORDINANCE NOS. BL2006-986 through BL2006-988 – These three ordinances authorize the director of public property administration to acquire easements by negotiation or condemnation for public works and water/sewer improvement projects. These ordinances have been approved by the planning commission.

Ordinance No. BL2006-986 (Toler) authorizes the acquisition of easements for three parcels of property for public works improvements at Demonbreun Street from 8th Avenue South to 10th Avenue South.

Ordinance No. BL2006-987 (Greer, Toler & McClendon) authorizes the acquisition of easements for five parcels of property in order to install a new 8” sewer line near the intersection of Lewis Street and Green Street. Easements are to be acquired for 118 Lewis Street and 59, 63, 55, and 51 Green Street.

Ordinance No. BL2006-988 (Forkum & Toler) authorizes the acquisition of easements for 102 parcels of property in connection with Neelys Bend intersection improvements at Idlewood Avenue, Randy Road, and Larkin Springs Road.

ORDINANCE NOS. BL2006-989 & BL2006-990 (GILMORE & MCCLENDON) – These two ordinances declare two parcels of Metropolitan Government-owned property to be surplus and authorizes the director of public property administration to sell the property in accordance with the standard procedures for the disposition of surplus property. The Metropolitan board of public education has determined that this property is no longer needed for school purposes. The council must approve the disposition of all property maintained by the school board before it can be sold. The proceeds of the sales will be credited to the unappropriated school fund. These ordinances have been approved by the planning commission.

Ordinance No. BL2006-989 declares property located at 5580 Eatons Creek Road to be surplus and authorizes the sale of the property.

Ordinance No. BL2006-990 declares property located at 5022 Old Hydes Ferry Pike to be surplus and authorizes the sale of the property.

ORDINANCE NO. BL2006-991 (RYMAN & TOLER) – This ordinance abandons an 8” sanitary sewer line and accompanying easement that will be replaced by a new sewer line and easement for 11 lots in phase 3 of the Harbor Village subdivision. The existing line to be abandoned is no longer needed by the Metropolitan Government. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-992 (TUCKER & WILHOITE) – This ordinance amends the Metropolitan Code of Laws to require the Metro fire marshal to maintain a record of all blasting permit information, which is to be available for public inspection. The fire marshal already makes permit information available for public inspection, as they are public records of the Metropolitan Government. However, this ordinance would also require the fire marshal to maintain a record of the times all blasting is to occur, in addition to the name of the permit holder and the location where blasting is to take place.

The Council Office is of the opinion that this ordinance violates state law. The state legislature has expressly preempted local governments from enacting any ordinances or regulations pertaining to blasting. Since state law does not require applicants for blasting permits to disclose the times they plan to blast, the fire marshal would not be allowed to require that such information be furnished.

ORDINANCE NO. BL2006-993 (HAUSSER, TOLER & DOZIER) – This ordinance authorizes the director of public property administration to acquire a parcel of property on Ashwood Avenue by negotiation or condemnation for the expansion of fire hall #16 in the Belmont-Hillsboro.

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2006-994 (TOLER & MCCLENDON) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Pulte Homes, Tennessee LP to provide public sewer service to section 2 of the Winterset Woods subdivision. The Owl Creek trunk sewer project was constructed in anticipation of developers contributing funds in lieu of construction to connect to the sewer. Pulte Homes has agreed to contribute \$68,000 toward the cost of the projects in aid of construction for a total of 34 single-family home connections. These funds are to be deposited into the water and sewer extension and replacement fund. This is a typical participation agreement entered into by the Metropolitan Government, acting through the department of water and sewerage services, whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

ORDINANCE NOS. BL2006-995 & BL2006-996 (WALLACE) – These two ordinances abandon portions of Metro Government rights-of-way that are no longer needed for governmental purposes. Metro will retain all easements encumbering these areas. These ordinances have been approved by the planning commission.

Ordinance No. BL2006-995 abandons an unbuilt alley from 3rd Avenue North to 4th Avenue North. This closure has been requested by Lawrence Brothers, LLC, the owner of the two adjacent properties. Although this alley is not notated on the property maps, it is still currently part of the official street and alley map. Consent of the affected property owners is on file with the department of public works.

