

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **February 17, 2004**

RE: **Analysis Report**

Balances As Of:
2/12/03

2/11/04

<u>GSD 4% RESERVE FUND</u>	\$24,696,921	\$6,856,869
 <u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
 <u>GENERAL FUND</u>		
GSD	\$22,725,560	\$35,500,789
USD	\$8,433,994	\$13,909,890
 <u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	\$38,771,091	\$53,181,288

- MOTION TO RECONSIDER -

ORDINANCE NO. BL2003-114 (DREAD & GILMORE) – This ordinance, as amended, approves an increase in the basic rate charged by the division of emergency ambulance and rescue service for the transportation of patients to hospitals. The last increase in the rate charged for patient transportation was in 1995, when the rate increased from \$125.00 to \$280.00. This ordinance increases the rate charged to \$650.00, with an additional charge of \$5.00 per mile. There is currently no mileage charge incorporated into the fee structure. This \$650.00 will be a single rate for transportation to hospitals. In the past, patients were billed separately for supplies in addition to the transportation rate.

The finance director, in his memorandum to the Council regarding this fee increase dated December 15, 2003, stated that the increase is necessary to help offset the operating loss of providing emergency medical services. The annual loss to taxpayers to subsidize these services is approximately \$8.6 million. It is anticipated that increasing the fee to \$650.00, plus the \$5.00 mileage charge, will net approximately \$8 million annually to help the emergency medical service reduce its property tax subsidy.

It is important to note that these fees are almost entirely paid by private insurance, Medicare, TennCare, and workers compensation programs. Individuals pay less than 10% of the total payments for the service. All persons needing ambulance services are provided such services without regard to their ability to pay. Increasing the rate to \$650.00 is within the Medicare allowable rates, and Medicare and TennCare patients are not billed for charges not paid by Medicare or TennCare. This increase will cause Nashville's ambulance transportation charge to be in line with other comparable cities.

- RESOLUTIONS -

RESOLUTION NO. RS2004-163 (NEIGHBORS) – This resolution approves an amendment to the lease agreement between Meharry Medical College and the Metropolitan Government to permit Metro, or its sublessee or assignee, to vacate any portion of the leased premises upon 30 days written notice to Meharry. This 30-year lease agreement was entered into in 1994 to provide for a new General Hospital. Revenue bonds were issued by the health and educational facilities board to finance the construction of the hospital. Pursuant to the lease agreement, Metro pays annual rent to Meharry in the amount of \$4 million. The lease agreement provided that any amendments to the lease were subject to the approval of the council by resolution receiving 21 affirmative votes.

This lease amendment relates to the right of Metro's sublessees and assignees to vacate the premises. The lease agreement provides that Metro as tenant has the right to sublet the premises with the consent of the bond insurer and to assign Metro's rights and interest in the lease to a third party with the consent of Meharry. The lease agreement also provides that Metro reserves the right to vacate the premises prior to expiration of the lease upon 30 days written notice. Metro would still be obligated to pay all future lease payments if it elected to vacate the premises. The purpose of this amendment is to expressly provide that Metro's assignees and sublessees (presently the Metropolitan hospital authority) also have the right to vacate the premises upon 30 days notice. Although it can be argued that under common law assignees and sublessees have whatever rights the tenant has, this amendment would make it clear that they have the right to vacate.

RESOLUTION NO. RS2004-178 (GILMORE & ISABEL) – This resolution accepts the Bordeaux-Whites Creek 2003 Plan Update adopted by the planning commission on October 9, 2003, and amended on January 22, 2004. The Bordeaux-Whites Creek Plan is one of 14 subarea plans making up the general plan, which is used by the planning commission in its decision making process regarding zoning. This plan update is the result of seven community meetings held between March 2003 and December 2003. This resolution is simply a memorializing of the plan by the council, as the plan has no binding effect on zoning decisions made by the council.

RESOLUTION NO. RS2004-179 (HART, DREAD & OTHERS) – This resolution would permit remaining council infrastructure funds to be used for right-of-way improvements, including the installation of flagpoles and median reconstruction. Resolution No. RS2002-920, as amended, appropriated \$2,000,000 from the council infrastructure improvement program reserve account, as provided in the 2001-2002 operating budget, for council infrastructure improvements, with not more than \$57,142.85 to be spent in any one council district. An additional \$350,000 was appropriated to the council infrastructure reserve account in the 2002-2003 operating budget for council infrastructure improvements. This additional amount was appropriated by Resolution No. 2002-1125, with not more than \$10,000 to be spent in any one council district. An additional amendment was made in 2003 regarding the restrictions on use of the funds to permit funds for one council district to be combined with funds for another district to allow for joint infrastructure improvements. Additional money was not included in the current fiscal year's operating budget for the council infrastructure program, but unspent funds from each district as of June 30, 2003 were carried over into the current budget.

