

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **March 17, 2009**

RE: **Analysis Report**

Balances As Of:	<u>3/11/09</u>	<u>3/12/08</u>
<u>GSD 4% RESERVE FUND</u>	* \$28,317,051	\$21,891,153
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$19,996,217	\$23,492,103
USD	\$13,510,632	\$15,945,572
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	\$52,554,640	\$61,509,540

* Assumes estimated revenues in fiscal year 2009 in the amount of \$9,046,697

– RESOLUTIONS –

RESOLUTION NO. RS2009-659 (FORKUM) – This annual resolution calls the Metropolitan board of equalization (MBE) into regular session convening June 1, 2009, and adjourning June 19, 2009, and calls the MBE into special session convening June 22, 2009, to complete any unfinished business regarding appeals on pro-rated assessments. The special session is not to extend beyond May 31, 2010. The MBE always meets during the month of June to hear appeals of assessments on real property. Historically, the MBE has been required to have special sessions to conclude their work due to the large number of appeals. Given the state of the economy and the fact that this is a reappraisal year, it is likely that there will be an even greater number of appeals this year.

State law authorizes county legislative bodies to fix the number of days the board of equalization is to sit in regular session and to call the board into special session to complete unfinished business.

RESOLUTION NO. RS2009-660 (FORKUM) – This resolution appropriates \$165,000 as a supplemental appropriation from the undesignated fund balance of the community education enterprise fund to balance the fiscal year 2009 operating budget for the community education alliance. The funding for community education alliance is made up of three parts: (1) a subsidy from the Metropolitan Government of \$597,100; (2) a subsidy from the board of education of \$215,000; and (3) revenues from class registrations. The revenues for community education are currently well short of projections, which has caused the community education alliance to operate at a substantial deficit. The primary cause of the revenue shortage was the failed aquatics program the community education alliance took over from the board of education two years ago. Instead of realizing a projected \$400,000 in revenue for the aquatics program, the community education alliance realized a total of \$21,842 through January 31, 2009.

This supplemental appropriation will enable the community education alliance to continue operation, sans the aquatics program, for the remainder of the fiscal year without laying off any of the community education site coordinators.

RESOLUTION NO. RS2009-661 (BARRY & FORKUM) – This resolution establishes a task force to study the changing role of community education and determine how community education may best serve Nashville's residents. The existing community education model in Nashville was created by the council by ordinance in 1976. At that time, the primary focus of community education was to provide a mechanism for adults to receive their high school equivalency diploma. Today, the community education alliance provides a wide variety of educational, social, and recreational programming. Concerns regarding financial accountability for community education and reduced participation in the alliance's programs have raised questions about the viability of this thirty year old governance model, and how best to ensure the most-needed community education services are being provided.

In response to these concerns, this resolution establishes a task force to recommend a new governance model for community education. The task force will consist of nine members to be appointed as follows:

- The chair of the education committee, or her designee.
- The chair of the budget & finance committee, or his designee.
- The chair of the board of public education, or his designee.
- The mayor, or his designee.
- The director of schools, or his designee.
- The chair of the community education alliance.
- Three persons appointed by the vice mayor representing key stakeholder groups in community education.

The task force is to submit its recommendations to the council and the board of education regarding necessary changes in the community education governance model not later than May 1, 2009. As a second step, the task force is to study and recommend programming changes for community education to better meet the needs of Nashville.

RESOLUTION NO. RS2009-662 (FORKUM) – This resolution approves a grant in the amount of \$55,000 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to provide training to participants in the plumbers and pipefitters union apprenticeship program. These funds will be used to provide training to pre-apprentices working toward apprenticeship in plumbing, pipefitting, welding, backflow prevention, medical gas installation, and HVAC installation/repair. The union will be responsible for a \$65,000 match for the grant. The term of the grant is from February 2, 2009 through December 31, 2009.

RESOLUTION NO. RS2009-663 (JAMESON & HOLLEMAN) – This resolution adds the National Green Building Standard as a protocol for sustainable design development as part of the “Green Permit” provisions in the Metro Code. In June 2008, the Council enacted Ordinance No. BL2008-217 authorizing the department of codes administration to issue a “Green Permit” to buildings meeting the sustainable design protocols provided in the ordinance. Ordinance No. BL2008-217 specifically designated the U.S. Green Building Council’s LEED certification program and the “EarthCraft House” green building program as the two sustainable design protocols for the green permit program. However, the ordinance included a provision allowing for additional green building certification programs subject to approval of the Council by resolution.

