

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **April 2, 2002**

RE: **Analysis Report**

Balances As Of: 3/27/02 3/28/01

GSD 4% RESERVE FUND \$10,056,275 \$9,197,729

CONTINGENCY ACCOUNTS

GSD	\$35,000	\$50,000
USD	\$50,000	\$50,000

GENERAL FUND

GSD	\$63,997,770	\$46,859,389
USD	\$16,682,399	\$11,156,918

GENERAL PURPOSE

<u>SCHOOL FUND</u>	\$10,404,340	\$22,665,532
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SOLID WASTE
DISPOSAL FUND

Solid Waste Activities	\$2,293,382	\$865,517
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- RESOLUTIONS -

RESOLUTION NO. RS2002-994 (DILLARD, HAUSSER & OTHERS) - This resolution appropriates \$250,000 from the reserve for council community police program account to the Metropolitan police department to fund the police department's "community response teams". This money was designated by the council in the budget for the 2001-2002 fiscal year as non-recurring funds to be used for community policing. The "community response teams" are a recommendation from the police department as the best way for their department to utilize these funds to achieve the increased community policing efforts desired by the council.

The "community response teams" will consist of at least one sergeant and five officers who, after meeting with council members and community leaders, will target specific crime related and quality of life problems. It would be possible for these teams to go on approximately 200 six-hour long operations under this program. Each sector commander could use up to 40 operations within their sector. The officers will work in an extra-duty capacity in the areas where they normally patrol. Thus, the officers working under this program will have familiarity with the issues and concerns of the particular geographic area. The police department will be held accountable by documenting and reporting to the council on a monthly basis the man-hours used, funds used, number of arrests made and citations issued, and community response.

All funds appropriated under this resolution must be expended by June 30, 2002.

RESOLUTION NO. RS2002-995 (SHULMAN, BRILEY & MCCLENDON) - This resolution authorizes the execution, terms, issuance, sale and payment of general obligation energy production facility refunding bonds in the amount of \$72 million. This refunding bond issue is necessary because there will no longer be revenue available to pay the principal and interest of the prior refunded bonds once construction begins on the new energy production facility and the thermal plant ceases operation.

Resolution No. RS2001-877 adopted on December 18, 2001 authorized the issuance of general obligation refunding bonds in the principal amount not to exceed \$72 million. This refunding bond issue includes the initial \$14,565,000 1984A bond issue to acquire the thermal system, which was refunded in 1986, and the \$52,200,000 1984B bond issue to expand the thermal plant, which was refunded in 1985. This refunding bond issue also includes the \$37,545,000 1997A bond issue to provide for further improvements and expansions to the thermal plant and the \$15,370,000 1997B refunding bonds to refund the prior 1986 refunding bonds.

The bonds issued by this resolution are designated as the general obligation energy production refunding bonds series 2002A and 2002B. The 2002A refunding bonds used to refund the 1997A series bonds will have an interest rate not to exceed 6 1/4% per annum, with interest to be paid semi-annually on July 1 and January 1 commencing July 1, 2002 and extending through July 1, 2014. The 2002B refunding bonds used to refund the 1997B series bonds will have an interest rate not to exceed 7 3/4% per annum paid in the same manner as the 2002A bonds, only extending through July 1, 2012. The bonds will be advertised and sold to the bidder whose bid results in the lowest true interest cost to Metro. Principal

and interest on these bonds will be paid primarily from the debt service fund of the urban services district, with any deficiency payable from the ad valorem taxes levied in the general services district.

RESOLUTION NO. RS2002-996 (HADDOX & SHULMAN) - This resolution approves an annual grant between the state department of health and the Metro health department to fund the child healthy start program in Metro. The amount of the grant is \$442,800 and is for a term beginning July 1, 2002 through June 30, 2003. The purpose of this program is to provide home visitation, counseling, and education services by public health nurses regarding child health. The program focuses on children from birth to three years of age and will provide initial services at birth or prenatal services to at least 200 first time at-risk parents. The program also seeks to insure that all children served through the program are fully immunized by the age of two.