The original council infrastructure appropriation resolution allowed such funds to be used for drainage activities, street paving activities, park equipment and activities, and sidewalk construction and repairs. This resolution would allow such funds to be used for right-of-way improvements as well, including the installation of flagpoles and median reconstruction.

RESOLUTION NO. RS2004-181 (GILMORE & NEIGHBORS) – This resolution approves a contract between the Metropolitan department of health and Victory Health Plans, Inc., under which the department of health will provide early periodic screening, diagnostic, and treatment services to persons enrolled in TennCare and assigned to Victory Health Plans, Inc. The Metropolitan health department is a health care provider under TennCare. Victory Health Plans, Inc., is a health maintenance organization (HMO) that has entered into an agreement with the State to arrange for the provision of health care services to eligible persons. Victory Health Plans, Inc., desires to retain the Metropolitan health department to provide certain medical services to its plan members.

Pursuant to this agreement, the department of health will provide diagnostic and follow-up treatment services including a comprehensive health and development history, physical exam, immunizations, laboratory tests, health education, vision services, dental services, hearing services, and behavioral services, as medically needed. The term of this agreement is for one year, with an automatic one-year renewal unless written notice of termination is (continued on next page)

RESOLUTION NO. RS2004-181 (continued)

provided within 90 days of the expiration date. The health department will be compensated for services provided based on the lesser of a valuation formula or the billed charges. The health department will be responsible for the collection of any applicable co-payment and agrees not to pursue collection from any member patient for any portion of the charges of covered services not paid by Victory Health Plans, Inc.

RESOLUTION NO. RS2004-182 (GILMORE & JAMESON) – This resolution approves a \$25,000 donation from the James Stephen Turner Charitable Foundation to the Metropolitan arts commission to research, discuss, and recommend opportunities for art in transit projects. The Metropolitan Code of Laws allows the arts commission to accept funds from other arts organizations and private entities for disbursement to deserving nonprofit civic and charitable organizations, subject to approval by resolution of the Council.

RESOLUTION NO. RS2004-183 (GILMORE) – This resolution approves an interlocal agreement between the emergency communications district (ECD) and the Metropolitan Government, whereby the purchasing division of the finance department will handle procurements for the ECD. The ECD has been granted the status of a municipality under state law and, therefore, has the authority under state law to enter into interlocal agreements. The Metropolitan Government has entered into interlocal agreements with the ECD on two occasions, once in 1996 and once in 1998, in which the purchasing division procured specific equipment and systems on behalf of the ECD. The ECD does not have the staffing for procuring goods and services on a regular basis, and the ECD board has approved the use of Metro's purchasing division to fulfill this role.

Pursuant to this agreement, Metro agrees to provide procurement services through the purchasing division of the finance department for a one-year term, beginning January 1, 2004 and extending through December 31, 2004. The services to be provided by the purchasing division include the preparation and promulgation of request for proposals, and the award, drafting and administration of procurement contracts on behalf of the ECD. The ECD is responsible for financing all procurements made on its behalf and agrees to pay all incidental procurement costs such as printing, copying, and mailing.

RESOLUTION NO. RS2004-184 (GILMORE) – This resolution approves an annual contract between the Metropolitan board of health and the state department of health for environmental laboratory tests for particulate matter (PM 2.5) air filters. The federal Clean Air Act requires that local governments such as the Metropolitan Government test for particulate matter 2.5 microns or greater in size using licensed testing facilities. The state's facility is a licensed facility at which such laboratory tests can be performed. The term of this contract is from July 1, 2004, through June 30, 2005. Pursuant to this contract, the state will charge Metro \$14.00 per PM 2.5 test, for a total of \$28,000.

