

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: **November 18, 2008**

RE: **Analysis Report**

Balances As Of: 11/12/08 11/14/07

GSD 4% RESERVE FUND \* \$31,079,382 \$26,540,553

GENERAL FUND UNDESIGNATED FUND BALANCE

GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable

GENERAL PURPOSE SCOOOL FUND UNRESERVED FUND BALANCE

Unavailable	Unavailable
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\* Assumes estimated revenues in fiscal year 2009 in the amount of \$20,778,291

– RESOLUTIONS –

**RESOLUTION NO. RS2008-533** (FORKUM) – This resolution approves a loan agreement between the Metropolitan Government and the Public Building Authority of the City of Clarksville for the purpose of providing funds to refund general obligation bonds previously issued by Metro. In 1996, the council issued general obligation bonds with an original principal amount of \$74,880,000 for the East Bank Redevelopment Project, which consisted of site preparation necessary for the construction of LP Field, including the demolition of buildings, street improvements, riverfront improvements, lighting, parking, and architect and engineering costs. On April 20, 2004, the council authorized the issuance of general obligation refunding bonds with a principal amount not to exceed \$65 million to essentially refinance a portion of the stadium debt. As part of the 2004 refunding, the council allowed Metro to enter into an interest rate swap agreement, known as a “swaption”, whereby a counterparty bank (in this case SunTrust Bank) obtained an option to “swap” interest rate payments in the future on the call date in exchange for a one-time payment to Metro equivalent to the present value savings from refunding the outstanding bonds at a lower interest rate. This upfront cash payment was then used by Metro for debt service.

Under the swaption agreement, if SunTrust Bank elected to exercise the contract right and “swap” interest rates on the call date, they would pay an interest rate equivalent to the present prevailing interest rate, and Metro would have to either pay the interest at the current rate of the outstanding bonds or call the bonds and pay an early call premium. The swap rate for the counterparty is a fixed rate, but is a variable rate for Metro. SunTrust Bank exercised its option for a variable to fixed interest rate swap for the refunded bonds in 2006, thus requiring Metro to refund the bonds and pay a variable interest rate. Variable rate bonds are similar to a variable interest rate mortgage that fluctuates over the life of the loan. The 2006 resolution (RS2006-1269) also approved a standby bond purchase agreement, commonly known as a liquidity facility, in which DEPFA Bank, PLC agreed to purchase the bonds in the event they are not purchased by other buyers because of the variable rate. In exchange for the liquidity facility, Metro paid an annual fee to DEPFA Bank, PLC. DEPFA was recently downgraded to BBB, which caused the bonds to convert to bank bonds and changed the remaining amortization schedule from 18 years to 7 years. The change in the amortization schedule means that Metro must pay substantially more each year in debt service. The current principal amount of the outstanding 2006 bonds is \$58,900,000.

In order to quickly get out from under the bank bonds, the finance director has determined it is in Metro’s best interest to enter into a loan agreement with the Public Building Authority of the City of Clarksville, utilizing the Tennessee Municipal Bond Fund, to refund the 2006 bonds. Pursuant to this agreement, the Clarksville Public Building Authority (the “issuer”) will issue variable rate revenue bonds with a principal amount of \$59,140,000 for the purpose of making the loan to Metro, which will be paid by the ad valorem tax revenues of the Metropolitan Government. These funds will be used by Metro to refund the bonds and to pay all costs incident to the issuance and sale of the bonds. These issuance fees are approximately \$240,000. Since the bonds to be refunded are general obligation bonds, we are pledging the full faith and credit of the Metropolitan Government in the loan agreement. The indebtedness will be payable from 2009 through a final maturity date of 2026. The repayment schedule will be the same as the amortization schedule in the 2006 bonds, except for the \$240,000 issuance fees that will be paid in the first year.

**RESOLUTION NO. RS2008-533** (continued)

The loan agreement designates The Bank of New York Mellon Trust Company as the trustee for the revenue bonds. Metro will be required to indemnify the issuer, the bank, the trustee, and the remarketing agent, to the extent legally permissible, for claims in connection with the agreement. There are a number of fees described in the loan agreement form that Metro will be obligated to pay if such fees are incurred. These fees include trustee fees and expenses, attorney fees, fees associated with the execution of a substitute letter of credit, and any other reasonable fees or expenses in connection with the bonds, loan or letter of credit. Such fees are estimated to be about one percent of the outstanding principal annually.

The loan agreement provides that the interest rate will be a variable rate to be determined by the remarketing agent, or by the trustee if the rate has not been determined by the remarketing agent. It is very unusual for Metro to have a variable interest rate on its bonds determined by agents or trustees that have no fiduciary (or other) relationship with Metro. These parties referenced in this loan agreement have their relationship with the issuer of the bonds.

