

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director  
Metropolitan Council Office

DATE: **June 3, 2003**

RE: **Analysis Report**

Balances As Of:  
5/29/02

5/28/03

|  |              |              |
|--|--------------|--------------|
| <u>GSD 4% RESERVE FUND</u>             | \$14,526,302 | \$15,306,836 |
| <u>CONTINGENCY ACCOUNTS</u>            |              |              |
| GSD                                    | \$50,000     | \$35,000     |
| USD                                    | \$50,000     | \$50,000     |
| <u>GENERAL FUND</u>                    |              |              |
| GSD                                    | \$35,852,664 | \$63,995,550 |
| USD                                    | \$13,910,490 | \$16,682,399 |
| <u>GENERAL PURPOSE<br/>SCHOOL FUND</u> | \$53,181,288 | \$10,404,340 |

**- BILL ON PUBLIC HEARING -**

**ORDINANCE NO. BL2003-1432** (SUMMERS & JENKINS) – This ordinance adopts the capital improvements budget for 2003-2004 through 2008-2009. A separate analysis will be provided for the capital improvements budget. The capital improvements budget is a planning document and does not in itself appropriate any money. All capital projects must be provided for in this document before a capital improvement can be approved by the Council, except in the case of a public emergency. This budget is amendable on third and final reading. The Charter requires the Council to adopt the capital improvements budget not later than June 15<sup>th</sup> of each year. Once adopted, future amendments to the capital improvements budget must be approved by the planning commission, be recommended by the Mayor, and be adopted by resolution of the Council receiving twenty-seven (27) affirmative votes.

**- RESOLUTIONS -**

**RESOLUTION NO. RS2003-1474** (SHULMAN) – This resolution provides twenty-one proposed amendments to the Metropolitan Charter. Five of the proposed amendments were previously submitted pursuant to other resolutions filed earlier this year. These five amendments include filling Council vacancies, compensating members of the board of education, and increasing the salary of Councilmembers. The prior resolutions were deferred indefinitely to allow any proposed amendments to the Charter to be included in one resolution.

The Council, pursuant to the Charter, may only adopt two resolutions during the term of the Council that submits amendments to the voters for ratification. One resolution has already been adopted during this term at the September 17, 2002, council meeting, which submitted one proposed amendment for ratification at the November 2002 election.

A supplemental analysis is attached that provides details of each proposed amendment, including the recommendation of the Charter Revision Commission.

**RESOLUTION NO. RS2003-1475** (WATERS) – This resolution establishes the Nashville Alcohol Policy Coalition to study and address concerns regarding the

impact that alcohol consumption and misuse of alcoholic beverages and their containers are having on neighborhoods in Nashville and Davidson County. The idea for this coalition originated out of discussions regarding legislation that would have prohibited the sale of single container beers within the urban zoning overlay. The Coalition is to be composed of not more than 15 members that are appointed by the mayor and confirmed by the Council. Pursuant to this resolution, the members to be appointed are to be representatives from neighborhood groups, the alcoholic beverage industry, including distributors, wholesalers and retailers, the Chamber of Commerce, and retail food stores and convenience markets. The Coalition is to issue a report to the Council by June 30, 2004.

**RESOLUTION NO. RS2003-1480** (JENKINS) – This resolution appropriates \$2,078,200 from the unappropriated fund balance of the general fund of the general services district, the hotel occupancy reserve funds, and from other sources to various Metro departments. The distribution of the funds will be made as follows:

- \$25,000 for a reauthorized contribution to Cumberland Region Tomorrow;
- \$117,300 to the election commission for staffing costs as a result of the extra runoff election in December 2002;
- \$45,000 to the finance department for the eBid surplus property auction;
- \$113,900 for AS400 computer system consolidation;
- \$48,600 to the state trial courts for court officers;
- \$772,100 to the police department;
- \$17,000 to the arts commission for interim director costs;
- \$480,000 to the emergency communications center for start-up costs to implement the audit recommendations;
- \$18,400 to the register of deeds for rent at the Gaylord Entertainment Center;
- \$25,000 from the public and government access TV fund to community access television (CATV);
- \$406,800 to the convention center for roof repairs. Half of this amount will come from the convention center portion of the hotel occupancy reserve, and the other half from the additional revenues of the hotel occupancy tax;
- \$212,000 from the pension trust fund to human resources for the Metro pension plan computer imaging project.

**RESOLUTION NO. RS2003-1481** (JENKINS) – This resolution authorizes the department of law to enter into a final agreement to compromise and settle the claim of the U.S. department of justice against the Metropolitan Government regarding compliance with the Americans with Disabilities Act (ADA). The Council approved an interim agreement with the department of justice pursuant to

Resolution No. RS2000-280, whereby Metro agreed to review its policies and procedures under the ADA, to survey existing facilities, and to make modifications to certain physical structures by December 21, 2003. Under the interim agreement Metro was to complete required structural modifications to the Metro Courthouse, the Ben West Building, the Criminal Justice Center, Howard School complex, Lentz Public Health Center, 222 Building, the Centennial Sportsplex, the Planning Commission Building, and the Municipal Auditorium.

