

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **April 20, 2004**

RE: **Analysis Report**

Balances As Of:	<u>4/14/04</u>	<u>4/10/03</u>
<u>GSD 4% RESERVE FUND</u>	\$32,110,235	\$9,144,257
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$24,729,757	\$35,850,689
USD	\$8,433,994	\$13,909,890
<u>GENERAL PURPOSE</u> <u>SCHOOL FUND</u>	\$38,771,091	\$53,181,288

– RESOLUTIONS –

RESOLUTION NO. RS2004-255 (COLEMAN) – This resolution provides an amendment to the Metropolitan Charter to require that a member of the metropolitan board of education be appointed by the mayor to the planning commission. This would increase the number of planning commission members to ten. The board of education member appointed to the planning commission by the mayor would be subject to confirmation by the Council and would serve for a term of two years.

The Council, pursuant to the Charter, may only adopt two resolutions during the term of the Council that submit amendments to the voters for ratification. This amendment to the Charter must be adopted by 27 affirmative votes of the Council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. This resolution provides that the date for holding the resolution is the November 2004 presidential election. State law requires that the election be held within 45-60 days after the Council adopts the resolution submitting amendments to the voters for ratification. Thus, this resolution should be deferred indefinitely in order to avoid the calling of a special election.

RESOLUTION NO. RS2004-256 (GILMORE) – This resolution calls the Metropolitan board of equalization (MBOE) into regular session convening June 1, 2004 and adjourning June 11, 2004, and calls the MBOE into special session convening June 14, 2004 to complete any unfinished business regarding appeals on pro-rated assessments. The special session shall not extend beyond May 31, 2004. The MBOE always meets during the month of June to hear assessments on real property. State law authorizes county legislative bodies to fix the number of days the board of equalization shall sit in regular session and to call the board into special session to complete unfinished business. This is an annual resolution.

RESOLUTION NOS. RS2004-257 & RS2004-258 (GILMORE) – These two resolutions authorize the issuance of refunding bonds for the purpose of refunding general obligation and revenue bonds issued in 1996 in connection with the football stadium project. The purpose of the bond refund is to achieve long-term interest savings to the Metropolitan Government as a result of today's favorable interest rates.

This bond refunding package is not a traditional refinancing of outstanding debt. Internal Revenue Service regulations will not allow governments issuing tax-exempt bonds to refund the bonds and invest the savings in higher yielding investments, which is known as "arbitrage". These resolutions would allow Metro to enter into what are known as "Swaption" agreements in order to avoid negative arbitrage in the escrow. A swaption is a contract between Metro as the issuer and a third party known as a counterparty whereby the counterparty obtains an option to "swap" interest rate payments in the future on the call date in exchange for a one-time payment to Metro equivalent to the present value savings from refunding the outstanding bonds at a lower interest rate. This up-front cash payment would then be used by Metro for debt service. If the counterparty elects to exercise the contract right and "swap" on the call date, the counterparty would pay an interest rate equivalent to the prevailing interest rate and Metro would have to either pay the fixed rate payment based on the current rate of the outstanding bonds or call the bonds and pay an early call premium. The swap rate for the counterparty is a fixed rate, but the swap rate for Metro would be a variable rate. Once the swaption is exercised by the counterparty, Metro would refund the bonds with variable rate bonds.

(continued on next page)

RESOLUTION NOS. RS2004-257 & RS2004-258 (continued)

Whether or not the counterparty elects to exercise the swaption will depend on the prevailing interest rate at the call date. As stated above if the rates are lower on the call date, the counterparty would exercise the swaption and Metro would call the bonds paying a premium. If the rates were higher at the call date, the swaption would remain unexercised, Metro would not call the bonds, and Metro would keep the one-time option premium payment. Thus, by entering into such agreements, Metro is hoping and assuming that interest rates are higher on the call date than the rates are presently. Metro is not actually refunding the bonds today, but is giving a third party the contract right to determine whether the bonds will be refunded on the call date.

