

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **July 16, 2002**

RE: **Analysis Report**

Balances As Of:	<u>7/10/02</u>	<u>7/12/01</u>
<u>GSD 4% RESERVE FUND</u>	\$16,108,439	\$14,376,729
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	Unavailable
USD	\$50,000	Unavailable
<u>GENERAL FUND</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE SCHOOL FUND</u>	Unavailable	Unavailable
<u>SOLID WASTE DISPOSAL FUND</u>		
Solid Waste Activities	Unavailable	Unavailable

- BILL ON PUBLIC HEARING -

ORDINANCE NO. BL2002-1115 (WHITMORE & TUCKER) – This ordinance approves the development of 19 units of low-rent scattered site housing in the vicinity of the Preston Taylor Hope VI redevelopment project. Resolution No. R92-288 approved a cooperation agreement with MDHA in support of up to 200 new dwelling units. MDHA is planning this development in accordance with the U.S. department of housing and urban development (HUD) replacement housing program. The proposed development will be located on MDHA owned sites on Michigan

Avenue, 40th Avenue North, Georgia Avenue and Indiana Avenue. State law requires that a public hearing be held prior to council's approval of the development project.

This ordinance is scheduled to be considered by the planning commission at their July 25, 2002, meeting.

- RESOLUTIONS -

RESOLUTION NO. RS2002-1074 (HAUSSER, MCCLENDON & WHITMORE) - This resolution authorizes the Metropolitan Government to enter into a water and sewer utility relocation contract with the state department of transportation for the West End Avenue from I-440 to Acklen Park Drive project. Metro agrees to reimburse the state for 100% of the relocation costs, which are estimated to be \$232,081. Metro is authorized to enter these type utility relocation contracts by resolution of the Metropolitan Council.

This resolution further authorizes the state treasury department to transfer the funds necessary to pay for the utility relocation from Metro's local government investment pool (LGIP) account. LGIP agreements are used to allow Metro to earn interest on the money to fund Metro's portion of state construction projects until the funds are actually spent.

RESOLUTION NO. RS2002-1075 (HADDOX, DILLARD & SHULMAN) - This resolution authorizes the director of public property to acquire a 15' sewer easement across property owned by E.R. Smith Real Estate, LLC (now a Burger King restaurant) off of Clarksville Highway for use in the construction of the north Nashville police precinct. In consideration for granting Metro the easement, Metro will convey an easement to Metro-owned property located behind the Burger King to E.R. Smith Real Estate for use as a storage area for dumpsters.

RESOLUTION NO. RS2002-1090 (SHULMAN) – This resolution extends the term of the study and formulating committee to expire on October 15, 2002. The mayor is authorized by the Metropolitan Charter to appoint a five-member study and formulating committee for a one year period at least once every five years to study and formulate a plan for employee benefits. The mayor appointed such committee and the appointees were approved by the council. It has been determined that the study and formulating committee will not complete its work within the one year time period, thus it is necessary to extend the term.

RESOLUTION NO. RS2002-1091 (TUCKER, WATERS & OTHERS) – This resolution appropriates \$4,470,750 in community development block grant (CDBG) funds for 2002 for the following purposes:

a.	General Administration	\$546,425
b.	Planning and Urban Environmental Design	\$432,173
c.	Rehabilitation (Rehabilitation Loans, Emergency Rehabilitation)	\$1,539,925
d.	Rental Rehabilitation	\$372,563
e.	Acquisition of Real Property	\$397,400
f.	Relocation	\$49,675
g.	Economic Development	\$173,862
h.	Affordable Housing Assistance	\$114,252
i.	Youth Initiatives Program	\$247,725
j.	Civic Design Center Assistance	\$100,000
k.	Section 108 Loan Repayment	<u>\$496,750</u>

TOTAL \$4,470,750

RESOLUTION NO. RS2002-1092 (SHULMAN & BRILEY) – This resolution sets a public hearing on the acceptance of a local law enforcement block grant from the U.S. department of justice to be held at the August 6, 2002 council meeting. This public hearing is for a grant that is the subject matter of Ordinance No. BL2002-1123, currently on second reading.