As long as Metro is in compliance with this final agreement, the justice department will not seek to terminate or withhold any federal funds to be received by the Metropolitan Government. Under the final agreement, Metro agrees to comply with applicable ADA laws regarding structural changes in existing facilities, new construction, and public rights-of-way. According to Metro's accessibility surveys of its existing facilities, the most common barriers to access include inaccessible exterior routes, parking, building entrances, and interior routes of travel. Metro is to submit written compliance reports on an annual basis summarizing the actions taken to implement the plan. This agreement will terminate once the plan has been implemented, or on June 1, 2006, whichever comes first.

**RESOLUTION NO. RS2003-1482** (JENKINS) - This resolution approves a second amendment to a grant agreement between the state department of transportation and the Metro police department in the amount of \$1,221,274 for the Governor's Highway Safety Program. The purpose of the grant is to pay overtime officer enforcement teams to reduce traffic related crash fatalities by focusing on alcohol or drug impaired drivers. This grant was amended once to increase the term to three years and to modify the mileage reimbursement provisions. This amendment extends the grant term from May 1, 2003 to October 1, 2003.

**RESOLUTION NO. RS2003-1483** (JENKINS) - This resolution authorizes the mayor to submit an application for the state criminal alien assistance program grant from the U.S. department of justice to the sheriff's office. If this grant is awarded, the sheriff's department would be entitled to receive federal funds for costs incurred as a result of incarcerating undocumented criminal aliens who have been convicted of State and local offenses, and who have been incarcerated for a minimum of four consecutive days.

**RESOLUTION NOS. RS2003-1484 & RS2003-1485** (JENKINS) - These two resolutions approve annual grants from the state department of human services to the Metro social services commission for adult day care and homemaker services. The terms of the grants are from July 1, 2003 through June 30, 2004. The services to be provided under the grants are for the benefit of adults who are not capable of full independent living.

**Resolution No. RS2003-1484** approves a grant in the amount of \$164,600 for adult day care services. The services to be provided using these grant funds include health monitoring, nutrition services, counseling, life enrichment activities, and continuing education. A required local match of \$41,150 will be provided from the Metro social services commission's budget.

**Resolution No. RS2003-1485** approves a grant in the amount of \$245,000 for homemaker services. The services to be provided include teaching of homemaker skills, household management, essential shopping, household tasks, and personal care. A total of 11,136 hours of homemaker services will be provided using these grant funds. A required local match of \$61,250 will be provided from the social services commission's budget.

**RESOLUTION NOS. RS2003-1486 & RS2003-1487** - These two resolutions authorize the Metropolitan Government to enter into supplemental agreements with Nashville and Eastern Railroad Corporation to allow the department of water and sewerage services to increase the rental fee for two sewer lines in the existing railroad right-of-way. These annual rental fees are to be paid from the water and sewer extension and replacement fund. The next scheduled increase in rent will be April 1, 2006. The Council approved a similar resolution to increase the rental fee for a land lease in the railroad right-of-way at the May 20, 2003 council meeting.

**Resolution No. RS2003-1486** (Hall) increases the rental fee for the sewer line at M.P. 10.39 in Hermitage from \$411.28 to \$440.07 annually.

**Resolution No. RS2003-1487** (Jenkins, Wallace & Hall) increases the rental fee for the sewer line at M.P. 2.73, Vine Hill Branch, from 253.34 to 271.08 annually.

**- BILLS ON SECOND READING -**

**ORDINANCE NO. BL2003-1311** (SHULMAN) - This ordinance amends the Metropolitan Code of Laws relating to the collection of garbage during certain hours. The Code currently prohibits the collection of garbage between the hours of eleven p.m. and seven a.m. within 300 feet of any residential structure that is not located within the CC (Commercial Core) and CF (Core Frame) zoning districts. The ordinance would increase the distance requirement to 900 feet.

**ORDINANCE NO. BL2003-1353** (DREAD, BRILEY & WALLACE) - This ordinance amends the Metropolitan Code of Laws to exempt restaurants 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 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 consumption, but no set distance requirements are included in the state law.

This ordinance also provides that in the event a restaurant permit holder that is exempted under this exception to the distance requirements ceases to hold a valid state liquor license for on-premises consumption for any reason, the beer permit is automatically deemed revoked and the applicant would have to reapply for a new beer permit without being exempted from any distance requirements.

An ordinance consisting of similar subject matter was defeated by the council in April of 2002.

There will likely be a substitute offered for this ordinance that provides limits to the application of the exemption from the minimum distance requirements. Pursuant to the substitute, a restaurant located within the MUN or MUL zoning districts that possesses a valid state on-premises liquor license would be exempted from the minimum distance requirements. The substitute would also clarify that the state definition of "restaurant" would be used in determining the applicability of this ordinance. The state definition of restaurant includes primarily eating establishments with seating capacity of at least 75 people at tables, or a gourmet restaurant with a seating capacity of at least 40 people.

**ORDINANCE NOS. BL2003-1387 & BL2003-1388** (WALLACE & HAUSSER) –

These two ordinances amend the permit parking program sections of the Metropolitan Code to enable single-family residential lots located within 1,500 feet of a college, university, or other post-secondary school to be eligible for residential permit parking. The Metro Code currently provides for a residential permit parking program. In order for an area to be designated for residential permit parking, a petition requesting the permit parking area must be filed with the councilmember representing the district in which the proposed area is located. The petition must be signed by seventy-five percent (75%) of the residents within the geographic limits requested to be included in the residential permit parking area. The (continued on next page)

**ORDINANCE NOS. BL2003-1387 & BL2003-1388** (continued)

petition must include each petitioner's name and driver's license number, the time of day the permit is to be required, a description of the geographic boundaries of the area, and the maximum time limit that a non-permit holder should be allowed to park. The councilmember then submits the petition, with a written recommendation, to the chief traffic engineer. The chief traffic engineer in turn

makes a recommendation to the traffic and parking commission, who then either approves or disapproves. If approved, the area is designated as a residential permit parking area and residents are required to apply for a parking permit and pay a fee set by the traffic and parking commission and approved by the council to cover the administrative costs.