Since the enactment of the ordinance establishing the green permit, the National Association of Home Builders and the International Code Council, Inc., jointly developed the National Green Building Standard as an American National Standards Institute (ANSI) consensus standard for green residential development. The director of the department of codes administration has recommended that the National Green Building Standard be added as a permissible standard for the “Green Permit” program.

RESOLUTION NO. RS2009-664 (MCGUIRE & FORKUM) – This resolution approves a grant in the amount of \$14,800 from the March of Dimes Foundation to the board of health for a

program addressing the health of women in the preconception period. The term of the grant is from March 1, 2009 through March 1, 2010.

RESOLUTION NO. RS2009-665 (FORKUM & MCGUIRE) – This resolution approves an annual grant in the amount of \$471,900 from the state department of health to the Metropolitan board of health for implementation of the state immunization program. The term of this grant is from January 1, 2009, through December 31, 2009. This grant, comprised of \$131,900 in state funds and \$340,000 in federal pass-through funds, will be used to pay the salaries and benefits of health department employees who provide the immunization services.

RESOLUTION NO. RS2009-666 (FORKUM) – This resolution approves a grant in the amount of \$23,600 from Vanderbilt University to the Metropolitan board of parks and recreation to fund part-time positions to assist with parent training on obesity prevention and school success. Vanderbilt Medical Center has received a Project Diabetes grant from the state of Tennessee and is seeking to use two Metro parks' employees to serve in an advisory capacity on the project. The term of this grant is from July 1, 2008 through June 30, 2009.

The resolution provides that the grant is from "the Monroe Carrell, Jr., Children's Hospital at Vanderbilt." However, the grant contract is with Vanderbilt University through its medical center.

RESOLUTION NO. RS2009-667 (FORKUM) – This resolution approves a grant in the amount of \$15,000 from the Friends of Beaman Park to the Metropolitan parks department for part-time staffing at Beaman Park. Friends of Beaman Park received a grant from the U.S. Department of Agriculture for the non-native invasive plan management and landscape restoration program at Beaman Park. This resolution simply accepts the funds for the purpose of hiring a part-time naturalist.

There is an error in the resolution, as it refers to the non-native invasive "plant" management rather than "plan" management.

RESOLUTION NO. RS2009-668 (FORKUM) – This resolution authorizes the director of public property administration to exercise an option to purchase 14.67 acres of property from the Harpeth Youth Soccer Association (HYSA). This property, which is located along the Harpeth River in the Bellevue area, is to be acquired at a cost to Metro of \$18,000. Metro proposes to lease the property back to HYSA for recreational and youth soccer activities at an undisclosed rental amount.

In February 2005, the Council enacted Ordinance No. BL2004-501, which accepted a quit claim deed from HYSA for this property to essentially remove the property from the tax rolls while continuing to allow HYSA to use the property for youth soccer activities. Apparently, HYSA failed to deed the property to Metro, and thus has continued to incur property taxes. HYSA currently owes \$17,709.15 in current and back property taxes to Metro. Thus, Metro will basically be purchasing the property for the approximate amount of taxes owed. Upon receiving the purchase price, HYSA is to pay the taxes owed for the current year plus all back taxes.

The Metro Code allows for the acquisition of property through the exercise of a negotiated option to sell at a fixed price, which is subject to approval of the council by resolution.

This resolution has been approved by the board of parks and recreation and the planning commission.

RESOLUTION NO. RS2009-669 (BENNETT & FORKUM) – This resolution approves an application for a grant in the amount of \$282,331 from the U.S. department of justice to the Metropolitan police department for the gang resistance education and training (GREAT) program. The GREAT program is a school-based curriculum taught by police officers to middle school students. The primary goal of GREAT is to prevent youth delinquency, violence and gang membership.

GREAT Nashville is applying to be the GREAT Southeast Regional Training Center to police officers from across the region. These grant funds will be used to pay the salaries of our police officers providing the training, as well as travel expenses, equipment and supplies.