Ordinance No. BL2006-996 abandons a 62 x 35 foot section of right-of-way at the northwest end of Burns Street. This closure has been requested by the department of water and sewerage services to improve access to the bio solids facility.

ORDINANCE NO. BL2006-997 (HAUSSER) – This ordinance renames Garland Avenue from 21st Avenue South to 22nd Avenue South, and renames 22nd Avenue South from Garland Avenue to Blakemore Avenue, as “Medical Center Drive.” The portion of these two streets being renamed are private roads owned by Vanderbilt University. The Metropolitan Code provides for the naming of private streets and roads in order to improve emergency services.

This ordinance has been approved by the planning commission.

- BILLS ON THIRD READING -

ORDINANCE NO. BL2005-834 (SUMMERS) – This zoning text change would increase the amount of notice required prior to public hearings held by the board of zoning appeals on requests for special exceptions and variances. The zoning code currently requires that notice be sent by certified mail to property owners located within 300 feet of the applicant’s property not less than twenty-one days prior to the hearing. The code further requires that notices be mailed twenty-one days prior to public hearings held by the planning commission. This ordinance would increase the notice requirement for special exception and variance requests from the board of zoning appeals from twenty-one to sixty days. This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2005-910 (WALLACE) – This zoning text change would require the zoning administrator to notify district councilmembers upon the filing of special exception and variance applications. The code currently requires the board of zoning appeals to hold a public hearing on variance and special exception applications within 60 days from the date of filing. This ordinance would require written notice to be given to the district councilmember within three days from the filing of a variance or special exception application. This notice is to include (1) the substance of the request; (2) whether construction on the property necessitating the special exception or variance has commenced; and (3) whether the property owner has been cited for a violation of the zoning code which led to the filing of the application for a special exception or variance.

This ordinance has been approved by the planning commission.

ORDINANCE NOS. BL2006-943 & BL2006-946 through BL2006-949 – These five ordinances abandon sewer easements no longer needed by the department of water and sewerage services. These ordinances have been approved by the planning commission.

Ordinance No. BL2006-943 (Wallace) abandons a sanitary sewer easement encumbering property at the corner of 11th Avenue and Division Street. Nashville Urban Partners is the owner of the property encumbered by the easement.

Ordinance No. BL2006-946 (Summers & Toler) abandons an 8” sanitary sewer line and easement encumbering property west of the L&N Railroad and north of Nebraska Avenue. Westwood Nashville, LLC is the owner of the property encumbered by the easement. An 8” sanitary sewer line and easement of equal size, along with an 8” water main and a 2” connection, will be replacing the abandoned line and easement.

Ordinance No. BL2006-947 (Summers & Toler) abandons an 8” sanitary sewer line and easement encumbering property located at the corner of West End Avenue and Carden Avenue. John W. Neeley and Patricia H. Neeley are the owners of the property encumbered by the easement. An 8” sanitary sewer line and easement of equal size will be replacing the abandoned line and easement.

Ordinance No. BL2006-948 (Adkins) abandons a 20’ sanitary sewer easement encumbering property between Harding Place and Wallace Road for the Wallace Road Medical Building. The section of Wallace Road running across this property was abandoned by the Council in 2001.

Ordinance No. BL2006-949 (Walls & Toler) abandons a 36" sanitary sewer line and easement encumbering property located at Basswood Drive and Robertson Avenue for the Reo Stone project. A 36" sanitary sewer line of equal size will be replacing the abandoned line and easement.

ORDINANCE NOS. BL2006-944 (TOLER) – This ordinance authorizes the director of public property administration to acquire easements by negotiation or condemnation for the purpose of constructing drainage improvements in the Holt Road area. Easements are to be acquired for the following properties:

- 6775 Holt Road
- 6801 Holt Road
- 6720 Holt Road
- 6713 Holt Road
- 6671 Holt Road
- 6600 Holt Road
- 6575 Holt Road
- 6541 Holt Road
- 6464 Holt Road
- 6461 Holt Road
- 101 Holt Hills Road

The estimated cost for these easements is \$16,500, which is to be provided from the water and sewer extension and replacement fund. The ordinance provides that the acquisition of additional easements for these same purposes may be approved by resolution of the Council. This ordinance has been approved by the planning commission.

