

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **March 15, 2005**

RE: **Analysis Report**

Balances As Of:	<u>3/9/05</u>	<u>3/10/04</u>
<u>GSD 4% RESERVE FUND</u>	* \$12,353,275	\$25,823,029
<u>CONTINGENCY ACCOUNTS</u>		
GSD	- 0 -	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$28,864,961	\$24,779,757
USD	\$5,003,020	\$8,433,994
<u>GENERAL PURPOSE</u> <u>SCHOOL FUND</u>	\$25,250,424	\$38,771,091

* Assumes estimated revenues in fiscal year 2005 in the amount of \$18,738,500.

– RESOLUTIONS –

RESOLUTION NO. RS2005-723 (BRILEY) – This resolution extends the time for the Ethics Review Task Force to make its report to the Council. The task force was established by the Council by Resolution No. RS2003-113, with an initial expiration of June 30, 2004. The expiration date was extended on two occasions, and is set to expire March 31, 2005. The task force has been meeting on a regular basis, but needs another month to make a final report to the Council. This resolution extends the reporting deadline to April 30, 2005.

RESOLUTION NOS. RS2005-724 & RS2005-725 (MCCLENDON) – These two resolutions appropriate funds from the general fund reserve fund (4% fund) to the police department and fire department to purchase equipment and make building improvements. Four percent funds may only be used for the purchase of equipment and repairs to buildings.

The total amount of these two resolutions is \$4,433,300. The balance in the general fund reserve fund as of February 15, 2005, was \$13,333,475. The 4% fund balance assumes unrealized estimated revenue for fiscal year 2005 in the amount of \$18,738,500. The resolutions provide that “(t)he Director of Finance may schedule acquisitions authorized herein to ensure an appropriate balance in the fund.” Copies of the supporting information sheets required by Ordinance No. O86-1534 are attached to this analysis.

Resolution No. RS2005-724 appropriates \$3,448,200 from the general fund reserve fund to the fire department to purchase new equipment.

Resolution No. RS2005-725 appropriates \$985,100 from the general fund reserve fund to the police department to purchase equipment and to install a new HVAC unit in a computer room.

RESOLUTION NO. RS2005-726 (MCCLENDON) – This resolution approves an amendment to a grant from the state department of health to the Metropolitan health department to provide nutrition education, breastfeeding promotion services, and supplemental food to eligible women, infants, and children. The original grant was in the amount of \$1,597,400, with a term from October 1, 2004 through September 30, 2005. This amendment increases the grant award by \$57,900, for a total grant award of \$1,655,300. These are federal pass-through funds used to pay the salaries of health department employees that administer federal Women, Infants and Children (WIC) program services.

RESOLUTION NO. RS2005-727 (MCCLENDON) – This resolution approves a contract between the Metropolitan board of health and Matthew Walker Comprehensive Health Center, Inc., for assistance in Matthew Walker’s study to reduce cardiovascular disease and diabetes among African Americans. The term of this contract is from September 30, 2004, through September 30, 2005, with a possible one-year extension. Pursuant to this contract, Matthew Walker agrees to pay a total of \$88,351 to the health department to fund part of the salaries of three support personnel and administration costs. These positions will consist of a research analyst, a program specialist, and a community health researcher. Under this contract, the health department will conduct telephone surveys and manage the data received. This is part of a program entitled Nashville REACH 1010 Demonstration (continued on next page)

RESOLUTION NO. RS2005-727 (continued)

Project, and is an attempt to collect and manage data to determine a plan to reduce cardiovascular disease and diabetes among African Americans in Nashville. The health department has entered into similar contracts with Matthew Walker in the past.

RESOLUTION NO. RS2005-728 (MCCLENDON) – This resolution approves a contract between the Metropolitan board of health and the state department of health for the purchase of behavioral risk factor surveillance interviews. Pursuant to this contract, the state department of health behavioral risk factor surveillance unit will conduct 700 telephone surveys of Davidson County residents. Metro will purchase these survey results from the state at a cost of \$21.50 per completed interview, for a total cost not to exceed \$15,050. The term of this grant is from April 1, 2005 through June 30, 2006, with a possible extension of up to four additional one-year periods.