RESOLUTION NO. RS2009-670 (BENNETT & FORKUM) – This resolution approves an amendment to a grant in the amount of \$150,000 from the U.S. department of justice to the Metropolitan police department for the gang resistance education and training (GREAT) program by extending the term of the grant through June 30, 2009.

RESOLUTION NO. RS2009-671 (BENNETT) – This resolution approves an intergovernmental agreement between the Metropolitan police department and the U.S. Department of the Treasury to allow police department personnel to access financial information under the Bank Secrecy Act. The Financial Crimes Enforcement Network, which is a bureau within the Department of Treasury, maintains a database of certain financial information that is reported to the federal government, including currency transaction reports filed by financial institutions, foreign bank account reports, and suspicious activity reports. This agreement will allow the police department to make specific inquiries about financial activity in the course of criminal investigations. The agreement includes a number of provisions regarding the confidentiality of financial information included as part of the network, which the police department agrees to abide by. There is no cost to Metro for access to this system.

RESOLUTION NO. RS2009-672 (BENNETT & FORKUM) – This resolution approves a grant in the amount of \$1,597,383.91 from the Tennessee emergency management agency to the Mayor's office of emergency management to support the ongoing efforts to prevent, respond to, and recover from incidents of terrorism. These federal pass-through funds are to be used to pay for training exercises, planning, management, and equipment purchases allowable under the Homeland Security grant program. The term of the grant is from September 1, 2008 through June 30, 2011.

RESOLUTION NO. RS2009-673 (TOLER & FORKUM) – This resolution approves a grant in the amount of \$46,178 from the state emergency management agency to the Metropolitan Government associated with the purchase and demolition of four homes located in a repetitively

flooded area. The council approved a grant in 2002 to fund a portion of the acquisition and demolition costs for these homes on Wimpole Drive. The grant was subsequently amended in 2008 to provide for a total of \$362,285 in federal pass-through funds.

This resolution accepts an additional \$47,178 to cover cost overruns associated with the purchase and demolition of these properties. The term of the grant is from October 2, 2008 through June 30, 2009.

RESOLUTION NO. RS2009-674 (TOLER & FORKUM) – This resolution authorizes the director of public property administration to exercise options to purchase two flood prone properties located on San Marcos Drive. This purchase is part of the department of water services' on-going program to purchase flood prone properties using federal grant funds.

The purchase price for the home located at 5405 San Marcos Drive is \$340,000. This property was purchased by the current owner in 1984 for \$101,000. The home located at 5409 San Marcos Drive is being acquired at a purchase price of \$335,000. The current owners purchased the property in 2002 for \$215,200.

This resolution has been approved by the planning commission.

RESOLUTION NOS. RS2009-675 & RS2009-676 (FORKUM & TOLER) – These two resolutions approve supplemental licensing agreements with Nashville and Eastern Railroad Corporation to increase the rental fee paid for water lines located in the railroad right-of-way. The supplemental agreements provide that the fees are to be adjusted every three years hereafter based upon the consumer price index. The rental cost is to be paid from the water and sewer operation and maintenance fund.

Resolution No. RS2009-675 increases the rental fee from \$372.00 to \$416.64 for the water line located at M.P. 3.11 and 3.24.

Resolution No. RS2009-676 increases the rental fee from \$186.00 to \$202.74 for the water line located at M.P. 3.29.

RESOLUTION NO. RS2009-677 (FORKUM) – This resolution authorizes the acquisition of eight easements in conjunction with the department of water and sewerage services' Sanitarium Road sewer extension project. Ordinance No. BL2007-52, which authorized the initial easement acquisitions for this project, allows additional easements to be acquired by resolution.

Easements are to be acquired for the following properties, at a total estimated cost of \$12,000, to be paid from the water and sewer extension and replacement fund:

- 201 Sanitarium Road
- 203 Sanitarium Road
- 124 Sanitarium Road
- Sanitarium Road, unnumbered
- Hospital Road, unnumbered
- Cottage Lane, unnumbered

- 1161 Sioux Terrace
- 1165 Sioux Terrace

This ordinance has been approved by the planning commission.

RESOLUTION NOS. RS2009-678 THROUGH RS2009-680 – These three resolutions authorize the installation, construction, and maintenance of aerial encroachments over the public right-of-way. The applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachments, and are required to post a 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 than ordinance. These resolutions have been approved by the planning commission.