While the variable interest rate on the loan cannot exceed the maximum interest rate permitted by law, Metro is expressly waiving the defense of usury. The agreement also provides that Metro will be in default on the loan if a final judgment for the payment of \$1 million or more is entered against Metro and is not paid within 45 days from the date the judgment is entered. Metro also agrees to pay attorney fees and expenses incurred by the issuer, the bank, or the trustee for the collection of loan repayments.

This resolution also authorizes the mayor to execute a refunding escrow agreement with Deutsche Bank National Trust Company, Olive Branch, MS, to serve as the escrow agent, if needed. The escrow agent will be responsible for holding the funds and making the principal and interest payments on the bonds being refunded when due. The escrow agent will be compensated for its services, but the compensation amount in the escrow agreement form is blank. The finance director has advised that there most likely will not be a need for the escrow agent, and thus no escrow fee.

Since these bonds are not being issued by the Metropolitan Government, Metro's bond counsel will not be issuing an opinion. Rather, such opinion is to be issued by the bond counsel for the Tennessee Municipal Bond Fund.

This is the first time the council office is aware of Metro entering into such a loan agreement with a pass-through entity for the purpose of providing funds to refund outstanding bonds. Given Metro's strong credit rating, Metro has always been able to issue its own debt and find willing buyers of Metro bonds. However, the finance director has advised that this course of action is appropriate given the current condition of the financial markets.

**RESOLUTION NO. RS2008-534** (LANGSTER, HARRISON & COLEMAN) – This resolution approves an application for a grant in the amount of \$4,051,398 from the U.S. department of housing and urban development (HUD) to the Metropolitan development and housing agency (MDHA) for the Neighborhood Stabilization Program. This program provides emergency assistance to state and local governments for the acquisition and redevelopment of foreclosed properties. This one-time allocation will provide \$4,051,398 in funding to acquire foreclosed properties that would otherwise become a source of blight. The funds will be allocated as follows:

1. \$2,633,408.70 for acquisition and rehabilitation of foreclosed homes for resale to households earning less than 120% of the area median income.
2. \$1,012,849.50 for acquisition and rehabilitation of foreclosed homes to be rented to persons earning less than 50% of the area median income.
3. \$405,139.80 for administration of the program.

**RESOLUTION NO. RS2008-535** (MOORE & FORKUM) – This resolution approves the waiver of disability pension benefit overpayments made to George Coleman, which were caused by employee benefit board staff errors. As a result of this staff error, Mr. Coleman received a total of \$998.40 in disability 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 based upon the recommendation of the benefit board staff that requiring Mr. Coleman to repay this amount would create a financial hardship.

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

**RESOLUTION NOS. RS2008-536 & RS2008-538** (FORKUM) – These two resolutions approve annual grants from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to prepare adults and dislocated workers for re-entry into the labor force, and to provide training for those facing serious barriers to productive employment. The grant terms are from October 1, 2008 through June 30, 2010. These grants provide operating funding for the NCAC.

**Resolution No. RS2008-536** approves an adult worker grant in the amount of \$1,435,021.

**Resolution No. RS2008-538** approves a dislocated worker grant in the amount of \$1,219,247.

**RESOLUTION NO. RS2008-537** (FORKUM) – 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 provide training to Bridgestone employees. The term of the grant is from October 1, 2008 through June 30, 2009.

**RESOLUTION NO. RS2008-539** (FORKUM) – This resolution approves a grant in the amount of \$61,445 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to coordinate resources to ensure the effective and efficient delivery of workforce services in workforce development area 9. Workforce development area 9 consists of the counties of Davidson, Rutherford, Trousdale and Wilson. These federal pass-through funds provide funding for NCAC to provide space and access to employment and training programs administered through NCAC. The term of this grant is from July 1, 2008, through June 30, 2009.

**RESOLUTION NO. RS2008-540** (DURBIN & FORKUM) – This resolution approves an amendment to a grant in the amount of \$63,200 from the state department of health to the Metropolitan health department for tobacco prevention services. These federal pass-through funds are used to provide tobacco education services, to develop a comprehensive annual action plan to prevent initiation of tobacco use among young people, promote quitting among adult and youth tobacco users, and partner with community organizations to implement counter-marketing campaigns.

This resolution approves a housekeeping amendment to the contract substituting the words “grant contract” for the word “grant”, and moving the ending date of the contract up two days from March 31 to March 29, 2009.

**RESOLUTION NO. RS2008-541** (DURBIN & FORKUM) – This resolution approves a data use agreement between the Metropolitan board of health and Vanderbilt University Medical Center for compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As the council is aware, this law prohibits people from disclosing certain health information unless specifically authorized. This agreement is to allow Vanderbilt to disclose certain limited patient data to the health department to be used in conjunction with a research project by the Division of Epidemiology and Notifiable Diseases. This agreement will be in effect until the data is destroyed or returned to Vanderbilt.

