

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **June 7, 2005**

RE: **Analysis Report**

Balances As Of:	<u>6/1/05</u>	<u>5/26/04</u>
<u>GSD 4% RESERVE FUND</u>	* \$12,393,245	\$33,087,904
<u>CONTINGENCY ACCOUNTS</u>		
GSD	- 0 -	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$28,815,661	\$24,754,757
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.

– **BILL ON PUBLIC HEARING** –

ORDINANCE NO. BL2005-662 (NEIGHBORS) – This ordinance adopts the capital improvements budget for 2005-2006 through 2010-2011. A separate analysis will be provided for the capital improvements budget prior to third reading. 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 15th 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. RS2005-823 (NEIGHBORS & COLEMAN) – This resolution appropriates \$6,030 from the general fund reserve fund (4% fund) for the purchase of electronic equipment for the Metropolitan Council. Four percent funds may only be used for the purchase of equipment and repairs to buildings. The balance in the general fund reserve fund as of June 1, 2005, was \$12,393,245. The 4% fund balance assumes unrealized estimated revenue for fiscal year 2005 in the amount of \$18,738,500. These funds will be used to purchase two digital cameras with accessories, two PowerPoint projectors with cases, and two tripod screens with cases. This equipment will be available for Members of Council to check out for use at community meetings and other councilmanic functions. This appropriation is recommended and requested by the Executive Committee.

A copy of the supporting information sheet as required by Ordinance No. O86-1534 is attached to this analysis.

RESOLUTION NO. RS2005-847 (NEIGHBORS) – This resolution establishes the certified tax rate of the Metropolitan Government. State law requires that once the county reappraisal program is completed, a tax rate be set that will receive the same amount of revenue that was received in the previous year based on the old assessment values and tax levy, as a government may not realize greater revenue by means of the reappraisal program. The purpose of the reappraisal program is to assure that property assessments are "equalized" by having all property appraised at the same time. The certified tax rate for the GSD is \$3.33 and \$0.65 for the USD for a total rate in the USD of \$3.98.

The council must adopt this resolution establishing the certified tax rate prior to adopting the ordinance filed by the mayor increasing property taxes. This resolution may not be adopted until the state board of equalization has approved the certified tax rate. The Council Office would recommend that this resolution be deferred until it is approved by the state board of equalization.

RESOLUTION NO. RS2005-848 (NEIGHBORS) – This resolution determines to issue \$286,807,100 in GSD general obligation bonds and \$18,930,000 in USD general obligation bonds to provide funding for various projects contained in the mayor’s capital spending plan. This is the first step in the process toward the ultimate sale of the bonds by public bid to provide the necessary financing for the projects. The general obligation bonds to be issued provide funding for some 52 GSD projects, and the USD bonds will provide funding for 6 projects. This debt will be paid from the debt service of the GSD and the USD. The maximum interest rate of the bonds is not to exceed 7% per annum.

The projects to be financed with the GSD bonds include:

- Convention center capital projects
- E.Budget project
- Major maintenance of several facilities
- Upgrades to computer systems
- Implementation of the warehouse study recommendations
- Howard campus infrastructure improvements and building modifications
- Renovations to City Hall and the Ben West building
- Modifications to the former Genesco warehouse recently leased by Metro
- Capital contributions to the Frist Center, the Nashville Symphony, the Children’s Theatre, and the Nashville Zoo
- Schools capital projects, including replacement of buses, energy retrofits, and repairs to buildings and athletic fields
- Bridge repairs
- Construction of a Bellevue branch library
- Bridge and roadway maintenance projects

The projects to be funded with the USD bonds include:

- Construction and improvements of sidewalks
- State route paving program
- Recapping of the Bordeaux Landfill

A detailed list of all capital projects to be funded by this bond issue, including the estimated cost for each project, is attached to this analysis. 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 21st meeting.