Resolution No. RS2009-678 (Gilmore) authorizes Vanderbilt University to construct telecommunications cable over the public right-of-way from 1231 18th Avenue South to 1025 16th Avenue South. This aerial cable will be attached to 27 Nashville Electric Service poles.

Resolution No. RS2009-679 (Gilmore) authorizes Midtown Millworks, G.P., to install a fire door escape for the building at 1702 Charlotte Avenue, which will extend over the public right-of-way. The fire door escape will have an area of approximately 24 square feet.

Resolution No. RS2009-680 (Jameson) authorizes the Lester L. Turner Trust to install a front awning at the Liggett Building located at 200 Second Avenue South. The awning will extend four feet over the sidewalk at a height of eight feet, nine inches.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2008-352 (CRAFTON) – This ordinance amends the Metropolitan Code to reduce the amount of water/sewer capacity fees for connection to the water and sewer system. In June 2006 and June 2007, the council approved certain “revenue enhancements” necessary to balance the department of water and sewerage services’ operating budget. One aspect of these revenue enhancements included an increase in tap fees and capacity fees. In 2006, a new “capacity charge” of \$1,000 was enacted for all new single-family equivalent connections to the public water supply system. In addition, the 2006 ordinance increased the capacity charge on all new single-family equivalent connections to the public sewer system from \$500 to \$2,000. These fees were re-authorized in June 2007.

Since the enactment of these capacity fee increases, many developers and small businesses have been required to pay substantial sums of money for water/sewer connections, both for new construction and for renovations of existing buildings where water/sewer capacity is expected to increase. In an effort to provide some relief to these businesses, the council approved Ordinance No. BL2008-215 in June 2008 to allow certain water/sewer customers to pay these fees in even monthly installments over a three year period.

This ordinance would abolish the capacity charge for water connections and would reduce the sewer capacity fee from \$2,000 to \$500. This would essentially take the code back to its status prior to June 2006. This ordinance also provides that those customers who were on an installment plan pursuant to Ordinance No. BL2008-215 would have their remaining water capacity fee balance forgiven, and would receive credit for the amount they have paid toward the reduced sewer capacity fee. Any remaining balance on their sewer capacity fee installment plan would be forgiven once the reduced capacity fee has been paid in full.

Substitute Ordinance No. BL2009-407, which is on third reading, would reduce the current capacity charges to \$250 for water and \$750 for sewer.

ORDINANCE NO. BL2009-404 (MURRAY) – This ordinance amends the Metropolitan Code to prohibit former members of Metropolitan Government boards and commissions from being eligible to serve as the director or assistant director of the board or commission upon which he/she served for a period of two years following the date of discontinuation of service. The Charter prohibits members of boards or commissions from holding any other remunerative position within the Metropolitan Government while they are on a board or commission, unless the Charter specifically provides otherwise. However, persons no longer serving on a board or commission are free to apply for any position within the Metropolitan Government.

ORDINANCE NO. BL2009-405 (FORKUM) – This ordinance amends the Metropolitan Code to allow part-time Metropolitan Government employees who are injured during the course and scope of their employment to have their medical expenses paid by the Metropolitan Government. Section 13.12 of the Charter provides that “[a]ny employee of the Metropolitan Government entitled to benefits under any benefit plan established for the Metropolitan Government” is entitled to medical care at Metro’s expense for injuries arising out of and in the course of employment. Title 13 of the Charter defines “employee” as persons who are “regularly employed” by Metro. Since part-time employees are not considered “regularly

employed” and are not entitled to benefits, they are not covered by the Charter in-line-of-duty (IOD) medical care provisions.

This ordinance provides that any employee who is not regularly employed (meaning they work less than twenty hours per week) is entitled to medical treatment at the expense of the Metropolitan Government for accidental injury arising out of and in the course of employment. Such injured part-time employee will be entitled to emergency medical treatment at the nearest hospital. Any further necessary treatment will be chosen from a panel of medical providers authorized by the department of human resources.