RESOLUTION NO. RS2004-185 (GILMORE) – This resolution compromises and settles the lawsuit of Marco Golliday, a minor, by and through his next friend, Bessie Brown, against the Metropolitan Government in the amount of \$75,000. On the night of April 13, 2001, a Metropolitan parks and recreation employee took a Cub Scout troop he led at Morgan Park Community Center to a Kats game in a Metro Parks van. After the game while transporting boys home, the Metro employee stopped across the street from ten-year-old Marco Golliday's home and did not attempt to assist him in crossing the street. The procedure the employee was supposed to follow was to drop the child off in front of his house so he would not have to cross the street. Marco was struck by a vehicle with its headlights off that pulled out from behind the van. The vehicle sped up, dragging the child down the street. When Marco became free from the car, the car did not stop. Marco suffered serious injuries consisting of open cuts and abrasions all over his body, a contusion to his right lung, a laceration to his right kidney, and a pulmonary laceration. Marco was taken to Vanderbilt Hospital and remained in the Pediatric Intensive Care unit for five days. He later underwent surgery to remove scarring to his face. Marco's medical expenses totaled \$34,676. Marco has also claimed damages for future medical expenses as a result of scarring, recurring headaches, and shortness of breath.

The department of law recommends contributing \$75,000 toward the total settlement of \$175,000 for Marco Golliday. Ms. Brown's uninsured motorist insurance carrier is contributing the remaining \$100,000. Metro Government's amount is to be paid from the self-insured liability fund. No disciplinary action was taken against the Metro employee. All parks department van drivers are now required to take a driver/passenger safety course and the policy now prohibits the disembarking of passengers when they would have to cross any right-of-way unescorted.

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- BILLS ON SECOND READING -

ORDINANCE NO. BL2003-94 (WALLACE) – This ordinance amends the Metropolitan Code of Laws to prohibit the collection of garbage between the hours of eleven p.m. and seven a.m., and to include a permit forfeiture provision for multiple violations of this restriction. The Code currently prevents the collection of garbage between the hours of eleven p.m. and seven a.m. when the garbage container is within 300 feet of a residential structure that is not located within the commercial core (CC) and core frame (CF) zoning districts. This ordinance would make the collection time restriction apply countywide and it would not be limited to residential areas. This ordinance also includes a provision that would require the revocation of a private collection permit for a permit holder found guilty of violating the collection time restriction more than twice. If a permit holder's permit is revoked pursuant to this ordinance, the permit holder would not be eligible to reapply for a private collection permit for one year.

ORDINANCE NO. BL2004-122 (WALLACE, NEIGHBORS & WHITSON) – This ordinance amends the Metropolitan Code of Laws regarding the control of traffic in temporary work zones. The Code currently provides that the installation and maintenance of temporary traffic-control devices and the use of barricades for street construction shall meet the requirements of the latest edition of the Manual for Uniform Traffic Control Devices (MUTCD). The Code does not place any restrictions regarding the training of persons directing traffic flow around construction sites. Off-duty police officers have routinely been used to monitor and direct traffic at these temporary construction work zones.

This ordinance would establish additional regulations regarding temporary work zones and traffic control devices. This ordinance retains the basic requirement of the current Code that all temporary work zones and traffic control devices must be in compliance with the most recent edition of the MUTCD. In addition, this ordinance would require that only those persons who have been trained in proper temporary traffic control practices and have a basic understanding of the principles contained in MUTCD may supervise the placement and maintenance of temporary traffic control devices or barricades at temporary traffic control zones. Pursuant to this ordinance, training provided by a nationally recognized organization such as the American Traffic Safety Services Association or a qualified engineer would suffice. This ordinance would prohibit off-duty police officers from working at such temporary work zones unless they received training regarding the MUTCD. Metro police officers currently do not receive training regarding the MUTCD because they are already authorized by law to direct traffic and receive traffic control training at the police academy.

ORDINANCE NO. BL2004-125 (ISABEL, WHITMORE & OTHERS) – This ordinance names the new north police precinct station in honor of retired Captain William David Bodenhamer. The Metro Code of Laws provides that no building of the Metropolitan Government may be named except pursuant to an ordinance enacted by the Council. The Code further requires that biographical information regarding the person in honor of whom the building is named be attached to the ordinance. The last ordinance naming a Metro

building was enacted in 1997, which named the fire station located at 4201 Gallatin Road in honor of the late Chief Russell Campbell.

