

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director  
Metropolitan Council Office

DATE: **June 1, 2004**

RE: **Analysis Report**

Balances As Of:	<u>5/26/04</u>	<u>5/28/03</u>
<u>GSD 4% RESERVE FUND</u>	\$33,087,904	\$14,526,302
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$24,754,757	\$35,852,664
USD	\$8,433,994	\$13,910,490
<u>GENERAL PURPOSE SCHOOL FUND</u>	\$38,771,091	\$53,181,288

**– BILL ON PUBLIC HEARING –**

**ORDINANCE NO. BL2004-255** (LORING & GILMORE) – This ordinance adopts the capital improvements budget for 2004-2005 through 2009-2010. A separate analysis will be provided for the capital improvements budget. The capital improvements budget is a planning document and does not in itself appropriate any money. All capital projects must be provided for in this document before a capital improvement can be approved by the Council, except in the case of a public emergency. This budget is amendable on third and final reading. The Charter requires the Council to adopt the capital improvements budget not later than June 15<sup>th</sup> of each year. Once adopted, future amendments to the capital improvements budget must be approved by the planning commission, be recommended by the Mayor, and then be adopted by resolution of the Council receiving twenty-seven (27) affirmative votes.

**– RESOLUTIONS –**

**RESOLUTION NO. RS2004-319** (WALLACE) – This resolution appropriates \$7,500 from the unappropriated fund balance of the general fund to fund an economic impact study regarding Metro employees living outside of Davidson County. Rule 15 of the Council Rules of Procedure provides that "no resolution or ordinance involving the appropriation or expenditure of money, upon being filed, shall be placed on the agenda by the Metropolitan Clerk until the Director of Finance has furnished a statement of the availability of funds." The director of finance has provided a statement that the funds are not available for this appropriation. The Council has established a policy of maintaining a minimum unappropriated fund balance of five percent. As the unappropriated fund balance is currently below this five percent threshold, appropriating these funds for this purpose would violate the longstanding policy set by the Council. The proposed operating budget for 2004-2005, on first reading, estimates a five percent balance as required by the Council policy.

**RESOLUTION NO. RS2004-325** (GILMORE) – This resolution establishes a \$1.00 litigation tax to be used solely for jail construction and upgrades. State law allows counties, upon adoption of a resolution by a 2/3 majority vote of the county legislative body, to levy a privilege tax not to exceed ten dollars on litigation in all civil and criminal matters to be used exclusively for the purposes of jail construction, renovation, or to retire debt on jail construction and courthouse renovation. Such levy can only be in effect until all expenses for construction have been paid or until the debt has been retired.

This resolution would impose a \$1.00 litigation tax on all litigation effective January 1, 2005, to be used exclusively for funding jail construction, renovation and upgrade projects. In keeping with state law, this resolution expressly provides that no such litigation tax shall be paid in suits instituted by the State or the Metropolitan Government on behalf of any individual who is indigent.

The finance department anticipates new revenues of \$200,000 for the last six months of the year.

**RESOLUTION NO. RS2004-326** (GILMORE) – This resolution authorizes the issuance of general obligation multi-purpose improvement bonds in the amount of \$75 million to retire the outstanding commercial paper of the Metropolitan Government authorized pursuant to RS2003-1496. In June of 2003, the Council authorized a commercial paper program for the Metropolitan Government.  
(continued on next page)

**RESOLUTION NO. RS2004-326** (continued)

Commercial paper is a form of short-term financing for capital projects whereby the commercial paper is issued as needed to cover interim construction costs until long-term debt in the form of bonds are issued and sold for the project. Commercial paper was issued to cover approximately \$68 million in construction costs of various capital projects authorized by the initial bond resolutions from the mayor's 2001 and 2002 capital spending plans. This resolution authorizes the sale of bonds to pay off the commercial paper maturing through October 8, 2004.

This \$75 million bond issue pledges the full faith and credit of the Metropolitan Government and the bonds are to be paid from ad valorem taxes levied on property within Davidson County. These bonds are to bear interest at a rate not exceeding a true interest cost of 5.5% per annum and are to mature over a period of 25 years.