No medical treatment will be paid for by Metro for any part-time employee that is injured as a result of willful misconduct, intentional self-inflicted injury, intoxication, illegal drug use, or willful failure or refusal to use a safety device. The human resources department will determine whether a part-time employee’s injury qualifies as a valid IOD claim. Injured part-time employees will be required to notify the department of human resources within 10 after the injury.

The ordinance grants a subrogation interest to Metro for any monetary award or settlement an employee receives from a third party that caused the injury.

This ordinance specifically does not apply to part-time employees of the board of education.

ORDINANCE NO. BL2009-406 (CRADDOCK & GOTTO) – This ordinance amends the Metropolitan Code pertaining to vehicles left running while unattended. The Code currently makes it unlawful to leave a vehicle unattended without first turning off the engine and removing the key from the ignition. The purpose of this law is to prevent auto thefts. The police department has recently cited certain individuals under this Code section for leaving their cars unattended to warm up during periods of cold weather.

This ordinance would allow a vehicle on private property to remain idling while unattended when the outside temperature is below forty degrees.

ORDINANCE NO. BL2009-408 (BENNETT) – This ordinance approves a licensing agreement between the Metropolitan police department and Gaylord Entertainment Company for the use of a boat ramp on the Cumberland River. Gaylord owns a boat ramp at the end of McGavock Pike on the Cumberland River known as the Williams Ferry Boat Ramp. The police department desires to have access to this boat ramp to respond to requests for emergency services. This license agreement simply provides that Metro will have the right to use this boat ramp and to make necessary improvements thereto at our own expense. This agreement may be terminated by either party upon 180 days written notice. Amendments to this license agreement may be approved by resolution of the Council receiving 21 affirmative votes.

This ordinance has been approved by the planning commission.

There is an amendment to correct an error in the caption of this ordinance, as it provides the agreement is with “Opryland Entertainment Company” as opposed to Gaylord.

ORDINANCE NO. BL2009-409 (BARRY & TOLER) – This ordinance abandons an 8-inch water line and easement and accepts a replacement 8-inch line and easement at the Belmont

University School of Pharmacy located at 1510 Acklen Avenue and 1515 Wedgewood Avenue. This ordinance has been approved by the planning commission. Future amendments to this ordinance may be approved by resolution.

ORDINANCE NO. BL2009-412 (MCGUIRE) – This ordinance amends the Metropolitan Code to prohibit the placement and distribution of unauthorized advertisements in publications. This legislation is the result of recent actions taken by a hate group to insert their propaganda into a legitimate publication, which was then distributed in the Green Hills area. This ordinance, modeled after a California law, would prohibit a person from inserting an unauthorized advertisement into a publication and redistributing such unauthorized advertisement to the public.

ORDINANCE NO. BL2009-413 (BENNETT) – This ordinance approves a memorandum of understanding (MOU) between the Mayor’s office of emergency management (OEM) and Belmont University to provide for the creation of a joint information center on Belmont’s campus in the event of a major disaster. The purpose of the MOU is to provide a broad framework to guarantee that a site will be available at Belmont to be used for the coordinated response and recovery efforts in a disaster situation. Belmont agrees to make space available on the campus for media to gather and press conferences to be held regarding the disaster. Belmont will provide work space for 30-40 people, a public address system, phones and internet access. OEM agrees to provide meals to public information officers at the site, portable generators, and IT support. The estimated time frame for activation of the joint information site will be 12 to 24 hours following the emergency, with a total duration of 5 to 10 days.

There is no cost to the Metropolitan Government for entering into this MOU.

ORDINANCE NO. BL2009-414 (FORKUM, LANGSTER & OTHERS) – This ordinance declares Metropolitan Government-owned property located in various council districts 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 proceeds of the sales will be credited to the general fund. This ordinance approves the disposition of the following properties:

<u>Address – Location</u>	<u>Council District</u>
2937 Brick Church Pike	2
2939 Brick Church Pike	2
1701 McKinney Avenue	2
2122 – 15th Avenue North	2
2409 Middle Street	2
2415 18th Avenue North	2
1412 Clay Street	2
1515 Jewel St.	5
830 Stockell Street	5
908 Stockell Street	5
504 Vernon Winfrey	5
1114 Lillian Street	6
1516 Boscobel	6

