

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **November 18, 2003**

RE: **Analysis Report**

Balances As Of:
11/14/02

11/12/03

<u>GSD 4% RESERVE FUND</u>	\$17,664,408	\$4,582,776
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE</u> <u>SCHOOL FUND</u>	Unavailable	Unavailable

- RESOLUTIONS -

RESOLUTION NO. RS2003-66 (WALLACE, GILMORE & ISABEL) – This resolution sets a public hearing regarding the extension of the Nashville Gas franchise to be held at the December 2, 2003, council meeting. The Metropolitan Charter requires that a public hearing be held before the final adoption of the ordinance amending and extending the Nashville Gas franchise agreement, which is the subject matter of Ordinance No. BL2003-36 on second reading.

RESOLUTION NO. RS2003-67 (GILMORE) – This resolution supplements and amends Resolution No. RS2003-37 and awards the sale of the Metropolitan Government's general obligation multi-purpose bonds, series 2003, to the lowest bidder. On October 21, 2003, the Council authorized the issuance of general obligation multi-purpose bonds in the amount of \$140,000,000 to retire commercial paper to provide permanent funding for various capital projects of the Metropolitan Government. These bonds have been advertised and bids have been received. This resolution simply authorizes the sale of the bonds to the bidder with the lowest true interest cost to the Metropolitan Government. The name of all of the bidders, including the lowest bidder, will be announced at the November 18, 2003, Council meeting.

A substitute resolution will be filed which incorporates the bids and specifically awards the sale to the lowest bidder.

Metropolitan Government's bond rating has been confirmed at AA by the three major rating agencies, however, Fitch Ratings has called attention to the need to maintain a 5% balance in our unappropriated fund balances. Council should guard against allowing a further weakening in these funds. The credit rating by these agencies determines the interest rate cost to Metropolitan Government.

Two of our last G.O. bond issues sold at a true interest cost to Metro of 4.310212% (October 2002) and 4.115378% (April 2002).

RESOLUTION NO. RS2003-68 (WALLACE) – This resolution authorizes the department of public works to accept \$67,331 in recycling rebate grant funds from the state department of environment and conservation for fiscal year 2003-2004. The funds will be used to open a new recycling convenience center on Freightliner Drive. There is a required local match of \$67,331 in order to receive these state grant funds.

RESOLUTION NO. RS2003-69 (WHITMORE) – This resolution appropriates \$160,000 of urban development action grant (UDAG) repayments for affordable housing activities at the Historic Preston Taylor Homes. The UDAG program is a federal program that provides loans to developers, which loans are repaid to the Metropolitan development and housing agency (MDHA) rather than the federal government. These funds must be used in the "pocket of poverty" areas of the Metropolitan Government. These funds will be used for the redevelopment of the Historic Preston Taylor Homes to provide affordable housing opportunities for low-moderate income persons.

RESOLUTION NO. RS2003-70 (DREAD & GILMORE) – This resolution approves an amendment to a lease/purchase agreement between the police department and Acton Mobile Industries, Inc., for the lease of a modular building being utilized at the police training academy. The original agreement approved in 1999 provided that Metro was to pay 48 monthly payments with the option to purchase the building at the end of the 48-month period. Due to a delay in getting the modular building in place, the agreement will expire before the 48 monthly payments are made. The police department would like to exercise its option to purchase the building at the end of the 48 payments, but to do so requires an extension of the agreement. The original agreement was set to expire on September 30, 2003. This resolution extends the term of the agreement to January 31, 2004. Metro will continue to pay \$580 a month for the next four months, and then will be eligible to exercise its option to purchase the building for \$14,491 on January 31, 2004.

RESOLUTION NO. RS2003-71 (WHITMORE & GILMORE) – This resolution approves an annual grant in the amount of \$278,000 from the state department of state to the Nashville public library system for library services to the hearing impaired and materials for the disadvantaged. The term of this grant is from July 1, 2003, through June 30, 2004, with a possible extension of four additional one-year terms. The grant funds will be divided as follows: \$91,000 for general library services, \$182,000 for library services to the deaf and hard of hearing, and \$5,000 for library materials for the disadvantaged.

RESOLUTION NO. RS2003-72 (NEIGHBORS & GILMORE) – This resolution approves an EPA cooperative agreement between the U.S. environmental protection agency and the Metropolitan health department for participation in the ozone mapping project under the environmental monitoring for public access and community tracking program. This agreement decreases the amount of the original grant by \$157,119, for a total grant award of \$556,271.

RESOLUTION NO. RS2003-73 (NEIGHBORS & GILMORE) – This resolution approves a contract in the amount of \$52,700 between the National Healthcare for the Homeless Council and the Metropolitan health department to fill the position of TennCare Shelter Enrollment Coordinator. The term of this agreement is from July 1, 2003, through June 30, 2004, with a possible extension of two additional one-year terms.