RESOLUTION NO. RS2002-997 (HADDOX & SHULMAN) - This resolution approves an annual contract between the Metro health department and the state department of health to provide for laboratory services for testing particulate matter and other environmental tests. The federal Clean Air Act requires that local governments test for particulate matter 2.5 microns or greater in size using licensed testing facilities. The state's facility is such a licensed facility. The term of this contract is from July 1, 2002 through June 30, 2003. Pursuant to the contract, the state will charge Metro \$24.00 per test.

RESOLUTION NO. RS2002-998 (SHULMAN) - This resolution approves the settlement of the lawsuit of Adrian Jenkins, next friend of Waymon Jenkins, against the Metropolitan Government for \$14,200. On May 27, 1999, Waymon Jenkins was stopped for driving with stolen tags. After initially pulling over, he fled and crashed his vehicle into a ditch. He then fled on foot and was apprehended after trying to hide. He was visibly fatigued and was helped by the officers to the patrol car. After being brought to the jail he was taken to Nashville General Hospital where a urine screen showed high levels of protein. However, the urine screen was not transported with Mr. Jenkins back to the jail on May 28, 1999. He returned to the hospital on the 29th for a chest X-ray, which appeared to be normal. Back at the jail he continued to complain of pain and was taken by a correctional officer to the clinic run by Prison Health Services (PHS). A video tape shows Mr. Jenkins in extreme pain and the officers compassionately assisting him. The nurses examined Mr. Jenkins, but determined that he was a "manipulator" and sent him back to the general population. A nurse was again called on June 1, 1999 because of Mr. Jenkins's continued complaints of pain. The nurse said she was busy and that she would get to the patient, but never did.

Waymon Jenkins died in the early morning hours of June 1, 1999. His cause of death was determined to be an arrhythmia, which is an irregular and uncoordinated heartbeat, possibly brought on by an enlarged heart caused by long-term cocaine abuse. PHS has indicated that they would have provided more extensive care of Mr. Jenkins if they had known the results of the urine test showing elevated protein levels, though expert proof has not yet been offered in this case linking the increased protein levels to arrhythmia. None of the nurses involved are still employed by PHS.

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RESOLUTION NO. RS2002-998 (continued)

Adrian Jenkins, wife of Waymon Jenkins, filed a wrongful death action against Metro and Prison Health Services. The hospital authority later became a party to the suit. It is alleged that Metro was negligent in its supervision of its agent, Prison Health Services, was negligent in allowing Mr. Jenkins to be included in the general inmate population, and negligent in General Hospital's failure to transport the urine sample to the jail. This settlement will provide \$60,000 to Adrian Jenkins, with Metro paying \$14,200, the hospital authority paying \$12,500, and Prison Health Services paying the remainder. The department of law believes the \$14,200 is a fair and reasonable amount and recommends the case be settled. This amount is to be paid out of the self-insured liability fund. No disciplinary action was taken against any Metro employee as a result of this incident.

RESOLUTION NO. RS2002-999 (SHULMAN) - This resolution authorizes the department of law to settle all possible claims that Metro Government might have against UBS PaineWebber, Inc. and its employee, W. Keith Phillips for \$10,300,000. PaineWebber acted as the investment consultant to the employee benefit board from 1990 through the middle of 2000 and W. Keith Phillips was the PaineWebber employee who managed Metro's PaineWebber account. As the result of a report issued by the internal audit section of the finance department, the department of law examined the conduct of PaineWebber in its duties as Metro's investment consultant. The department of law employed several experts in the fields of investment consulting and secured transactions about some concerns regarding PaineWebber's and Phillips' service and compensation.

The department of law believes that due to the expense and uncertainty of litigation, it is in the best interest of the Metropolitan Government to settle any potential claims it might have regarding this consulting relationship. Pursuant to this settlement, PaineWebber will make a one-time \$10 million wire transfer to the employee pensions plan fund and \$300,000 to the judgments and losses fund to compensate for expenses incurred in reviewing this matter. The \$10 million represents the approximate amount that Metro paid PaineWebber for its investment consulting services during the 1990-2000 period. According to the terms of the settlement agreement, neither PaineWebber nor W. Keith Phillips are admitting any liability for wrongdoing in their capacity as an investment consultant.