There is some risk associated with interest rate swaps. Were the counterparty to default on its obligation Metro would be left with variable rate bonds. It is important to ensure that the counterparty is a good credit risk to hopefully avoid this possibility. Thus, the bonds require that any counterparty contracting with Metro be at least "A" rated. In addition, if the interest rates are lower on the call date, Metro would either have to continue paying the higher rate on the face of the bonds or call the bonds and pay a one percent premium. Either scenario would result in a higher cost to Metro. Finally, Metro would have some exposure if the counterparty were to terminate the swap agreement early.

Resolution No. RS2004-257 authorizes the issuance of general obligation refunding bonds, series 2006, in a principal amount not to exceed \$65,000,000. In June of 1996, the Metropolitan Government issued general obligation public improvement bonds in the original principal amount of \$74,880,000 to be used for the East Bank Redevelopment Project, which consisted of site preparation necessary for the construction of the Coliseum, including the demolition of buildings, street improvements, riverfront improvements, lighting, parking, and architect and engineering costs. As with all general obligation bonds, these refunding bonds are supported by the full faith and credit of the Metropolitan Government and are to be paid from property tax revenue. A form for the rate swap agreement is to be attached as an exhibit to the resolution, but at the time of the preparation of this analysis this agreement has not been attached. In addition, a report from the State director of local finance finding that the interest rate swap agreement is in compliance with all state regulations is also to be attached to the resolution as an exhibit.

Resolution No. RS2004-258 approves the authorization, issuance, and sale of public improvement revenue refunding bonds, series 2006, in a principal amount not to exceed \$75,000,000 to be issued by the sports authority. The sports authority, with Council approval, issued public improvement revenue bonds in July 1996 for the construction of the Coliseum in the original principal amount of \$78,970,000. The board of directors of the sports authority has determined that it is in the best interest of the sports authority to issue these refunding bonds to refund the 1996 revenue bonds. The bonds are to be refunded no earlier than 90 days prior to the July 1, 2006 redemption date. These bonds are supported by a pledge of revenue from the sports authority and, if necessary, fees and charges of the Metropolitan Government, but not Metro tax revenues.

There will be a substitute resolution to attach the appropriate exhibits.

RESOLUTION NO. RS2004-259 (GILMORE) – This resolution authorizes the director of finance to accept and allocate \$1,087,500 in private sector funds for the purposes of marketing and promoting Nashville, and to appropriate \$1,087,500 in public matching funds. Substitute Ordinance No. BL2003- (continued on next page)

RESOLUTION NO. RS2004-259 (continued)

1471, the fiscal year 2003-2004 operating budget, authorizes the finance director to allocate up to \$2 million from the hotel occupancy tax fund, subject to a dollar for dollar private sector match, for the purpose of marketing and promoting Nashville. The use of hotel-motel occupancy tax funds is limited by law for such purposes. The total amount of \$2,175,000 will be allocated to the convention and visitors' bureau. A similar resolution was approved by the Council at the March 16, 2004, meeting, which allocated \$173,965 in private sector funds and \$173,965 in public matching funds for the promotion of Nashville. The following private organizations have contributed matching funds to be accepted and allocated by this resolution:

Country Music Association	\$450,000
Great American Country	\$450,000
Southwest Airlines	\$150,000
African American History Museum of Nashville, Inc.	\$37,500

RESOLUTION NO. RS2004-260 (DREAD, GILMORE & NEIGHBORS) – This resolution approves a grant in the amount of \$1,068,400 from the state department of health to the Metro board of health to increase bioterrorism preparedness and response capabilities. The services to be provided with these grant funds include collaboration by the health department with emergency personnel and hospitals regarding emergency preparedness, the development of a chemical terrorism response plan and a regional bioterrorism preparedness plan, and data monitoring and surveillance. The term of the grant is from July 1, 2004 through June 30, 2005. A recital clause in the resolution states that no local matching funds are required, but the grant budget does indicate that a \$42,400 indirect cost match is required.

RESOLUTION NO. RS2004-261 (GILMORE & NEIGHBORS) – This resolution renews the annual contract between the state department of health and the Metro board of health for inspection of hotels, food service establishments, tattoo studios, body-piercing establishments, and organized camps. This contract extends the program through June 30, 2005. The Metro board of health will receive an amount not to exceed \$1,450,000 for these inspection services. The board of health provides numerous health inspections on behalf of the state.