The Metro Code also provides for a downtown area residential permit parking program whereby residents of the downtown area may apply for a permit that enables them to park on downtown streets without payment of the required parking meter charges. Applicants for the downtown area are required to pay an annual fee set by the traffic and parking commission and approved by the council.

These two ordinances essentially accomplish the same result in that they both would allow permit parking at single-family residences located within 1,500 feet of a college or university. However, the first ordinance amends the current code section regarding residential permit parking, whereas the second creates a new residential permit parking program specifically for university area lots. Only one of these two ordinances should be adopted on third and final reading since the ordinances are related to the same subject matter. These two ordinances have been referred to the traffic and parking commission. A more detailed analysis of the two ordinances is as follows:

**Ordinance No. BL2003-1387** amends the Metro Code to provide that university area residential lots are eligible for residential permit parking on an individual lot basis without first having the geographic area designated as a residential permit parking area and without having to obtain signatures of seventy-five percent of the residents in the area. Pursuant to this ordinance, a “university area individual residential lot” means any lot within the area of the Metropolitan Government that has an erected and occupied single-family residence within 1,500 feet of a university, college, junior college, or other post-secondary school. This ordinance also provides that in addition to the regular residential permit parking fee, the applicant would be required to pay the reasonable costs incurred in the installation of the parking signs.

**Ordinance No. BL2003-1388** amends the Metro Code by creating a separate university area individual residential lot permit parking program. The definition of university area individual residential lot is the same as provided in Ordinance No. BL2003-1387. This ordinance is essentially modeled after the existing residential permit parking program ordinance. Pursuant to this ordinance, the chief traffic engineer is authorized to restrict parking on streets in front of a university area individual lot to vehicles bearing a valid (continued on next page)

permit, subject to approval by the traffic and parking commission. An application would have to be submitted to the chief traffic engineer for review by staff of the traffic and parking commission. The application is to include the following information: (1) the applicant’s name and address; (2) the make, model, color, registration and license plate numbers of the vehicle; (3) driver’s license number;

(4) time of day that permits will be required; and (5) the maximum amount of time that non-permit holders may legally park. (continued on next page)

**ORDINANCE NOS. BL2003-1387 & BL2003-1388** (continued)

The applicant's vehicle registration must show the applicant's present address, and the applicant must have a valid Tennessee license plate unless the applicant is a full-time college student. The chief traffic engineer would then recommend to the traffic and parking commission whether to designate the lot for a university area individual residential lot permit. The traffic and parking commission would be required to either approve or disapprove the recommendation of the chief traffic engineer.

If the lot is designated for university area individual residential permit parking, then a permit would be issued to the applicant on an annual basis. The fee for the permit must be set by the traffic and parking commission and approved by the council. This ordinance provides that a fee of \$25.00 is approved. The applicant would also be required to pay the reasonable costs associated with the installation of the parking signs. The holder of such permit would be the only vehicle allowed to park on the street in front of the university area individual lot with the exception of service vehicles and vehicles for which a visitor's permit is obtained.

These two ordinances were deferred by the traffic and parking commission at their meeting of May 12, 2003.

**ORDINANCE NO. BL2003-1400** (WATERS) – This ordinance, as amended, amends the Metropolitan Code of Laws to provide for reimbursement of customer overpayments for water and sewer services. The Metro Code sections regarding water rates and charges provide for the classification of customers into four classes for the purpose of billing. These four classes are described as follows:

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

This ordinance would only affect commercial customers since there are three different classes of commercial usages, as opposed to only one residential class.

Pursuant to this ordinance, if the director of water and sewerage services shall determine whether a customer has been overcharged during the previous 36 months upon receipt of a request by that customer. The customer's most recent 12-month usage period would be used in determining the applicable rate in the event of a claimed error in usage calculation. If the customer was overcharged, then the department shall reimburse the customer in the amount of the customer's overpayment. This ordinance expressly provides that no



reimbursement shall be made for any overcharge that occurred prior to the effective date of this ordinance. Thus, the provisions of this ordinance are not to be applied retroactively.

**ORDINANCE NO. BL2003-1406** (GREER) – This ordinance readopts the Metropolitan Code to include all ordinances enacted on or before February 24, 2003.

**ORDINANCE NO. BL2003-1407** (HALL & STANLEY) – This ordinance authorizes the director of public property administration to acquire property easements by negotiation or condemnation for the Lebanon Pike sidewalk improvement project from Munn Road to Disspayne Drive. The estimated cost for the easements is \$70,000, and is to be paid from previously issued GSD multipurpose improvement bond funds.

This ordinance has not yet been considered by the planning commission.