RESOLUTION NO. RS2002-1000 (WALLACE & TUCKER) - This resolution sets a public hearing to be held at the Tuesday, May 21, 2002, council meeting for a proposed amendment to the Capitol Mall redevelopment plan. The Capitol Mall redevelopment plan basically governs the redevelopment of the downtown area. State law requires that a public hearing be held prior to final approval of an amendment to a redevelopment plan. This resolution also directs the Metropolitan clerk to publish the notice of public hearing in the May 6, May 13, and May 20, 2002 issues of *The Tennessean*.

Ordinance No. BL2002-1083, which is on first reading, provides for the amendment. An analysis of the amendment will be provided when the ordinance is on second reading.

- **BILLS ON SECOND READING** -

ORDINANCE NO. BL2002-975 (WALLACE) - This ordinance amends the Metropolitan code of laws to exempt establishments that already have a state on-premises liquor consumption license from Metro's minimum distance requirements to obtain a beer permit. The code currently prevents a beer permit from being issued to an establishment located within 100 feet from a church, school, park, daycare, or a one or two family residence. Pursuant to state law, the Tennessee alcoholic beverage commission can take the applicant's location into consideration when determining whether to grant a license for on-premises liquor consumption.

This ordinance addresses the same subject matter as Ordinance No. BL2002-985, also on first reading.

ORDINANCE NO. BL2002-980 (MCCLENDON) - This ordinance closes portions of 5th Avenue North, 4th Avenue North, and Alleys # 201, # 508, # 509, and #510. The sections of streets and alleys to be closed are located within the borders of Metrocenter Boulevard, Dominican Drive, and Clay Street. Metro and the contracted utility companies will retain easements to construct and maintain existing and future utilities.

This closure is requested by Phillip Piercy of Littlejohn Engineering Associates, on behalf of abutting property owners. Properly executed letters showing consent of the affected property owners are on file with the planning commission. This ordinance has been approved by the planning commission and by the traffic and parking commission.

ORDINANCE NO. BL2002-983 (WALLACE) - This ordinance amends the Metropolitan code of laws to require that a permit be issued by the Metropolitan Government before any encroachment can be constructed or installed on any Metro street, sidewalk, alley, or other public way. Persons or entities seeking to install an encroachment would be required to pay a \$100.00 permit fee and provide liability insurance holding Metro harmless from all claims or damages arising out of the construction, operation, or maintenance of the encroachment. The manner of construction, installation, operation, and maintenance of a proposed encroachment would be subject to the direction and approval of the director of public works.

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2002-984 (WALLACE) - This ordinance amends the Metropolitan code of laws to allow on-sale beer permits to be issued to performing arts facilities. Currently, retailer on-sale beer permits are limited to eating establishments where meals or lunches are regularly served.

This ordinance also defines a "performing arts facility" as being a facility owned by the government and administered by a non-profit corporation, which is located within the core commercial district (CC) or core commercial frame district (CF), where "meetings, festivals, live theatrical, musical, and other performances and events are regularly presented." This would allow for facilities such as The Tennessee Performing Arts Center (TPAC) and the War Memorial Building to obtain on-sale beer permits.

ORDINANCE NO. BL2002-985 (WALLACE) - This ordinance exempts establishments that have already obtained an on-premises consumption liquor license from the state alcoholic beverage commission, or that are within the same building or adjoin a building that already has an on-premises consumption license, from the minimum distance requirements for the issuance of beer permits. The code currently prevents a beer permit from being issued to an establishment located within 100 feet of a church, school, park, daycare, or a one or two family residence. Pursuant to state law, location can be taken into consideration by the alcoholic beverage commission in deciding whether to grant an on-premises consumption license.