RESOLUTION NO. RS2002-1093 (SHULMAN, BRILEY & DERRYBERRY) – This resolution supports the acceptance of an electronic law enforcement grant in the amount of \$2,049,244, which is the subject of Ordinance No. BL2002-1123 on second reading. The acceptance deadline for this grant is August 4, 2002. Since Ordinance No. BL2002-1123 could not be passed on third reading until August 6, 2002, after the August 4th deadline, this resolution is necessary to indicate the council's intent to accept the grant on third reading at the August 6th meeting. This resolution indicates that if the grant is not approved on third reading at the August 6th council meeting, the funds may be awarded to another jurisdiction.

As this is an electronic grant and a hard copy was not attached to the ordinance accepting the grant, the council cannot be made aware of the precise terms and conditions of the grant or the obligations of the Metropolitan Government.

RESOLUTION NO. RS2002-1094 (WHITMORE, SHULMAN & BRILEY) - This resolution approves an amendment to a grant from the state of Tennessee, office of the secretary of state, to the Nashville public library for reimbursement of costs in lending our books to other libraries. This amendment extends the term of the grant an additional year to expire on September 30, 2003, and increases the amount of the grant by \$3,621 for a total of \$7,030.

RESOLUTION NO. RS2002-1095 (SHULMAN, TUCKER & OTHERS) – This resolution approves a grant from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to provide Families First support services. The term of the grant is from July 1, 2002 to June 30, 2003 and provides funds in the amount of \$2,592,387.84. The grant may be extended for an additional one year period. The services to be provided include assessments, Fresh Start/PACE, career counseling and job training.

RESOLUTION NO. RS2002-1096 (SHULMAN, TUCKER & BRILEY) – This resolution approves an amendment to a grant from the state department of labor and workforce development to the Nashville career advancement center (NCAC) for Families First employment and training services. This amendment decreases the amount of the grant by \$2,359,360.04. The original grant was for \$6,415,359.26, but the actual funds expended only totaled \$4,055,999.22.

There may be a housekeeping amendment to this resolution, which would clarify that the amount stated to be decreased in the resolution matches the amount in the attached grant amendment.

RESOLUTION NO. RS2002-1097 (MAJORS) –This resolution submits a proposed plan of services to the planning commission for the extension of the urban services district to include a parcel of property located on Oak View Drive abutting the south side of Briley Parkway, east of Dickerson Road. A proposed plan of services for three abutting parcels has already been submitted to the planning commission pursuant to Resolution No. RS2002-1006, and was approved by the planning commission in May 2002. This fourth parcel was created when one of the other three parcels was divided and is under the same ownership as the other three parcels. A request has been made that this fourth parcel, along with the other three, be included in the urban services district, which would make them in conformity with the other properties in the area abutting Briley Parkway.

State law requires that a plan of services be approved by the planning commission, and then be adopted by the council after public hearing, before an ordinance to extend the boundaries of the urban services district may be acted upon.

This parcel of property already receives additional police protection, fire protection, water and sewer service, and street cleaning services. Thus, the only additional services that will be rendered under the plan of services are street lighting and trash collection at a minimal cost to the Metropolitan Government.

RESOLUTION NO. RS2002-1098 (SHULMAN & BRILEY) – This resolution adds to and modifies the existing master list of architectural and engineering firms of the Metropolitan Government. The Metro code of laws requires that all contracts for professional services of architects and engineers must be with firms listed on the master list. This resolution adds the names of 21 architect firms and 23 engineering firms to the master list. Additionally, it changes the firm name on the list of five architectural firms and four engineering firms.

RESOLUTION NO. RS2002-1099 (TURNER) – This resolution approves property located at 3332 Sidco Drive to be used as a waste transfer station for the benefit of Gray's Disposal. Gray's Disposal has filed a request for a special exception with the Metro board of zoning appeals to use this property as a waste transfer station. The zoning text of the Metro code of laws requires that the Metro council approve the location by adoption of a resolution before the board of zoning appeals can act on the request.