RESOLUTION NOS. RS2003-74, RS2003-75 &RS2003-76 (NEIGHBORS) – These three resolutions approve agreements between the Metropolitan Government and three local nursing school programs to provide public health training for student nurses. The agreements are with Belmont University, Aquinas College, and Vanderbilt University, respectively. Pursuant to these agreements, the Metro health department will provide clinical training experiences to nursing students as part of their public health training. Students will not receive any compensation and there is no cost to the Metropolitan Government for providing this service. Metro has participated in similar clinical experience programs in the past. The terms of the agreements are from July 1, 2003, through June 30, 2008. The colleges will be required to provide assurance that the students are covered by health insurance and to designate a staff person to serve as a coordinator of the program and to serve as a liaison between the college and Metro. The colleges will also be required to maintain professional liability insurance for its students.

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RESOLUTION NOS. RS2003-74, RS2003-75 & RS2003-76 (continued)

- * Resolution No. RS2003-74 approves the contract with Belmont University.
- * Resolution No. RS2003-75 approves the contract with Aquinas College.
- * Resolution No. RS2003-76 approves the contract with Vanderbilt University.

RESOLUTION NO. RS2003-77 (NEIGHBORS & GILMORE) - This resolution approves a grant agreement between the U.S. department of housing and urban development and the Metropolitan health department to implement a homeless management information system (HMIS). The HMIS program will be a web-based program to collect data and report the needs of homeless service providers. This grant provides for federal funds in the amount of \$174,485 for this project. Metro will be required to furnish matching funds in the amount of \$41,485. The grant funds will be used to hire a program coordinator, purchase computers and network equipment, and to spearhead the implementation of the software into shelters and other agencies serving homeless persons.

RESOLUTION NO. RS2003-78 (GILMORE) - This resolution approves an annual grant in the amount \$525,894 from the state commission on children and youth to the juvenile court for juvenile accountability incentive block grant program services. These funds are federal pass through dollars that are used to fund certain salaried positions and professional services in the juvenile court. The term of the grant is from October 1, 2003, through September 30, 2004, with a possible extension of two additional one-year periods. The juvenile court will be required to provide a cash match of \$58,433 from their operating budget.

RESOLUTION NO. RS2003-79 (GILMORE) - This resolution approves a lease agreement between the Metro police department and Imagistic/Pitney Bowes for lease of fifty-two copiers. The police department has been leasing these copiers from Pitney Bowes since 1998. This is a short-term lease agreement to continue this arrangement until the results from a Metro-wide copy machine review and audit are available. The police department will continue leasing the copiers for a period of six months, with a possible extension of an additional six month period. The rental cost for the copiers will remain at \$7,004 per month.

The Metro Code requires that all leases for equipment exceeding \$5,000 per year be approved by resolution of the Council.

RESOLUTION NO. RS2003-80 (GILMORE) - This resolution accepts \$48,136.54 in settlement of the Metropolitan Government's subrogation claim against Henry S. Tarpley. On August 29, 2000, Mr. Tarpley was driving a Metro-owned vehicle in the scope of his employment as a fire codes inspector when he was involved in an accident. Mr. Tarpley was proceeding through the green light at Shelby Street and South 4th Street when another driver ran the red light and struck the vehicle Mr. Tarpley was driving. Mr. Tarpley sustained physical injuries resulting in a permanent and total disability from performing his job or any other work. Mr. Tarpley ultimately received a permanent disability pension from the Metropolitan Government.
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RESOLUTION NO. RS2003-80 (continued)

Mr. Tarpley settled his lawsuit against the party causing the injury for \$350,000. An economist submitted a report in the lawsuit that Mr. Tarpley's economic loss from the accident was \$1,000,000. When combining the annual disability payments already paid plus the future annual disability payments, the Metropolitan Government will have sustained damages totaling \$205,318, which when reduced to present day value amount to \$158,000.

The department of law recommends settling the subrogation claim against Mr. Tarpley in the amount of \$48,136.54. This will result in Mr. Tarpley and the Metropolitan Government each receiving approximately 25% of their respective damages, after Mr. Tarpley pays his attorney fees.

RESOLUTION NO. RS2003-81 (GILMORE) – This resolution authorizes the department of law to compromise and settle the lawsuit of Lonzie Wade against the Metropolitan Government in the amount of \$12,000. On October 30, 2001, Mr. Wade was playing basketball at the Antioch community center when he lost his balance and collided with the glass wall in the gymnasium. The glass panel shattered, causing severe lacerations to his left arm and wrist. Mr. Wade's medical bills to date total \$5,753, and it is estimated that he will have \$15,000 in future medical expenses to repair the scarring on his forearm and hand. In addition, Mr. Wade has numbness in his middle finger.