RESOLUTION NO. RS2005-729 (MCCLENDON) – This resolution approves an amendment to a grant from the U.S. department of health and human services to the Metropolitan board of health for the community access program. The original grant was approved in December 2003, and was amended in 2004 to increase the grant award. This resolution approves another amendment to the grant to extend the grant term until August 31, 2005, so that the remaining balance of the grant can be carried over to the current year. The funds from this grant are used to improve and expand access to medical services, substance abuse services, mental health services, and dental services for residents of Davidson County who are uninsured.

RESOLUTION NO. RS2005-730 (LORING & MCCLENDON) – This resolution accepts a grant from Opry Mills Mall Limited Partnership to the Nashville career advancement center (NCAC) for the Pearl Sims Learning and Development Center. In 2002, the Council approved a lease agreement between Opry Mills and NCAC for office space for the learning center. The lease agreement was for a ten-year term with a rental payment of \$1.00 per year. In furtherance of the purpose of the lease, Opry Mills and NCAC executed a memorandum of understanding whereby Opry Mills contributed \$300,000 for the operation of the center. The agreement was amended to increase the amount contributed by \$100,000. The parties now wish to execute a second amendment to the agreement to provide for an additional contribution by Opry Mills in the amount of \$100,000.

Although the memorandum of understanding and subsequent amendment should have been submitted to the Council for approval, this resolution incorporates the prior agreements and approves the agreement as amended. Thus, the Council is essentially ratifying the prior agreements, as well as accepting an additional \$100,000 for NCAC.

RESOLUTION NO. RS2005-731 (WILHOITE & MCCLENDON) – This resolution accepts a grant in the amount of \$170,000 from the Nashville Public Library Foundation to the public library to fund the neighborhood builders youth engagement program. These funds were donated to the Nashville Public Library Foundation by Bank of America. The neighborhood builders youth engagement program will consist of a leadership team of five youth who will develop and implement a program to promote the benefits of the public library system to other teens.

RESOLUTION NO. RS2005-732 (MCCLENDON) – This resolution settles the lawsuit brought by the Metropolitan Government against American Manufacturers Mutual Insurance Company for the amount of \$39,000. In November 1998, the Metropolitan Government entered into a performance agreement with Carlton Enterprises as principal and American Manufacturers as surety on a bond for a development known as Brittany Park. The surety bond was to guarantee the completion of certain improvements, including roadways and sidewalks. Carlton Enterprises failed to complete the sidewalks as required by the performance agreement. In addition, a sinkhole developed under a roadway possibly due to a faulty sewer line connection under the road. Metro water services incurred expenses in the amount of \$16,000 to repair the sinkhole and repave the roadway.

The department of law recommends settling this lawsuit for the amount of \$39,000, which is the full amount of the bond and the maximum that the surety would be liable were the case to go to trial. The Metropolitan Government has obtained a judgment against Carlton Enterprises, the principal on the bond. However, the corporation has been dissolved and has no assets.

RESOLUTION NO. RS2005-733 (MCCLENDON) – This resolution authorizes the Metropolitan Government to accept \$5,021.71 in settlement of its property damage claim against Nathan Willhite. On December 21, 2004, Mr. Willhite ran a red light at the intersection of Middleton Street and Hermitage Avenue and struck the left front fender of a Metro fire marshal’s vehicle. Metro’s 1996 Ford Crown Victoria sustained damage in the amount of \$5,021.71. There were no injuries as a result of this accident. The department of law recommends settling this claim for the amount of the property damage to the Metro vehicle.

RESOLUTION NO. RS2005-734 (JAMESON) - This resolution authorizes the Doubletree Hotel to install and maintain stamped concrete that will overlay the sidewalk and install four new trees in the sidewalk at 315 4th Avenue North. The Doubletree Hotel (Sun Rockpoint Nashville Hotel Lessee, Inc.) has agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the stamped concrete and trees, and is required to provide a \$300,000 certificate of public liability insurance naming the Metropolitan Government as an insured party. This resolution has been approved by the planning commission.