**ORDINANCE NO. BL2003-1408** (STANLEY, MCCLENDON & OTHERS) – This ordinance authorizes the director of public property to accept a greenway easement from Mr. and Mrs. Gayron C. Lytle for use in connection with the Stones River Greenway System. The property for which this easement is to be accepted is located adjacent to the Ravenwood Club beginning at Stones River Road. Pursuant to the agreement for the granting of the easement, Metro is to use the property only for a pathway for pedestrian or bicycle travel, nature trail, and/or natural area. Metro further agrees to install and maintain a five foot fence across a portion of the property. Metro also agrees to conserve a 5.99 acre parcel of Metro-owned property on Stones River Road as open space.

In addition to the acceptance of the greenway easement, this ordinance closes, abandons, and conveys Metro's interest in an unbuilt right-of-way across a portion of the property to Mr. and Mrs. Lytle.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2003-1409** (BOGEN & HALL) – This ordinance abandons an ingress-egress driveway easement to the Rolling Fork reservoir on five parcels of property located off of Hathaway Court and Jocelyn Hollow Road in the Westmeade area. This easement is no longer being used by the department of water and sewerage services or any other utility. Amendments to this ordinance may be approved by resolution of the Metropolitan Council.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2003-1410** (HAND & BRILEY) – This ordinance renames a portion of Robertson Avenue from Briley Parkway, at Urbandale Avenue, to Interstate 40 as “Briley Parkway”, and renames a portion of Robertson Avenue between Interstate 40 and Charlotte Pike as “White Bridge Pike”. The portions of Robertson Avenue to be changed are in the vicinity of the construction project for the new entrance ramps to Interstate 40 at White Bridge Road. A copy of the letter sent to residents in the area affected by this name change is on file with the planning commission.

This ordinance has been approved by the planning commission and the ECD board.

**ORDINANCE NO. BL2003-1411** (HALL) – This ordinance closes Alley #254 from North 2<sup>nd</sup> Street to its terminus. Metro has determined that there is no future need for this portion of this alley for governmental purposes. This closure has been requested by Ed Atkinson of R. Chris Magill Architects, on behalf of the abutting property owners. Metro will retain all easements.  
(continued on next page)

**ORDINANCE NO. BL2003-1411** (continued)

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

The council office has requested documentation from the planning commission staff indicating consent of the affected property owners.

**ORDINANCE NO. BL2003-1412** (WALLACE) – This ordinance abandons a portion of Alley #571 southwest of 14<sup>th</sup> Avenue North and abandons a portion of an unnamed alley from Meharry Boulevard to its terminus. In addition, this ordinance approves the relocation of Alley #577 from Meharry Boulevard to its terminus at Alley #571. This alley is to be relocated approximately 23 feet towards 14<sup>th</sup> Avenue North. Metro has determined that there is no future governmental need for this portion of these alleys. This closure has been requested by Michael Delvizis of Stantec Consulting Services, Inc., for Matthew Walker Comprehensive Health Center, Inc., the abutting property owner. This closure is necessary for the construction of the new Matthew Walker Comprehensive Health Center. Pursuant to this ordinance, all easements held by Metro are abandoned.

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

The council office has requested documentation from the planning commission staff indicating consent of the affected property owners.

**ORDINANCE NO. BL2003-1413** (TYGARD) – This ordinance closes a triangular portion of Old Harding Pike where Old Harding Pike merges with Highway 100. Metro has determined that there is not future governmental need for this portion of Old Harding Pike. Metro will retain all easements. This closure has been requested by Richard Jones of World Realty, for John P. Chaffin and Christopher W. and Hyun H. Chang, the abutting property owners.

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

The council office has requested documentation from the planning commission staff indicating consent of the affected property owners.

**ORDINANCE NO. BL2003-1414** (HAND & BRILEY) – This ordinance abandons a portion of 61<sup>st</sup> Avenue North from the CSX railroad tracks to its terminus at the Cumberland River. Metro has determined that there is no future governmental need for this portion of 61<sup>st</sup> Avenue North. This closure has been requested on behalf of Cone Solvents and Altivia Corporation, the abutting property owners. Pursuant to this ordinance, all easements held by Metro are abandoned.

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

**ORDINANCE NO. BL2003-1422** (SONTANY) – This ordinance amends the Metropolitan Code of Laws to increase dog licensing fees and to provide for a licensing fee differential for sterilized dogs. The Metro Code currently requires all dogs kept within Davidson County to be licensed, with the annual license fee set at a fixed \$4.00 per dog, regardless of whether the dog has been spayed or neutered. This ordinance would increase the fee to \$20.00 for each unsprayed or unneutered dog and \$5.00 for each sterilized dog. Certification of sterilization would have to be presented at the time the licensing fee is paid to be eligible for the \$5.00 fee. The licensing fee would not be applicable to registered service animals and law enforcement dogs, nor would senior citizens be required to pay any fee for a spayed or neutered dog. The fee for a duplicate or replacement tag would be an additional \$2.00. In addition, this ordinance lowers the age at which dogs must be vaccinated for rabies from six months to four months.

**ORDINANCE NO. BL2003-1423** (HALL & JENKINS) – This ordinance authorizes the Metropolitan Government to participate with John Ring (Tennessee Contractors, Inc.) to provide public sewer service to phase three of the Fountainbrooke subdivision located in northeastern Williamson County. This subdivision ties into the Owl Creek Trunk sewer project, which was built in

anticipation of developer participation. John Ring has deposited \$64,000 as a contribution-in-aid of construction for a total of 32 single-family home connections.

