

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director  
Metropolitan Council Office

DATE: **May 18, 2004**

RE: **Analysis Report**

Balances As Of:  
**5/14/03**

**5/12/04**

<u>GSD 4% RESERVE FUND</u>	\$32,948,160	\$14,397,959
 <u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
 <u>GENERAL FUND</u>		
GSD	\$24,729,757	\$35,852,664
USD	\$8,433,994	\$13,910,490
 <u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	\$38,771,091	\$53,181,288

**– RESOLUTIONS –**

**RESOLUTION NO. RS2004-298** (GILMORE, WHITMORE & WALLACE) – This resolution appoints the members to the Ethics Review Taskforce and extends the deadline for the task force to report to the council from June 30, 2004 to September 30, 2004. Resolution No. RS2003-113, adopted on February 3, 2004, established an Ethics Review Task Force to review the Code of Ethical Conduct and to make recommendations to the Council regarding changes that need to be made to the Code. The resolution creating the task force provided that the members were to be appointed by the Council Executive Committee and confirmed by the Council. The Council Executive Committee has recommended the following persons to serve on the task force:

- a. Two former Davidson County elected officials: Earl Campbell and Mansfield Douglas
- b. Representative of the Nashville Bar Association: John L. Chambers
- c. Representative of the Napier-Looby Bar Association: Allegra C. Montgomery
- d. Two individuals trained in the study of contemporary ethics representing institutes of higher learning: Prof. Erin O'Hara of Vanderbilt University School of Law and Prof. John Monmarquet of Tennessee State University
- e. Corporate Ethicist: Kate Payne
- f. Certified Public Accountant: Bruce Sullivan

The task force was to report back to the council regarding their recommendations not later than June 30, 2004. This resolution extends this deadline to September 30, 2004 to allow the task force adequate time to review the Code and to make recommendations.

**RESOLUTION NO. RS2004-299** (WALLACE & ISABEL) – This resolution appropriates \$130,000 in community development block grant (CDBG) funds for community recreational improvements at Murrell School in the Edgehill neighborhood strategy area. CDBG funds are designated for affordable housing activities and for neighborhood community improvement projects.

**RESOLUTION NO. RS2004-300** (ISBAEL, MURRAY & WHITMORE) – This resolution appropriates certain community development block grant (CDBG) funds for various programs administered by the Metropolitan development and housing agency (MDHA). Ordinance No. BL2003-64, enacted December 16, 2003, specified certain programs for which CDBG funds were to be used. CDBG funds are designated for affordable housing activities, youth initiative projects, and community projects associated with stormwater drainage, sidewalks, park improvements, neighborhood commercial revitalization, and slum and blight removal. This resolution authorizes MDHA to expend the following amounts for the following purposes:

• General Administration	\$531,252
• Planning and Urban Environmental Design	\$420,172
• Rehabilitation (Rehabilitation Loans, Emergency Rehabilitation)	\$1,545,461
• Acquisition of Real Property	\$386,365
• Relocation	\$48,296
• Economic Development	\$313,922
• Affordable Housing Assistance	\$159,376
• Youth Initiatives Program	\$362,217
• Civic Design Center Assistance	\$100,000
• Section 108 Loan Repayment	<u>\$400,000</u>
Total	\$4,267,061

**RESOLUTION NO. RS2004-301** (GILMORE) – This resolution authorizes the department of finance to accept certain donations for the use and benefit of the caring for children program. Pursuant to Ordinance No. BL2003-57, the director of finance is authorized to accept donations for the caring for children program, subject to approval of the Council by resolution. These donations are to be used for food, clothing, baby supplies, Christmas gifts for families, Thanksgiving food boxes, school supplies, household supplies, transportation assistance, and other similar items. This resolution accepts the following monetary gifts from the following donors:

- Gabriela Mistral Club                 \$400.00
- Sandra Beaty                             \$100.00
- Anthony Bond                            \$25.00
- Patricia Dyer                             \$15.00
- Terra Forest                              \$5.00

**RESOLUTION NO. RS2004-302** (GILMORE) – This resolution supplements and amends several prior resolutions issuing general obligation multi-purpose refunding bonds, and awards the sale of \$58,080,000 in series 2004 general obligation public improvement refunding bonds. Resolution No. RS2001-510, adopted on February 6, 2001, authorized the issuance of general obligation multi-purpose refunding bonds in an amount not to exceed \$291,000,000. Resolution No. RS2001-786, adopted on October, 16, 2001, amended Resolution No. RS2001-510 by increasing the amount refunded to \$336,000,000 so that additional maturities on other series of bonds could be refunded to result in additional savings to Metro. Finally, Resolution No. RS2002-1190, adopted on October 1, 2002, amended these prior resolutions to authorize the refunding of additional bonds in the amount of \$108,690,000.