This resolution should be withdrawn and refiled as an ordinance. Ordinance No. O87-1890 allows the Council to grant aerial encroachments over and/or across sidewalks by resolution instead of ordinance, as is required for all other encroachments in the right-of-way. However, the encroachment to be authorized by this resolution is actually in the right-of-way, not over it. The plans also show a new canopy to be installed, which is not referenced in the resolution.

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- BILLS ON SECOND READING -

ORDINANCE NO. BL2004-414 (TUCKER) – This ordinance amends the Metropolitan procurement code to prevent businesses performing auditing or consultant services for the Metropolitan Government from bidding on contracts involving the implementation of the audit recommendations for a period of five years. Under the procurement code, contracts for goods and most services purchased by the Metropolitan Government are awarded based on competitive sealed bids. The code provides that certain professional services may be exempted from the requirements of centralized purchasing. In the past, various firms providing auditing and consulting services to Metro have bid on contracts pertaining to certain aspects of the implementation of the firm's recommendations. Such consultants have provided financial advisory services, investment advisory services, medical consulting services, architectural and engineering services, and legal services. This ordinance would make auditing and consulting firms ineligible to bid on contracts related to their recommendations for a period of five years from the date of making the recommendations.

The finance department has indicated that this ordinance would result in higher costs to the Metropolitan Government for necessary services and would diminish the government's capacity to improve efficiency.

There is a housekeeping amendment for this ordinance that corrects a typographical error.

ORDINANCE NO. BL2004-421 (COLE) – This ordinance, as amended, amends the Metropolitan code of laws to provide reporting requirements for nonprofit organizations receiving grants from the Metropolitan Government. State law requires that all organizations desiring financial assistance from the Metropolitan Government submit "a copy of an annual audit", but this state law provision does not define the term "audit". As a result, there has been some confusion as to the type of financial information that nonprofit organizations must submit in order to receive grants from the Metropolitan Government. The finance department has in the past been willing to accept other information in lieu of an audit, such as a copy of a tax return, for some start-up nonprofit entities. However, the department of law has recently interpreted the state law provision in question to require that such nonprofit entities file an annual audit with the Metropolitan Clerk before obtaining governmental funding. The legal opinion issued by a Metropolitan Attorney quotes a Tennessee Supreme Court case in which the Court states that "an audit, as the term is commonly use, is ... the methodical examination of records with intent to verify the accuracy." A Tennessee Attorney General opinion from 1991 states that although an audit is required, the audit does not have to be prepared by an independent accountant. The Attorney General opinion further provides that the local legislative body can adopt regulations to clarify the type of audit required.

In an effort to clarify the type of information required, this ordinance amends the code to include a specific list of information that must be submitted to the Metropolitan Government prior to the disbursement of any grant funds to nonprofit organizations. This ordinance is modeled after a law currently in place in Knoxville, Tennessee. Pursuant to this ordinance, all nonprofit organizations would be required to submit the following information:

- A copy of its corporate charter or other articles, constitution, bylaws, or instruments of organization.
- A copy of a letter from the Internal Revenue Service evidencing the fact that the organization is a nonprofit, tax-exempt organization.

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ORDINANCE NO. BL2004-421 (continued)

- A statement of the nature and extent of the organization's program that serves the residents of the metropolitan government.
- The proposed use of the funds to be provided by the metropolitan government.
- The proposed budget of the organization.
- A copy of the organization's audit for the most recent fiscal year. The ordinance defines the term "audit" as "a formal examination of the organization's accounting records and financial situation in accordance with the generally accepted auditing standards issued by the American Institute of Certified Public Accountants."

This ordinance expressly exempts nonprofit civic and charitable organizations receiving grants from the arts commission, as these appropriations are governed by another specific code section.

There will likely be an amendment offered for this ordinance that would postpone the effective date of the ordinance until July 1, 2005.