Upon being sued, the Metropolitan Government brought in the construction company, the glass company, and the architect who designed the gym as third party defendants. Prior to the accident in question, there had been three other incidents at the community center involving broken glass panels since 1999. These prior incidents clearly establish that Metro had, or should have had, notice of a dangerous or defective condition. However, no remedial steps regarding the other panels in the gym were taken until after the incident in question. The glass panels have now all been covered with clear carbonate, a substance designed to make the glass shatterproof. No complaints had ever been made to the construction company, glass company, or architect about the glass panels. Mr. Wade has accepted a total settlement of \$26,000, representing \$1,000 each from the construction company and glass company and \$12,000 each from the architects and Metro.

The department of law is of the opinion that \$12,000 is a fair and reasonable settlement considering the facts and circumstances of this injury. The caption of this resolution should be amended to simply state that this amount is to be paid from the self-insured liability account, rather than the Metro Parks self-insured liability account.

RESOLUTION NO. RS2003-82 (GILMORE) – This resolution compromises and settles a portion of the claim of Billy R. Johnson against the Metropolitan Government in the amount of \$21,753.67. On September 22, 2003, a blockage in the public sewer main caused sewage to back up and flood a duplex at 319 May Drive in Madison. The sewage ultimately flooded both sides of the duplex to a depth of approximately four inches. The sewage back up caused damage to the entire floor of the duplex and saturated most of the walls. This resulted in the replacement of the flooring and part of the sheetrock, as well as extensive cleaning and sanitizing.

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RESOLUTION NO. RS2003-82 (continued)

The Metro claims representative advised Mr. Johnson that Metro would pay for reasonable cleaning and repair in keeping with industry standards. Mr. Johnson opted to hire a private contractor who submitted a bill for restoration in the amount of \$32,861.26. The claims division obtained a separate estimate for the work in the amount of \$21,753.67, including a discount for the worn condition of the flooring in the duplex prior to the incident. Mr. Johnson has agreed to accept this amount for the restoration, with the cleaning portion of the claim to be resolved separately. In the event a settlement is reached regarding the cleaning portion of the claim, another resolution will be filed subsequently.

The department of law is of the opinion that this is a fair and reasonable settlement considering the extent of the damage done to the property. This amount is to be paid from the self-insured liability fund.

RESOLUTION NO. RS2003-83 (GILMORE) – This resolution authorizes the department of law to compromise and settle the lawsuit of Willie Marable against the Metropolitan Government in the amount of \$40,000. Mr. Marable was an employee at the Nashville Convention Center from 1987 until 2001. He claims that a co-worker repeatedly came to work intoxicated and harassed him on those occasions. He further alleges that the harassment became racial in 1999 and that after he told his supervisor about the harassment, nothing was done to address the problem. The supervisor denies receiving such reports and further states that she was unaware of the alleged racial harassment.

In July of 2000, the employee was verbally abusive to Mr. Marable, for which the employee was terminated. Mr. Marable claims that his supervisor retaliated against him after the employee was fired by denying vacation requests and harassing him about his use of sick leave. The supervisor also denies this allegation. Mr. Marable sued the Metropolitan Government in federal court alleging race discrimination, supervisor and co-worker hostile work environment, and retaliation. Metro was granted summary judgment on all but the co-worker hostile environment claim.

Mr. Marable was diagnosed as suffering from major depression with psychotic features. He applied for and received a disability pension in 2001, which he continues to receive. He continues to be treated by a psychiatrist and psychologist, who testified that the events involving the harassment of the former employee caused him to suffer from his current mental illness. The Metropolitan Government employed a psychologist to perform an independent medical evaluation, who determined that Mr. Marable does suffer from mental illness, but that the diagnosis of schizoaffective disorder should be considered as an alternative to major depression.

Mr. Marable's medical bills total \$16,590 to date. His disability pension is approximately 60% of the salary he was earning in 2000, and he is 22 years from retirement age. Thus, his lost wages are approximately \$300,000. Although the Metropolitan Government disputes causation, a jury award for lost wages alone would likely be in excess of \$300,000. Based on the risk of a substantial recovery for the plaintiff at trial, the department of law recommends settling this lawsuit in the amount of \$40,000 to be paid from the judgments and losses fund.

- BILLS ON SECOND READING -

ORDINANCE NOS. BL2003-1 & BL2003-2 – Both of these ordinances amend the beer permit requirement provisions in the Metro Code of Laws to exempt certain 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. However, the Council in July of 2003 enacted Substitute Ordinance No. BL2003-1353 establishing an exemption from the minimum distance requirements for restaurants located on property subject to a planned unit development (PUD) that already have a state on-premises liquor consumption license. Substitute Ordinance No. BL2003-1353 was essentially a compromise bill in an effort to take a step toward enabling restaurants with a state liquor license to obtain an on-sale beer permit without meeting the established distance requirements in the Code. 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.