This resolution amends these prior resolutions to make certain changes to the terms of the bonds in order to sell the bonds on terms more favorable to the Metropolitan Government. In addition, this Resolution issues \$58,080,000 in refunding bonds to refund the general obligation public improvement bonds, series 1996A. Due to today's favorable market interest rates, it is deemed to be in the best interest of the Metropolitan Government to issue these refunding bonds. The series 1996A bonds to be refunded have maturity dates ranging from November 2006 through November 2016. These refunding bonds are direct general obligations supported by the full faith and credit of the Metropolitan Government and are to be paid from property tax revenues.

These bonds have been advertised and bids will be accepted from prospective buyers. A substitute resolution will be filed awarding the sale of the bonds to the bidder offering the lowest true interest cost to the Metropolitan Government once all bids are in.

**RESOLUTION NO. RS2004-303** (GILMORE) – This resolution authorizes Nashville Electric Service (NES) to issue revenue bonds in an amount not to exceed \$110,000,000. Although NES has complete control and authority over the operation of the electric system, pursuant to the Metropolitan Charter it cannot issue debt without permission of the Metropolitan Government. These revenue bonds will be issued to provide funds for capital system improvements to the electric system. The interest rate on the bonds being issued cannot exceed 7% per annum. The resolution also approves the form of the bonds and the purchase agreement with the underwriters, who will purchase these revenue bonds initially and then be responsible for resale of the bonds. Morgan Keegan and Company is the lead and principal underwriter of the bonds.

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**RESOLUTION NO. RS2004-303** (continued)

The system improvements to be funded with these bond proceeds, as well as existing capital funds, include all improvements to the system made from April 1, 2004 to the date of issuance of these bonds, and all future improvements for the next three years, totaling \$194,000,000. The estimated expenditures for the next three years are as follows:

	<u>2005</u>	<u>2006</u>	<u>2007</u>
New Business	\$13.2 million	\$13.3 million	\$13.8 million
System Construction	\$20.1 million	\$20.7 million	\$17.3 million
Other Construction	\$20.7 million	\$22 million	\$23.5 million
Equipment and Facilities	\$4.8 million	\$5.8 million	\$6.2 million

In addition to the bonds to be issued pursuant to this resolution, NES has outstanding revenue bonds from 1992, 1996, 1998, and 2001. These bonds are to be paid solely from the revenue of NES and will not be an obligation of the Metropolitan Government or be guaranteed by the taxing authority of the Metropolitan Government.

**RESOLUTION NO. RS2004-304** (GILMORE) – This resolution accepts a grant in the amount of \$659,700 from the State of Tennessee to the Metropolitan board of health to maintain a Healthy Start site. The purpose of the Healthy Start program is to provide home visitation, counseling, and education services by public health nurses regarding child health. These funds will be used to provide access to adequate prenatal and well childcare, and to promote child development. The term of the grant is from July 1, 2004 though June 30, 2005. There is no required Metro match.

**RESOLUTION NO. RS2004-305** (GILMORE) – This resolution approves an agreement between the Metropolitan Government and Tennessee State University School of Nursing to provide public health training for student nurses. Pursuant to this agreement, the Metro health department will provide clinical training experience to TSU 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. The health department has similar agreements with other local and area schools of nursing. The term of the agreement is from July 1, 2003, through June 30, 2008. The school 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 school and Metro. The school will also be required to maintain professional liability insurance for its students.