RESOLUTION NO. RS2004-262 (GILMORE & NEIGHBORS) – This resolution approves a grant in the amount of \$371,898 from the U.S. department of health and human services to the Metro board of health to provide primary healthcare services to homeless persons. The amount of the grant for fiscal year 2003/2004 is \$159,385, and \$212,513 for fiscal year 2004/2005. There is no required local match for this grant.

RESOLUTION NO. RS2004-263 (GILMORE & NEIGHBORS) – This resolution approves a grant in the amount of \$513,700 from the state department of health to the Metro board of health to provide HIV/AIDS prevention and surveillance services. The term of the grant is from January 1, 2004 through December 31, 2004. The amount of the grant is \$256,850 for each of the fiscal years 2003 and 2004. Almost all of these funds will be used to pay salaries of health department personnel providing the prevention and surveillance services. The resolution provides that no local matching funds are required, although the grant budget indicates that there is a health department match of \$81,000 to cover supplies and indirect costs.

RESOLUTION NOS. RS2004-264 & RS2004-265 (GILMORE & NEIGHBORS) – These two resolutions approve grant agreements from the state department of health to the Metro board of health to provide a variety of local health programs and services. The services to be provided by these grants include adolescent pregnancy prevention, children's special services and prevention initiative for children, home visiting services, HIV-AIDS early intervention, dental services, and tuberculosis services. These funds provide operational funding for the health department.

Resolution No. RS2004-264 approves an annual grant in the amount of \$5,912,753. The term of the grant is from July 1, 2004 through June 30, 2005. The resolution provides that no local matching funds are required, however, the grant budget indicates that there is a local match of \$474,301 for indirect costs and employee benefits/taxes.

Resolution No. RS2004-265 amends a grant previously awarded for the current fiscal year by increasing the amount of the grant by \$426,500 for a total grant award of \$7,116,153.

RESOLUTION NO. RS2004-266 (WILLIAMS & GILMORE) – This resolution authorizes the Metropolitan Government to enter into an interlocal agreement with the City of Oak Hill to fund the cost of milling Tyne Boulevard. Metro and Oak Hill have agreed to split the cost of the milling services, as Tyne Boulevard is located in both municipalities. The Metropolitan Government has entered into a contract with Civil Construction of Franklin, Tennessee to provide milling services. Pursuant to the agreement, Oak Hill and Metro will each contribute \$47,775 for a total amount of \$91,000. State law authorizes local governments to enter into such interlocal agreements to complete joint service projects, which agreements may be approved by resolution.

RESOLUTION NO. RS2004-267 (JAMESON) – This resolution authorizes the Metropolitan Government to enter into a supplement utility relocation agreement with the Tennessee department of transportation for relocation of water and sewer utilities in connection with the Gateway Boulevard (Franklin Street) project. Under the previous agreement entered into in 2002, Metro's estimated cost for this relocation was to be \$248,145 to be paid from the water and sewer extension and replacement fund. This resolution supplements the prior agreement by increasing the cost by \$60,570.25 for a total relocation cost of \$308,837.89. This increase is necessary due to some additional installation expenses caused by grading revisions and a proposed retaining wall on Gateway Boulevard.

RESOLUTION NO. RS2004-268 (GILMORE) - This resolution modifies the existing master list of architectural and engineering firms. The Metro Code of Laws provides that all contracts for professional services or architects and engineers must be with firms listed on the master list. This resolution adds the following three firms to the master list:

- Latz & Partners of Kranzberg, Germany
- Peter Walker & Partners Landscape Architecture, Inc., of Berkeley, CA
- Mesick Cohen Wilson Baker Architects of Albany, NY