Only one of these ordinances should be adopted on third and final reading since they both concern the same subject matter and amend the same section of the Code.

Ordinance No. BL2003-1 (Wallace) amends the Metro Code of Laws to provide that restaurants possessing a valid license issued by the state alcoholic beverage commission for on-premises liquor consumption shall have 180 days from the enactment of this ordinance to apply to the beer board for a permit and be exempted from the minimum distance requirements. After the 180 day window of opportunity, any restaurant possessing a valid state on-premises liquor consumption license desiring to be exempt from the minimum distance requirements could only do so if the Council adopts a resolution approving the exemption. The Council would have 60 days from the date that the Council and the district councilmember are notified by the beer board that such an application requesting an exemption has been filed in which to adopt such a resolution. Failure by the Council to approve or disapprove within 60 days would be deemed an approval by the Council. This is similar to the Code provisions regarding the Council’s approval of certain special exception uses such as landfills and waste transfer stations.

Ordinance No. BL2003-2 (Dread) amends the Metro Code of Laws to exempt restaurants possessing a valid license issued by the state alcoholic beverage commission for on-premises liquor consumption from the minimum distance requirements pertaining to one and two family dwellings. The distance requirements pertaining to churches, schools, daycares, and parks would still be applicable to restaurants with a state liquor license. This ordinance also provides that in the event a restaurant permit holder that is exempted from the distance requirements pertaining to residences 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. Also pursuant to this ordinance, 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 NO. BL2003-3 (GILMORE) – 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 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 to taking action on the matter. If adopted, this ordinance would require the Council to approve the siting of all landfills, solid waste disposal facilities, and solid waste processing facilities before a state permit for the facility could be issued and construction commenced.

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.”

Based on the interpretation of the above definitions, the Jackson Law would apply to facilities such as sanitary landfills, construction and demolition landfills, recycling centers that reduce the volume of or separate waste, and waste transfer stations that sort and separate waste. 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. The Jackson Law would not apply to landfills that already have a state permit and are in operation unless the facility sought to enlarge its size by lateral expansion or new construction.

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ORDINANCE NO. BL2003-3 (continued)

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. An identical bill to adopt the provisions of the Jackson Law was pending with the Council for several months in 2003 before it was withdrawn by its sponsor.

ORDINANCE NO. BL2003-4 (WALLACE) – This ordinance amends the Metropolitan Code of Laws to allow owners of stolen motor vehicles 72 hours to reclaim their vehicle at the Metro tow-in lot without paying a storage fee. The Code currently provides that the police department is to notify all owners of stolen motor vehicles whose vehicles are located and taken to the Metro tow-in lot, and the owner has 24 hours to reclaim the vehicle and remove it from the lot without being charged a storage fee. If the owner fails to remove the vehicle within 24 hours of notification, the owner is charged the regular daily storage fee from the time the vehicle is brought to the tow-in lot. The Code also provides that such provisions only apply to those owners of stolen motor vehicles that actually report their vehicle as stolen to the Metro police department. This ordinance extends the 24-hour reclamation provision to 72 hours, and deletes the provision requiring owners to have reported their vehicle as stolen to be exempt from the storage fee.

ORDINANCE NO. BL2003-6 (TUCKER, WILHOITE & TOLER) – This ordinance authorizes the acquisition of approximately 28 acres located in the Pettus Road area to be used for construction of a new Antioch Middle School and a future elementary school. This acquisition, by either negotiation or condemnation, has been approved by the board of public education. Metro has an option to purchase the property for \$900,000. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2003-11 (SHULMAN & WALLACE) – This ordinance amends the Metropolitan Code of Laws to designate the responsibility to the Metropolitan board of parks and recreation to approve markers and stones in the Metropolitan Government-owned cemeteries prior to their installation. The Code currently provides that the board of parks and recreation shall have the responsibility of operating and maintaining all cemeteries owned by the Metropolitan Government, and is authorized to implement rules and regulations concerning their operation. The Metropolitan Government currently owns and operates two cemeteries: the historic Nashville City Cemetery and the County Cemetery on 18th Avenue North. This ordinance would have the board approve the stones and markers in advance to ensure that they are appropriate in keeping with the historic nature of the cemetery.