**RESOLUTION NO. RS2008-542** (DURBIN & FORKUM) – This resolution approves a grant in the amount of \$142,100 from the state department of health to the Metropolitan board of health to provide rapid HIV testing services. These federal pass-through funds will be used to pay the salaries of three communicable disease specialists to provide HIV testing to 3,500 at-risk persons in a clinical setting. The health department will be required to report positive HIV test results to the state within 24 hours, and provide counseling and referral services to those clients receiving a positive result. The term of the grant is from September 30, 2008 through September 29, 2009.

**RESOLUTION NO. RS2008-543** (FORKUM & DURBIN) – This resolution approves an amendment to an annual grant in the amount of \$735,200 from the state department of health to the Metro board of health to provide an array of local health services. The term of the grant is from July 1, 2008 through June 30, 2009. These grant funds are typically used to pay the salaries of health department administration employees. This resolution approves a technical amendment to the contract to specify the health department programs that may be funded through the grant.

**RESOLUTION NO. RS2008-544** (DURBIN & FORKUM) – This resolution approves an amendment to a grant from the state department of mental health and developmental disabilities to the Metropolitan health department to provide services related to the treatment of drug and/or alcohol dependent adults. These funds are used for outpatient treatment, hospitalization, residential treatment, and detoxification services. The grant funds are to provide services to persons that have no other financial means of obtaining alcohol and drug abuse treatment.

This resolution increases the amount of the grant by \$53,040 for a new total grant award of \$95,472, and extends the term of the grant through March 31, 2009.

**RESOLUTION NOS. RS2008-545** (DURBIN) – This resolution approves a clinical affiliation agreement between the Metropolitan board of health and Tennessee State University (TSU) to provide clinical experience to nursing students. Pursuant to this agreement, the Metro health department will provide clinical training experiences to TSU nursing students as part of their public health training. Students will not receive any compensation and there is no cost to the Metropolitan Government for providing this service. The term of the agreement is from September 1, 2008 through August 31, 2013, but may be terminated by either party upon 30 days written notice.

Metro participates with several colleges and universities to provide clinical experience for nursing students.

**RESOLUTION NO. RS2008-546** (DURBIN & FORKUM) – This resolution approves a contract between the Metropolitan board of health and United Neighborhood Health Services (UNHS) for the operation of a substance abuse treatment program for homeless clients at the downtown clinic. The health department receives state and federal grant funds to provide healthcare services for the homeless at the downtown clinic. In October 2008, the council enacted Ordinance No. BL2008-300 approving a contract with UNHS for privatization of these medical services to the homeless. The health department currently provides substance abuse treatment for homeless persons, and desires to continue to provide such services at the homeless clinic facility, now under the operation of UNHS.

Pursuant to the contract, UNHS will make space available to the health department at the downtown clinic for the substance abuse treatment program. The health department agrees to operate this program until March 31, 2009 or until UNHS is licensed as a substance abuse treatment facility and has the adequate staff in place, whichever comes first. The contract specifies that there is no compensation for either party for performance of the contract. The term of this agreement is from November 1, 2008 through March 31, 2009, with a possible extension of two additional one-year terms.

**RESOLUTION NO. RS2008-547** (BENNETT & FORKUM) – This resolution approves a grant in the amount of \$1,546,019 from the U.S. department of homeland security to the Mayor's office of emergency management to support port-wide risk management for the Port of Nashville. The Port of Nashville has traditionally been defined by the U.S. Coast Guard as ten miles of the Cumberland River extending in each direction from downtown Nashville. These funds will be used for protection of critical port infrastructure from terrorist attacks through the development of a port-wide risk management/mitigation plan. A portion of the funds will be awarded to subrecipients for specific projects approved by the federal government. There is a required local match \$309,203.80 to be provided by the subrecipients.

**RESOLUTION NO. RS2008-548** (BENNETT & FORKUM) – This resolution approves an application for a grant in the amount of \$10,000 from the National Association of Drug Diversion Investigators to the Metropolitan Nashville police department for the investigation of prescription drug diversion cases. These funds will be used by the police department's diversion investigators to reduce prescription drug abuse in Davidson County. The funds will be used to purchase surveillance equipment and training materials, and to pay overtime for detectives working on the prescription drug diversion cases. This is for the continuation of a grant approved by the council in January of this year.