ORDINANCE NO. BL2005-506 (WALLACE) – This ordinance, as amended, amends the Metropolitan code of laws to allow meter maids to enforce the code provisions requiring dog owners to clean up excrement left by the dog. The council recently enacted an ordinance requiring dog owners to clean up excrement left by their dog on public property or on another person's private property, or be subject to a fifty-dollar fine. Under the code, the police department is responsible for the enforcement of all Metro ordinances. A meter maid patrol is provided for in the code with the primary duty of enforcing parking laws and regulations. The code provides that the training, equipment, and salaries of meter maids shall be borne by the traffic and parking commission, which is a part of the department of public works operating budget. This ordinance would grant authority to meter maids to enforce this one additional ordinance pertaining to dog excrement.

ORDINANCE NO. BL2005-557 (NEIGHBORS & WILHOITE) – This ordinance approves an agreement between the Metropolitan Government and the Oasis Center regarding participation in the Oasis AmeriCorps program. AmeriCorps is a network of national service programs that engage volunteers to work intensively in various service projects. AmeriCorps members serve through more than 2,100 nonprofit organizations, public agencies, and faith-based organizations. The Oasis Center in Nashville is recruiting AmeriCorps members to partner with the Metropolitan department of parks and recreation to lead youth civic action groups at various inner-city community centers.

Pursuant to this contract, the Metropolitan Government will provide \$20,000 to the Oasis Center for support of the AmeriCorps participants. The Oasis Center will be responsible for recruiting the AmeriCorps participants, for carrying out criminal background checks on the participants, and for providing the participants with stipends, training, and administrative support. The Oasis Center is required to maintain commercial general liability insurance in the amount of \$1 million per occurrence, as well as automobile and workers' compensation insurance. The contract provides that the Oasis Center will indemnify the Metropolitan Government for any claims arising from acts or omissions of the participants.

Amendments to this contract may be approved by resolution of the Council.

ORDINANCE NO. BL2005-558 (RYMAN & BRILEY) – This ordinance establishes the criminal justice planning unit (CJPU) as a department of the Metropolitan Government. In 1990, the United States district court placed an inmate population cap on Metro’s jails as a result of overcrowded conditions in the jails. In 2000, Metro filed a final jail management plan to get out from under the court decree, which included the establishment of a criminal justice steering committee comprised of the mayor, the district attorney, the public defender, the sheriff, the chief of police, the director of law, a general sessions judge, and a criminal court judge. In 2001, the Institute on Crime, Justice and Corrections at George Washington University, at the request of Metro’s criminal justice consultant, recommended that Metro create an independent criminal justice population forecasting unit. As a result of this recommendation, the steering committee executed a memorandum of purpose in 2002 to create a criminal justice planning unit.

This ordinance formally establishes the CJPU as a Metropolitan Government department. Some of the powers and duties of the CJPU include the following:

- Advise Metro policy makers regarding the necessary correctional capacity to meet Metro’s incarceration obligations.
- Collect information in order to provide accurate statistical data reports.
- Create an annual correctional population projection report for the following five years.
- Create reports evaluating and describing criminal justice policies and practices.

The CJPU was funded in the operating budget for fiscal year 2005.

ORDINANCE NO. BL2005-559 (ISABEL) – This ordinance amends the Metropolitan Code of Laws to require that all vehicles operated by Metropolitan transportation licensing inspectors be clearly marked as transportation inspection vehicles. The transportation and licensing commission has the authority under the code for the licensing and regulation of taxicabs, limousines, horse-drawn carriages, and wreckers. The code further provides that the transportation and licensing commission has the authority to employ inspectors to enforce such regulations. The commission currently employs two inspectors, who spend approximately 80% of their time out in the field enforcing the regulations. For example, the inspectors follow taxicabs to ensure that the meter, which is visible through the back window, is charging by the mile rather than by the hour as required by the regulations. In addition, the inspectors ensure that unlicensed wreckers are not picking up and dropping off vehicles inside Davidson County.

The Council Office would point out that adoption of this ordinance would essentially negate the purpose and effectiveness of the transportation inspectors. If inspection vehicles were clearly marked as such, a taxicab or wrecker driver would be able to evade the inspector and escape being cited for violations.