356 Larkin Springs	9
1106 2nd Ave S.	17
26 Garden Street	17
2130 Canady	17
707 Buchanan	19
1704 17th Ave N.	19
1617-16th Avenue N.	19
1101 Cockrill Street	19
1543 11th Ave N.	19
1518-16th Avenue N.	19
1601 Scovel Street	19
1603 Scovel Street	19
1818 Jefferson Street	19
1514 B 14th Ave N.	19
1514 14th Ave N.	19
1027 Cheatham Pl	19
1017 Monroe Street	19
1001-11th Avenue N.	19
204 Jackson St.	19
1001-2nd Avenue N.	19
1819 Jefferson Street	19
0 D. B. Todd Blvd.	19
705-18th Avenue N.	19
0- 40th Avenue N.	21
2912 Clifton Avenue	21
3218 Torbett Street	21
408-37th Avenue N.	21
407 – 35th Avenue North	21
605-26th Avenue N.	21
5257 Tusculum Ct.	32
5253 Tusculum Ct.	32
5245 Tusculum Ct	32
5241 Tusculum Ct.	32
5237 Tusculum Ct.	32
5918 Temple Road	35
0 Highway 100	35

– BILLS ON THIRD READING –

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

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

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

The council office would point out that this ordinance is likely preempted by federal law. Railroads engage in interstate commerce, and as such fall within the jurisdiction of the U.S. Congress under the Commerce Clause of the United States Constitution. Further, two federal statutes expressly preempt state and local regulation of railroads in the areas of safety and rail facility operations. There is a case currently pending in federal court regarding a local ordinance in Cayce, South Carolina that required railroads to paint their bridges. This South Carolina case is in the early stages of litigation, so we do not know how the court will rule. Thus far, the City of Cayce has not defended the railroad's position that the ordinance is preempted. Rather, the City is arguing that the federal court should abstain from hearing the case until the state court matters are resolved.

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

SUBSTITUTE ORDINANCE NO. BL2009-382 (CLAIBORNE & BENNETT) – This substitute ordinance amends the Metropolitan Code provisions pertaining to the fees charged for the impoundment and boarding of dogs found running-at-large. The Code currently provides that all dogs found running-at-large by the Metro animal care and control division of the health department are to be impounded. The current fees for the impoundment and boarding, which have been left unchanged since 1989, are as follows:

Offense	Impoundment	Boarding
First	\$11.00	\$4.00 per day
Second	\$25.00	\$4.00 per day
Third	\$50.00	\$4.00 per day

According to information provided by the health department, the current fee schedule is insufficient to cover the department's expenses incurred through the impoundment and care of the animals.

This ordinance would increase the impoundment fee to \$50.00 and the boarding fee to \$18.00 per day. These fees would be subject to future modification with approval of the board of health and ratification of the council by resolution. The ordinance provides that three dollars of the daily boarding fee would be used to fund animal education and welfare programs of the animal care and control division. Further, the director of health would be authorized to have impounded dogs implanted with an electronic microchip at the owner's expense, which will allow the animal and owner to be identified if the dog is picked up again. The health department provides the microchip implantation at a cost to the owner of \$25.00, which is approximately one-half the cost of the service at a private veterinary clinic.

These new boarding fees are consistent with the cost to the health department of providing the services. The metropolitan government is prohibited by law from charging fees that exceed our costs to provide the particular service.

ORDINANCE NO. BL2009-383 (FORKUM) – This ordinance approves a contract between the Metropolitan Government and the Tennessee Coalition Against Domestic and Sexual Violence to provide enhanced victim notification services. The U.S. Department of Justice has awarded a grant to the Tennessee Coalition Against Domestic and Sexual Violence to implement a victim information and notification system. Pursuant to this contract, the sheriff's office will provide the Coalition and its contractor (Appriss, Inc.) with access to its facilities for installation of the victim notification system and training of personnel necessary to operate the system. There will be no cost to Metro to participate in this program. The term of the contract is from January 1, 2009 through June 30, 2010.

SUBSTITUTE ORDINANCE NO. BL2009-407 (FORKUM, TOLER & OTHERS) – This ordinance amends various sections in the Metropolitan Code pertaining to the department of water and sewerage services. The ordinance essentially makes three major changes to the Code: a water and sewer rate increase; a decrease in water and sewer capacity fees; and the enactment of a new storm water user fee.