**RESOLUTION NO. RS2008-549** (FORKUM & TOLER) – This resolution authorizes the Metropolitan Government to participate in the Local Government Energy Efficiency Loan Program to be administered by the state department of economic and community development. The Local Government Energy Efficiency Loan Program offers low interest loans to local governments to fund energy efficiency-related projects in government buildings. Metro water services is borrowing \$330,000 for the K.R. Harrington water plan energy savings project. This loan will be repaid in annual installments over the next seven years, and will bear interest at a maximum rate of three percent per annum, which may be reduced at a later date. The equipment to be installed will consist of raw water variable frequency drives, which are estimated to save \$42,500 per year in reduced energy consumption.

**RESOLUTION NO. RS2008-550** (TOLER) – This resolution approves an application for a grant from the Coca Cola Company for 75 special event recycling bins. These bins will be placed at various special events around Nashville, such as Titans football games, Sounds games, and the Earth Day celebration.

**RESOLUTION NO. RS2008-551** (TOLER, BURCH & OTHERS) – This resolution approves an amendment to a grant from the state emergency management agency to the Metropolitan Government to fund the purchase and demolition of four homes located in a repetitively flooded area. This grant in the amount of \$362,285, for the purpose of acquiring and demolishing four homes located in the Seven Mile Creek floodplain, was approved by the council in March 2008. The total estimated cost for this acquisition project is \$853,669, with \$491,384 of the cost provided by the stormwater division of Metro water services. The term of the grant is from November 14, 2007 through November 14, 2010.

**RESOLUTION NO. RS2008-551** (continued)

The homes to be acquired and the estimated cost for each home are as follows:

- 4802 Milner Drive      \$203,710
- 4806 Milner Drive      \$191,100
- 4810 Milner Drive      \$241,670
- 373 Wimpole Drive      \$138,970

This resolution approves an amendment to the previous grant contract to allow for an additional year extension at the discretion of the state.

**– BILLS ON SECOND READING –**

**ORDINANCE NO. BL2008-249** (GOTTO) – This ordinance amends the dumpster collection restrictions contained in the Metropolitan Code to extend the distance from residential structures for which nighttime dumpster collection is prohibited. The Code currently prohibits the emptying of trash dumpsters located within 300 feet of a residential structure between the hours of 11:00 p.m. and 7:00 a.m. This ordinance would extend the distance to 1,000 feet.

There is a proposed amendment for this ordinance that would limit its application to the general services district.

**ORDINANCE NO. BL2008-298** (TYGARD & WILHOITE) – This ordinance amends the Metropolitan Code to provide a minimum pension benefit for employees with at least five years credited service. In October 2001, the council amended the code to change the employee pension system from a ten year required vesting period to five year vesting. The 2001 ordinance also added a provision that allows a vested employee who dies and is survived by a dependent child or children, but does not have a surviving spouse, to have a benefit paid to this surviving child or children the same as a spouse would have been paid. However, the 2001 ordinance did not change the minimum pension benefit provisions to allow the benefit after five years credited service. The minimum pension benefit is set at an amount of \$150 per month for an employee with ten years credited service, and increases by fifteen dollars for each additional year of service up to a maximum of \$300 per month for twenty or more years of service.

At least one situation has arisen where a former employee with five years credited service died with a dependent child and no surviving spouse after leaving the employment of the Metropolitan Government. Since this employee had less than ten years credited service, his minor child dependent did not qualify for the minimum pension benefit.

This ordinance would establish a minimum pension benefit of \$75 per month for an employee with five years of service, which would increase by fifteen dollars a month for each additional year of service. This ordinance must be deferred until the council receives an actuarial study from the employee benefit board detailing the estimated cost for this change to the pension system.

**ORDINANCE NO. BL2008-306** (JAMESON & DUVALL) – This ordinance amends the Metropolitan Code to add noise restrictions within the downtown area. The noise ordinance was amended by Ordinance No. BL2008-259 in September 2008 to add a “plainly audible” standard for determining violations and adding certain restrictions pertaining to motor vehicle noise. However, Ordinance No. BL2008-259 retained the exemption for the downtown area from the noise ordinance restrictions.

This ordinance would basically set a maximum decibel of 85 Db(A) for downtown properties, with certain exceptions. For condominium and apartment units, the decibel measurement (continued on next page)

**ORDINANCE NO. BL2008-306** (continued)

would be taken from the interior of another residential unit in the same complex (if the sound is coming from a residential unit), or from the boundary line of the nearest residentially-occupied property at street level (for noise from bars, nightclubs, etc.). The ordinance would not apply to special events in the downtown area for which a permit has been issued, or to any outdoor entertainment facilities owned by Metro (LP Field and Riverfront Park). The ordinance would also prohibit amplified sound from businesses to attract customers greater than 85 Db(A) from any point within the boundary line of the nearest residentially-occupied property.