**RESOLUTION NO. RS2004-306** (GILMORE) – This resolution approves an application for a \$500,000 grant from the U.S. department of labor to the Nashville career advancement center (NCAC) to improve the capacity of faith and community-based organizations to provide workforce development services. If this grant is awarded, NCAC will sub-award the grant to various faith and community-based organizations to provide career skill and interest assessments, pre-employment soft-skills training, job training, and post employment follow-up and mentoring. NCAC will follow the request for proposals (RFP) process established in the procurement code to identify the faith and community-based organizations to participate in the program.

**RESOLUTION NO. RS2004-307** (GILMORE & WALLACE) – This resolution approves an amendment to an annual grant from the state department of environment and conservation to the Metro department of public works for the purpose of collecting and disposing of waste tires from residents. The original grant was in the amount of \$435,625 with a term beginning July 1, 2003, and extending through June 30, 2004. This resolution amends the grant by increasing the grant award in the amount of \$145,000 for a total grant award of \$580,625.

**RESOLUTION NO. RS2004-308** (ADKINS & GILMORE) – This resolution amends Ordinance No. BL2002-1164 to add an additional home to the list of homes to be purchased as part of the Seven Mile Creek home buyout. Ordinance No. BL2002-1164 authorized the securing of grant funding from the federal hazard mitigation grant program and the state flood mitigation assistance program to purchase homes that have been vacated or are in danger of flooding due to their proximity to the flood plain. The ordinance provided that additional homes could be added by resolution. This resolution adds an additional home located at 305 Milner Court to the buyout list. The Tennessee emergency management agency has increased its grant award to enable this home to be purchased for \$101,625. This increases the total grant award to \$511,417, and increases Metro’s required match by \$33,875.

**RESOLUTION NO. RS2004-309** (GILMORE) – This resolution accepts a grant from the State of Tennessee, department of military, in an amount not to exceed \$14,395.86 to coordinate the purchase and demolition of certain single-family residential structures that are subject to frequent flooding due to poor drainage capacity related to Ellington Parkway. The construction of Ellington Parkway in the 1970’s has resulted in poor drainage and ponding water from heavy rains in the area has been known to reach eight feet in depth. It is estimated that it would cost between \$10 and \$20 billion to correct the problem, so purchase of the homes is obviously the most logical choice. There is a required Metro match of \$1,475.37 for this grant.

**RESOLUTION NO. RS2003-310** (BURCH & GILMORE) – This ordinance authorizes the director of public property administration to exercise options to purchase 11 homes as part of the Wimpole Drive home buyout along Mill Creek. These homes are all flood-prone and the federal and state governments have provided approximately \$1.4 million to fund a substantial part of the purchase of these properties. The parcels to be acquired and the price for each are as follows:

- 369 Wimpole Drive \$137,000
- 363 Wimpole Drive \$124,000
- 361 Wimpole Drive \$144,500
- 359 Wimpole Drive \$130,500
- 357 Wimpole Drive \$135,000
- 355 Wimpole Drive \$135,000
- 387 Wimpole Drive \$136,000
- 385 Wimpole Drive \$118,000
- 381 Wimpole Drive \$142,000
- 379 Wimpole Drive \$140,000
- 375 Wimpole Drive \$171,000

The resolution provides that the option agreements are attached as an exhibit. However, no option contracts have been attached to the resolution or filed with the Metropolitan Clerk. This resolution should be deferred until these option contracts are filed with the clerk.

**RESOLUTINO NO. RS2004-311** (LORING & GILMORE) – This resolution authorizes the mayor to enter into a supplemental licensing agreement with Nashville and Eastern Railroad Corporation to increase the rental fee paid for the sewer line in the railroad right-of-way west of Old Hickory Boulevard at Shute Lane. The original license agreement, approved by the council and executed in 1998, provided that Metro would pay \$71.50 annually for the license, to be increased subsequently based on the consumer price index. This resolution increases the rental fee to \$81.80, to be adjusted every three years hereafter based upon the consumer price index. This rental cost is paid from the extension and replacement fund of the water and sewer department. This resolution has been approved by the planning commission.

**RESOLUTION NO. RS2004-312** (HAUSSER) – This resolution authorizes Vanderbilt University to construct fiberoptic cable over the public right-of-way across the Acklen Avenue ramp and along Acklen Avenue and Orleans Drive. Vanderbilt will be responsible for all construction and maintenance costs and has agreed to indemnify and hold the Metropolitan Government harmless for any claims resulting from the installation of the cable. Vanderbilt is required to submit a \$300,000 certificate of public liability insurance naming the Metropolitan Government as additional insured. This resolution has been approved by the planning commission.