ORDINANCE NO. BL2005-560 (WALLACE) – This ordinance amends the building code and property standards code sections of the Metropolitan Code of Laws to prohibit fences from extending past the front façade of single and two-family homes. In October 2004, the Council amended the fence provisions in the code to require that fences be constructed of certain materials such as wrought iron, wood, masonry, split rail, and chain link. This ordinance further amends the fence provisions to prohibit a fence from being erected past the front edge of a house. This would essentially prevent fences from being located in a person’s front yard and along the street right-of-way in front of the house.

ORDINANCE NO. BL2005-561 (GILMORE & SHULMAN) – This ordinance approves a contract with the state department of transportation for the installation of traffic signals at Ashland City Highway and Briley Parkway. Pursuant to this contract, the state will install the signals, and Metro will maintain and provide electricity for the signals. Future amendments to this contract may be approved by resolution of the Council.

ORDINANCE NO. BL2005-562 (WHITMORE, GIMORE & OTHERS) – This ordinance, as amended, declares 39 parcels of property owned by the Metropolitan Government to be surplus and authorizes the director of public property administration to sell the property in accordance with the standard procedures for the disposition of surplus property. The Metropolitan Government has determined that these parcels are no longer needed for governmental purposes. The proceeds from the sale of these parcels will be credited to the general fund. The property to be sold consists of the following:

- Route 2 Clarksville Pike
- 317 Vailview Drive
- One parcel on Old Matthews Road
- Five parcels on Hobart Street
- Once parcel on Lincoln Street
- Seven parcels on McKinley Street
- One parcel on Free Silver Road
- One parcel on West Trinity Lane
- 325 E. Trinity Lane
- 357 Queen Avenue
- Three parcels on Cross Street
- 709 Douglas Avenue
- 1411 Jewel Street
- 1409 Jewel Street
- 1407 Jewel Street
- 2410 Chapel Avenue
- One parcel on 23rd Avenue North
- 1701 McKinney Avenue
- 2409 Middle Street
- 1824 12th Avenue N.
- 1726 Delta Avenue
- 1632 Dr. D.B. Todd Jr. Blvd.
- 303 Taylor Street
- 3012 Indiana Avenue
- 2617 Herman Street
- 2007 Delta Avenue
- 2415 18th Avenue N.

All of these parcels were acquired by the Metropolitan Government as a result of property owner's failure to pay back property taxes. This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2005-563 (MURRAY) – This ordinance accepts an easement for property located at 1016 McClurkan Avenue in connection with the Nashville Auto Diesel College stormwater project. This easement is being donated at no cost to the Metropolitan Government in order that the stormwater project may be completed. This easement will be filed in the office of the register of deeds to evidence its acceptance. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-567 (TYGARD, NEIGHBORS & SHULMAN) – This ordinance accepts \$35,000 from Riverwalk Development Partners, Inc., to fund traffic infrastructure improvements at Newsome Station Road and McCrory Lane. The development of the Riverwalk subdivision at Newsome Road and McCrory Lane has necessitated certain infrastructure improvements. These funds will be deposited into a fund designated by the director of finance as a contribution towards the improvements.

This ordinance should be amended to correct a typographical error in the numbering of the sections of the ordinance.

ORDINANCE NO. BL2005-568 (RYMAN & NEIGHBORS) – This ordinance approves two agreements between Vanderbilt University and the Metropolitan Government for clinical training of Vanderbilt medical residents and medical students. Pursuant to these agreements, the students and medical residents will receive clinical training under the fire department's first responder and ambulance and rescue programs. The term of the program, which has no cost to Metro, will continue through June 30, 2009. Vanderbilt will be required to maintain professional liability insurance coverage for all residents and medical students participating in this program.

ORDINANCE NO. BL2005-569 (ISABEL) - This ordinance extends the boundaries of the downtown PILOT program, created by Ordinance No. BL2003-1533. In August 2003, the council enacted Ordinance No. BL2003-1533, which delegated the authority to the industrial development board of the Metropolitan Government to accept agreements for payments in lieu of ad valorem taxes for the public purpose of increasing downtown development activity. Ordinance No. BL2003-1533 set the boundaries of the downtown PILOT program to include approximately 80 blocks of Nashville's central business district covering the area bordered by 1st Avenue, 9th Avenue, Union Street and Peabody Street. This ordinance would expand the area included in the program by approximately fifteen times to include the area bordered on the north by W. Trinity Lane and encompassing the MetroCenter area, and bordered to the west, south, and east by Interstates 65, 40 and 24.