RESOLUTION NO. RS2005-849 (NEIGHBORS) – This resolution appropriates \$6,849,403 from the unappropriated fund balance of the general fund of the general services district and from the unappropriated fund balance of the general fund of the urban services district to various departments. The following appropriations are made from the unappropriated fund balance of the general fund of the general services district to various departments to balance their budgets for the current fiscal year:

- Department of Law - \$100,000
- Fire Department - \$2,190,488
 - Advance Life Support Fringe Benefits - \$48,558
 - EMS Medical Supplies - \$134,924
 - Internal Service Fees (Radio Shop) - \$210,103
 - Repair and Maintenance - \$74,125

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RESOLUTION NO. RS2005-849 (continued)

- Travel - \$37,921
- Professional Services - \$440,577
- Utilities - \$129,849
- Overtime Pay - \$1,114,431
- Emergency Communications Center (Harding 911 Backup) - \$590,496
- Public Schools State Teacher Pay Bonus - \$3,085,127
- Domestic Violence intervention - \$144,200
- Administration (Corporate Dues/Contributions) - \$38,300
- Transportation Licensing Commission - \$37,500

The following appropriations are made from the unappropriated fund balance of the general fund of the urban services district to the fire department to balance its budget for the current fiscal year:

- Fire Department - \$663,292:
 - Overtime Pay - \$645,728
 - Fringe Benefits - \$17,564

RESOLUTION NO. RS2005-850 (WHITMORE) – This resolution appropriates \$200,000 in community development block grant (CDBG) funds for property acquisition and related costs in the Booker Street neighborhood strategy area. CDBG funds are designated for affordable housing activities and for neighborhood community improvement projects.

RESOLUTION NO. RS2005-851 (MURRAY & WILHOITE) – This resolution appropriates certain community development block grant (CDBG) funds for various programs administered by the Metropolitan development and housing agency (MDHA). Ordinance No. BL2004-425, enacted December 21, 2004, specified certain programs for which CDBG funds were to be used. CDBG funds are designated for affordable housing activities, youth initiative projects, and community projects associated with stormwater drainage, sidewalks, park improvements, neighborhood commercial revitalization, and slum and blight removal. This resolution authorizes MDHA to expend the following amounts for the following purposes:

- General Administration - \$522,264
- Planning and Urban Environmental Design - \$413,064
- Rehabilitation (Rehabilitation Loans, Emergency Rehabilitation) - \$1,281,921
- Acquisition of Real Property - \$379,829
- Relocation - \$47,479
- Economic Development - \$308,611
- Affordable Housing Assistance - \$156,679
- Youth Initiatives Program - \$356,089
- Civic Design Center Assistance - \$100,000
- Section 108 Loan Repayment - \$400,000
- Total - \$3,965,936**

RESOLUTION NOS. RS2005-852 THRU RS2005-855 (NEIGHBORS) – These four resolutions approve amendments to annual grants from the state department of labor and workforce

development, under the provisions of the Workforce Investment Act of 1998, to provide funding for the Nashville career advancement center (NCAC) to prepare adults, youth, and children for re-entry into the labor force, and to offer training to those facing serious barriers to employment. These amendments simply make technical changes in the allocation of funding for the various grants, and do not affect the overall total of the grant awards.

Resolution No. RS2005-852 approves an amendment to an adult worker grant by increasing the amount by \$106,097.92, for a new total grant award of \$320,338.63.

Resolution No. RS2005-853 approves an amendment to an adult worker grant by increasing the amount by \$272,480.73, for a new total grant award of \$1,088,675.85.

Resolution No. RS2005-854 approves an amendment to a dislocated worker grant by decreasing the amount by \$106,097.92, for a new total grant award of \$247,561.82.

Resolution No. RS2005-855 approves an amendment to a dislocated worker grant by decreasing the amount by \$272,480.73, for a new total grant award of \$635,788.36.

RESOLUTION NO. RS2005-856 (NEIGHBORS & RYMAN) – This resolution approves a grant in the amount of \$380,765 from the U.S. department of homeland security to the Metropolitan fire department for the Metro fire prevention program. These grant funds will be used in part to train 25 fire captains as certified fire inspectors, which will greatly increase the department’s ability to inspect properties in Davidson County. In addition, these funds will be used to hire six state certified elementary education teachers, two of which will be fluent in both English and Spanish, to serve as instructor trainers in the Learn Not to Burn program. The term of the grant is from April 14, 2005, through April 13, 2006. There is a required local match of \$163,186 for this grant to be provided from the fire department’s budget.