This ordinance is similar in subject matter to that of Ordinance No. BL2002-975, which was deferred on second reading at the March 19, 2002 council meeting.

ORDINANCE NO. BL2002-986 (CAMPBELL, DILLARD, & OTHERS) - This ordinance approves a grant in the amount of \$192,161 to the Metro police department from the U.S. department of justice office of community oriented policing services (COPS) office to implement a training program promoting strategies to reduce racial profiling. The term of the grant is from August 1, 2001 through July 31, 2002. The COPS office provides grants and assistance to local police departments to increase police presence and to improve community policing. The purpose of this grant agreement is to promote strategies to reduce racial profiling through the collection and analysis of data, community involvement, and officer training. COPS will designate a program manager to assist with this program. The police department will work with the program manager to develop surveys and evaluate the results, write the training curriculum, and train police personnel and community members.

ORDINANCE NO. BL2002-987 (DILLARD & SHULMAN & DERRYBERRY) - This ordinance approves a grant in the amount of \$6,000 to the Metro police department from the Tennessee department of transportation Governor's highway safety office for the "You Drink, You Drive, You Lose" project. The term of the grant is from February 1, 2002 through June 30, 2002. The grant funds can only be used to purchase radar units, preliminary breath testing units, and mounted in-car video cameras.

ORDINANCE NO. BL2002-988 (MCCLENDON & SHULMAN) - This ordinance authorizes the acquisition of property, by negotiation or condemnation, for the purposes of obtaining one utility easement for the Hillsboro Road at Bancroft Place 8" water main improvements project. The acquisition cost is estimated at \$1,500 and will be paid from the water and sewer extension and replacement fund. The new water main will eliminate the need for the Crater Hill pumping station and reservoir and will improve the fire protection for the area. The temporary construction easements described in this ordinance are the minimum necessary to complete the project. The director of public property administration is authorized by this ordinance to acquire additional easements that may be needed for this project in the future.

The easement authorized to be acquired by this ordinance is for property located at 6000 Hillsboro Pike. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2002-989 (HAUSSER, MCCLENDON & SHULMAN) - This ordinance authorizes the acceptance of a contract between the state department of transportation and the Metropolitan Government for the 21st Avenue sidewalk improvement project under the federal surface transportation enhancement program. The missing sidewalk segments to be constructed connect Hillsboro Village, Vanderbilt, and surrounding restaurants and shops on 21st Avenue South. The estimated total construction cost for the project is \$675,000, with Metro paying twenty percent (20%) of that amount, not to exceed \$135,000. The remaining eighty percent (80%) will be paid by the state department of transportation through federal program funds. The twenty percent to be paid by Metro can either be by a cash match or through the use of the value of preliminary engineering services. If Metro chooses to fulfill its payment obligation by providing the preliminary engineering services, such services must be performed either by Metro personnel or a consultant engineering firm hired pursuant to state consultant selection procedures.

Metro is responsible for all costs associated with operating and maintaining the project and is liable for all third-party claims arising from the construction and maintenance of the project. Metro agrees to act in accordance with a construction schedule that would provide for at least fifty percent (50%) completion within one year from the commencement date. As this project has the potential for construction within a historic district, Metro must consult with the state historical preservation office prior to such construction. This ordinance authorizes the mayor to execute any additional documents required for this project upon approval of the council by resolution receiving 21 affirmative votes.

Staff would point out that there is a typographical error in the third recital of this ordinance that should be corrected by amendment.

ORDINANCE NO. BL2002-990 (SHULMAN, DILLARD, & OTHERS) - This ordinance approves an amendment to the lease agreement between Metro Government and the state of Tennessee for lease of property located on Griffith Road for an 800 MHz emergency communications tower. The lease, which was the subject matter of Ordinance No. O98-1435, is for a 25 year term with an option to renew for two additional terms of 25 years, and provides that Metro

will make no rental payments. Pursuant to the lease, Metro was to remove the present tower and building located at this site and replace them with a new building and tower. The new tower has been constructed and is now in use.