ORDINANCE NO. BL2004-134 (WALLACE & BRILEY) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Tiara Development to provide sewer service to phase 3 of the Willowmet Subdivision in Williamson County. Tiara Development has agreed to contribute \$52,000 in lieu of construction for a total of 26 single-family connections. This is a typical participation agreement entered into by the Metropolitan Government acting through the department of water and sewerage services whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

ORDINANCE NO. BL2004-157 (GILMORE) – This ordinance amends the Metropolitan Code of Laws regarding the financial reporting requirements for cable television franchisees. The Code requires that cable television franchise holders submit certain reports regarding their operation. The reports that are currently required to be provided include a summary of the previous year's activities in development of the cable television system, a summary of complaints, a fully audited and certified financial report, an annual statement of all capital expenditures, and a statement of future construction plans. The division of internal audit and the department of information technology services have determined that Metro does not need an audited financial statement, but only needs a financial report supported by an opinion of an independent certified public accountant. This ordinance amends the Code to remove the requirement that an audited financial statement be provided, and substitutes this provision with a requirement that an annual statement of gross revenues and franchise fees be provided. This statement is to be prepared by the franchisee's chief financial officer and certified by its chief operating officer and chief financial officer. This financial report must be examined by an independent certified public accountant approved by the director of finance and the accountant must give an opinion as to the information contained in the report.

The CATV special committee has approved this modification of the cable television franchise ordinance. This ordinance should be amended to correct a typographical error in the number of the section of the Code to be amended.

ORDINANCE NO. BL2004-158 (WALLACE) – This ordinance grants an easement to Colonial Pipeline Company to property located at 1600 Second Avenue North, and accepts \$1,000 in consideration for granting the easement. This property is already encumbered by an existing utility easement held by Colonial Pipeline Company. This ordinance grants an easement to an additional 300 square foot area to permit the expansion of a gas pipeline. The \$1,000 payment is to be deposited into the water and sewer revenue fund. Future amendments to this ordinance may be approved by resolution of the Council. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-159 (GILMORE) – This ordinance authorizes the director of public property administration to acquire easements to real property, by negotiation or condemnation, in connection with the Omohundro 48" water main construction project. Easements are to be acquired for property located at 1400 Pumping Station Road, 70

Fessler's Lane, and 905 Visco Drive. The estimated cost for the acquisition of these easements is \$4,500, which is to be paid from the water and sewer extension and replacement fund. Amendments to this ordinance may be approved by resolution of the Council. The planning commission has approved the acquisition of these easements.

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2003-98 (WHITMORE) – This ordinance, as amended, renames a portion of 37th Avenue North, between Georgia Avenue and Indiana Avenue, as “Elizabeth Jordon Street”.

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

ORDINANCE NO. BL2003-105 (SUMMERS) – This ordinance abandons and relocates a portion of an 8” sewer line and easement on property owned by Browning & Bacon Properties, LLC located at West End and Craighead Avenues. The existing sewer line and accompanying easement are no longer being used by the department of water and sewerage services. This abandonment is conditioned upon the installation and acceptance by Metro water and sewer of the proposed relocation. Any future amendments to this ordinance may be approved by resolution. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-123 (ISABEL) – This ordinance closes Alley #1059 and an unnumbered alley located between North Avondale Circle and Avondale Circle. This closure has been requested by Gene and Teresa George, the adjacent property owners. Metro will retain all easements.

This ordinance has been approved by the planning commission and traffic and parking commission. Documentation showing consent of the affected property owners was requested from the department of public works on January 28, 2004, but has not been received.

ORDINANCE NO. BL2004-124 (JAMESON) – This ordinance authorizes the Historic Edgefield Homeowners Association to install 27 street sign encroachments located at the corners of South 5th, 6th, 7th, 8th, 9th, and 10th Streets, and Woodland Street, Russell Street, Fatherland Street, Prospect Street, Boscobel Street, and Shelby Avenue. Plans for these encroachments are on file with the director of public works. The homeowners association has agreed to indemnify the Metropolitan Government for 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.

ORDINANCE NO. BL2004-126 (SUMMERS & SHULMAN) – This ordinance declares a parcel of property owned by the Metropolitan Government located off of Woodmont Boulevard to be surplus, and authorizes the director of public property administration to sell the property for the highest and best price. The Metropolitan Government has determined that there is no longer a governmental need for this property. The proceeds from the sale will be credited to the general fund. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-127 (BRILEY) – This ordinance, as amended, approves a lease agreement between the Metropolitan Government, the Nashville Academy Theatre and Nashville Children’s Theatre for the lease of property on the Howard campus located at 724 Second Avenue South. The Nashville Academy Theatre and Nashville Children’s Theatre have leased this property since 1973. The term of this new lease will be for fifteen years, with a possible extension of three consecutive five-year terms. The rental amount paid to Metro will be \$15.00 per year for the life of the lease. The premises are only to be used for the operation of a nonprofit theatre including public performances, educational programs, the sale of merchandise, concession sales, and a café. Nashville Academy Theatre and Nashville Children’s Theatre will pay all utility costs and will be responsible for all maintenance of the building. The theatre will be permitted to add on or renovate the premises subject to the approval of the director of public property administration. The Theatre will also maintain liability insurance in the amount of \$1,000,000, and agrees to indemnify the Metropolitan Government for any claims arising from the Theatre’s willful misconduct or grossly negligent acts.