This ordinance is the result of a task force made up of downtown residents that began looking at this issue in September 2006. The task force toured downtown at night and took noise measurements at various locations. The 85 decibel limitation is greater than the noise ordinance in Las Vegas and New York City, and is in line with the noise ordinance in Austin, Texas, which is comparable to downtown Nashville as it pertains to the mixture of live music venues and residential living. An example of noise at approximately 85 Db(A) would be a heavy truck passing by 50 feet away. As another example, the noise emitted from a vacuum cleaner ranges from 60 to 85 Db(A).

**ORDINANCE NO. BL2008-307** (COLE, JAMESON & OTHERS) – This ordinance amends the Metropolitan Code to prohibit the parking of motor vehicles within bicycle lanes. The code currently provides that “motor vehicles should not be parked, stopped or left standing in bicycle lanes unless such activity is otherwise permitted.” However, the department of law has opined that this provision alone is insufficient to allow police officers to ticket vehicles parked in bike lanes unless there is additional signage stating that parking is not allowed.

This ordinance would expressly prohibit parking in the bicycle lanes unless the traffic and parking commission has determined that parking within the bicycle lane in specific locations is appropriate during certain hours, and signs have been erected in the designated areas allowing parking in the bicycle lane. Otherwise, parking in a bicycle lane would be punishable by a fine of fifty dollars, which is to be assessed through the issuance of a parking citation by the police department.

This ordinance has been approved by the traffic and parking commission.

**ORDINANCE NO. BL2008-330** (MOORE) – This ordinance amends the Metropolitan Code to broaden the required qualifications for hiring a new executive director of the Metropolitan historical commission. The Code currently provides that the director is to possess a degree in history, preferably with postgraduate training, and must have at least five years’ experience in “historical work”. However, the duties of the executive director now require that such person be more knowledgeable in zoning and land use regulations than history. This ordinance amends the criteria to require that the executive director have a degree in history, historic preservation, architectural history, or some related field such as land use planning or architecture. Further, the executive director would be required to have five years’ experience in historic preservation or a related field.

**ORDINANCE NO. BL2008-331** (DURBIN) – This ordinance amends the Metropolitan Code provisions pertaining to smoking in Metropolitan Government buildings to bring our standards in line with the state law provisions governing smoking in public buildings. Our existing Code provisions prohibit smoking in Metro buildings unless the rooms are adequately ventilated to expel secondhand smoke or have a mechanical device to remove the smoke. Our ordinance also exempts certain areas of the convention center from the smoking ban.

In June 2007, the Governor signed the Tennessee Non-Smoker Protection Act, which bans smoking in almost all enclosed public places in Tennessee. This ordinance amends the Metro Code to be consistent with the new state law. Smoking will be prohibited in all Metro buildings and in all non-enclosed areas of public spaces where smoke can infiltrate into a government building.

**ORDINANCE NO. BL2008-332** (HODGE) – This ordinance amends the Metro fire code to exempt certain group homes from the sprinkler installation requirement. The council approved several local amendments to the National Fire Prevention Association fire code and the Life Safety Code when the latest versions were adopted pursuant to Ordinance No. BL2007-1390 in April 2007. These local amendments are more restrictive than what is included in the national code and required by the state. One of these more restrictive local amendments requires group homes to retrofit existing homes with automatic sprinkler systems. Specifically, Ordinance No. BL2007-1390 deleted a provision contained in the 2006 Life Safety Code that would have exempted small group homes from the sprinkler installation requirement when all occupants have the ability to move to a point of safety in a timely manner.

The council office and the department of law have discussed some concerns regarding the sprinkler requirement for group homes in light of the federal Fair Housing Act, and recommend that this ordinance be enacted to address the issue. This ordinance would eliminate the sprinkler requirement for existing and converted small board and care facilities, provided all occupants have the ability as a group to move to a reliable point of safety in a timely manner, as determined by the fire marshal. Sprinklers would still be required for newly-constructed group homes and those homes in which the residents cannot quickly move to a point of safety.

The council office strongly encourages the Council to enact this ordinance, as a failure to do so would likely subject the Metropolitan Government to costly litigation. The council office would point out that violations of the Fair Housing Act can result in monetary damages, injunctive relief and attorney fees.

**ORDINANCE NOS. BL2008-335 through BL2008-337** – These three ordinances abandon water and sewer lines and easements that are no longer needed by the department of water and sewerage services. The ordinances provide that future amendments may be approved by resolution of the council. These ordinances have been approved by the planning commission.

**Ordinance No. BL2008-335** (TOLER) abandons an 8" sanitary sewer line and the 4", 8" and 10" water lines, along with the corresponding easements, at phase three of the Carothers Crossing development on Carothers Road, east of Battle Road.

**Ordinance No. BL2008-336** (TOLER) abandons an 8" sanitary sewer line and easement at 3717 West End Avenue. The existing sewer line and easement is to be replaced with a new line and easement on the property.