**ORDINANCE NO. BL2003-1424** (GILMORE & JENKINS) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with the Cheatham County Rail Authority for the construction of a box culvert to improve access to the Whites Creek pumping station. Pursuant to the agreement, the department of water and sewerage services will pay the actual cost of the box culvert, not to exceed \$65,000. Any future amendments to this agreement may be approved by resolution of the Metropolitan Council.

**ORDINANCE NO. BL2003-1425** (HALL & PONDER & STANLEY) – This ordinance authorizes the Metropolitan Government to assume and take over all functions, assets, and liabilities connected with the water distribution reservoirs and pumping facilities of the First Suburban Water Utility District. First Suburban provides water service to customers in the Hermitage and Stones River areas, including portions of Wilson County. State law permits Metro to acquire utility and other public service districts that operate within the area of the Metropolitan Government. This acquisition was contemplated when Metro entered an agreement with First Suburban approved by Resolution No. R94-1431. Pursuant to Resolution No. R94-1431, Metro took over the sewer utility functions of First Suburban approximately eight years ago. This resolution approves an amendment to the 1994 agreement to provide for Metro to assume the water treatment and distribution functions of First Suburban as well.

Pursuant to this agreement, the ownership of all of First Suburban's operations, assets, property, facilities and liabilities relating to the treatment and distribution of water will be transferred to Metro on or before July 1, 2003, except that Metro will not acquire any of the assets or liabilities regarding the portion of First Suburban operating in Wilson County. A purchaser in Wilson County is to acquire the assets regarding the Wilson County operations of First Suburban and is to assume the outstanding bond liability.

**ORDINANCE NO. BL2003-1426** (WILLIAMS & HALL) – This ordinance abandons the Crater Hill water pumping station easement encumbering property owned by Barry S. Wilker. This pumping station and easement is no longer being used by the department of water and sewerage services. Pursuant to this ordinance, Metro agrees to demolish the existing water pumping station and abandon the encumbering easement. This abandonment has been approved by the planning commission.

**ORDINANCE NO. BL2003-1427** (LORING & HALL) – This ordinance accepts the donation of .527 acres of property from John Barker for use as public right-of-way. This property is located between Old Lebanon Pike and Lebanon Pike.

This donation has not yet been approved by the planning commission.

**ORDINANCE NO. BL2003-1428 (BEEHAN & JENKINS) – This ordinance authorizes the director of public property administration to acquire, by negotiation or condemnation, easement interests on six parcels of property to be used in connection with the Washington Regulator project. The easements to be acquired are on parcels located at the intersection of Main Street and North First Street. The planning commission has approved the acquisition of the necessary easements.**

**ORDINANCE NO. BL2003-1429** (JENKINS) – This ordinance approves a lease agreement between the Metropolitan Government and Domain Copper Ridge Associates, Ltd., for office space at Parkway Towers for the public defender. In June of 2002, the Council approved an agreement for the lease of 39,974 square feet of space at the American Trust Building for the public defender at a rental cost of \$519,662 annually. This lease agreement evidently proved to be unworkable and Metro now desires to lease space at Parkway Towers, located at 404 James Robertson Parkway, for the public defender.

Pursuant to this agreement, Metro will lease 30,736 square feet of space at an annual rental cost of \$391,884. After the second year of the lease, the base rental rate will increase by 2.5% per year. In addition to the base rent, Metro agrees to pay \$150 a month for two parking spaces in the Parkway Towers garages, and agrees to pay Metro's proportionate share of the reasonable operating costs that exceed \$6.00 per rentable square foot. These operating costs include common area maintenance, trash removal, landscaping, janitorial services, and lighting. Metro will also be responsible for any construction costs only to the extent that these costs exceed \$307,360. The term of this lease agreement is from September 1, 2003 through August 31, 2013, with a possible extension of one five-year period. This lease cannot be cancelled during the first five year period except as a result of a breach of the contract.

Domain Copper Ridge Associates agrees to maintain the interior and exterior of the premises, including lighting, HVAC, and plumbing. Metro agrees to provide self-insured liability coverage subject to the limitations under Tennessee governmental tort liability laws. This lease may be amended only upon approval of the Metropolitan Council by resolution.

**ORDINANCE NO. BL2003-1430** (BLACK & JENKINS) – This ordinance closes Price Street from West Trinity Lane to Freesilver Road. Metro has determined that there is no future governmental need for this portion of Price Street. This closure has been requested by Parker Toler for Sabbath Day Church and Wade Phelps, the abutting property owners. Metro will retain all easements. This closure has been approved by the planning commission and the traffic and parking commission. The council office has requested documentation from the planning commission staff indicating consent of the affected property owners.

**ORDINANCE NO. BL2003-1431** (HAUSSER & WALLACE) – This ordinance renames a 200-foot segment of Capers Avenue as “Children’s Way”. The section of Capers Avenue to be renamed is located parallel to Blakemore Avenue between 21<sup>st</sup> Avenue South and 22<sup>nd</sup> Avenue South.

This ordinance has been approved by the planning commission and has been referred to the ECD board.