RESOLUTION NO. RS2004-269 (GILMORE) – This resolution settles the lawsuit of Jacqueline Melton Griswold, administratrix of the Estate of Charles Wayne Melton, *et al.*, against the Metropolitan Government in the amount of \$50,000. On Friday March 3, 2000, at approximately 9:30 p.m., a Metro police officer observed a car speeding and driving recklessly on I-65 near the Trinity Lane exit. The officer estimated that the suspect was traveling approximately 100 mph. The officer initiated a high speed chase of the suspect's vehicle that continued for approximately seven miles. The suspect's car spun out in the median of I-265, but the suspect was able to get the car moving again. The police chase continued off the interstate at the Broadway exit and onto 17th Avenue South. The suspect's tire went flat, but he continued to drive through the Music Row Roundabout, which was under construction. The officer drove around the construction zone. While driving on 17th Avenue South the suspect's left rear tire came off the rim and he reduced his speed. The officer disengaged his pursuit and waited for the vehicle to stop. However, the suspect did not stop and collided with a vehicle driven by Charles Melton traveling eastbound on Wedgewood Avenue. The suspect was traveling at approximately 65-70 mph at the time of impact. Mr. Melton died at Vanderbilt Hospital as a result of head injuries sustained in the crash. The officer was approximately ¼ mile behind the suspect when the accident occurred.

The police investigation revealed that the suspect was driving on a suspended license, was intoxicated, and was under the influence of drugs at the time of the pursuit and accident. The suspect plead guilty to vehicular homicide and evading arrest.

The plaintiffs in this lawsuit sued the driver causing the accident, the owner of the car the suspect was driving, and the Metropolitan Government. The plaintiffs have settled the lawsuit as to the driver and owner of the vehicle. Thus, Metro is the only remaining defendant. The department of law recommends settling this lawsuit in the amount of \$50,000 due to the uncertainty of the outcome were the case to go to trial. Although the officer was found to have followed the procedure in place at the time for vehicle pursuits, Metro's potential exposure under the Governmental Tort Liability Act limits in effect at the time would be \$130,000. This \$50,000 settlement is to be paid from the self-insured liability account.

RESOLUTION NO. RS2004-270 (JAMESON) – This resolution authorizes Piranha Bar and Grill to install and maintain four awnings protruding three feet from the existing face of the building at 113 2nd Avenue North. Piranha Bar and Grill has agreed to indemnify the Metropolitan Government for any claims arising out of the installation or maintenance of the awnings, and is required to furnish a certificate of public liability insurance in the amount of \$300,000 naming Metro as an insured party.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2004-172 (GILMORE & WALLACE) – This ordinance authorizes the director of public property administration to acquire easements to real property, by negotiation or condemnation, for the Harding Place 8" sanitary sewer extension in connection with the Tennessee Department of Transportation's widening of Murfreesboro Pike. Easements are to be required for property located at 1824 Murfreesboro Pike, and 1821 and 1823 Old Murfreesboro Pike. 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. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-173 (CRAFTON) – This ordinance amends the Metropolitan Code of Laws to conform Metro's residency requirements for a certificate of compliance for a retail liquor license to be the same as the state requirements for the issuance of a retailer's liquor license. The Metro Code currently requires that any person seeking a certificate of compliance to sell packaged liquor must have been a resident of the area of the Metropolitan Government for at least two years before the issuance of such a certificate. The Code also provides that if the application is for a corporation, then all of the capital stock must be owned by individuals who have been a resident of the area of the Metropolitan Government for at least two years, and no stock may be transferred to any person that has not been a Davidson County resident for two years.

The state law, on the other hand, only requires that applicants for retailer's liquor license be residents of the State of Tennessee for two years. This ordinance would amend the Metro Code to conform to the state residency requirement. This ordinance also adds a provision found in the state law prohibiting a person owning stock in a liquor store from obtaining a certificate of compliance if he/she has any interest in another business licensed to engage in the sale or distribution of liquor.

ORDINANCE NO. BL2004-178 (GILMORE, RYMAN & OTHERS) – This ordinance amends the Metropolitan Code of Laws to require that plumbers be "licensed" as opposed to "certified", and to include additional provisions regarding apprenticeship programs and penalties for violations. The Code includes three classifications of plumbers: master plumber, journeyman plumber, and apprentice plumber. The Code currently requires that all three classifications be examined, certified, and registered. This Ordinance would require that such plumbers be "licensed" instead of certified. The ordinance also specifies what type of work is considered "plumbing work" for which a plumber must be licensed. Such work includes plumbing construction, renovation, installation, alteration, extension, removal, reparation, maintenance, or servicing.