**RESOLUTION NO. RS2004-327** (GILMORE) – This resolution supplements and amends several prior resolutions issuing general obligation multi-purpose refunding bonds, and awards the sale of \$56,270,000 in series 2004 general obligation public improvement refunding bonds. This resolution is of the same subject matter as Resolution No. RS2004-302, which was withdrawn at the May 18, 2004, Council meeting. The resolutions to be amended by this refunding bond resolution consist of the following:

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 \$56,270,000 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. Assuming the bond market is favorable, 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 NOS. RS2004-228, RS2004-229 AND RS2004-230** (GILMORE) – These three resolutions provide for the mayor's 2004-2005 spending plan for various capital projects, construction of new facilities, renovation of existing facilities, and acquisition of equipment. A separate analysis on these three resolution is attached at the end of this analysis report. The Council Office believes that additional resolutions authorizing capital expenditures from the general fund reserve fund (4% fund) will be filed for consideration at the June 15<sup>th</sup> meeting.

**RESOLUTION NO. RS2004-331** (GILMORE) – This resolution authorizes the mayor to submit an application for a state grant in the amount of \$9,000 for the benefit of the juvenile court. The application is for the Tennessee commission on children and youth for state supplement juvenile court improvement funds. If awarded, these funds will be used to provide training opportunities to juvenile court staff.

**RESOLUTION NO. RS2004-332** (NEIGHBORS & GILMORE) – This resolution approves an annual intergovernmental agreement between the Metropolitan hospital authority and the Metropolitan Government, and appropriates \$16,989,492 as a loan to the hospital authority to facilitate receipt of additional reimbursements for Bordeaux Hospital from the state under the Title XIX Medicaid State Plan Amendment. This is essentially an accounting technique used to leverage funds to receive additional federal dollars for the state and Bordeaux Hospital. Under this program, local governments that operate nursing home facilities such as Bordeaux Hospital agree to transfer funds to the state, who then makes an application for additional reimbursement from the federal government through the Health Care Financing Administration.

Pursuant to this resolution, Metro will loan the hospital authority \$16,989,492 from the general fund of the Metropolitan Government, which funds will in turn be transferred by the hospital authority to the state. The state will then qualify these funds with the federal government, along with other funds from other local governments, to receive additional reimbursements for nursing home facilities such as Bordeaux Hospital. The transfer of funds is for a period of November 1, 2003, through June 30, 2004. Metro will be repaid the \$16,989,492 amount of the loan plus a 2% administrative fee. In addition to the 2% fee, Metro benefits from this program in that Bordeaux Hospital receives increased Medicaid reimbursements.

The agreement provides that in the event the Medicaid reimbursement program is unsuccessful or the transfer is disallowed, Metro will have its funds returned, plus the 2% administrative fee.

**RESOLUTION NO. RS2004-333** (NEIGHBORS & GILMORE) – This resolution approves a contract between the Metropolitan department of health and Meharry Medical College School of Dentistry to provide dental services at the downtown clinic. Total payments under the contract are not to exceed \$38,500. The term of the contract is from July 1, 2003, through June 30, 2004.

**RESOLUTION NO. RS2004-334** (DREAD & GILMORE) – This resolution accepts a grant in the amount of \$56,285.44 from the Community Foundation of Middle Tennessee to the Metropolitan police department to purchase various law enforcement investigation equipment. The equipment to be purchased consists of a day/night commercial grade digital video camera, a covert monitoring system, a wireless receiving system, a body worn video and audio recorder, and a buttonhole camera. The grant agreement provides that Metro must use the funds solely for the purchase of the stated equipment "from one or more" of the three vendors listed in the agreement. The Council Office questions that legality of the requirement of the grant that such equipment be purchased from a restricted list of vendors. Should the Foundation want to benefit solely these vendors, the Foundation should purchase the equipment directly and then donate the equipment to the police department.

**RESOLUTION NOS. RS2004-335 & RS2004-336** (GILMORE) – These two resolutions approve annual grants from the state department of labor and workforce development, under the provisions of the Workforce Investment Act of 1998, to provide funding to the Nashville career advancement center (NCAC) to prepare adults, youth, and dislocated workers for re-entry into the labor force, and to offer training to those facing serious barriers to productive employment. These are essentially federal pass-through funds that provide operating funds for NCAC. The term of the two grants is from April 1, 2004, through June 30, 2006. **Resolution No. RS2004-335** approves an administration grant in the amount of \$120,695.23. **Resolution No. RS2004-336** approves a youth worker grant in the amount of \$1,086,257.05.