Water and Sewer Rate Increase

The ordinance provides for a water rate increase effective May 1, 2009 of five percent for each of the next three years, and a sewer rate increase of nine percent for 2009, eight percent for 2010, and seven percent for 2011. This will result in an average increase of \$3.76 per month for a typical residential customer in the first year.

The last time a water rate increase was proposed by the administration and approved by the Council was 1995. The last sewer rate increase was in 1996. The last rate adjustment was actually a reduction in 1999, when the Council reduced water rates by twenty-five percent for residential customers, along with a smaller reduction for commercial users. Since 2000, the number of sewer customers has increased by twenty-one percent, while the number of employees in the water department decreased by five percent.

The water department's aging infrastructure is in need of rehabilitation. In fact, over sixty percent of our water infrastructure and fifty percent of our sewer infrastructure is more than forty years old, with some pipes having been in the ground since the late 1800s. In order to satisfy state and federal environmental requirements, a number of capital improvements must be made to our water and sewer infrastructure. Under the current rate structure, there are simply no funds to carry out these infrastructure projects.

The council office would point out that the cities of Birmingham, AL and Atlanta, GA are experiencing a financial crisis as a result of their failure to properly maintain their water and sewer systems. Both cities have been under a court order to repair and rehabilitate their systems. If our rate structure is not modified to address the system's capital needs, the Metropolitan Government runs the risk of incurring substantial fines and penalties from the environmental protection agency (EPA).

This ordinance also makes an adjustment to the late fee calculation, which was modified in 2006 as part of the "revenue enhancements" for the water department. This ordinance reduces the amount of the minimum late fee from \$10.00 to \$2.50, and increases the time in which to pay the bill from 15 to 20 days. The new late fee will be the greater of \$2.50 or five percent of the total net bill.

Finally, the substitute ordinance requires that Metro Water Services, within six months of installing the new customer information system, develop and implement a budget billing program to allow customers to make monthly water payments based upon the average of their monthly water consumption over the previous year. The twelfth month would be a "true up" month to reflect actual usage. This is similar to the program offered by NES and other utilities.

Capacity Fee Reduction

As stated above, in June 2006 and June 2007, the Council approved certain "revenue enhancements" necessary to balance the department of water and sewerage services' operating budget. One aspect of these revenue enhancements included an increase in tap fees and capacity fees for connection to the water and sewer system. In 2006, a new "capacity charge" of \$1,000 was enacted for all new single-family equivalent connections to the public water supply system. In addition, the 2006 ordinance increased the capacity charge on all new single-family equivalent connections to the public sewer system from \$500 to \$2,000. These fees were re-authorized in June 2007.

Since the enactment of these capacity fee increases, many developers and small businesses have been required to pay substantial sums of money for water/sewer connections, both for new construction and for renovations of existing buildings where water/sewer capacity is expected to increase. In an effort to provide some relief to these businesses, the council approved Ordinance No. BL2008-215 in June 2008 to allow certain water/sewer customers to pay these fees in even monthly installments over a three year period.

This substitute ordinance reduces the amount of the water capacity fee to \$250 per unit of flow and reduces the sewer capacity fee to \$750 per unit of flow. The ordinance would also provide a "true-up" mechanism for customers that are on an installment plan pursuant to Ordinance No. BL2008-215. Upon request of the customer, the department would be required to review the customer's account after one year to determine the customer's actual capacity requirement. If the actual capacity requirement differs by ten percent or more from the estimate from which

the fees were based, the department would either refund to or collect the difference from the customer, as the case may be.

Storm Water User Fee

This ordinance adds a storm water user fee to be paid by all property owners in Davidson County, unless otherwise exempted from the fee. The federal Clean Water Act requires local governments to obtain a National Pollution Discharge Elimination System (NPDES) permit for discharges from the municipality’s storm sewer systems. In response to this federal law, the Tennessee General Assembly adopted the Storm Water Management Act to enable municipalities to regulate storm water discharges and to collect storm water user fees. Although this law was enacted in 1993, the Metropolitan Government has never implemented a storm water user fee. In 2002, the personnel and operational activities associated with Metro’s storm water functions were “transferred” by a memorandum of understanding to Metro water services (MWS). This transfer was not officially ratified by the council until 2007.