### **- BILLS ON THIRD READING -**

**ORDINANCE NO. BL2003-1344** (MCCLENDON) – This ordinance closes Willow Brook Drive from Thompson Lane southward to its terminus. This ordinance also closes a 940-foot portion of the Thompson Lane right-of-way off of the eastbound lane. Metro has determined that there is no future governmental need for the portions of this street and right-of-way. This closure is requested by Jay West of Bone, McAllester, Norton PLLC, on behalf of JDN Development Company, Inc., the contracted purchaser of all abutting properties. All easements are to be retained by the Metropolitan Government. Documentation showing consent of the affected property owners is on file with the planning commission.

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

**ORDINANCE NO. BL2003-1352** (DREAD, BRILEY & WALLACE) – This ordinance amends the Metropolitan Code of Laws to enable a beer permit holder whose permit has been revoked for the unlawful sale of beer to a minor, and who has filed an appeal of that decision, to continue to sell beer upon posting a \$25,000 bond with the Metropolitan clerk. The Code provides that the beer board has the authority to revoke or suspend a permit if the permit holder sells beer or allows beer to be sold to a minor. The Code also provides, in accordance with state law, that a decision of the beer board to revoke a permit may be appealed to the chancery or circuit court. The intent of this ordinance is to allow for a permit holder that has appealed the beer board’s decision to be allowed to continue selling beer during the appeal process only upon posting the \$25,000 bond, unless the court issues a stay providing otherwise. The ordinance provides that any subsequent finding by the beer board that the permit holder has sold beer to a minor will result in a forfeiture of the bond.

**ORDINANCE NO. BL2003-1363** (WATERS) – This ordinance, as amended, amends the Metro Code of Laws to provide that certain acts by beer permit holders are prohibited. The Code of Laws currently provides that certain acts by beer permit holders are prohibited, such as the sale of beer to minors, the sale to intoxicated persons, and allowing intoxicated persons to loiter on the premises. This ordinance would add allowing gambling on the premises, allowing solicitation of prostitution, and allowing criminal activity on the premises, as other prohibited acts that would constitute grounds for the revocation of a beer permit.

The originally filed version of this ordinance would have also prohibited the sale or display of beer from an ice tub and prohibited the sale of single container beers within an urban zoning overlay district. These provisions were amended out of the bill at the May 20, 2003, council meeting.

**ORDINANCE NO. BL2003-1364** (GILMORE & MCCLENDON) – This ordinance makes applicable to the Metropolitan Government the provisions of Part 7 of Chapter 211 of Title 68 of Tennessee Code Annotated (commonly referred to as the “Jackson Law”) to require local approval of landfills, solid waste disposal facilities, and solid waste processing facilities prior to construction of such facilities and prior to an issuance of a permit by the state department of environment and conservation. The Jackson Law was enacted principally to (continued on next page)

**ORDINANCE NO. BL2003-1364** (continued)

enable smaller local government legislative bodies with limited zoning requirements to have some control over the siting of proposed landfills and solid waste facilities. If this ordinance is adopted it would require that public notice be given to inform interested persons in the area of a proposed landfill, waste processing facility, or waste disposal facility, and that interested persons be given the opportunity to request that the local legislative body hold a public hearing prior taking action on the matter.

The Jackson Law does not expressly define the terms “waste processing facility” and “waste disposal facility”, though the terms are defined in the Tennessee Solid Waste Act. “Solid waste disposal” is defined under the Act as “the process of permanently or indefinitely placing, confining, compacting, or covering solid waste.” “Solid waste processing” is defined as “any process that modifies the characteristics or properties of solid waste, including but not limited to, treatment, incineration, composting, separation, grinding, shredding, and volume reduction; provided, that it does not include the grinding or shredding of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch or other useful products.” According to a decision by the Tennessee Court of Appeals in *Profill Development, Inc. v. Dills*, a recycling facility that falls within the definition of “solid waste processing facility” is covered by the provisions of the Jackson Law and requires local government approval. The *Profill* case also clarified that both public and private permit applicants must obtain local legislative approval if the municipality has opted into the provisions of the Jackson Law.

The Metropolitan Code of Laws already requires that all requests for special exceptions, including sanitary landfills and waste transfer facilities, be approved by resolution of the Metropolitan Council prior to consideration by the board of zoning appeals. The Council Office

contacted the state department of environment and conservation to obtain some clarification as to the types of facilities to which the Jackson Law would apply. The department indicated that the Jackson Law would be applicable to a recycling center that fell within the definition of "waste processing facility", but a collection center would not. The Metro Zoning Code defines "collection center" as "a facility which is staffed and fenced that has waste receptacles on site that are open to the public, when an attendant is present, to receive household waste, municipal solid waste and recyclable material."

Representatives from the state department of environment and conservation also informed the public works committee on May 20, 2003, that recycling facilities such as Rivergate Recycling that are not required to obtain a state permit would not require Metro approval if the provisions of the Jackson Law are adopted.

State law requires that this ordinance be adopted by a two-thirds majority vote of the council (27 votes) prior to its adoption on third reading.

**ORDINANCE NO. BL2003-1401** (LORING & DERRYBERRY) – This ordinance authorizes the Metropolitan Government to enter into a utility relocation contract with the state department of transportation (TDOT) for reimbursement of engineering and construction inspection provided by Metro water services in connection with the I-40 widening and rehabilitation from I-24 to Donelson Pike. The reimbursable engineering and inspection costs under this agreement are estimated to be \$11,000. This is a typical agreement entered into by Metro and TDOT for reimbursement of inspection costs.