This ordinance also adds an additional provision to the definition of "apprentice plumber." The Code currently defines apprentice plumber as "an individual who holds a current and valid metropolitan apprentice plumber's certificate of registration duly issued by the board of plumbing examiners and appeals; one who is regularly employed as an apprentice by a registered and bonded metropolitan plumbing contractor and who works at the trade of plumbing under the direct supervision and in the immediate presence of a metropolitan master or journeyman plumber." This ordinance would expand the definition to include enrollment in an apprenticeship program registered with the U.S. department of labor, bureau of apprenticeship and training, which consists of a minimum 8,000 hours of practical experience combined with a minimum of 1,000 hours of classroom training.

(continued on next page)

ORDINANCE NO. BL2004-178 (continued)

This ordinance further adds penalty provisions for violations. The Code currently provides that the board of plumbing examiners and appeals has the authority to revoke or suspend a certificate upon proof that a plumber violated the provisions of the certification or registration requirements, violated a rule or regulation of the board, practiced fraud or deception in making an application, is incompetent to perform plumbing services, allowed his/her certificate to be used by another to perform plumbing services, or is guilty of other unprofessional or dishonorable conduct. This ordinance adds two additional grounds justifying suspension or revocation: (1) Where a plumber permits himself or his company to represent itself as being in the business of plumbing if it doesn't employ a master plumber; (2) Knowingly took out a permit for plumbing work to be performed by a person without a plumber's license. In addition to suspension or revocation, this ordinance also authorizes the board to impose penalties, including but not limited to stop work orders, fines, and suspension of work privileges. The ordinance further provides that the board shall have the authority to enforce the applicable Code provisions through the use of work-site inspections and unannounced work-place inspections. This Council Office is of the opinion that this provision should be amended to grant this authority to the department of codes administration, as such authority would exceed the powers granted to the board of plumbing examiners and appeals by Section 2.92.090 of the Metropolitan Code of Laws.

There will likely be a substitute ordinance offered that would make some modifications to the apprentice provisions and to grandfather in all existing certified plumbers.

ORDINANCE NO. BL2004-184 (SHULMAN) – This ordinance would require the director of finance to provide certain financial information to the Council and the board of education regarding the operating budget for schools. The ordinance simply provides that prior to the submission of the schools' operating budget to the board of education, the director of finance shall provide to the members of the board and the council information regarding the revenues available, including available fund balances.

ORDINANCE NO. BL2004-185 (WALLACE) – This ordinance classifies the public roads in Davidson County, as required by state law. Each year, the Council approves the adoption of all additions and deletions to the official street and alley maintenance and acceptance map. State law also requires that a list of all county roads and a summary of the changes be submitted to and classified by county legislative bodies. This ordinance adopts the official street and alley acceptance and maintenance map, as supplemented, as the road classification for Davidson County. Any amendments to this list and future lists regarding road classification may be approved by resolution of the Council.

ORDINANCE NOS. BL2004-186 & BL2004-187 (WALLACE & GILMORE) – These two ordinances authorize the Metropolitan Government to enter into participation agreements with developers to provide sewer service to subdivisions in Williamson County. These are typical 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. The funds received as part of these agreements are to be deposited into the water and sewer extension and replacement fund.

(continued on next page)

ORDINANCE NOS. BL2004-186 & BL2004-187 (continued)

Ordinance No. BL2004-186 approves a participation agreement with CK Development to provide sewer service to phases 1 and 3 of the Brookfield Estates subdivision. CK Development has agreed to pay the cost of 29 single-family connections at \$2,000 per connection for a total amount not to exceed \$58,000.

Ordinance No. BL2004-187 approves a participation agreement with John Ring, Tennessee Contractors, Inc., to provide sewer service to phase 4 of the Fountainbrooke subdivision. John Ring, Tennessee Contractors, Inc., has agreed to pay the cost of 14 single-family connections at \$2,000 per connection for a total amount not to exceed \$28,000.

ORDINANCE NO. BL2004-188 (ISABEL & NEIGHBORS) – This ordinance names the building located at 3315 John Mallette Drive the “William F. Moynihan Center.” William F. Moynihan served as director of the Metropolitan social services department from 1977 to 1991. 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. This building was the old Bordeaux library and is being renovated as a training and resource center for social services.