RESOLUTION NO. RS2005-857 (NEIGHBORS & RYMAN) – This resolution approves a grant in the amount of \$189,438 from the U.S. department of homeland security to the Metropolitan fire department to upgrade the fire department’s self-contained breathing apparatus by replacing the regulators and upgrading the face pieces. This upgrade is necessary to bring the fire department into compliance with the National Fire Protection Association (NFPA) requirements. There is a required local match of \$81,187 for this grant.

RESOLUTION NO. RS2005-858 (COLE, RYMAN & NEIGHBORS) – This resolution approves an application for a grant from the U.S. department of homeland security to the Metropolitan fire department to purchase equipment and to provide for a wellness program for firefighters. The fire department is seeking a grant award of \$1,604,477 to purchase new protective coats and pants for all 1,093 firefighters, physical exams for firefighters, and wellness training and equipment. If awarded, there will be a required local match of \$401,119.

RESOLUTION NO. RS2005-859 (RYMAN & NEIGHBORS) – This resolution approves an application for a grant from the state emergency management agency for various homeland security functions. The Metropolitan Government is seeking \$2,001,147 in federal funds for the homeland security

program in Nashville and Davidson County. If awarded, these funds will be used for the following purposes:

- Replacement of personal protection equipment;
- Provide surgical staffing and equipment for alternate care sites in a mass disaster situation;
- Purchase of a grant management system;
- Purchase of response capability equipment;
- First responder training and equipment;
- Community preparedness training for community organizations;
- Purchase of equipment for the police department, including a bomb robot, night vision goggles; and a command vehicle; and
- Administrative costs.

RESOLUTION NO. RS2005-860 (NEIGHBORS & SHULMAN) – This resolution approves an amendment to an annual grant from the state department of environment and conservation to the department of public works for the purpose of collecting and disposing of waste tires from residents. Metro operates this program without requiring tip fees for the disposal of the tires. The majority of the tires collected under this program have typically been disposed of by Metro’s subcontractor, and only a small portion of tires have been collected at Metro’s convenience centers. This resolution extends the term of the grant until June 30, 2006, and provides additional funding in the amount of \$494,741 for this program.

RESOLUTION NO. RS2005-861 (GILMORE & NEIGHBORS) – This resolution approves an annual intergovernmental agreement between the Metropolitan hospital authority and the Metropolitan Government, and appropriates \$13,322,770 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 \$13,322,770 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 May 1, 2005, through June 30, 2005. Metro will be repaid the \$13,322,700 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. RS2005-862 (NEIGHBORS) – This resolution compromises and settles the lawsuit brought by April Jennings against the Metropolitan Government in the amount of \$55,000. On June 1, 2002, at approximately 9:00 pm., April Jennings left a friend’s house located on 5th Avenue

North in the Germantown area and stepped on a water meter cover, which gave way causing her leg to fall into the hole. Ms. Jennings suffered serious injuries to her leg requiring multiple surgeries and physical therapy. Ms. Jennings was diagnosed as suffering a 3% permanent impairment to her left lower extremity. Metropolitan Government records show that the meter was read two days before the accident, which would likely be deemed by the court to be sufficient notice to Metro of the broken meter cover. There is legal precedent in Tennessee that whenever a meter is read just days before an accident, the circumstances suggest that the government is responsible for injuries sustained as a result of a defective cover.

The department of law recommends settling this lawsuit for \$55,000, which consists of \$29,923.09 in medical bills, \$716.45 in lost wages, and \$27,360.46 for pain and suffering. This amount is to be paid from the self-insured liability fund.

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- BILLS ON SECOND READING -

ORDINANCE NO. BL2005-580 (SUMMERS) – This ordinance amends the Metropolitan Code of Laws regarding ethical standards for members and prospective members of boards and commissions of the Metropolitan Government. The Code currently provides ethical standards for board and commission members. Whenever a member has or is likely to have a conflict of interest in connection with a matter pending before the board or commission, the member is to either disqualify himself/herself from further action on the matter, or disclose the nature of the conflict, at which time he/she may proceed to take action on the matter. The Code currently does not restrict any person having a real or perceived conflict of interest from serving on any board or commission.