This amendment clarifies the amount of property being leased, which consists of 0.21 acre and a 30-foot wide easement. The amendment also clarifies that Metro will remove the old TEMA tower by June 30, 2002 and all existing buildings on the leased premises within one year. Further, the amendment provides that Metro will seal the state's existing fallout shelter and to remove the State's communication trailer. Metro is responsible for the maintenance of the new tower.

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2002-991 (SHULMAN) - This ordinance approves a lease agreement between the Metropolitan Government and Opry Mills for office space for the Pearl Sims learning and development center. Metro, acting through the Nashville career advancement center, will use this space at Opry Mills for career counseling services and job training.

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ORDINANCE NO. BL2002-991 (continued)

The term of the lease is for ten years commencing May 1, 2000 and ending April 30, 2010, with rent to be paid in the amount of \$1.00 per year. Metro has a ten-year renewal option period. The leased space is located at the Opry Mills mall and consists of 3,356 square feet. After the third year of the lease, either party can terminate the agreement upon 30 days written notice. Opry Mills reserves the right to relocate the learning center if necessary. Metro is not responsible for paying any utilities other than phone service, nor is Metro required to pay a proportionate share of taxes and common ground maintenance. Metro must maintain self-funded insurance against all claims arising from the use and occupancy of the premises. However, Metro is not required to indemnify Opry Mills for claims whose fault is not attributable to Metro.

The remaining provisions of the lease are typical of other commercial leases.

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2002-992 (WALLACE) - This ordinance authorizes AmSouth Bank and 2000 PBL Venture, Ltd., to install aerial and ground encroachments for the AmSouth Bank Plaza renovations along Union Street and Deaderick Street. The exterior renovations include seven blade-style signs measuring 14 feet in width by 7 feet in length extending from the building over the sidewalk area. These signs will replace seven existing trees, which will not be replaced. The ordinance also provides for the construction of a sign measuring 11 feet in width and 80 feet in length above the Deaderick building entrance. This sign will be 25 feet above the sidewalk and will possibly contain a skylight. Further, this ordinance provides for the installation of planters and special pavers in front of the Deaderick Street entrance and the Union Street entrance, as well as at the corners of 3rd Avenue North/ Union Street and 4th Avenue North/Union Street. 2000 PBL Venture, Ltd., will be required to maintain \$300,000 in public liability insurance naming Metro as an insured party.

This ordinance has been approved by the planning commission.

- BILLS ON THIRD READING -

ORDINANCE NO. BL2001-892 (WALLACE) - This ordinance, as amended, amends the Official Street and Alley Acceptance and Maintenance Map for the Metropolitan Government, as enacted by Ordinance No. BL2001-916, by closing Alley No. #86 and a portion of Alley No. #87. The alleys run perpendicular to each other off 7th Avenue South. This closure is requested by Richard Ropelewski for abutting property owners. This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2002-969 (MAJORS, WATERS & OTHERS) – This amendment to the zoning text expands the exempt signs provision pertaining to official government, fraternal, religious or civic flags. Section 17.32.040 (H) presently exempts these flags from the sign regulations provided that they are mounted individually on permanent poles attached to the ground or building. This amendment removes the limitation that the flags be mounted on poles, and therefore would permit flags to be displayed by other means.

This text change has been approved by the planning commission, subject to a proposed amendment which will be proposed.

ORDINANCE NO. BL2002-973 (WALLACE) - This ordinance closes alley # 421 between Music Circle East to its terminus. Metro has deemed that there is no future need of this alley for government purposes. Metro and contracted utility companies will retain easements to construct and maintain existing and future utilities. This closure is requested by Barge, Cauthen & Associates. Signed consent of the affected property owner is on file with the planning commission.

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

ORDINANCE NO. BL2002-974 (SHULMAN, WILLIAMS, & OTHERS) - This ordinance establishes the Council Afterschool Initiative and creates the council's taskforce on out-of-school time and youth success. This ordinance also authorizes the approval of a contract, by resolution, between Metro and Vanderbilt Child and Family Center for support, facilitation, and coordination activities, with payment for these services to be funded out of the reserve for council neighborhood aftercare account provided in the fiscal year 2001-2002 operating budget.