**Ordinance No. BL2008-337** (GILMORE & TOLER) abandons an 8" sanitary sewer line and easement and approves the installation of a manhole at 1220 Laurel Street.

**ORDINANCE NO. BL2008-338** (GILMORE, LANGSTER & HARRISON) – This ordinance authorizes the mayor to submit the annual update to the five year consolidated plan for housing and community development programs for the Metropolitan Government to the U.S. department of housing and urban development (HUD). This five year consolidated plan was prepared by the Metropolitan development and housing agency (MDHA) and is administered by MDHA. The plan includes the allocation of funds received from HUD for community development block grants (CDBG), the HOME investment partnerships program (HOME), the emergency shelter grant program (ESG), and the housing opportunities for persons with AIDS (HOPWA). The current five year plan was approved by the council in December 2004.

**CDBG** funds are based on new entitlement funding in the amount of \$4,900,000, with program income of \$470,000 during the coming year. These CDBG funds are to provide matching funds for affordable housing activities and to provide neighborhood activity funds for youth initiative programs and community projects. A large portion of the CDBG funds are targeted at specific neighborhood strategy areas (NSAs) and commercial district areas. The CDBG funds will be used as follows:

- \$540,000 for administration of the program
- \$440,000 for planning
- \$325,000 for property acquisition
- \$1,385,000 for housing rehabilitation
- \$1,185,000 for the NSAs and commercial district target areas
- \$500,000 for special neighborhood activities
- \$400,000 for economic development loans
- \$300,000 for property acquisition
- \$175,000 for affordable housing services
- \$445,000 for Section 108 repayments

The NSAs included in the plan are Jefferson Street, SoBro, Booker, Bordeaux Hills, Buchanan Street, Cameron, Cass, Cleveland Park, Martin Street, Murfreesboro Road, Salemtown and South Inglewood. Maps that set out the boundaries for all of the NSAs and commercial district target areas are on file with MDHA.

**HOME** funds are to provide a mixture of owner-occupied and rental rehabilitation, new housing ownership programs, new multi-family housing opportunities, down payment assistance and housing assistance through non-profit community housing development organizations. A required twenty-five percent local match must be provided from repayments of urban development action grants (UDAG). UDAGs are federal loans made to qualifying programs, essentially in the downtown area, which are repaid to the Metropolitan Government to be expended in approved programs that target persons living in pockets of poverty. The annual update shows proposed HOME program allocations of \$3,720,000 for next year.

**ORDINANCE NO. BL2008-338** (continued)

**ESG** funds are allocated to local homeless shelter providers to help cover operational expenses, prevention services, and essential services. Most of the funds are distributed to subgrantee shelters to cover their operational costs. Local matching funds required under this program must be provided by the local non-profits that participate in the program as subgrantees. The consolidated plan update shows a proposed allocation of \$220,000 in ESG funds next year.

The **HOPWA** program provides housing related assistance for low-income persons with AIDS and their families. The plan shows proposed allocations in the amount of \$795,000 for this program.

This ordinance also includes an amendment to the annual update to the consolidated plan for HUD's new Neighborhood Stabilization Program. This program provides emergency assistance to state and local governments for the acquisition and redevelopment of foreclosed properties. This one-time allocation will provide \$4,051,398 in funding to acquire foreclosed properties that would otherwise become a source of blight. An application for the federal funding for this program is the subject matter of Resolution No. RS2008-534.

The ordinance specifically provides that all requested program expenditures associated with the CDBG program and the Neighborhood Stabilization Program must be approved by resolution of the council.

There is a housekeeping amendment for this ordinance adding a prohibition on the use of these program funds to acquire property by eminent domain without approval by the council, which is already restricted by federal law.

**ORDINANCE NO. BL2008-339** (MATTHEWS, TOLER & FORKUM) – This ordinance authorizes the director of public property administration to acquire easements by negotiation or condemnation for two parcels of property on Cato Road for the Cato Road Bridge public works project. The easement costs will be paid from capital funds set aside for bridge maintenance projects.

This ordinance has been approved by the planning commission.

**ORDINANCE NOS. BL2008-340 & BL2008-341** – These two ordinances accept contributions from private developers for infrastructure improvements to be made by the department of public works that will enhance their developments. These funds will be deposited into a fund designated by the director of finance as a contribution towards the improvements.

**Ordinance No. BL2008-340** (TOLER & FORKUM) accepts \$110,000 from Murphy Development, LLC for transportation infrastructure improvements in the Swiss Avenue area. These improvements are needed as a result of the Swiss View and Hermitage Manor developments.

**Ordinance No. BL2008-341** (TOLER & FORKUM) accepts \$133,500 from Centex Homes for transportation infrastructure improvements in the southeast infrastructure deficiency area as a result of a 133 unit development on Pettus Road.