This ordinance would prohibit certain persons from being eligible to serve on a board or commission, and would provide for certain reporting requirements for members of boards and commissions. First, this ordinance would provide that no person shall be eligible to serve on a board or commission who (1) knows or should know that he/she has or is likely to have a financial interest or personal interest in a matter before the board; (2) is an employee of any business that routinely brings matters before the board or commission; or (3) is an employee of a print or broadcast news media business engaged in reporting actions taken by the Metropolitan Government. "Personal interest" under the ordinance means any interest arising from relationships with immediate family or business associations. "Financial interest" means any interest that yields a monetary or material benefit to the member, or to any person employing the member or someone in his/her immediate family. Second, this ordinance would amend the conflict of interest provisions in the Code to require any board or commission member who knows or should know he/she has a personal or financial interest in any matter pending before the board or commission, or who is an employee of any business bringing a matter before the commission, to publicly disclose the conflict in writing to the board or commission and to abstain from participating in the discussion or vote on the matter.

In addition, this ordinance would add certain disclosure requirements for members of boards and commissions. Under the ordinance, members would be required to disclose all positions of employment, every source of income in excess of \$5,000, any benefit received by a member's immediate family derived from transactions with Metro, and all ownership interests in real property. The Code currently does not include any disclosure requirements.

The Council Office is of the opinion that the provisions of this ordinance pertaining to the eligibility of persons to serve on boards and commissions created by the Metropolitan Charter are not enforceable. Section 11.102 of the Charter, under the General Provisions for Administrative Boards and Commissions chapter, has the heading "Qualifications for members." The only qualification stated in the section is that every member of a board or commission must have been a resident of Davidson County or had their principal place of business in Davidson County for at least one year. Section 11.101 of the Charter provides that the general provisions in the chapter apply to all administrative boards or commissions, unless another specific Charter provision pertaining to a particular board or commission provides otherwise. Since the additional qualifications contained in this ordinance exceed those contained in the Charter, a Charter amendment would be necessary in order for the provisions of this ordinance to be effective.

ORDINANCE NO. BL2005-585 (LORING & NEIGHBORS) – This ordinance approves a lease agreement between the Metropolitan Government and Two Rivers Corporate Centre, L.P. for property located at 2501 McGavock Pike to be used as office and professional training space by the board of education. This property, located in the Opryland area, has been converted from retail space into an office complex. Metro is seeking to lease 24,372 square feet of the space to be used by the board of education for professional development classes for teachers and other school board personnel. The term of the lease is from September 1, 2005 through August 30, 2010. The monthly rent payments pursuant to the lease are as follows:

- Year 1: \$23,472.48 per month
- Year 2: \$23,941.86 per month
- Year 3: \$24,420.70 per month
- Year 4: \$24,909.12 per month
- Year 5: \$25,407.30 per month

Two Rivers Corporate Centre, L.P. (the “lessor”) will be responsible for paying operating expenses of the facility up to \$4 per square foot during each calendar year. Operating expenses include repair of the building, supplies, utilities, trash removal, insurance, and maintenance of the common area. The Metropolitan Government will be responsible for operating expenses in excess of \$4 per square foot, but Metro’s portion of additional rental for common area maintenance and insurance is capped not to exceed 4% in any calendar year. The lessor is required to build out the space according to Metro’s requirements. The lessor is also required to maintain and repair both the interior and exterior of the premises, including all electrical wiring and HVAC systems, and to insure that the premises are ADA compliant. This lease has been approved by the planning commission.

The board of education has informed the council that over \$1 million dollars is to be provided by private contributions to cover the lease costs, although this is not indicated in the ordinance nor in the lease agreement itself.

ORDINANCE NO. BL2005-651 (WALLACE) – This ordinance amends the Metropolitan Code of Laws to limit the types of traffic violations for which a vehicle may be towed by the Metropolitan police department. Presently, the Code provides that any vehicle which is parked, stopped, or standing in violation of any ordinances, except overtime parking, may be towed by the police department. This ordinance would provide that vehicles can be towed only when parked in violation of an ordinance or regulation and are (1) causing a safety hazard, (2) blocking pedestrian or vehicle access to property or a street, alley, or driveway, or (3) disrupting the flow of traffic.