Pursuant to the lease agreement, Metro will be entitled to use the theatre up to 12 times a year and will provide self-insured liability coverage for each occasion that Metro exercises its right to use the facility. This ordinance has been approved by the planning commission. Amendments to this lease may be approved by resolution of the Council receiving 21 affirmative votes.

ORDINANCE NO. BL2004-128 (BRILEY) – This ordinance amends the Metropolitan Code of Laws to ensure that Metro’s pension plan is in compliance with federal tax laws. This ordinance makes what is essentially a housekeeping change that will not affect the benefit calculations for any member of the pension plan. The amendment relates to the use of mortality tables to determine a member’s equivalent annual benefit. The IRS requires that the language in this ordinance be part of the Code of Laws so that Metro’s pension plan will remain qualified under the federal tax laws to maintain certain benefits.

ORDINANCE NO. BL2004-129 (BRILEY) – This ordinance approves a license agreement between the Metropolitan Government and United States Filter Corporation for the use of U.S. Filter’s patented process related to the removal of sulfides from flow in sewer lines. Nashville has been a customer of U.S. Filter for over twenty years, and in consideration of this long-term relationship, U.S. Filter is granting the license for the nominal fee of \$1.00 per year. The patented sulfide removal process is used as part of Metro Water Services’ wastewater odor control program. This license is to expire not later than December 9, 2008.

ORDINANCE NOS. BL2004-130 & BL2004-131 – These two ordinances, as amended, authorize the director of public property to acquire certain property interests by negotiation or condemnation to enable the department of public works to replace two box bridges. The costs of these projects are to be funded by the GSD multi-purpose improvement bonds of 2002. Any amendments to this ordinance may be approved by resolution of the Council receiving 21 affirmative votes. These two ordinances have been approved by the planning commission.

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ORDINANCE NOS. BL2004-130 & BL2004-131 (continued)

Ordinance No. BL2004-130 (HUGHES) authorizes the acquisition of property interests in connection with the Brick Church Lane over North Fork of Ewing Creek box bridge replacement project.

Ordinance No. BL2004-131 (BRILEY) authorizes the acquisition of property interest in connection with the Dry Fork Road over Carney Creek box bridge replacement project.

ORDINANCE NOS. BL2004-132 & BL2004-133 – These two ordinances authorize the Metropolitan Government to enter into participation agreements to provide improved public water and sewer service. These are typical participation agreements entered into by the Metropolitan Government acting through the department of water and sewerage services whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

Ordinance No. BL2004-132 (TOLER & BRILEY) approves a participation agreement between Metro and Richard Argo to provide improved public sewer services from the existing public sewer at Sugar Valley Drive to the private property at 6262 Nolensville Road. This project consists of the extension of approximately 915 feet of 8” sewer main. Metro will contribute the lesser of \$45,000 or 75% of the construction costs. Richard Argo has agreed to contribute the remaining \$15,000 or 25% of the construction cost.

Ordinance No. BL2004-133 (WHITMORE & BRILEY) approves a participation agreement between Metro and Baty Development Group, LLC, for the installation of approximately 2,500 feet of 12” water main extending along 31st Avenue North from the 12” main in Parthenon Avenue to the end of an existing 10” main in West End Circle. Metro will contribute the lesser of \$190,000 or 85% of the projected construction cost, with Baty Development Group contributing the remaining construction costs. Baty Development Group agrees to have the water main installed by a licensed contractor subject to Metro’s standards. Metro will contribute its portion of the construction costs once the water main has been accepted and deeded to Metro.

ORDINANCE NO. BL2004-135 (WALLACE) – This ordinance abandons and relocates a portion of a sewer line and easement located between 1st Avenue South and 2nd Avenue South at Franklin Street. The abandonment is conditioned upon the installation and acceptance of the relocated 10” sewer line. The department of water and sewerage services is no longer using the portion of the sewer line and easement to be abandoned. Amendments to this ordinance may be approved by resolution of the Council. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-136 (MCCLENDON & WALLACE) – This ordinance abandons an existing sewer line and easement located on 13 parcels of property on Willowbrook Drive. The department of water and sewerage services is no longer using this sewer line and easement. Amendments to this ordinance may be approved by resolution of the Council. This ordinance has been approved by the planning commission.