**ORDINANCE NOS. BL2008-342 & BL2008-343** – These two ordinances abandon portions of Metro right-of-way no longer needed for government purposes. The ordinances do retain all Metro easements. These two ordinances have been approved by the traffic and parking commission and the planning commission.

**Ordinance No. BL2008-342** (DURBIN) abandons a portion of Acklen Avenue from Alley No. 436 westward to the dead end. This closure has been requested by Littlejohn Engineering for the expansion of a pharmacy. Consent of Belmont University, the owner of the affected properties, is on file with the department of public works.

**Ordinance No. BL2008-343** (GILMORE & LANGSTER) abandons a portion of Alley No. 616 from Spruce Street to Jo Johnson Avenue. This closure has been requested by Spruce Street Baptist Church for the stated purpose of “community safety and beautification”. Consent of the affected property owners is on file with the department of public works.

**– BILLS ON THIRD READING –**

**ORDINANCE NO. BL2007-44** (CRADDOCK & RYMAN) – This zoning text change amends the code provisions pertaining to mobile vendors. In January 2007, the council enacted Ordinance No. BL2006-1283, which was intended to prohibit mobile vendors from being located outdoors. The code defines a “mobile vendor” as a person who peddles, vends, sells, displays, or offers for sale goods, wares or merchandise at a temporary location and/or on a temporary or occasional basis. Vendors selling only food and/or beverages, vendors selling living plants and agricultural products, and licensed street vendors are expressly not to be considered “mobile vendors”. Under Ordinance No. BL2006-1283, mobile vendors within the commercial zoning districts are currently required to be located within a permanent, enclosed structure.

Since the enactment of Ordinance No. BL2006-1283, certain temporary establishments were able to find a way around the mobile vendor ordinance by maintaining a storefront location where merchandise is for sale, but conducting the vast majority of their sales outdoors. This ordinance is a further attempt to regulate mobile vendors operating on commercial property.

First, this ordinance deletes the term “mobile vendor” entirely. Instead, these type vendors would be referred to as “outdoor vendors”, which would include the sale, display or offering for sale of merchandise outside of a fully-enclosed structure. As with the prior ordinance, the sale of food and/or beverages, the sale of living plants and agricultural products, and street vendors licensed by the county clerk would not fall under the new regulations for outdoor vendors.

Second, the ordinance designates outdoor vending as a use permitted with conditions in the mixed-use and commercial districts. Outdoor vending would be permitted by right in the industrial districts. The conditions that would be applicable to outdoor vendors in commercial districts are as follows:

1. No outdoor vending would be allowed except as part of a permanent, enclosed retail establishment on the same property and under the same name and ownership.
2. The outdoor vending area could not exceed fifteen percent of the total square footage of the ground level of the permanent enclosed structure.
3. No outdoor vending activity could take place within 300 feet of the public right-of-way.
4. All outdoor vending activity would be required to take place on the side or rear of the permanent enclosed structure, and could not be visible from the public right-of-way. Further, fencing or other screening material would be required to shield the outdoor vending area from any residential property.

This ordinance would essentially prohibit any outdoor vendors from selling goods on property where they do not maintain a permanent storefront location, and would prohibit merchants from selling or displaying items in front of the store.

**ORDINANCE NO. BL2008-285** (JERNIGAN) – This zoning text change would allow for a waiver of the board of zoning appeals application fee for applications initiated by members of council on behalf of their constituents. The zoning code currently provides the authority for fees to be charged by the board of zoning appeals for applications for a variance, a special exception use, a change to a nonconforming use or structure, or any other application in which the board is required or requested to act. Such fee schedules must be approved by the council by resolution.

**ORDINANCE NO. BL2008-285** (continued)

This ordinance would allow members of council to file applications with the board of zoning appeals on behalf of their constituents without paying an application fee, provided the purpose of the application is not for the benefit of an individual property owner or development.

**ORDINANCE NOS. BL2008-299 & BL2008-327** (PAGE) – These two ordinances amend the Metro zoning code to create a new land use for after hours establishments, and to add locational standards and parking requirements for this use. There is currently no specific use in the zoning code for after hours clubs. The operation of these establishments is regulated by the department of codes administration pursuant to another chapter in the Metro code, but these regulations do not pertain to the location of the establishments. Since there is no specific use in the zoning code, the zoning administrator considers an after hours establishment to be a “bar/nightclub”, which is allowed in the CS, CA, CF and CC zoning districts.

**Ordinance No. BL2008-299**, as amended, creates a new use for after hours establishments, which would be permitted with conditions in the CS, CA, CF, CC, IR and IG zoning districts. The ordinance defines after hours establishment as “a commercial establishment open to the general public after the hour of 3:00 a.m. that allows patrons to bring alcoholic beverages onto the premises (BYOB).” This definition is consistent with the definition in the regulations pertaining to the operation of these establishments.