**RESOLUTION NO. RS2004-313** (GILMORE) – This resolution compromises and settles the Metropolitan Government's lawsuit against Z-Tel Technologies, Inc. ("Z-Tel") for \$800,000 in cash and \$800,000 in Z-Tel stock. This lawsuit resulted from an investment by the Metropolitan employee benefit board investment committee in a limited partnership that held stock in Z-Tel. In December of 1999, the limited partnership dissolved and liquidated its assets at the same time that Z-Tel was preparing for its initial public offering. As part of the dissolution, Metro was to receive 519,741 shares of Z-Tel stock. This stock was never received by Metro, although Z-Tel says the stock certificate was mailed. In February 2000, Z-Tel informed Metro that it had already sent the stock certificate and refused to issue a new certificate unless Metro executed an affidavit saying the stock certificate had been lost and agreed to indemnify Z-Tel. Metro was unwilling to indemnify Z-Tel or sign an affidavit that the stock certificate had been lost. In May 2002, Z-Tel agreed to issue a replacement stock certificate, but by then the value of the stock had substantially decreased in value. Metro requested that Z-Tel compensate Metro for its losses resulting from the decline in value of the stock, but Z-Tel refused. As a result, Metro brought suit against Z-Tel in federal court in Tampa, Florida. Metro and Z-Tel went through an unsuccessful mediation process in 2003 and the case was set for trial to begin May 17, 2004. The magistrate ordered the parties to appear for one last mediation attempt and convinced the parties that it was in the best interest of both parties to settle. As a result, this settlement agreement was reached.

Pursuant to the settlement agreement, Z-Tel will pay \$800,000 in cash and another \$800,000 in stock. Z-Tel will bear all costs and expenses in connection with the registration of the stock. If the registration has not become effective by August 31, 2004, Z-Tel may obtain up to three one-month extensions upon paying additional payments of \$20,000, \$56,000, and \$80,000, respectively. As part of this settlement, Z-Tel is not admitting any liability and Metro is not acknowledging any lack of merit to its claims.

It is important to note that if this settlement agreement is not approved by the council at the May 18<sup>th</sup> council meeting, the agreement shall become null and void. Thus, time is of the essence and this settlement should not be deferred.

**RESOLUTION NO. RS2004-314** (GILMORE) – This resolution accepts \$7,084.59 in settlement of the Metropolitan Government's claim against Kimberly A. Coggins. On June 30, 2003, a Metro fire department employee was assisting a victim in an overturned vehicle on the shoulder of I-40 at the Bellevue exit. Ms. Coggins hydroplaned when she approached the accident and struck the Metro vehicle and another vehicle. The Metro fire employee was not injured in this accident, but extensive damage was done to the Metro 1999 Ford Taurus. This resolution accepts \$7,084.59 as settlement of the repair cost for the damaged vehicle.

**RESOLUTION NO. RS2004-315** (GILMORE) – This resolution accepts \$6,115.25 in settlement of the Metropolitan Government's claim against Nicholas Turner. On December 4, 2003, Mr. Turner failed to stop at a flashing red light at Hamilton Church Road and Murfreesboro Road and struck a Metro police car. The impact caused \$6,115.25 in damage to the left front and side of the police car. The Metro officer was injured in the collision and is still being treated for his injuries. This resolution only settles the property damage portion of the claim and the department of law will continue to pursue the claims for medical bills and lost wages.

**RESOLUTION NO. RS2004-316** (GILMORE) – This resolution accepts \$6,049.63 in settlement of the Metropolitan Government's claim against the State of Tennessee, Tennessee Business Enterprises. On November 17, 2003, a grease trap backed up at the snack bar in the criminal justice center, which is operated by the State of Tennessee, Tennessee Business Enterprises. The back up caused an overflow of the drain into the storage area causing damage to Metro police department property. Metro spent approximately twenty labor hours cleaning up the overflow. The resolution reimburses Metro for the labor costs and for all of the damage to the property.