Since fiscal year 2005, Metro’s storm water program has been funded solely by the ratepayers of Metro water services, as opposed to the Metro general fund. The council office would point out that it is highly questionable from a legal standpoint as to whether the use of ratepayer funds for storm water projects in areas not served by MWS is appropriate.

The state Storm Water Management Act allows municipalities operating or maintaining storm water control facilities to establish a graduated storm water user’s fee to be based on the actual or estimated use of the storm water and/or flood control facilities. The state law requires that the cost be distributed proportionately to all users or classes of users, which may include basing the fee on the user’s impervious surface. The state law specifically exempts properties, including agricultural properties, whose storm water runoff is not discharged into or through the storm water or flood control facilities of the municipality. The state law also requires that the fee structure provide adjustments for users who construct facilities to retain and control storm water runoff. All revenue generated from the storm water user fee must be used exclusively for the municipality’s storm water and flood control facilities.

This ordinance establishes a graduated storm water user fee based upon the impervious area of each property. The ordinance defines “impervious area” as any portion of the property covered by a material that substantially reduces or prevents the infiltration of storm water, excluding natural surface rock areas.

The fee will be added to property owners’ water bills, and will be based upon the following schedule:

Property Type; Impervious Area (Square Feet)	Monthly Fee
All; Less than 400	\$0.00
Residential; Between 400 and 2,000	\$1.50
Residential; Between 2,000 and 6,000	\$3.00
Residential; More than 6,000	\$4.50
Non-Residential; Between 400 and 6,000	\$10.00
Non-Residential; Between 6,000 and 12,800	\$20.00
Non-Residential; Between 12,800 and 51,200	\$40.00
Non-Residential; Between 51,200 and 300,000	\$100.00

Non-Residential; Between 300,000 and 1,000,000	\$200.00
Non-Residential; More than 1,000,000	\$400.00

The ordinance defines “residential property” as any property whose primary use is residential single-family or two-family. All other property would be billed at the non-residential rate.

Properties that do not receive water and/or sewer service from MWS will still be responsible for paying the storm water user fee. This includes surface parking lots and properties served by other utility districts. The ordinance allows MWS to contract with other utilities operating in Davidson County to have the fee included on the bills sent out by the utility district. Otherwise, MWS will bill these properties at least twice a year.

In keeping with state law, the ordinance includes several exemptions and adjustments. The following properties would be exempt from paying any fee:

1. Residential properties in the AG and AR2a districts of which one-half or more of the property is used as a working farm.
2. Properties having no impervious area.
3. Properties for which no storm water is discharged through the public system. “Public system” includes all storm water and flood control facilities, including natural conveyances maintained or improved by Metro that are used to control storm water.
4. Properties within the six satellite cities (Belle Meade, Berry Hill, Forest Hills, Goodlettsville, Lakewood and Oak Hill). By law, we cannot mandate that these satellite cities participate in our program since they each have their own NPDES permit. However, the ordinance provides that any of the satellite cities may opt to have all of their properties included in our program upon equal terms with all other customers by action of their legislative body, and upon executing a form contract included as part of the ordinance.

The ordinance allows properties with a functioning system that substantially limits the discharge of storm water or improves its quality to receive an adjustment to the storm water user fee in proportion to the improvement achieved by the system. The ordinance also provides for up to a fifty percent reduction in the fee to any nonprofit facility (i.e. church or school) that provides a regular education program regarding stewardship of water resources. Each qualifying nonprofit would have to submit an application for the adjustment to MWS and the nonprofit’s water education program would have to be approved by the director of MWS in order to receive the discount.

The substitute ordinance includes an appeal mechanism for users that dispute the calculation of their impervious area. Adjustments after the appeal would be on a prospective basis only. The ordinance also requires Metro Water Services to conduct a periodic review to ensure the impervious area calculations are accurate. This would allow for a recalculation based upon additions to structures, new parking lots, or the removal of impervious surface.

The director of MWS is required to promulgate regulations pertaining to the administration of the storm water user fee program after a public comment period. Such regulations must be approved by the Metro stormwater management committee prior to becoming effective. The director must also submit an annual report listing the properties that have been exempted or granted adjustments, as well as a list of all storm water projects completed within the previous year for each council district, broken down by priority category (A, B and C).