**RESOLUTION NO. RS2004-337** (GILMORE) – This resolution approves an annual grant in the amount of \$1,053,157.50 from the state department of human services to the Nashville career advancement center (NCAC) to provide Families First services to eligible participants. The term of the grant is from July 1, 2004, through June 30, 2006, with a possible extension of one year. The funds are to be used to provide services to Families First participants that lead to employment, career advancement, and economic self-sufficiency. Such support services include vehicle repairs and expenses, dental assistance, optical services, and employment-related support services.

**RESOLUTION NO. RS2004-338** (GILMORE) – This resolution accepts \$7,579.55 in compromise and settlement of Metro's claim against Mental Health Cooperative. On August 4, 2003, a Metro police officer was traveling west on Jefferson Street transporting an arrestee to the booking station. The driver of a vehicle owned by Mental Health Cooperative entered the intersection of 3<sup>rd</sup> Avenue North and Jefferson Street on a yellow flashing caution light and struck the Metro police car. Both the arrestee and the officer were taken to Meharry General Hospital. This resolution only settles the property damage portion of the claim for the damage to the 1999 Ford Crown Victoria police car.

**RESOLUTION NO. RS2004-339 & RS2004-340** (WALLACE & GILMORE) – These two resolutions authorize the mayor to enter into supplemental licensing agreements with Nashville and Eastern Railroad Corporation to increase the rental fee paid for the sewer line in the railroad right-of-way at M.P. 1.14. These rental fees are to be paid from the extension and replacement fund of the water and sewer department.

**Resolution No. RS2004-339** increases the annual rental fee from \$299.00 to \$313.95, to be adjusted every three years hereafter based upon the consumer price index.

**Resolution No. RS2004-340** increases the annual rental fee from \$27.25 to \$28.62, to be adjusted every three years hereafter based upon the consumer price index.

**RESOLUTION NO. RS2004-341** (TUCKER, GILMORE & WALLACE) – This resolution authorizes the Metropolitan Government to enter into a water and sewer distribution and collection system relocation contract with the state department of transportation for the Knight Road bridge project over Whites Creek and Earthman Fort Creek. Pursuant to this contract, Metro agrees to reimburse the state for 100% of the relocation costs, estimated to be \$179,000. Metro is authorized by ordinance to enter into these type of agreements by resolution of the Council.

This resolution further authorizes the state treasury department to transfer the funds necessary to pay for this utility relocation from Metro's local government investment pool (PGIP) account. LGIP agreements are used to allow Metro to earn interest on the money set aside to fund Metro's portion of state construction projects until the funds are actually spent.

**- 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. BL2004-179** (BRILEY & WILHOITE) – This ordinance, as amended, authorizes the imposition of a \$1.00 litigation tax on all cases in the general sessions and juvenile courts to provide funds which will be used exclusively for victim mediation centers duly certified under state law. State law allows local governments to impose such a tax, provided that all of the revenue is distributed monthly to qualified mediation centers. Presently, the Victim Offender Reconciliation Program (VORP) qualifies under state law as a mediation center, though others might also qualify to receive these funds.

This ordinance provides that this tax will be taxed as part of the court costs. Revenues generated from the tax will be collected by the court clerks and remitted to the Metropolitan treasurer. Such revenue will then be distributed monthly to qualified center(s) pro rata on a monthly basis based on the number of cases referred by the Davidson County district attorney's office and general sessions court. The ordinance provides that this litigation tax shall not take effect until July 1, 2004.

**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. BL2004-194** (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. BL2004-221** (LORING) – This zoning text change deletes the existing provisions regarding contextual street setbacks in the urban zoning overlay (UZO) district and substitutes these provisions with new contextual street setback provisions. The contextual street setback provisions (continued on next page)

**ORDINANCE NO. BL2004-221** (continued)

were added to the Code as part of Ordinance No. BL2000-364, which established the UZO. Ordinance No. BL2000-364 states in part that the purpose of the UZO is to preserve and protect “existing development patterns that predate the mid-1950’s and ensuring the compatibility of new development.” The current contextual setback provisions for the UZO allow buildings to be built closer than the minimum setbacks for the base zoning district, up to the edge of the right-of-way, when existing buildings on neighboring lots or corner lots facing the same intersection are located closer to the street than the base zoning would allow. In addition, for lots in the R, RS, and lower density multi-family zoning districts, if two-thirds or more of the buildings on a block do not meet the minimum setback requirements for the base zoning, then new buildings constructed along that block may be constructed as close to the street as the closest front façade on the block. There is no requirement that only adjacent buildings built before 1950 be used in determining the appropriate setback.