ORDINANCE NO. BL2003-14 (BROWN & GILMORE) – This ordinance authorizes the Metropolitan Government to enter into a licensing agreement with Wal-Mart Stores East, LP, allowing the department of public works to place 14 recycling bins at the Wal-Mart parking lot located at 4101 Lebanon Pike in Hermitage. The term of this agreement is for one-year, but a new licensing agreement may be entered into after the one-year period for a longer term subject to Council approval. Metro will not be required to pay any rent to place the recycling bins at the Wal-Mart store, but is required to maintain the premises in a reasonably clean condition. If Metro fails to clean up debris within five days of receiving notice, Wal-Mart may clean the premises and bill Metro for the costs incurred.
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ORDINANCE NO. BL2003-14 (continued)

This license agreement also requires Metro to maintain a \$2,000,000 personal injury and property damage insurance policy and a \$1,000,000 worker's compensation insurance policy. The license agreement makes no mention of the Metropolitan Government's self-insured status or the applicability of the Governmental Tort Liability Act to Metro's actions or omissions. The Council Office is of the opinion that the Council should not approve such an agreement requiring Metro, by contract, to furnish a certificate of public liability insurance under these circumstances.

This ordinance provides that amendments to this agreement or future agreements with Wal-Mart Stores for the placement of recycling bins may be approved by resolution receiving 21 affirmative votes.

This ordinance has been approved by the planning commission.

This ordinance was deferred at the October 21, 2003, meeting to allow time to have the license amended to address the insurance issue.

ORDINANCE NO. BL2003-31 (GILMORE) – This ordinance adopts the property identification maps for the Metropolitan Government identifying property as of January 1, 2003, as the official maps for the identification of real estate for tax assessment purposes. These maps are adopted on an annual basis.

ORDINANCE NO. BL2003-32 (MCCLENDON) – This ordinance readopts the Metropolitan Code to include all ordinances enacted on or before May 20, 2003.

ORDINANCE NO. BL2003-34 (GILMORE) – This ordinance authorizes the mayor's office of neighborhoods to accept cash donations and to appropriate sponsorship money that has been received into the general fund for the purpose of underwriting the costs of the "Celebrating Neighborhoods" conference. Fourteen private companies and nonprofit organizations have pledged a total of \$25,300 to help underwrite the costs of the conference. Pursuant to this ordinance, these cash donations will be appropriated to the office of neighborhoods fund once they are received. The funds pledged by each donor are as follows:

ORGANIZATION	AMOUNT
Delta Dental Plan of TN	\$500.00
W.L. Hailey & Company	\$3,500.00
BellSouth	\$1,000.00
Stringfellow, Inc.	\$500.00
Nashville Electric Service	\$4,000.00
Nashville Gas	\$1,000.00
Insituform Technologies, Inc.	\$5,000.00
Fisk University	\$100.00

USInfrastructure, Inc.	\$5,000.00
Metropolitan Development and Housing Agency	\$2,000.00
Stansell Electric Co., Inc.	\$100.00
The District	\$500.00
United Way of Metropolitan Nashville	\$100.00
Roy T. Goodwin Contractors Inc.	\$2,000.00
TOTAL	\$25,300.00

ORDINANCE NO. BL2003-35 (KERSTETTER & GILMORE) – This ordinance amends the Metropolitan Code of Laws regarding employee benefits to include certain new provisions to comply with federal law. As a result of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Metro pension plan needs to be amended to reflect certain provisions in the federal law. These amendments are technical in nature and the actuaries employed by the Benefit Board have determined that the amendments have no real impact on the pension plan itself. The amendments reflect provisions in the EGTRRA related to maximum income and benefit levels that do not affect Metro employees or pensioners. Most of these federal law requirements apply to the private sector, but Metro’s plan is required by federal law to be in compliance.

The Code change increases the maximum annual pension benefit that a pensioner could receive to \$160,000. However, there is no pensioner in the Metro system that is even near this maximum annual amount. Additionally, the amendment increases the maximum amount of compensation that can be used to determine pension benefits to \$200,000. But again, the Metro pay scales do not provide for compensation that would approach this maximum limit. The amendment also expands the ability to rollover pension plan distributions to other qualified retirement plans. This provision will have a negligible effect on the Metro pension plan because it would only apply to employee contributions, and Metro employees do not contribute to the Metro pension plan.

ORDINANCE NO. BL2003-36 (GILMORE) – This ordinance amends and extends the existing franchise agreement with Nashville Gas Company, due to expire on May 2, 2004. Nashville Gas has held a franchise to sell and transport natural gas within the area of the Metropolitan Government since 1912. The franchise agreement was extended in 1950 and again in 1974. This franchise extension was negotiated on behalf of the Metropolitan Government by the legal department and Hawkins, Delafield and Wood, a firm with national experience in municipal natural gas franchise agreements.

The renewal agreement provides that Nashville Gas will pay a one time up-front fee of \$262,200. Nashville Gas would then be obligated to pay an annual fee of \$62,200 through 2013, increased for inflation at the rate of 3.5% per annum. Nashville Gas will also pay to the Metropolitan Government an annual franchise fee of 5% of its gross receipts from the sale, transportation, and distribution of gas. This 5% annual franchise fee will remain in effect throughout the duration of the term, unless the Metropolitan Government grants a franchise to another company to sell, transport, and distribute gas.