If the council does not adopt or defeat this resolution within sixty (60) days, it shall be deemed approved by the council.

RESOLUTION NO. RS2002-1100 (SHULMAN & BRILEY) – This resolution authorizes the employment of Tillman L. Lay of the law firm of Miller, Canfield, Paddock & Stone to represent the Metropolitan Government in the appeal of a federal communications commission (FCC) ruling. On March 15, 2002, the FCC ruled that cable modem service did not fit within the definition of cable television service. Thus, franchising authorities such as Metro can no longer require cable television providers to include revenues generated from cable modem service in computation of the 5% franchise fee. The revenues from Comcast's cable modem service generated \$465,000 in franchise fees to Metro during 2001. Several national organizations that represent cities and counties, including the national league of cities (NLC) and the national association of telecommunications officers and advisors (NATOA), have appealed this ruling and have retained Tillman L. Lay to represent them in this matter. Metro has joined with 37 other affected municipalities who are pooling their resources to retain Mr. Lay by contributing between five and ten thousand dollars each to one of the appealing organizations. The Metropolitan Charter provides that the council may by resolution authorize the mayor to employ special counsel and pay a reasonable compensation.

This resolution authorizes the mayor to employ Tillman L. Lay and appropriates \$5,000 from the judgment and losses fund to NATOA for compensation of Mr. Lay's services.

RESOLUTION NO. RS2002-1101 (SHULMAN & BRILEY) – This resolution authorizes the department of law to compromise and settle the lawsuit of Mary E. Perkins against the Metropolitan Government. In November of 1997, Ms. Perkins, then a Metro action commission (MAC) head start employee with 29 years of service, was involved in a physical fight with another MAC employee. Witnesses confirmed that Ms. Perkins was not the aggressor, but was defending herself. After

inquiring about what action would result from the fight, Ms. Perkins' supervisor informed her that MAC had a zero tolerance policy regarding employee fights and that she would be terminated.

Several days later, Ms. Perkins met with her supervisors about the incident and was then given the opportunity to resign or be terminated. She was told that if she was terminated she would lose all of her retirement benefits. Ms. Perkins submitted her letter of resignation, which was accepted. The head start director then informed Ms. Perkins that she may want to change the word "resignation" to "retirement" since she was a vested Metro employee, to which she agreed. Ms. Perkins was not advised of any appeal process since she was retiring rather than being terminated. The next day she filed a grievance for reinstatement, which was denied since her retirement had been accepted. The other Metro employee involved in the altercation was also given the opportunity to resign or be terminated, and she submitted her resignation.

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RESOLUTION NO. RS2002-1101 (continued)

The pension benefits for Ms. Perkins when she retired from Metro Government were \$611 a month, which when added to the salary of her new job, approximately totaled her previous Metro salary. Had Ms. Perkins continued working as a head start teacher, she would have gone from a 10 month to a 12 month employee, thus significantly increasing her salary. Additionally, she would have not have had to incur an early retirement deduction. It is estimated that if Ms. Perkins had continued to work until June 30, 2002, her monthly pension would be approximately \$500 more per month than when she retired in 1997.

In her complaint filed in federal court, Ms. Perkins alleged that she was constructively discharged from her employment and was denied her due process rights. Metro filed a motion for summary judgment, which was denied on the grounds that it was not clear whether Ms. Perkins was aware she could appeal the charges, that she was not permitted to choose the effective date of resignation, that she did not have the benefit of representation by counsel, and that she was told that she would lose all of her retirement benefits if terminated. After two settlement conferences involving the parties and a federal magistrate, a settlement amount of \$90,000 plus attorney fees was agreed upon. It is estimated that if a jury found in favor of Ms. Perkins, Metro's liability could exceed \$200,000 including payment for pain, suffering and embarrassment. Additionally, federal law provides that the prevailing plaintiff is entitled to recover attorney fees for violation of due process.

The department of law believes that \$90,000 is a fair and reasonable settlement, and recommends that it be approved. This amount is to be paid out of the judgment and losses fund.