The Council Office would point out that adoption of this ordinance could have a considerable negative impact on revenue of the Metropolitan Government. The director of finance has refused to sign this ordinance as to the availability of funds. According to the director of finance, expanding the area of the downtown PILOT program would clearly erode the city's property tax base.

State law permits local governments to delegate the authority to industrial development boards to enter such agreements provided that the payments are in furtherance of the public purpose of the board. Payment in lieu of taxes (PILOT) programs have been used by the Metropolitan Government in the past to provide incentives to large employers to create more job opportunities. Some of the more prominent PILOT agreements from previous years include agreements as part of the package of incentives for the relocation of Columbia/HCA Healthcare Corporation, Inc., and Dell Computer Corporation.

Under the downtown PILOT program, property owners/developers are able to transfer property to be developed to the industrial development board, which qualifies as a tax exempt governmental entity. The developers can then make payments to Metro in lieu of property taxes. This provides an incentive to developers for the development of downtown housing. MDHA is responsible for the
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ORDINANCE NO. BL2005-569 (continued)

negotiation and administrative functions associated with executing the PILOT agreements. The maximum term for a PILOT lease is seven years, and a minimum of 20% of the development project must be set aside for affordable housing. Pursuant to the downtown PILOT program, the property taxes will be reduced on the property's improvements, not for its unimproved value. The applicant developer is also required to either own the property or have an option to purchase the property so that they will be able to convey the property to the industrial development board to be eligible for the PILOT program. The industrial development board is to notify the mayor and the council in writing upon the receipt of a PILOT tax abatement application indicating the date and time that the application will be considered by the board. Upon approval of a PILOT agreement by the industrial development board, the board is to again notify the mayor and the council of the precise terms of the agreement, which is subject to ratification of the council.

ORDINANCE NO. BL2005-570 (JAMESON) – This ordinance abandons Alley #66 from Alley #54 to the northern terminus of alley 66, located at 401 Church Street. This Alley is being abandoned to facilitate the construction of the Viridian apartment tower. The Metropolitan Government has determined that there is no future governmental need for this alley. All easements held by Metro are to be abandoned.

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

ORDINANCE NO. BL2005-571 (MURRAY) – This ordinance abandons a sewer line and easement for the construction of the Wal-Mart Neighborhood Market located on Gallatin Pike. The developer of the Wal-Mart Neighborhood Market has agreed to install a sewer manhole that will adequately serve the property currently encumbered by the sewer line and easement.

This ordinance has been referred to the planning commission.

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2004-259 (MCCLENDON, HAUSSER & JAMESON) – This ordinance amends the Metro Code relative to graffiti to make it unlawful to sell graffiti implements to minors. The code defines “graffiti implements” as aerosol paint containers, felt tip markers (greater than 1/8 inch), and graffiti sticks. The “graffiti stick” is a device that contains paint, chalk, wax, or similar substance capable of being applied by pressure leaving a mark of at least 1/8 inch in width, and which is not water soluble. Presently, it is unlawful to have graffiti implements in your possession in any public facility, recreation facility or public building, and within 100 feet of any underpass, bridge abutment, or similar type of infrastructure, unless authorized by the Metropolitan Government. This ordinance would add another restriction prohibiting the sale of graffiti implements to persons under the age of eighteen.