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ORDINANCE NO. BL2003-36 (continued)

This renewal agreement contains additional and amended provisions not included in the current agreement. Nashville Gas will be required to comply with all legal and regulatory requirements, including those of the historical commission. In the event Nashville Gas's parent company, Piedmont Gas, has their bond rating downgraded to BBB+ or lower, Nashville Gas will be required to deliver a performance bond to the Metropolitan Government in the amount of \$2,500,000. Additionally, Nashville Gas must give notice to customers prior to performing work on customer property. Any damage that is done to the customer's property must be repaired by Nashville Gas. Nashville Gas and Metro are contractually obligated to appoint an arbitrator knowledgeable in the field of gas utilities and personal liability who shall be available to arbitrate disputes between the company and customers, should the customer choose to use such arbitration method. The costs of the arbitrator are to be paid by Nashville Gas. Finally, the fines provision for the failure of Nashville Gas to comply with the provisions of this ordinance is increased from not less than \$10.00 nor more than \$50.00, to not less than \$200.00 nor more than \$1,000.00 for each offense.

The term of the renewal franchise agreement is 30 years, which is similar to the term of the existing agreement. However, after the first ten years of the term, the agreement will terminate unless the Council approves extending the agreement by Resolution for an additional five-year period. The agreement would then be extended three additional five-year periods upon adoption of a similar resolution every five years.

Section 17.02 of the Metropolitan Charter requires that extensions and amendments to franchise agreements for public utilities be approved by Ordinance enacted by the Council and then ratified by a 3/5 majority of the electors voting in the referendum election. The referendum is set to be held at the February Presidential primary, which will require that this ordinance be adopted on third reading at the December 2, 2003 council meeting so that proper notice will be given. The Charter also requires that a public hearing be held on this ordinance, which is also scheduled to be held at the December 2, 2003, council meeting.

The Council Office would point out that the rates Nashville Gas customers pay are regulated by the Tennessee Regulatory Authority. Thus, the Metropolitan Government has no control over such rates, nor does it have the authority to negotiate regarding the rate structure.

The Council Office is of the opinion that it is in the best interest of the Metropolitan Government that the franchise agreement with Nashville Gas be extended according to the terms set out in this ordinance. The Council Office has obtained information regarding the fiscal impact that Nashville Gas has on the Metropolitan Government. Nashville Gas pays approximately \$3.6 million in property taxes to the Metropolitan Government annually, in addition to the 5% franchise fee, which equates to approximately \$9,000,000 annually. This 5% franchise fee requirement is actually higher than the standard franchise fee in the industry. Many such franchise fees across the country are set by state law at 3%. In fact, the 5% fee paid by Nashville Gas is higher than any other such fee paid by Piedmont Gas, the parent company of Nashville Gas.

This ordinance should be amended to conform the "for the ballot" question with the Charter requirements of Section 17.02 and to clarify the publication provision.

ORDINANCE NO. BL2003-37 (WALLACE & JAMESON) – This ordinance approves a corrected deed conveying Metro’s interest in two parcels of property to the Nashville & Eastern Railroad Authority in connection with the Gateway Boulevard project. Ordinance No. BL2002-1132 approved Metro’s conveyance of property interests in two parcels of property. However, there was a material error in the property description in the deed that must be corrected prior to conveying the property. The original deed provided that the first parcel to be conveyed by Metro totaled approximately 220 square feet, when in reality the parcel is 25,982 square feet. This ordinance nullifies the prior deed approved by Ordinance No. BL2002-1132 and authorizes the director of public property administration to execute the new deed.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2003-38 (WALLACE) – This ordinance amends the Metropolitan Code of Laws to require only that street vendors be in possession of, but not wear, their identification badges issued by the Davidson County Clerk. The Code requires all street vendors to obtain a permit from the County Clerk upon meeting certain criteria and payment of a fee in order to be allowed to sell merchandise on the streets and sidewalks of the Metropolitan Government. The County Clerk issues identification badges to all street vendors and the Code requires that they be worn at all times. This ordinance would amend the Code to require only that street vendors and their employees be in possession of the I.D. badges at all times.

ORDINANCE NO. BL2003-39 (SHULMAN & JAMESON) – This ordinance amends the Metropolitan Code of Laws to require the director of codes administration to submit certain reports to the Council regarding permits issued, inspections made, and codes complaints. The Code of Laws currently requires the director of codes administration to prepare monthly reports regarding department receipts and expenditures, the number and classification of all employees, the number of permits issued, and the number of inspections made. This ordinance modifies and adds to these reporting requirements by including the following additional requirements:

1. The number of inspections made and action taken by the codes department by council districts; and
2. The number, by type location, and date filed, of any and all complaints to the department by council districts.