ORDINANCE NO. BL2004-189 (COLEMAN & ALEXANDER) – This ordinance authorizes the Metropolitan Government to enter into a contract with CSX Transportation, Inc., to install metal strand wires over the railroad located at Valuation Station milepost 9.75 for traffic signal upgrades. Pursuant to this agreement, Metro will be responsible for all costs associated with the installation of the wireline and for all costs CSX might incur as result of the installation and maintenance of the wireline. Metro further agrees to indemnify and hold CSX harmless from any liability as a result of injury or property damage in connection with the installation and maintenance of the wireline, except when caused by the willful misconduct or gross negligence of CSX. The agreement requires that a \$3 million liability insurance policy be obtained naming CSX as additional insured, but also provides that Metro may self-insure in accordance with state law. There is no one-time or annual license fee associated with this agreement.

ORDINANCE NO. BL2004-190 (BRILEY) – This ordinance authorizes Nashville Data Link, Inc., to construct, install, and maintain fiber optic cable in Davidson County. Nashville Data Link, Inc., plans to construct approximately 9.2 miles of cable within Davidson County as follows: (1) from the intersection of Lebanon Pike and McGavock Pike along Lebanon Pike approximately 7 miles to the Wilson County line; (2) along Elm Hill Pike westward to Arlington Avenue, approximately 0.3 miles; (3) from the intersection of Fesslers Lane and Murfreesboro Road to Crutchfield Avenue and south to Hill Avenue, approximately 1 mile; and (4) along Franklin Pike from north of Lakemont Drive, approximately 0.19 miles. Nashville Data Link, Inc., is to pay all costs related to the construction and maintenance of the cable. The plans and specifications for the cable must be submitted to and approved by the director of public works. The mayor and the Metropolitan Council reserve the right to repeal this ordinance at any time, and Nashville Data Link, Inc., would be required to remove the cable at their own expense. This authority granted to Nashville Data Link, Inc., will not interfere with Metro's existing utility rights. Further, Nashville Data Link, Inc., must obtain a \$1 million certificate of liability insurance naming Metro as insured if the cable is installed on existing poles, or a \$10 million (continued on next page)

ORDINANCE NO. BL2004-190 (continued)

certificate of insurance if installation of the cable requires any excavation in the right-of-way of Metro. A similar ordinance allowing Nashville Data Link to install fiber optic cable was enacted in April of 2002.

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2004-191 (WILLIAMS) – This ordinance closes Shamrock Drive from the west margin of Wildwood Valley Drive to its terminus. This closure has been requested by Harpeth Hills Church of Christ. All easements are to be retained by the Metropolitan Government.

Information regarding consent of the affected property owners has been requested of the planning staff.

ORDINANCE NO. BL2004-192 (TYGARD) – This ordinance renames one street and names an unnamed portion of a newly constructed street at the intersection of Old Harding Pike and Highway 100 in the Bellevue area. The section of Old Harding Pike in front of Harpeth Valley Elementary School is to be renamed "Learning Lane", and an unnamed right-of-way between Collins Road and Highway 100 is to be named "Old Harding Pike".

This ordinance should be amended to properly reflect these namings.

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

ORDINANCE NO. BL2004-193 (BURCH) – This ordinance renames a section of McCrory Creek Road as "Couchville Pike". The section of road to be renamed is parallel to Donelson Pike and adjacent to Couchville Pike.

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

ORDINANCE NO. BL2004-194 (SUMMERS) – This ordinance renames a section of Concord Park Road located at the northeast terminus of Concord Park E. as "Concord Park E." This road is in the vicinity of the Woodmont Boulevard and Woodmont Lane intersection.

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

ORDINANCE NO. BL2004-195 (BURCH) – This ordinance names an unnamed roadway between McCrory Creek Road and Donelson Pike as "Knapp Boulevard".

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

ORDINANCE NO. BL2004-196 (WALLACE) – This ordinance closes an unnumbered alley abutting 10th Avenue North near the Monroe Street intersection. This closure has been requested by Hopewell Missionary Baptist Church. The Metropolitan Government has determined that there is no future governmental need for this alley. Metro will retain all easements.