ORDINANCE NO. BL2004-489 (GOTTO, LORING & WHITE) – This zoning text change would require that zoning bills filed with the metropolitan clerk be forwarded to the planning commission, with a copy sent to the Council Office. The zoning code currently provides that applications to amend the official zoning map may be filed either with the planning commission or the metropolitan clerk, although in practice all applications are filed with the planning commission. Applications to apply a planned unit development or urban design overlay district may only be filed with the planning commission. This ordinance would provide that in the event an application to amend the official zoning map is filed with the clerk, then the application is to be forwarded to the planning commission with a copy to the Council Office. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-490 (FOSTER) – This zoning text change modifies the location standards for adult entertainment establishments. The zoning code currently prohibits adult entertainment establishments from being located within five hundred feet of any church, school ground, college campus, or park. However, these terms are not defined in the zoning code. This ordinance would substitute these terms with the following: a religious institution; a facility engaged primarily in community education; a day care center or day care home; a college or university; or a park. The other provisions in the current zoning code prohibiting such establishments from being located within redevelopment districts that do not permit adult entertainment as a use, and prohibiting such establishments from being located within one hundred fifty feet of another adult entertainment establishment, remain unchanged.

Since adult entertainment is a protected form of free speech under the First Amendment to the U.S. Constitution, regulations of such establishments must pass constitutional muster. The U.S. Supreme Court has held that a content-neutral ordinance providing regulations upon the location of adult entertainment establishments is constitutional provided that reasonable alternative avenues of communication are left open. According to the planning department staff analysis, adoption of this ordinance would result in a decrease of 16 available parcels (a 3% decrease) upon which an adult entertainment establishment could locate. Under the current zoning code, there are 514 parcels upon which an adult entertainment use could locate. The Council Office is of the opinion that this slight decrease in the number of available parcels for adult entertainment uses would not violate the constitutional protections on free speech.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-491 (MCLENDON & GREER) – This zoning text change amends the sidewalk provisions of the zoning code to clarify that any fees paid in lieu of sidewalk construction are to be in addition to any funds appropriated by the Council as part of the comprehensive sidewalk program. Ordinance No. BL2004-289, enacted on September 21, 2004, amended the sidewalk provisions to grant relief to developers from having to install sidewalks in certain circumstances. One of the provisions added to the zoning code by Ordinance No. BL2004-289 allows developers to make a payment in lieu of construction into a “sidewalk bank” if the sidewalk construction for the area is in the capital improvements budget. Once funds are paid in to the sidewalk bank, they must be expended on sidewalk construction within the same school district as the development within twenty-four months.

This ordinance further amends the sidewalk provisions to clarify that such payments in lieu of sidewalk construction are to be in addition to any amounts appropriated by the council as part of the mayor’s capital spending plans for sidewalk construction. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-507 (GOTTO) – This ordinance renames John Hager Road as “John Hagar Road”. This would correct an error in the spelling of John Hagar Road on the official street and alley acceptance and maintenance map. This ordinance has been approved by the planning commission and the ECD board.

ORDINANCE NO. BL2005-522 (NEIGHBORS & JAMESON) – This ordinance approves an agreement between the Metropolitan Government and Stahlman Redevelopment Partners, LLC, for the use of up to 175 parking spaces in the new courthouse garage. In August 2001, the Council declared the Stahlman Building to be surplus property and transferred ownership of the building to the Metropolitan development and housing agency (MDHA) for the purpose of converting the building to an apartment housing complex. MDHA has entered into a development agreement with Stahlman Redevelopment Partners, LLC, to redevelop the building for retail and residential use. Since the building does not have adequate parking, it is necessary that the developer locate other parking to serve the needs of the residents. The Metropolitan Government is currently constructing a new multi-level parking garage in front of the courthouse, and Metro has engaged in extensive negotiations with the Stahlman Building developer for the use of parking spaces for a fee in the new garage.

This agreement is for a period of forty years commencing July 1, 2006. Stahlman Partners will be using a federal housing administration loan to finance the building conversion, and the federal insured loan requires the parking agreement to be forty years. Should the loan be paid off, the term of the parking agreement will revert to twenty years, with an optional extension of two additional ten year periods. The rental rate is to be \$115 per space, and is to be adjusted annually based upon the percentage increase or decrease in the consumer price index. In the event of casualty damage to the garage, the rent will be abated until the unusable spaces are made available by Metro. Metro is guaranteeing a number of parking spaces equal to 1.2 times the number of residential units in the Stahlman Building, not to exceed 175. Metro is responsible for the maintenance and daytime security (continued on next page)

ORDINANCE NO. BL2005-522 (continued)

of the garage. The Metropolitan Government will not be responsible for any damage to or loss of any personal property belonging to tenants, and Stahlman Partners has agreed to hold the Metropolitan Government harmless for any such damage or loss of personal property up to its liability insurance limits.