The council office would point out that information supplied to the council office by the department of law indicates that the settlement agreement is for \$90,000 plus attorney fees. However, this resolution only authorizes a settlement of \$90,000 with no provision for attorney fees.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2002-1066 (SHULMAN & DERRYBERRY) - This ordinance approves the transfer of a cable television franchise held by Comcast Cable Communications, Inc. (Comcast) to AT&T Comcast Corporation (AT&T Comcast). The franchise is technically held by Broadband Nashville I, LLC, which is a wholly-owned subsidiary of Comcast. Comcast has agreed to merge with AT&T Broadband Corp. and create a new company known as AT&T Comcast Corporation. The present franchise was granted in 2001 and the Metro cable ordinance requires consent of the Metropolitan Government prior to a change of control affecting the franchise. The new corporation will be bound by all of the existing terms and conditions of the current franchise agreement. Only the ownership of the franchise will change. AT&T Comcast is to file a franchise acceptance agreement

whereby it agrees to be bound by all of the terms and conditions set forth in the franchise agreement and this ordinance. Comcast has paid the \$5,000 processing fee to the Metropolitan Government required by the cable ordinance, and agrees to pay any excess out-of-pocket expenses Metro incurs in reviewing the transfer application and preparing the ordinance. Pursuant to our cable franchise ordinance, Metro reserves the right to approve the transfer of such franchises so that we can be assured that the operators are competent to maintain a cable television franchise in a city the size of Nashville.

This ordinance should be considered by the special CATV committee prior to its adoption on third reading. This matter is scheduled to be taken up by the special CATV committee at their meeting on Monday, July 15, 2002. There will be a proposed substitute ordinance offered either recommending approval or disapproval of the franchise transfer after the special CATV committee has met.

Federal law, as referenced in our cable franchise ordinance, requires that Metro have 120 days to act on a request for approval of a cable franchise transfer, unless an extension of time is mutually agreed upon. This time period has already been extended. Federal law further provides that if Metro fails to act within the time period, then the transfer will be deemed approved. Thus, if the council does not act on this ordinance on second reading at the July 16, 2002 meeting, then the time period will expire before the ordinance is acted upon on third reading and the transfer will be approved by default.

ORDINANCE NO. BL2002-1075 (DERRYBERRY, WATERS & SONTANY) - This ordinance provides for the regulation of the use and operation of horse-drawn carriages within the Metro area by requiring carriage owners and operators to obtain licenses through the Metropolitan transportation licensing commission, much in the same manner as taxicab companies and drivers are currently licensed. Pursuant to this ordinance, all owners of horse-drawn carriages will be required to obtain an annual certificate to operate such a business. The application, along with a \$100 permit fee, is to be submitted for approval by the commission. The application will contain business and personal information about the owner including a list of drivers, number of carriages, the number of horses along with four separate color photographs of each horse (with a shot of the front, both sides, and rear of the horse), documentation from a veterinarian as to the horse's physical condition, \$1 million in liability insurance per carriage, and an applicant's criminal history. If the commission deems an application to meet all of the requirements, a permit is issued for each carriage. After a permit has been issued, it may be suspended or revoked if the commission finds a violation of the regulations or a criminal conviction. There is an appeal process for applicants who are denied. Carriage companies must also file a list of their basic rates of fare with the commission.

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ORDINANCE NO. BL2002-1075 (continued)

Also mandated by this ordinance is a requirement for a driver's permit to operate a horse-drawn carriage. The requirements for a driver's permit are very similar to those of taxicab drivers. The application must include proof that a driver is at least 21 years old, experience in the industry, educational and criminal background, a federal department of transportation drug and alcohol test, and a valid Tennessee special chauffeur's driver's license. Once a driver's permit is issued, the driver must display the permit prominently on his/her clothing or in the carriage. A permit may be revoked for a criminal conviction. A driver may not pay another business to solicit passengers. Drivers must also take adequate measures to keep a horse from dropping excrement from its "diaper", must obey all traffic laws, and must keep the speed of the horses to a trot, among various other restrictions.