ORDINANCE NOS. BL2006-945 (WILHOITE) – This ordinance authorizes the director of public property administration to acquire easements by negotiation or condemnation in order to complete a sewer project at the intersection of Bell Road and Smith Springs Road. The U.S. Army Corps of Engineers has agreed to grant an easement at no cost to Metro for four tracts of property at this intersection. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-950 (TOLER) – This ordinance authorizes the director of public property administration to acquire easements by negotiation or condemnation for the purpose of making water and sewer improvements in Williamson County. Specifically, these easements will be acquired for property located at 264, 266 and 268 Forest Trail for the Concord Forest – Forest Trail grinder pumps project. The department of water and sewerage services provides sewer service to certain areas of Williamson County. These out-of-county customers pay the same rates as Davidson County customers. The ordinance provides that the acquisition of additional easements for these same purposes may be approved by resolution of the Council. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-951 (TOLER, JAMESON & OTHERS) – This ordinance accepts easements to allow for the completion of various stormwater projects. These easements are being donated by the property owners at no cost to Metro. Easements are to be accepted for the following properties:

4119 Sneed Road
926 Woodland Street
2215 Garland Avenue
695 Grassmere Park Drive
254 Spence Lane
1221 18th Avenue South
6120 Mt. View Road

This ordinance has been approved by the planning commission.

ORDINANCE NOS. BL2006-952 (TOLER) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with LEGG Investments for the Mill Creek Town Center. LEGG Investments has agreed to contribute \$292,000 toward the cost of the projects in aid of construction for a total of 146 single-family home connections. These funds are to be deposited into the water and sewer extension and replacement fund. This is a typical participation agreement entered into by the Metropolitan Government, acting through the department of water and sewerage services, whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service. Metro water services will pay the lesser amount of \$26,000 or one-half the installation cost as its participation toward the construction of the sewer lines. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-953 (SHULMAN) – This ordinance abandons an 8" sanitary sewer line, an 8" water line, and accompanying easement that will be relocated in the Bedford Avenue right-of-way. The lines to be abandoned are no longer needed by the Metropolitan Government. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-954 (SHULMAN, DOZIER & OTHERS) – This ordinance amends the Metropolitan Code of Laws to create a "Nashville KNOWS" program to be administered by the mayor's office of emergency management (OEM). The purpose of this program is to maximize resources and efforts to prepare the citizens of Nashville and Davidson County about steps to take in preparation of and response to emergency situations. Pursuant to this ordinance, OEM is to use its existing resources to establish and implement this program. The program is to consist of a public relations campaign, conducting neighborhood meetings, and educational programming in the public schools. OEM will be required to provide the mayor and Members of Council with an annual report about its activities in connection with the "Nashville KNOWS" program.

ORDINANCE NO. BL2006-971 (NEIGHBORS, COLE & COLEMAN) – This zoning text change would allow a waiver in the minimum lot size for single-family cottage developments and would reduce the minimum lot sizes for attached townhouses to allow for the fee-simple ownership of such homes. Cottage developments and townhouses are allowed under the existing zoning code. However, fee-simple ownership of these units is not allowed because the minimum lot sizes in the code are too large. Instead, such units must be sold as condominiums where the homeowner owns the structure, (continued on next page)

ORDINANCE NO. BL2006-971 (continued)

but not the land underneath. Pursuant to this ordinance, cottage developments are defined as single-family residential developments of four to ten dwelling units arranged on small lots toward a common open space on at least two sides. These cottage developments would only be permitted in multi-family districts, not the R and RS districts. The cottages would have to be developed at the same density as the base zoning district, but there would be no minimum lot size. Instead, there would have to be at least 250 (continued on next page)

square feet of open space per cottage. The rear of the units would not be allowed to face a street. The maximum building square footage would be 1,000 square feet, with a maximum height of two stories. Thus, a two-story cottage could have a maximum of 2,000 square feet. The front, rear and side setbacks would be a minimum of three feet. The cottage development must provide two parking spaces per cottage on-site, but such parking cannot be visible from the public street and must be screened from adjacent residential properties. The rear and side setbacks for these cottages would be a minimum of three (3) feet from the right-of-way.