This ordinance has been approved by the planning commission and the traffic and parking commission. This ordinance needs to be amended to correct a typographical error in Section 1.

Information regarding consent of the affected property owners has been requested of the planning staff.

ORDINANCE NO. BL2004-197 (MCCLENDON) – This ordinance closes Alley # 1928 and Alley # 1929 between Nolensville Pike and Harrison Street. This closure has been requested Clyde P. Holland on behalf of the abutting property owners. The Metropolitan Government has determined that there is no future governmental need for this alley. Metro will retain all easements.

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

Information regarding consent of the affected property owners has been requested of the planning staff.

ORDINANCE NO. BL2004-198 (WHITMORE) – This ordinance authorizes Pinnacle National Bank to install and maintain underground encroachments under the public right-of-way at alley #382 adjacent to 23rd Avenue North. The encroachments will consist of two 4 ½" steel tubes, ten 1" pvc conduit tubes, one 2" pvc conduit tube, and a 2" irrigation sleeve. Pinnacle National Bank is required to indemnify the Metropolitan Government for any claims arising out of the installation and maintenance of the encroachments, and is required to maintain a certificate of public liability insurance in the amount of \$300,000 naming the Metropolitan Government as an insured party.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-225 (SUMMERS) – This ordinance amends the Metropolitan Code of Laws to prohibit the codes department from issuing a permit until all necessary easements held by the Metropolitan Government have been abandoned. This would apply whenever a developer is seeking to build on land encumbered by an easement held by the Metropolitan Government, and there is no future governmental need for the easement. Easements held by the Metropolitan Government can only be abandoned by ordinance enacted by the Metropolitan Council.

This ordinance should be amended to clarify that the codes department would be prevented from issuing a permit only when an easement held by the Metropolitan Government is encumbering the property and the developer is desiring to construct the project within the area of the easement, thus making abandonment of the easement necessary.

ORDINANCE NO. BL2004-226 (SUMMERS) – This ordinance declares a 120-day moratorium on the issuance of any building or grading permits by the department of codes administration for property fronting West End Avenue from I-440 to the westward boundary of the urban zoning overlay (UZO) district. This moratorium would prevent new construction for a 120-day period only if the proposed development is to have construction closer than the base zoning would allow without using the UZO contextual setback provisions.

Ordinance No. BL2004-221, which will be up for public hearing and second reading at the May 4, 2004 Council meeting, makes some revisions to the contextual street setback provisions for property within the UZO, including the property affected by this moratorium. Thus, this moratorium ordinance would allow time for this zoning text change ordinance to make its way through Council, and its impact on development standards for property fronting West End Avenue determined, before new construction is commenced.

p:second

- BILLS ON THIRD READING -

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 (continued on next page)

ORDINANCE NO. BL2003-3 (continued)

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.

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. BL2004-123 (ISABEL) – This ordinance, as amended, closes 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.

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.

SUBSTITUTE ORDINANCE NO. BL2004-175 (ALEXANDER & GILMORE) – This substitute ordinance amends the Metro Code of Laws provisions relating to the fee schedule for Codes permits and inspections. The fee schedules used by the department of codes administration have been in place for a number of years. The last increase in fees for permits was in 1992, and some permit fees have not been increased in over 40 years. As a result of last year's audit of the department of codes administration, Maximus was retained to examine the fees charged by the codes department and the fire marshal and determine how much the fees needed to be increased to achieve "full cost recovery". The increases provided in this substitute ordinance incorporate the recommendations of Maximus. A detailed analysis of these increases, as well as Maximus's Executive Summary, have been previously provided to the Council by the director of the department of codes administration.

It is important to note that state law prohibits charging fees for services that exceed the actual costs of the services provided. Thus, Metro is limited to the "full cost recovery" system of setting fee schedules. This substitute ordinance sets new fee schedules for building permits, gas/mechanical permits, plumbing permits, electrical permits, inspection and re-inspection fees, fees for the examination of plans, as well as administrative fees. Maximus estimated that these fee increases would allow the department of codes administration to recover an additional \$1.5 million of its cost in providing permitting and inspection services. A document comparing the current fee schedules in the Code of Laws with the new schedules is included as an attachment to this analysis.