**ORDINANCE NO. BL2003-1402** (HALL & JENKINS) – This ordinance abandons an existing 6" water line and easement at the James A. Caycee Homes conditioned upon the installation and acceptance of a relocated 6" water line and easement. The department of water and sewerage services is no longer using the line and easement to be abandoned. The planning commission has approved this abandonment.

**ORDINANCE NO. BL2003-1403** (HALL) – This ordinance abandons a portion of an 8" sewer line and easement on the Meigs Magnet School property. The department of water and sewerage services is no longer using the sewer line and easement. The planning commission has approved this abandonment.

**ORDINANCE NO. BL2003-1404** (HALL & HADDOX) – This ordinance abandons a portion of a 10" sanitary sewer line and easement in connection with the Buena Vista Elementary School addition project. The department of water and sewerage services is no longer using the sewer line and easement. This abandonment is conditioned upon the installation of a manhole over the existing 10" sewer line to establish separation of public and private lines. The planning commission has approved this abandonment.

**ORDINANCE NO. BL2003-1405** (DERRYBERRY) – This ordinance renames a portion of McCrory Creek Road as "Pulley Road", north from Couchville Pike to the existing Pulley Road. This



name change has been approved by the planning commission. A letter of notification sent to the affected residents in the area is on file with the planning commission.

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director

DATE: June 3, 2003

RE: **Supplemental Analysis Report On  
Proposed Charter Amendments**

**RESOLUTION NO. RS2003-1474** (SHULMAN) - This resolution provides twenty-one proposed amendments to the Metropolitan Charter. Five of the proposed amendments were previously submitted pursuant to other resolutions filed earlier this year. These five amendments include filling Council vacancies, compensating members of the board of education, and increasing the salary of Councilmembers. The prior resolutions were deferred indefinitely to allow any proposed amendments to the Charter to be included in one resolution.

The Council, pursuant to the Charter, may only adopt two resolutions during the term of the Council that submits amendments to the voters for ratification. One resolution has already been adopted during this term at the September 17, 2002, council meeting, which submitted one proposed amendment for ratification at the November 2002 election.

In keeping with state law, this resolution must be adopted at the June 3, 2003, Council meeting in order to submit amendments to the voters for ratification at the August Metropolitan General election. The Charter Revision Commission met Friday May 9<sup>th</sup> and Friday May 16<sup>th</sup> to discuss these proposed Charter amendments and to make a recommendation to the Council. The Charter Revision Commission only recommended that two of the proposed amendments be approved. The recommendations of the Charter Revision Commission are included in the analysis of the individual amendments listed below.

The Charter may also be amended by proposed amendments submitted for public referendum that are generated by a petition signed by 10% of the number of registered voters of Davidson County voting in the preceding general election. Two significant amendments to the Charter have been ratified that were generated by petition: one requiring an elected board of public education and one implementing the term limit provisions.

Each amendment submitted must be specifically adopted by 27 affirmative votes to be made a part of the resolution, and the resolution itself must receive 27 affirmative votes in order to be adopted. The recommendations of the Charter Revision Commission do not affect the required vote of the Council to submit an amendment to the voters for ratification. Charter amendments and resolutions proposing Charter amendments are not subject to the approval of the mayor.

Some of these proposed Charter amendments are in conflict with one another, and thus only one of those in conflict can be adopted. The proposed amendments that are in conflict with one another are as follows:

Amendment Nos. 1, 2, 3, 11, and 12 are in conflict as they all relate to altering the method of filling vacancies. Only one of these proposed amendments may be adopted.

Amendment Nos. 10, 14, 15, 19, and 20 are in conflict as they all relate to reducing the size of the Council. Only one of these proposed amendments may be adopted.

**Amendment No. 1** (Wallace) – This amendment would require that vacancies for an unexpired term in the offices of District Councilmember, Councilmember-at-Large, and Vice Mayor be filled by an election held by the Council, rather than by an election of the voters.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 2** (Wallace) – This amendment contains the same subject matter as Amendment No. 1, but adds the office of Mayor as well.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 3** (Jenkins) – This amendment would require that vacancies in the office of Councilmember-at-Large, in which there is less than two years remaining of the unexpired term, remain vacant for the duration of the Council term. The Charter currently provides that vacancies in the office of District Councilmembers, Councilmembers-at-Large, and the Vice Mayor be filled at the next general election. If this amendment were adopted and ratified, only vacancies with more than two years left in the unexpired term would be filled at the next general election.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 4** (Loring) – This amendment would increase the membership of the Electric Power Board from the current five members to nine members serving four-year terms. The Charter currently provides that the five members of the Electric Power Board serve five-year terms.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 5** (Loring) – This amendment would require the Electric Power Board to submit its annual budget to the Council for approval.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 6** (Tygard) – This amendment would prohibit members of Council from holding any other elective office. If this amendment was adopted and ratified, Councilmembers would be prohibited from holding any other elective office in the federal, state, or local government effective August of 2007.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 7** (Shulman) – This amendment would increase the membership of the Metropolitan Transit Authority (MTA) board from five to seven members, with one member being a regular rider and one member representing the interests of persons with disabilities.

The MTA board is presently comprised of five members appointed by the Mayor and confirmed by Council without specific qualification. Previous attempts to increase the size of various boards and commissions by Charter amendment have been rejected by the voters.