This taskforce is being created because of the council's desire to address the issues surrounding afterschool activities for Nashville's youth. This taskforce will be composed of members of council, parents, and representatives from youth programs and community organizations, among others, to work with the Madeline Initiative and Vanderbilt to develop a plan to increase out-of-school time programming and resources. This will include an inventory and review of existing out-of-school programs in Nashville and other cities, determining needed components, assessing appropriate locations, and publishing two informational booklets.

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ORDINANCE NO. BL2002-974 (continued)

The taskforce will be co-chaired by a member of council and an individual from the community, both to be appointed by the vice mayor. The taskforce will be established through December 31, 2002 and will issue a report to the council not later than December 31, 2002.

A contract between Metro and Vanderbilt Child and Family Center to provide for support may be approved by resolution of the council receiving 21 affirmative votes.

ORDINANCE NO. BL2002-976 (HALL & MCCLENDON) - This ordinance abandons a portion of Alley # 2027, designates Alley # 2027 between Marshall Street and Alley # 2025 as a pedestrian walkway, and authorizes the Metropolitan Government to accept property adjacent to Alley # 2025 to be used as public right of way. Under this ordinance, Metro is abandoning a three-foot strip on each side of Alley # 2027 to adjacent property owners Jimmy and Johanna Choate and Marcella Carter. Metro is also converting the remaining middle portion of Alley # 2027 from a conventional alley into a pedestrian walkway between Marshall Street and Alley # 2025. Metro will retain a utility easement to Alley # 2027. Further, Metro accepts from Jimmy and Johanna Choate approximately 350 square feet of their property adjacent to Alley # 2025 as a permanent easement for public right-of-way purposes. This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2002-977 (LORING, MCCLENDON, & SHULMAN) - This ordinance authorizes the acquisition of property, by negotiation or condemnation, for utility easements related to the Pennington Bend at Briley Parkway sewer system. Easements are required on three Pennington Bend Road properties for the purpose of constructing, maintaining, and operating sanitary and storm sewers. Costs of the easements, estimated at \$1,500, will be paid from the water and sewer extension and replacement fund. This ordinance also authorizes the director of public property administration to acquire additional temporary construction easements as needed. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2002-978 (BRILEY, GILMORE & BLACK) - This ordinance authorizes Nashville Data Link, Inc., to construct, install, and maintain fiber optic cable in Davidson County as long as the cable is not being used to offer local telecommunications service to retail customers in Davidson County. Nashville Data Link, Inc., plans to construct approximately 17 miles of cable within Davidson County from the Cheatham County line along Clarksville Pike to Lloyd Road, then along Highway 431, then along Trinity Lane. Nashville Data Link, Inc., is to pay all costs related to the construction and maintenance of the cable.

The plans and specifications for the cable must be submitted to and approved by the director of public works. The mayor and the Metropolitan Council reserve the right to repeal this ordinance at any time, and Nashville Data Link, Inc., would be required to remove the cable at their own expense. This authority granted to Nashville Data Link, Inc., will not interfere with Metro's existing utility rights. Further, Nashville Data Link, Inc., must obtain a \$1 million certificate of liability insurance naming Metro as insured if the cable is installed on existing poles, or a \$10 million certificate of insurance if installation of the cable requires any excavation in the right-of-way of Metro.

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2002-979 (WHITMORE) - This ordinance closes a portion of Leslie Avenue, a portion of 24th Avenue, Alley # 909, and Alley # 927. The sections of streets and the alleys to be closed are located at the corner of Charlotte Avenue and 23rd and 24th Avenues. Metro and the contracted utility companies will retain easements to construct and maintain existing and future utilities. These closures are requested by Tom Ramsey of HCA Realty, Inc., the abutting property owner. The properly executed application showing consent of the affected property owner is on file with the planning commission.

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