This ordinance also reduces the minimum lot size for attached townhouses as follows:

- In the RM20, OR20, MUN, MUL, MUG, OR40, ORI, RM40 and RM60 districts, the minimum lot area would be 1,500 square feet.
- In the RM15 district, minimum lot area would be 1,800 square feet.
- In the RM2, RM4, RM6 and RM9 districts, minimum lot area would be 2,800 square feet.

The minimum street setbacks for townhouses would generally be three feet from the right-of-way line.

ORDINANCE NO. BL2006-972 (MCCLENDON) – This zoning text change would require various automotive uses in commercial areas to be approved individually by the council as part of a specific plan (SP) district. The zoning code currently permits automobile repair, service, and sales, as well as wrecker services, within the CS, CA, CF, and industrial zoning districts. This ordinance would still permit such uses in the industrial districts, but not allow these uses in the commercial zoning districts. Rather, such uses would only be allowed in commercial areas if they were part of a SP district.

The SP district was created by the council in September 2006 to give the council more control over how the property is developed than a straight zone change to another zoning district. The SP district is designed to be an alternative zoning process to address the unique characteristics of an individual property through a site specific plan. A detailed plan is to be created for each property, which must be followed by the developer.

This ordinance also makes modifications to the definitions of various automotive uses. The changes to the definitions expressly provide that the storage of abandoned vehicles would be prohibited on the premises of these automotive uses. The most significant change in the definitions is to distinguish between used and new car lots. The zoning code currently considers vehicular sales to be a single use. Under this ordinance, new car lots would still be permitted by right in the commercial districts. However, used car lots would be required to be part of an SP district. Furthermore, new car dealerships would still be allowed to repair vehicles on the premises, but automobile repair would be strictly prohibited at used car lots.

(continued on next page)

ORDINANCE NO. BL2006-972 (continued)

The Council Office would point out that this ordinance would create hundreds of nonconforming uses in Davidson County. There are more than 300 used car lots and more than 240 automotive repair shops advertised in the Yellow Pages that would become nonconforming uses upon the adoption of this ordinance. When the current zoning code was adopted in 1997, a conscientious effort was made to avoid creating a large number of nonconforming uses due to the serious economic hardship imposed on the property owner. Further, the Council Office would caution against distinguishing between new and used car lots. Uses should be classified under the zoning code based on the activity that is taking place at the facility, not the age of the merchandise.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-973 (BRILEY) – This ordinance amends the zoning code to create a new land use called “donation center, drop-off.” The zoning code currently does not contain a specific use regarding a place where clothing and household items can be dropped off, but not resold on site. This ordinance is for the benefit of Goodwill Industries, which intends to replace its existing parking lot donation trailers with permanent storefront locations. This ordinance would make such facilities permitted with conditions (PC) in the mixed-use, commercial, and industrial zoning districts. The conditions that must be satisfied are as follows:

1. The donation center will generally operate between 9:00 a.m. and 6:00 p.m.
2. No retail sales will be allowed at the donation center.
3. No sorting of collected items may occur on-site.
4. No hazardous materials, large appliances, mattresses, or office equipment may be accepted for donation.
5. All collected materials must be picked up from the site at least once a week.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-975 (LORING) – This zoning text change would amend the provisions allowing for a density bonus for affordable housing units by reducing the time the affordable housing units must be designated as such from twenty years to seven years. The zoning code currently allows developers of property located within the MUI, ORI, CF and CC districts to achieve a density bonus if at least twenty-five percent of the floor area is constructed for affordable housing units and restricted for affordable housing for a twenty year period. The density bonus is achieved by not counting the floor area used for affordable housing in determining the floor area ratio of the building. This code section was added in 1998, but has never been used, largely because of the twenty year restriction. This twenty year restriction is contrary to federal funding requirements and Metro’s payment in lieu of taxes (PILOT) program for affordable housing, which have seven year periods. This ordinance would make the zoning code conform to federal law affordable housing provisions.

This ordinance has been approved by the planning commission.