This ordinance establishes new street setback provisions for the UZO. Pursuant to this ordinance, the UZO setback provisions would only apply within mixed use, office, industrial, and higher density multi-family residential zoning districts. The determination of the contextual street setbacks within the UZO are to be made by the zoning administrator and the executive director of the planning department or his designee. The director of the planning department is to determine whether a proposed street setback meets certain criteria. Lots with buildings of a different building type are not to be used as the basis for setbacks. Conformance with a zoning overlay district or redevelopment district is to be considered. Further, civic buildings are not to be used as the contextual basis for setbacks of non-civic buildings, and vice versa. A civic building is defined in the ordinance as a building designed and constructed for community use by governmental, educational, cultural, public welfare, religious, or transportation organizations. In addition, the setback is to be consistent with the street setbacks of pre-1950 buildings. Buildings constructed in 1950 or later are not to be used in determining the setback. If the site is not within an area having an adopted design plan or design guidelines, and the building types and setbacks of existing buildings are characteristic of a different zoning type from what the property is zoned, and if it is determined that implementation of the current zoning will change the development character within the district, then the contextual setback provisions will not apply.

The Council Office had some concerns regarding the legality of this ordinance, especially as it relates to the authority of the planning director and the zoning administrator to determine whether the UZO street setbacks apply. There will be a substitute ordinance filed that addresses these concerns.

This zoning text change 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.

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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. BL2004-235** (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. BL2004-238** (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.

**SUBSTITUTE ORDINANCE NO. BL2004-245** (BRILEY) – This substitute ordinance amends the Metropolitan Code of Laws to include public notification requirements for Metro boards and commissions. This ordinance would require the department of information systems to maintain a website calendar listing the date, time, location, and agenda of all meetings of Metro boards and commissions. This calendar is to be updated on a weekly basis and is to be accessible from the Nashville.gov website. The ordinance requires each board and commission to submit a list of all meeting dates, times, and agendas to the department of information systems. The information is to be posted on the website not later than 10 days prior to the scheduled meeting date for a board or commission, and not later than 5 days prior to the meeting of a subcommittee.

The ordinance also requires the Metropolitan Government to make available to the newspapers each Friday a list of all board and commission meeting times, locations, and agendas for the upcoming week. There is an emergency exception from this notice requirement that would allow a board or commission to consider an item not included in the notice to the press. There is also an exception from the notice requirement that would allow the benefit board to add an individual to the agenda so long as the subject matter of the addition only concerns that particular individual to be added.

In addition, the ordinance provides that any member of the public, upon request, shall be entitled to receive written notice by mail of the meeting time, date, location, and agenda of any Metro board or commission. Failure to receive such written notice shall not be considered a lack of adequate notice as long as all other means of notification required by law have been followed. The provisions of this ordinance are not to take effect until January 1, 2005.

**ORDINANCE NO. BL2004-246** (WALLACE, GILMORE & TUCKER) – This ordinance authorizes the acquisition of property by negotiation or condemnation for the expansion of Hume-Fogg Academic High School located at 8<sup>th</sup> Avenue North and Broadway. The property to be acquired is on 8<sup>th</sup> Avenue, directly behind Hume-Fogg.

This acquisition has been approved by the board of public education and the planning commission.

**ORDINANCE NO. BL2004-247** (GILMORE) – This ordinance approves the lease of 102 acres of property owned by the State located at 3000 Morgan Road in Joelton to be used as a public park. This State-owned property was formerly known as the Tennessee Youth Center. The term of the lease is from August 1, 2004, through July 31, 2024, with a possible twenty-year extension. The property is only to be used by Metro as a public park. Metro has the right to demolish any existing structures and construct additional buildings and make other improvements at its sole expense. Metro agrees to indemnify the State, to the extent legally permissible under the Governmental Tort Liability Act, for any claims resulting from the use and operation of the premises. Metro also agrees to maintain adequate self-insurance for damage to the property.