An enclosed parking garage less than one block from the new courthouse garage charges \$150 a month for accessible parking 24 hours a day, seven days a week. According to MDHA, the rental rate included in this agreement with Stahlman Redevelopment Partners is based on the average monthly parking fees charged by garages in the downtown area.

This ordinance has been approved by the planning commission and is on the March 14, 2005 traffic and parking commission agenda.

ORDINANCE NO. BL2005-529 (NEIGHBORS) – This ordinance approves an agreement with the Tennessee Performing Arts Center Management Corporation (TPAC) for reimbursement of the Deaderick Street sidewalk design and construction costs. The mayor’s 2004 capital spending plan that was approved by the council included funds for the rehabilitation of 6,508 square feet of sidewalks located on Sixth Avenue North and Deaderick Street to bring them up to federal ADA standards. While TPAC was renovating portions of the interior and exterior of the building, it incurred costs for the survey, design, and construction of new exterior sidewalks. This ordinance approves an agreement with TPAC that reimburses them for the sidewalk construction costs that Metro would have spent anyway. Pursuant to this agreement, Metro will pay TPAC’s incurred expenses of \$32,140.

ORDINANCE NO. BL2005-530 (BRILEY & NEIGHBORS) – This ordinance amends the employee benefit provisions of the Metropolitan Code of Laws to enable the benefit board to provide incentives for employees participating in special medical benefit programs. The Code currently provides that doctors listed as preferred providers (PPOs) in the plan are paid at 80% of the reasonable and customary charges, and non-PPO providers are paid at 60% of the reasonable and customary charges. This ordinance would allow the benefit board to modify these percentages to provide incentives for employees to participate in special pilot benefit programs.

ORDINANCE NO. BL2005-531 (BRILEY) – This ordinance amends the Metropolitan Code of Laws to make the ordinance prohibiting loitering during school hours applicable to students that have been suspended or expelled from school. The Code currently prohibits a child under the age of 18 who is subject to the state compulsory school attendance law from loitering in public places during school hours. No child may be taken into custody for violation of this provision until an investigation with the proper school officials has been made to determine if the child is required to be at school. However, the language of this section does not expressly apply to students that are suspended or expelled. Instead, expelled or suspended students may be loitering around the school grounds, but are not in violation of the Code because they are not “required” to be at school.

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ORDINANCE NO. BL2005-531 (continued)

This ordinance is a result of discussions between the juvenile court and the police department regarding suspended and expelled students loitering around school premises. This ordinance would provide that a child under the age of 18 who is subject to the state compulsory attendance law, but who is suspended or expelled from school, or otherwise in violation of the compulsory attendance law, is prohibited from loitering in public places.

There is a substitute for this ordinance adding some recitals clarifying the intent of the ordinance.

ORDINANCE NO. BL2005-532 (COLEMAN) – This ordinance readopts the Code of the Metropolitan Government to include all ordinances enacted on or before November 16, 2004.

ORDINANCE NO. BL2005-533 (WALLACE) – This ordinance abandons an unbuilt 63-foot portion of Alley #618, located near the intersection of Jo Johnston Avenue and Fisk Street. This closure has been requested by Dr. Jeffrey K. Moore and Jola Moore, the owners of the six surrounding parcels.

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

ORDINANCE NO. BL2005-552 (BRADLEY, RYMAN & DOZIER) – This zoning text change would prohibit temporary signs affixed to storefront windows from covering more than 25% of the total storefront window area. The zoning code currently exempts temporary merchandise displays and signs behind storefront windows from the sign regulations established in the code. The code includes no limitation on the amount of window surface area that can be covered by temporary signs. Thus, it is legal for stores to cover their entire window area with advertisements, which restricts visibility into the store and poses a possible safety threat to customers, employees and emergency personnel. This ordinance would limit the window surface area that can be covered to 25%.

This ordinance has been approved by the planning commission.