ORDINANCE NO. BL2004-176 (WALLS) – This ordinance closes a 322-foot portion of 50th Avenue North between Tennessee Avenue and Kentucky Avenue. Metro has determined that there is no future need for this portion of the street for governmental purposes. This closure has been requested by Donna Pollack, for the Alice W. Jew Foundation, and Marie Elkins and John A. Davis, the other abutting property owners. Metro will retain all easements. This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2004-177 (ISABEL, RYMAN & OTHERS) – This ordinance amends the Metropolitan Code of Laws to prohibit the use of mobile telephones while operating a bus or van transporting children, except in the case of an emergency. The stated purpose of the ordinance is to protect the safety of children in Nashville and Davidson County being transported on a bus or van. This prohibition on the use of mobile phones would apply to persons operating a school bus or other bus or van transporting children with a seating capacity of fifteen or more persons. The ordinance defines emergency as a situation where the driver of the bus or van needs to report that the vehicle is disabled, that medical attention is necessary for a passenger, that police intervention is necessary, or to report a disabled vehicle or accident on the roadway. The ordinance also contains a provision expressly excluding the application of the ordinance to a person transporting his/her own family.

ORDINANCE NO. BL2004-180 (KERSTETTER & GILMORE) – This ordinance, as amended, provides for a one-time early retirement incentive to employees of the Metropolitan Government eligible to retire on or before June 30, 2004. It is estimated that this early retirement incentive will realize a fiscal benefit for FY2004-2005 and thereafter by reducing overall employee salaries. Although there have been two prior incentive programs involving early retirement, this is the first time that this type of early retirement incentive payment program has been proposed. The mechanics of the early retirement incentive are as follows:

An eligible employee electing to accept the early retirement incentive will be paid \$500 for each year of employment with the Metropolitan Government. The \$500 payment will be prorated for any part of a year that the employee has worked. The retirement incentive will be paid from the savings generated by the various departments, not from the pension plan itself. Any employee who accepts this retirement benefit will be ineligible for rehire with the Metropolitan Government as a full-time employee, but may be rehired as a part-time employee after one year. If for some reason an employee does return to full or part-time employment with Metro, the employee will be required to refund the incentive payment. The last work date for employees accepting the payment shall be not later than June 30, 2004. The ordinance does contain a public safety extension whereby the last day of public safety personnel accepting the incentive may be extended not later than December 31, 2004 if such employee is necessary to assure public safety.

The director of finance has indicated that this \$500 per year of service payment is the maximum amount that could be paid to keep the program cost neutral. The department of human resources has stated that there are approximately 600 Metro employees eligible for normal retirement, and another 1,600 have some eligibility for early retirement.

ORDINANCE NO. BL2004-181 (NEIGHBORS & GILMORE) – This ordinance approves a memorandum of agreement, as well as an amendment to such agreement, between the Davidson County community service agency (DCCSA) and the Metropolitan Government for funding of the administration of the caring for children's program. The DCCSA is a governmental entity created by state law that is funded through the state department of children services. Metro has in the past provided administrative services to the DCCSA through the Metro department of health, Metro social services, and currently through the finance department. The DCCSA has entered into a grant agreement with the state department of children's services for funding of the program, which funding has been transferred to the department of finance to administer the program.

(continued on next page)

ORDINANCE NO. BL2004-181 (continued)

The memorandum of agreement and the amendment to the agreement approved by this ordinance provides that DCCSA will provide funding in the amount of \$5,393,654 for the administration of the caring for children program. Over \$4.4 million of these funds are to provide case management and family support services. The remaining services to be provided include assistance in the reunification of children in state custody with their families, emergency residential services, adoption services, independent living, and needs assessment. The responsibility of the Metropolitan Government is for administrative services only. The actual services provided by this program are through outside contractors.

ORDINANCE NO. BL2004-182 (MCCLENDON) – This ordinance readopts the Metropolitan Code to include all ordinances enacted on or before December 2, 2003.

p:billstrd