**RESOLUTION NO. RS2004-317** (GILMORE) – This resolution accepts \$6,806.68 in settlement of the Metropolitan Government's claim against Casey N. Cooper. On September 21, 2003, a Metro police officer was in his patrol car on the shoulder of I-440 West completing the investigation of an earlier traffic accident when Mr. Cooper's vehicle fishtailed and struck the rear of the patrol car. The road conditions were very slippery due to a hard rain. The impact caused \$6,030.80 in damage to the rear of the patrol car, as well as minor personal injuries to the police officer. In addition to the property damage claim, this resolution reimburses Metro for the police officer's lost wages in the amount of \$165.92 and \$609.96 in medical bills.

**- BILLS ON SECOND READING -**

**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. BL2004-173** (CRAFTON) – This ordinance, as amended, 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. As a condition to application, any out-of-county applicant may be required to consent to a voluntary criminal background check to be conducted by the Metropolitan Government. 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.

**SUBSTITUTE ORDINANCE NO. BL2004-178** (GILMORE, RYMAN & BRILEY) – This substitute 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. The ordinance includes a grandfather provision that would allow any master plumber, journeyman plumber, or apprentice plumber that possesses a valid certificate of registration to be entitled to all the rights and privileges of a licensed master, journeyman or apprentice plumber, including renewals.

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**SUBSTITUTE ORDINANCE NO. BL2004-178** (continued)

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, or any nationally accredited apprenticeship program, which consists of a minimum 8,000 hours of practical experience combined with a minimum of 600 hours of classroom training.

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 department of codes administration shall have the authority to enforce the applicable Code provisions through the use of work-site inspections and unannounced work-place inspections.

**ORDINANCE NO. BL2004-183** (SHULMAN & HAUSSER) – This ordinance amends the Metropolitan Code of Laws to require the board of parks and recreation to designate an area of Elmington Park as a “dog friendly zone.” The Code currently provides that a dog may only be brought into a park if the dog is on a leash not exceeding three feet in length. This ordinance would allow dogs to run freely in this designated area without being on a leash. The Council Office is of the opinion that this ordinance violates the Charter provisions relative to park operation.

**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. BL2004-190** (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 (continued on next page)

**ORDINANCE NO. BL2004-190** (continued)

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

Information regarding affected property owner consent has been requested from the planning staff.

**ORDINANCE NO. BL2004-192** (TYGARD) – This ordinance renames two sections of road 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 name change has been approved by the traffic and parking commission, the planning commission and the Emergency Communications District board. There is an amendment that clarifies the sections of roadway to be named or renamed.

**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 Emergency Communications District board.

**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.

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**ORDINANCE NO. BL2004-225** (continued)

There is an amendment 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. BL2004-227** (ISABEL) – This ordinance amends the Metropolitan Code of Laws to require that all persons or firms engaged in excavation or paving work in any street, alley, or public way display signs stating “Slow Down, My Daddy Works Here” and “Slow Down, My Mommy Works Here.” The Metro Code currently requires that barricades be installed when paving and excavation work is being performed in the public right-of-way to warn of the presence of such excavation.

**ORDINANCE NO. BL2004-228** (GILMORE & NEIGHBORS) – This ordinance authorizes the Metropolitan Government to collect payment in lieu of property taxes from nonprofit organizations that provide housing for low income elderly persons and persons with disabilities. Pursuant to state law, property of Tennessee nonprofit corporations which is used for permanent housing of low income persons with disabilities, or low income elderly or handicapped persons, is exempt from property taxation if the property owned by the nonprofit corporation is financed through federal loans. In order to qualify for the exemption, the property must be used as below-cost housing for elderly or handicapped persons, or persons with other disabilities.

The state law granting this exemption further provides that owners of projects which exceed twelve units shall agree to make payments to the Metropolitan Government not to exceed the cost of actual services rendered by the government to the property. This state law was enacted in 1994, but no program providing for the payment in lieu of taxes from these nonprofit organizations has ever been established through the Metropolitan Government. Thus, these organizations have been receiving the tax exemption without paying their required share of actual services provided to the property by the Metropolitan Government. This ordinance authorizes the Metropolitan Government to collect such payments, approves the formula for calculating the payments, and authorizes the Metropolitan Government to enter into the necessary agreements with the nonprofits to collect the payments.