This ordinance also requires that horses be examined every six months and provides restrictions on horse and carriage equipment, as well as limits on the number of passengers a horse can pull. The ordinance further provides numerous restrictions regarding the care and condition of horses used in the carriage business. The operation hours for horse-drawn carriages will be 6:00 p.m. to 6:00

a.m. Monday through Friday, and during any hours on weekends and holidays. The carriages will be limited to specific routes developed in consultation with the traffic and parking commission.

There is one important aspect of this ordinance that staff recommends be amended. The ordinance provides that a person in violation of any part of the ordinance shall be guilty of a misdemeanor and be subject to a fine of at least \$100 for a first offense, and a \$500 fine for subsequent offenses and/or up to 60 days imprisonment. This provision is contrary to state law in two respects. First, the State of Tennessee, not the Metropolitan Government, has the authority to designate criminal offenses. Second, pursuant to a recent Supreme Court decision, the Metropolitan Government is limited in its ability to fine for violations of ordinances to \$50.00 without providing a jury trial.

ORDINANCE NO. BL2002-1116 (WALLACE) - This ordinance amends the Metropolitan Code of Laws to prohibit the feeding of any fowl in public streets, alleys and sidewalks within the urban services district.

ORDINANCE NO. BL2002-1117 (WILLIAMS & SHULMAN) - This ordinance approves a grant in the amount of \$1,055.63 from the department of state, division of elections, to the Davidson County election commission for the purchase of a personal computer and software to upgrade the automated electoral system. The personal computer will be used to access the state's central voter registration database.

ORDINANCE NO. BL2002-1118 (STANLEY, PONDER & OTHERS) - This ordinance authorizes the director of parks and recreation to enter into an agreement for the granting of a perpetual easement from Kohl's Department Stores, Inc. for use in the Stones River greenway system. This parcel of property, located next to the Kohl's parking lot on Lebanon Road, adjoins an existing greenway conservation easement. Metro will construct and maintain a pathway for pedestrian or bicycle travel, nature trail, and/or a natural area to be located on the easement.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2002-1119 (HAUSSER & MCCLENDON) - This ordinance accepts two permanent 20 foot easements and two 10 foot temporary construction easements from Belmont University for construction and maintenance of sanitary sewers and drainage improvements on property located on Ashwood Avenue. This ordinance further provides that the Metropolitan Government will abandon these easements in the event that Belmont University purchases abutting property at 1500 Ashwood Avenue.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2002-1120 (WALLACE, MCCLENDON & OTHERS) - This ordinance authorizes the State of Tennessee to install and maintain a sign marquee above the sidewalk within the right-of-way on Deaderick Street and Sixth Avenue North and an elevator tower on the sidewalk along Deaderick Street at the Tennessee performing arts center. The plans for the sign and elevator tower are on file with the director of public works. The state will pay all costs associated with construction and maintenance of the marquee and tower.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2002-1121 (BOGEN) - This ordinance authorizes the Metropolitan Government to enter into an agreement with CPS Land, LLC (CPS) and CSX Transportation, Inc. for construction of a new bridge across the CSX railroad tracks in support of the Riverwalk Community

in Bellevue. This will be a concrete two-lane bridge with sidewalks on both sides. Pursuant to the agreement, CPS agrees to construct the bridge and all right-of-way improvements at its own expense and to reimburse CSX for any costs it incurs as a result of the bridge project, such as for preliminary engineering. CPS and its contractor will be required to maintain liability insurance to comply with CSX's and Metro's requirements.

Once the bridge is completed and is deemed to be in compliance with the plans and specifications, the director of public works shall recommend that the bridge be accepted by the Metropolitan Government, subject to approval of the council by resolution. In such resolution, the bridge will be accepted by the Metropolitan Government if the council deems it to be in the public's interest, that it is in compliance with the plans and specifications, and that adequate funds have been appropriated for the maintenance of the bridge pursuant to Section 13.10.020 of the Metropolitan Code of Laws. The council office would point out that part of this provision is contrary to the Metropolitan Government's requirements for the acceptance of private roads. Section 13.10.010 states that "privately owned roads may be accepted by ordinance", as opposed to by resolution.