This ordinance also requires that this report be provided on a monthly basis to the respective district council members and to the councilmembers-at-large. There is a deferred effective date of July 1, 2004, for the provisions of this ordinance to allow adequate time for the department of codes administration to implement the necessary technology to prepare such reports.

ORDINANCE NO. BL2003-40 (MCCLENDON) – This ordinance readopts the Metropolitan Code to include all ordinances enacted on or before August 19, 2003.

ORDINANCE NO. BL2003-41 (GILMORE & WILHOITE) – This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2003-2004. State law allows county legislative bodies to appropriate funds for such programs and establish guidelines for participation in the program and the disbursement of such funds. The Council appropriated \$841,800 in the current fiscal year’s operating budget for a property tax relief program for the elderly. This ordinance authorizes the Metropolitan trustee to establish rules and procedures for implementation of the program and directs the trustee to disburse the funds accordingly to all eligible taxpayers. All persons who qualify for the state property tax relief program and whose income does not exceed \$12,530 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2004.

ORDINANCE NO. BL2003-42 (DREAD) – This ordinance changes the name of justice information system (JIS) to “justice integrated services”. The justice information system was established by ordinance in 1992 for the stated purpose of improving “the administration of justice through the creation and operation of comprehensive integrated management systems and promulgate uniform standards.” The ordinance states that the justice information system subcommittee approved this name change in order to better describe its mission.

ORDINANCE NO. BL2003-43 (DREAD & GILMORE) – This ordinance approves the annual contract between the Metropolitan Government and the emergency communications district (ECD) relative to operation of the enhanced-911 service for fiscal year 2003-2004. This contract provides that Metro will operate the system through its emergency communications system. The department of public works will maintain an updated street and house number system, and the department of information systems will provide day-to-day staff and support services for the ECD board. Metro will also train its employees who will operate the system. The ECD is to pay the public works department \$4,826 for its services, and is to pay \$37,885 to the department of information technology systems for its services.

ORDINANCE NO. BL2003-44 (RYMAN) – This ordinance authorizes RAM Partners, LLC, to install and maintain a sign in the public right-of-way located at 100 Riverchase Boulevard. RAM Partners, LLC, agrees to indemnify the Metropolitan Government from any claims arising from the installation and maintenance of the encroachment, and is required to maintain a \$300,000 certificate of public liability insurance naming the Metropolitan Government as additional insured.

This ordinance has been approved by the planning commission.

Plans are on file with the department of public works.

ORDINANCE NO. BL2003-45 (SHULMAN) – This ordinance abandons and relocates an existing 8” sanitary sewer line and easement on property owned by Hammond and Brandt Builders in connection with the Observatory Drive, Green Hills Subdivision – Phase 1. This sewer line and easement is no longer being used by the department of water and sewerage services or any other public utility. Any future amendments to this ordinance may be approved by resolution.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2003-46 (SUMMERS) – This ordinance authorizes the director of public property administration to acquire easements to four parcels of property by negotiation or condemnation for the purpose of constructing water mains, sanitary sewers, reservoirs, and stormwater improvements in connection with the Lauderdale Road public utility drainage project. The estimated cost for the easements is \$6,000 and will be paid from the stormwater fund. The parcels of property for which easements are to be acquired include 4203 and 4205 Aberdeen Road, and 237 and 239 Lauderdale Road. Future amendments to this ordinance may be approved by resolution.

The planning commission has approved this ordinance.

ORDINANCE NO. BL2003-47 (GREER) – This ordinance closes and renames a portion of Argyle Avenue. This ordinance closes Argyle Avenue between the intersections of Beech Avenue and Alley #661. All easements are to be retained by the Metropolitan Government. This ordinance also renames the portion of Argyle Avenue between Hillside Avenue and Beech Avenue as “West Argyle Avenue”, and renames the portion of Argyle Avenue between Alley #661 and Ridley Boulevard as “East Argyle Avenue”.

Notification has been sent by the planning commission to the affected property owners.

This ordinance was disapproved by the planning commission, but approved by the traffic and parking commission and the ECD board.

ORDINANCE NO. BL2003-48 (ISABEL) – This ordinance abandons Alley #1065 between the properties of 1338 and 1324 Brick Church Pike. This closure has been requested by Charles Ray Raymer. All easements held by the Metropolitan Government are to be abandoned. This ordinance has been approved by the planning commission and the traffic and parking commission.

Consent of the property owners is on file with the planning commission.

Section 3 of this ordinance should be amended to simply state that all easements held by the Metropolitan Government regarding Alley # 1065 are hereby abandoned.