Pursuant to this ordinance, the formula for calculating the required payments in lieu of ad valorem taxes is a flat 25% of the taxes that would be due were the property not exempt under state law. The Council Office has some reservation about this formula since no distinction is made between property that is located within the urban services district and property located in the general services district. By Charter, property in the urban services district receives additional services, such as increased police protection, fire protection, street lighting, and garbage collection. Although state law only requires that the payments made by the exempt nonprofits not exceed the actual cost of services, there is no indication that the 25% formula is an adequate correlation to the actual services provided.

The ordinance authorizes the mayor to execute the necessary agreements to accept the payments and the agreements are to be implemented by the assessor of property and the trustee. The form of the agreement approved by this ordinance provides that the initial payment to be paid by the exempt nonprofit corporation shall be retroactive to the date that the property was exempt under the state  
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**ORDINANCE NO. BL2004-228** (continued)

law provisions. The agreement further requires the exempt nonprofit taxpayer to file an annual report with the assessor of property identifying changes to the property that might affect its exempt status. The agreement provides that if the exempt nonprofit corporation fails to make the required payment in lieu of taxes, Metro has the right to attempt to collect the payment in the same manner used to collect past due property taxes, and that unpaid in lieu of tax payments will bear interest at the same rate as unpaid property taxes. If the nonprofit corporation fails to make the required payments or uses the property in a manner other than low income housing for elderly and disabled persons, the Metropolitan Government has the right to terminate the agreement.

**ORDINANCE NO. BL2004-229** (DREAD & GILMORE) – This ordinance approves an amendment to the contract between the Metropolitan Government and the state department of correction regarding the housing of locally sentenced felons. The Metropolitan Government entered into a grant contract in 1989 with the state department of correction and the state funding board, which was amended in 1991 to finance the construction of the Metropolitan Detention Center located at the former DeBerry Detention Center Site. An addendum to the contract was added in 1995 establishing the reimbursement rate that the state would pay Metro for its cost in housing locally sentenced felons at any of its facilities other than the Metro detention facility.

The Metropolitan Government has undertaken a jail facilities construction/renovation project. The Council has appropriated \$20 million in capital funding for this project and an estimated \$13 million in additional funding will be needed to complete the project. A 300 cell male offender re-entry center is scheduled to open in October of 2004, and a 512 cell bed addition to the existing correctional development complex is scheduled to be completed in January 2005. In addition, 300 male cell beds are to be added to the existing criminal justice center in January 2006. As a result of these construction/renovation projects, it is necessary to amend the contract with the state to provide temporary additional capacity to house inmates under the care of Metro. Pursuant to this agreement, Metro would be able to temporarily use up to 300 cell beds at the detention center to house its local inmates. In addition, the agreement provides that if the locally sentenced felon population exceeds 95% of the detention center's capacity, then Metro has the authority to enter into an agreement with the private management firm of the detention center (currently CCA) to house the locally sentenced felons in excess of the detention center's capacity at the CCA facility in West Tennessee during the period of construction. The current capacity for the detention center is 1,195. Any such agreement would be subject to the approval of the commissioner of the department of correction, and Metro would be required to notify the commissioner each time inmates are transferred to the West Tennessee facility. This would operate as a safety valve in case Metro needed to transfer some inmates during construction of the new facilities. The state will reimburse Metro for transferred inmates at the same rate as the reimbursement for the detention center.

**ORDINANCE NO. BL2004-230** (MCCLENDON) – This ordinance readopts the Metropolitan Code to include all ordinances enacted on or before February 3, 2004.

**ORDINANCE NO. BL2004-231** (WALLACE) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Copperstone Development to provide public sewer service to the Woodlands at Copperstone development in Williamson County. This is a typical agreement entered into by Metro acting through the department of water and sewerage services whereby private developers contribute a portion of the cost to extend or upgrade public water and sewer services. Pursuant to this agreement, Copperstone Development has agreed to pay the cost of 38 single-family home connections at a total cost not to exceed \$76,000.