The Charter Revision Commission did not recommend this amendment as written, but reiterated their recommendation from last year that the MTA board be increased to seven members, with one member representing the interests of disabled citizens and no required qualifications for the other new member.

**Amendment No. 8** (Waters) – This amendment would remove the chief of police from the traffic and parking commission and would provide that eight members instead of seven be appointed by the Mayor and confirmed by the Council. The Charter specifically includes the chief of police as a member of the traffic and parking commission, although a designee of the chief of police attends the meetings and acts as a voting member of the commission.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 9** (Waters) – This amendment would allow the Mayor to designate a person as a member of the planning commission in place of the Mayor. The Charter specifically includes the Mayor as a member of the planning commission, although like the chief of police regarding the traffic and parking commission, the Mayor has appointed a designee to the planning commission to act on his behalf. This Charter amendment would ratify the current arrangement as it relates to the Mayor as a member of planning commission.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 10** (Waters) – This amendment would reduce the size of the Council to 14 members, with five at-large members and 9 district members from the nine school districts. Previously proposed amendments to reduce the size of Council failed to receive the Council’s approval last year.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 11** (Dread) – This amendment would provide that vacancies in the office of District Councilmember, Councilmember-at-Large, and Vice Mayor be filled by the candidate receiving a plurality of the votes. This would prevent the necessity for a runoff election in the event a candidate in a general election to fill a vacancy failed to receive a majority of the votes cast.

The Charter Revision Commission recommended approval of this amendment.

**Amendment No. 12** (Shulman) - This amendment would implement an instant runoff method of electing the Mayor, Vice Mayor, and Members of Council. This amendment was modeled after the instant runoff process used in San Francisco, California and would enable voters to rank candidates in their order of preference. When the votes are tallied, if no one candidate receives a majority of the votes, the candidate receiving the fewest votes on a ballot would be eliminated and that candidate’s votes would be transferred on each ballot to the next highest choice. This process would continue until one candidate received a majority of the votes. This amendment would eliminate the need for separate runoff elections.

The Charter Revision Commission deferred taking action on this amendment until more information is obtained from the Election Commission about how this process is working in other jurisdictions.

**Amendment No. 13** (Bogen) – This amendment would permit the Council to provide for compensation of members of the Board of Education as part of the general pay plan. The Charter currently prohibits members of boards and commissions from receiving compensation for their service. A similar proposed amendment failed to receive Council approval in 1998 and 2002.

The Charter Revision Commission recommended approval of this amendment.

**Amendment No. 14** (Wallace) – This amendment would reduce the size of the Council to 25 members and would eliminate the positions of Councilmembers-at-Large. This amendment would additionally require that the Vice Mayor be elected by the Council from its membership. A previously proposed amendment to reduce the size of the Council and to require that the Vice Mayor be elected by the Council failed to receive the Council’s approval in 1994 and 2002.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 15** (Wallace) – This amendment is identical to Amendment No. 14, except that it would reduce the size of the Council to 21 members.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 16** (Wallace) – This amendment would require that all employees and officers of the Metropolitan Government be residents of Davidson County. A similar proposed amendment failed to receive approval by the Council in 1994 and 2002.

The Metro Code formerly required that all employees be residents of the area of the Metropolitan Government. However, the Council repealed that requirement in 1994 and replaced the residency requirement with one that required employees to be residents of the State of Tennessee. The United States Supreme Court has ruled that it is valid to require that employees of local governments be residents of the jurisdiction of the government.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 17** (Wallace) – This amendment would prohibit a member of a Metro board or commission from serving on any other board or commission. An amendment containing the same subject matter failed to receive Council's approval in 2002.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 18** (Wallace) – This amendment would change the procedure for redistricting by allowing the Council to reject the planning commission's redistricting plan and adopt its own a redistricting plan by resolution without requiring a public referendum. The Charter allows the Council to reject the redistricting plan submitted by the planning commission and to adopt its own plan. Both plans must then be submitted to the voters allowing the people to choose which plan they prefer. Following the 1990 Census, the Council rejected the commission plan, adopted its own, and submitted both to the voters, with the voters approving the plan adopted by the Council. The referendum requirement is an attempt to assure that the "One Man – One Vote" principal is followed in redistricting. This principal was adopted in the landmark case of *Baker v. Carr*, which suit was originally brought by the City of Nashville.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 19** (Tygard) – This amendment would reduce the size of the Council to 18 district members and would eliminate the position of Councilmember-at-Large effective as of the Council term beginning September 1,

2011. Similar amendments reducing the size of the Council and eliminating the position of Councilmember-at-Large have been rejected by the Council in the past.

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 20 (Tygard) – This amendment would reduce the size of the Council to 21 members, with 18 district members and 3 at-large members effective as of the Council term beginning September 1, 2011. Similar amendments reducing the size of the Council have been rejected by the Council in the past.**

The Charter Revision Commission did not recommend this amendment.

**Amendment No. 21** (Wallace) – This amendment would allow the Council to change the salaries of Members of Council and the Vice Mayor by resolution of the Council, rather than as a part of the general pay plan. The Charter currently provides that salaries of Metropolitan officers, including the Mayor, Councilmembers, and other elected officials, may be changed by the Council as part of the general pay plan.

The Charter Revision Commission did not recommend this amendment.