- BILLS ON THIRD READING -

ORDINANCE NO. BL2003-5 (GILMORE) – This ordinance authorizes the Metropolitan police department to accept a \$1,000 donation from Target Department Stores and appropriates this amount to the police surveillance and investigative support unit. These proceeds will be used by the surveillance and investigative support unit for the support of audio and video equipment.

ORDINANCE NO. BL2003-7 (GOTTO & GILMORE) – This ordinance authorizes the director of public property administration to acquire property by negotiation or condemnation for public works improvements along John Hager Road. This ordinance authorizes the acquisition of a portion of the property on 35 parcels for the provision of widening John Hager Road to accommodate a future three-lane section, curb and gutter, grass strip, sidewalk, storm drainage, and other improvements. The funds for this acquisition will be provided from GSD multi-purpose improvement bonds of 2002.

ORDINANCE NO. BL2003-9 (WHITMORE) – This ordinance abandons and relocates a portion of Alley #889 adjacent to Louise Avenue. The ordinance provides that this abandonment shall not take effect until two parcels of property are consolidated so as to prevent this abandonment from creating a parcel that has no street frontage. All easements held by the Metropolitan Government regarding this portion of the alley are to be abandoned.

Rule 18 of the Rules of Procedure of the Council provides in part that no ordinance authorizing the abandonment of a street or alley shall be placed on the agenda unless the documents have been executed by the affected property owners. The Council office received a copy of the application for this alley relocation from the planning commission staff. The application states that the purpose of the closure is for the redevelopment of three parcels of property. The Council office assumes that these parcels are owned by the same person, although the affected property owner consent part of the application was left blank.

This ordinance was approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2003-10 (WALLACE & ISABEL) – This ordinance amends the Metropolitan Code of Laws to require commercial trucks hauling used tires to post certain information on the side or rear of the vehicle. This ordinance is modeled after the Code provision requiring certain information on dump trucks. Pursuant to this ordinance, all commercial trucks used in the collection or transporting of used tires will be required to have the name and telephone number of the owner of the truck painted or affixed to the side or rear of the truck. Any driver found in violation of this ordinance would be subject to a fine of up to fifty dollars, which is the maximum permitted under the Tennessee Constitution.

ORDINANCE NO. BL2003-12 (HAUSSER & GILMORE) – This ordinance abandons a sewer line and easement on property owned by H.G. Hill Realty Company at 21st Avenue South and Blair Boulevard for the Harris Teeter grocery and office. The department of water and sewerage services nor any other public utility is using the sewer line and easement. Any future amendments to this ordinance may be approved by resolution.

This abandonment has been approved by the planning commission.

ORDINANCE NO. BL2003-13 (LORING & GILMORE) – This ordinance abandons and relocates a portion of an 8” sewer line and easement on property owned by J.E. Stephenson in the vicinity of Pennington Bend Road. This portion of the sewer line and easement is no longer being used by the Metropolitan Government. Any future amendments to this ordinance may be approved by resolution.

The planning commission has approved this abandonment and relocation.

ORDINANCE NO. BL2003-15 (GILMORE & JAMESON) – This ordinance authorizes the mayor to enter into a licensing agreement with the Nashville and Eastern Railroad Corporation for the purpose of installing an electric line across the railroad right-of-way and under the railroad tracks for the Shelby Street Bridge project. The electric line will be encased in a 20” steel conduit. The license would be in perpetuity, provided however, that the agreement may be terminated by either party upon 90 days written notice, and Metro would be required to remove the line from the railroad right-of-way. Metro will pay an annual license fee of \$84.00 subject to increases every three years based on the national consumer price index average. In addition, Metro is required to pay a one-time fee of \$270.00 to cover the railroad’s costs in preparing the agreement.

Metro agrees to indemnify the railroad, to the extent in legally may, for claims or injuries arising from the installation and maintenance of the line. Metro, or its contractor, will also be required to maintain a \$2,000,000 certificate of public liability insurance. License agreements with railroads are typically the only contracts in which Metro agrees to provide a certificate of liability insurance, especially since Metro can require the contractor actually performing the installation work to maintain the insurance. This ordinance further provides that any future agreements with Nashville & Eastern Railroad concerning the use of railroad right-of-way for the installation of electric lines may be approved by resolution receiving 21 affirmative votes.

This ordinance has been approved by the planning commission.

Metro has several similar licensing agreements with CSX railroads.

ORDINANCE NO. BL2003-16 (TUCKER & WILHOITE) – This ordinance authorizes the Metropolitan Government to accept a donation of real property located at the northeast corner of Hamilton Church Road and Mt. View Road for the benefit of the Metropolitan public schools. Global Development, Inc., is the owner of the property and desires to donate the 11-acre tract of property to Metro for the use and benefit of the public schools. The Metropolitan board of public education has approved the acceptance of this property.