**ORDINANCE NO. BL2004-235** (SHULMAN & WALLACE) – This ordinance amends the Metropolitan Code of Laws to require persons engaged in excavation, sidewalk construction, or paving work in the Metro public right-of-way to post a sign indicating the expected commencement and completion date for the project. The sign is to be of an adequate size to be visible to the motoring public.

**ORDINANCE NO. BL2004-236** (WHITSON, WILLIAMS & OTHERS) – This ordinance approves an agreement between the U.S. Department of the Army and the Metropolitan Government for the Richland Creek feasibility study of flood damage reduction. The U.S. Army Corps of Engineers has conducted a reconnaissance study of flood damages along Richland Creek and has determined that further study in the form of a “feasibility phase study” is required. Pursuant to this agreement, the Metropolitan Government, through the department of water and sewerage services, will jointly participate in the study and share the funding costs. The total estimated cost of the study is \$480,000, with the federal government contributing \$240,000 and the Metropolitan Government contributing a cash payment of \$196,000 and an in-kind contribution for the remaining \$44,000.

**ORDINANCE NO. BL2004-238** (MCCLENDON, GREER & OTHERS) – This ordinance amends the Metropolitan Code of Laws to set criteria regarding the types of permissible materials that may be used in the construction of fences. The Code currently provides that fences are to be constructed in accordance with the building code. The Code designates the type of fences that are prohibited, but does not include the type of materials that may be used in the construction of fences. Fences that are prohibited by the Code include electric fences, the use of barbed wire below six feet on a fence, and fences containing barbs or sharp projections on top of the fence if the fence is located within five feet of the property line.

This ordinance provides that fences may only be constructed using the following materials:

1. Woven wire.
2. Wood, vinyl, steel, or aluminum slats of no more than 1” by 6” in width hung vertically, horizontally, or diagonally between steel, wood, or vinyl posts no further than ten feet apart.
3. Masonry consisting of brick, concrete block, split-face block, or stones and mortar.
4. New plastic or other synthetic material treated in a manner to maintain the fence in good structural condition and with an appearance that is aesthetically compatible with the type of fence it represents.
5. Decorative-type split rail or dry-stack stone may be used for decorative fences.

The ordinance further provides that metal fences must be constructed of new materials manufactured and/or treated in a manner to prevent rust or corrosion. Wood fences must be constructed of new materials and painted, stained or preserved in a manner to maintain the fence in good structural condition.

**ORDINANCE NO. BL2004-239** (HAUSSER) – This ordinance abandons a 6” water line and easement encumbering real property at The Enclave at Hillsboro Village. A private water line will replace the existing 6” water line. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2004-240** (HART) – This ordinance abandons the existing 8” sanitary sewer line and easement encumbering property located at 3518 Gallatin Pike owned by First Tennessee Bank, N.A. This existing sewer line and easement is no longer being used by the department of water and sewerage services. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2004-241** (ADKINS, WHITMORE & GILMORE) – This ordinance authorizes the director of public property administration to accept the donation of approximately four acres of property from Nashville Area Habitat for Humanity, Inc., for the use and benefit of the parks department. This property is located in the 26<sup>th</sup> Council District. There is a restriction in the deed requiring the property to be used for public park and recreational purposes. The board of parks and recreation has approved the acceptance of this property.

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

**ORDINANCE NO. BL2004-242** (GILMORE & WHITMORE) – This ordinance authorizes the director of public property administration to accept the grant of easements for use in connection with the development of the Whites Creek greenway. These perpetual easements will be utilized as part of Metro’s greenway system with a pathway for bicycles or pedestrian travel, nature trail, and/or natural area. Easements are to be accepted from the following property owners:

- John E. Ingram                      2.87 acres
- Hubert E. Lyle                      1.26 acres
- Raymond M. Pegram              2.93 acres

This ordinance has been approved by the planning commission.

The acceptance of these easements is to be considered by the board of parks and recreation at their June 1, 2004, meeting.

**- 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. BL2004-172** (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 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.

**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. BL2004-193** (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. BL2004-195** (BURCH) – This ordinance names an unnamed roadway between McCrory Creek Road and Donelson Pke 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 10<sup>th</sup> 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.

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 is on file with 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 23<sup>rd</sup> 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.

p:billstrd