Under this agreement, if the bridge is accepted by the Metropolitan Government, Metro will be responsible for all repair and maintenance of the bridge subject to CPS's one-year warranty.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2002-1122 (MCCLENDON) - This ordinance amends the Metropolitan code of laws to allow the chief medical director to order persons or businesses storing tires to eliminate the collection of water in the tires or take other adequate measures to prevent the breeding of insects, namely mosquitoes. The code currently provides a similar requirement regarding the collection of stagnant water on real property.

There will be a proposed amendment offered by the sponsor that includes rodents along with insects, and changes the wording of the ordinance so that the chief medical director may order that the collection of water in tires be eliminated *and* that other adequate measures be taken to prevent the breeding or harborage of pests.

ORDINANCE NO. BL2002-1123 (SHULMAN & DERRYBERRY) - This ordinance accepts a law enforcement block grant in the amount of \$2,049,244 from the U.S. department of justice to the Metropolitan Government for the benefit of the police department, the district attorney's office, the sheriff's office, the public schools, justice information systems, drug court, juvenile court, and the public defender's office. The participating departments will pay a total local match of \$227,694. The police department will oversee and manage the grant.

As this is an electronic grant, a hard copy of the grant was not included as part of the ordinance. The council office would recommend that a hard copy of the electronic grant be attached to this ordinance as an amendment before council approval, as the council cannot be aware of the precise terms and conditions of the grant and the obligations of the Metropolitan Government.

ORDINANCE NO. BL2002-1124 (MCCLENDON) - This ordinance abandons the sewer line and easement encumbering the property of Mr. Roy Flowers on East Cedar Street. The sewer line is to be relocated and is no longer needed by the department of water and sewerage services.

This abandonment has been approved by the planning commission.

ORDINANCE NO. BL2002-1125 (MCCLENDON) - This ordinance abandons the sewer line and easement on four parcels located on Douglas Avenue owned by Nashville Auto Diesel College. These four parcels are going to be consolidated into one tract and the department of water and sewerage will no longer need the easement.

This abandonment has been approved by the planning commission.

- BILLS ON THIRD READING -

ORDINANCE NO. BL2002-418 (SUMMERS) – This ordinance authorizes Charlotte Mini L.P., doing business as Cornerstone Self-Storage, to install and maintain a retaining wall that will encroach into the right-of-way of Balmy Avenue. This installation is requested by Fred Sans, and the company will be required to maintain \$300,000 in public liability insurance. This encroachment has already been constructed.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2002-1023 (ARRIOLA, SONTANY, & HAND) - This ordinance amends the Metro Code of Laws by creating a rebuttable presumption that the growth of grass or underbrush 12" or higher is a danger to the health, safety, or welfare of the citizens of Metro. The rebuttable presumption means that the burden of proof would shift to the property owner that has been cited to prove that grass more than a foot tall is not a health or safety hazard. This is to allow better enforcement of Metro's excessive vegetation control ordinance.

ORDINANCE NO. BL2002-1058 (WALLACE) – This ordinance closes Alley #164 between Lafayette Street and Charles E. Davis Boulevard. The abutting property owners desire this closure and the Metropolitan Government has no future need for the portion of the alley to be closed. Metro will retain utility easements.

There is no record of consent of the affected property owners on file with the Metropolitan Clerk.

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

ORDINANCE NO. BL2002-1080 (ALEXANDER) - This ordinance authorizes Overhill Partners, G.P., to construct a 6' x 16' sign for Brighton Valley Apartments in the public right-of-way where Brooksboro Terrace connects with Murfreesboro Pike. The new sign will replace an existing Hermitage "A" Apartments sign. Overhill Partners will maintain \$300,000 in liability insurance and will indemnify and hold Metro harmless for any claims. All work and material will be furnished by Overhill and is subject to approval by the director of public works. Overhill Partners will remove the sign at their own expense if this ordinance is ever repealed.

This ordinance has been approved by the planning commission.

p:resol