No rental payments are required to be paid by Metro for the lease of this property. Any amendments to the lease agreement are to be approved by resolution of the Council receiving 21 affirmative votes.

**ORDINANCE NO. BL2004-248** (ISABEL & GOTTO) – This ordinance authorizes the placement of automatic teller machines (ATMs) by the Metro Police Department Employees Credit Union in the North Nashville, Hermitage, and South police precincts. The credit union will be allowed to lease space for one year at a rental cost of \$500.00. The credit union will be required to maintain \$2 million in liability insurance naming the Metropolitan Government as additional insured.

There will be an amendment offered for this ordinance to state in the recital clauses that the credit union requested to install these automatic teller machines.

This ordinance has been referred to the planning commission.

**ORDINANCE NO. BL2004-249** (LORING) – This ordinance authorizes the Metropolitan Government to enter into an encroachment agreement with Colonial Pipeline Company in connection with the construction of a 48" water main to transport water from the Omohundro water treatment plant. The agreement provides certain restrictions on the types and methods of encroachments that are permitted. Pursuant to the agreement, Metro assumes responsibility for property damage and personal injury resulting from the encroachment activity.

Future amendments to this agreement may be approved by resolution of the Council.

**ORDINANCE NO. BL2004-250** (JAMESON, GILMORE & WALLACE) – This ordinance authorizes the department of water and sewerage services to enter into a participation agreement with B.I.G. Development, Inc., for the lining of the sewer along 1409 Fatherland Street. The department of water and sewerage services desires to install gunite lining and protection of the brick sewer at 1409 Fatherland Street, and B.I.G. Construction, Inc., has agreed to contribute \$4,750.00 toward this project.

**ORDINANCE NO. BL2004-251** (CRADDOCK & GILMORE) – This ordinance accepts an amount not to exceed \$3,500 from Skyline Medical Center for the purpose of having an appraisal conducted for the Old Due West landfill. Skyline Medical Center has expressed interest in leasing the 35-acre Old Due West landfill site located at 801 Old Due West Avenue in Madison. In order to determine the fair market lease value of the property, an appraisal of the property needs to be conducted. This ordinance simply accepts the funds from Skyline Medical Center to be used to pay for the appraisal.

**ORDINANCE NO. BL2004-252** (GILMORE & WALLACE) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Tennessee Contractors, Inc., to provide public sewer service to Phase 2 of the Fountainbrooke subdivision 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, Tennessee Contractors, Inc., has agreed to pay the cost of 36 single-family home connections at a total cost not to exceed \$72,000. These funds are to be deposited into the water and sewer extension and replacement fund.

**ORDINANCE NO. BL2004-253** (WALLACE) – This ordinance amends the Metropolitan Code of Laws to require that all individuals and firms engaged in tree care and removal activities, whether on private or public property, obtain a permit from the urban forester. The Code currently provides that all individuals and firms conducting tree care and removal as a business are required to have a permit to engage in such tree care and removal activities. The permit is to be issued by the urban forester upon proof by the applicant that he or she has successfully completed a test of tree knowledge given by the International Society of Arboriculture, and proof that he or she or his or her firm has a minimum of three hundred thousand dollars of liability insurance. The permit fee is twenty-five dollars per year.

The Code currently includes an exception from the above permit requirements for performing work on private trees unless the tree is a hazard tree. The Code states that the intent of the permit provisions is that “the provisions be applicable only to public trees and for the protection of public utility distribution lines.” This ordinance would remove the exception for private tree work.

**ORDINANCE NO. BL2004-254** (TYGARD & SHULMAN) – This ordinance abandons a section of surplus right-of-way along the north side of River Road from Overall Creek extending 1,000 feet east. There is no future governmental need for this 0.92-acre section of surplus right-of-way. Metro will retain all easements. This abandonment has been requested by the Harpeth Valley Utility District.

This ordinance has been referred to the planning commission and the traffic and parking commission.

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**- 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.

**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.

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. BL2004-190** (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; (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, as amended, 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.

**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.

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**ORDINANCE NO. BL2004-228** (continued)

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 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 (continued on next page)

**ORDINANCE NO. BL2004-229** (continued)

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. BL2004-236** (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. BL2004-239** (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 been referred to the planning commission.

**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.

p:billstrd