As stated above, this use would be permitted with conditions, meaning no such establishments would be permitted by right anywhere in Davidson County. The applicable conditions pertain to the location of the business. At a minimum, after hours clubs would be required to have driveway access on an arterial street. Further, such clubs could not be located within 500 feet from the property line of any residential property. The 500 feet setback from residential property is the same setback the zoning code requires for airports, and is greater than the setback for sanitary landfills.

According to information provided by the planning department, there are currently fourteen after hours clubs in Nashville, ten of which are in the downtown area. The amended version of this ordinance exempts the downtown area from the driveway requirement and setback.

This ordinance has been approved by the planning commission.

**Ordinance No. BL2008-327** is a companion bill to Ordinance No. BL2008-299 that would add parking requirements for after hours clubs. Such establishments would be required to have one parking space per 75 square feet of the building. The ordinance would also disqualify after hours establishments from the ten percent parking reduction available to businesses located within 660 feet of a MTA bus stop. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2008-308** (FORKUM, TYGARD & OTHERS) – This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2008-2009. State law allows county legislative bodies to appropriate funds for a tax relief program and establish guidelines for participation in the program and the disbursement of such funds. The council appropriated \$2,047,700 in the current fiscal year's operating budget for a property tax relief program for the elderly, which is approximately \$800,000 more than was appropriated for the last fiscal year.

This ordinance authorizes the Metropolitan trustee to establish rules and procedures for implementation of the program and directs the trustee to disburse the funds accordingly to all eligible taxpayers. All persons who qualify for the state property tax relief program and whose income does not exceed \$24,790 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2009.

This tax relief program has been in place for a number of years. This program is different from the tax freeze program for senior citizens.

**ORDINANCE NO. BL2008-309** (JAMESON & FORKUM) – This ordinance approves an agreement between the Metropolitan Government and MPD Credit Union for the use of office space at the criminal justice center. Pursuant to this agreement, MPD Credit Union will have a license to use 132 square feet as a credit union branch office. MPD Credit Union will be responsible for maintaining the area and will be liable for any damage. There is no rental fee for the use of space. The credit union agrees to indemnify Metro from claims as a result of its

use of the space, and will be required to maintain general liability insurance with a policy limit of not less than \$2 million naming Metro as an additional insured. The term of this agreement will expire on July 31, 2013.

This agreement has been approved by the planning commission.

**ORDINANCE NO. BL2008-310** (BENNETT & FORKUM) – This ordinance approves a lease agreement between the Metropolitan Government and the state administrative office of the courts for the lease of Suite 708 in the Metro courthouse. This space will be used by Judge Walter Kurtz, who recently took senior status. The state agrees to pay Metro \$500 per month for lease of the office space. Either party may terminate the lease upon 60 days written notice. The term of the lease is for one year, with a possible extension of three additional one year terms through March 31, 2012.

This lease agreement has been approved by the planning commission.

**ORDINANCE NO. BL2008-311** (FORKUM & TOLER) – This ordinance approves amendments to agreements with the state department of environment and conservation (TDEC) regarding the maintenance of closed solid waste facilities. State law requires that all owners of closed landfills either put up a performance bond or execute a contract agreeing to pay a penalty if the site is not adequately maintained. The Metropolitan Government has entered into contracts with TDEC in lieu of a performance bond as assurance of financial responsibility for our solid waste facility maintenance duties. The ordinance modifies the financial responsibility amounts,

**ORDINANCE NO. BL2008-311** (continued)

which results in an overall decrease in the amounts last changed in August 2007. The modifications to financial assurance for the various closed facilities are as follows:

- Metro compositing/mulching facility – increase from \$87,276 to \$89,623;
- Bordeaux sanitary landfill – decrease from \$2,615,327 to \$2,552,008;
- Thermal ash landfill – decrease from \$408,527 to \$397,475;
- Thermal ash landfill ext – increase from \$1,254,912 to \$1,288,795;
- Due West Superfund site – decrease from \$2,034,512 to \$2,012,056.

These amounts would only be paid if Metro failed to adequately maintain the sites. Future amendments to this ordinance may be approved by resolution of the council.

**ORDINANCE NO. BL2008-312** (GILMORE) – This ordinance abandons a portion of the right-of-way for Alley Nos. 86, 87 and 142 between 7<sup>th</sup> and 8<sup>th</sup> Avenues adjacent to Drexel Street. These alleys are no longer needed for government purposes. These closures have been requested by the Metro Development and Housing Agency for the benefit of the Campus for Human Development expansion project, as well as to have a controlled point of access for homeless services. The ordinance retains all Metro easements.

This ordinance has been approved by the traffic and parking commission and the planning commission.