This ordinance does not affect the authority to tow vehicles in violation of obstructing the orderly flow of traffic, parked on thoroughfares more than 48 hours without current registration, or are disabled so as to obstruct traffic, and other similar instances.

ORDINANCE NO. BL2005-654 (SHULMAN, BRILEY & TUCKER) – 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 19.21 miles of cable along eight different segments in Davidson County. These segments include lines along portions of Bell Road, Cane Ridge Road, Home Road, Gallatin Pike, Keeling Avenue, Trinity Lane, Hickory Hills Boulevard, Trinity Lane, and Brick Church Pike. Nashville Data Link, Inc., is to pay all costs related to the construction and maintenance of the cable.

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ORDINANCE NO. BL2005-654 (continued)

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.

Similar ordinances allowing Nashville Data Link to install fiber optic cable were enacted in April of 2002 and June of 2004.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-659 (BRILEY, JAMESON & OTHERS) – This ordinance amends the Metropolitan Code of Laws by repealing the existing “Standards for Ethical Conduct” for Members of Council and replacing the provisions with new “Standards of Conduct”. This ordinance is the final product of the ethics review task force, which was created by the council in February 2004 to review the current ethics laws and to make recommendations regarding changes to the laws. The task force recently completed its work and has recommended that this ordinance be enacted into law.

As stated above, the Code currently contains provisions pertaining to ethical conduct of Members of Council. The Code contains general conflict of interest provisions that require a Member of Council who has or is likely to have a conflict of interest in connection with a matter pending before the Council to recuse him/herself from taking further action on the matter. The Code also prohibits the solicitation or acceptance of gifts or benefits intended to influence a vote or given as a result of a vote. The Code exempts gifts or benefits that are provided to all Members of Council. The current law further prohibits Members of Council from benefiting from contracts with the Metropolitan Government and from exerting influence as a Council Member which would interfere with the performance or exercise of judgment of an officer or agency of the government. Members of Council are also prohibited from representing any person or entity for compensation before any Metro legislative or administrative officer or agency of the Metropolitan Government.

The ordinance would substitute the current ethics laws applicable to Members of Council with new standards of conduct. The ordinance contains some standards that are similar to the current ethics laws, such as a prohibition on soliciting or accepting benefits that might reasonably tend to influence a Member to act improperly or to influence a vote, and a prohibition on using council positions improperly to secure unwarranted privileges. In addition, this ordinance includes a blanket prohibition on Members of Council accepting “anything of value”, which includes money, gifts, benefits, advances, etc. The ordinance does contain exceptions not considered “anything of value”, including compensation paid by an employer, fees earned from outside employment, and lawful campaign contributions. This ordinance would also prohibit Members of Council from using Metropolitan Government property or information for personal use, or from providing services for compensation to a person or entity having business before the Metropolitan Government unless it is the Member’s primary source of income and he/she discloses the interest. Further, Members of Council would be prohibited from accepting promotional items in excess of \$25, and meals, tickets, (continued on next page)

ORDINANCE NO. BL2005-659 (continued)

admissions to events, or travel expenses in excess of \$100 from a single source in a given year. The ordinance expressly excludes meals provided to the entire council as long as the sponsoring organization has filed a notice with the Metropolitan clerk at least ten days in advance, and the organization has no matter pending or scheduled to come before the council at the next meeting.

Probably the most significant aspects of this ordinance are the required disclosure provisions. The current ethics law does not contain any disclosure requirements for Members of Council, although Members are required to file annual campaign finance disclosures with the election commission pursuant to state election law. This ordinance would require Members of Council to file annual disclosure statements and monthly benefit reports. The annual disclosure statement would include the following information:

1. Sources of income for Members of Council and their immediate family members. Attorneys or doctors whose source of income is their practice would be required to name the practice and any individual client that accounts for 15% or more of the individual's income, unless such disclosure would violate applicable laws and/or rules of professional conduct. If the individual relies on the protections allowing them to refrain from disclosing client names, that individual would be required to file a certification as to the number of clients the individual has not disclosed and the laws or rules the individual relied upon.
2. Financial interest for Members of Council and their immediate family members of 5% or more in any business with offices in Davidson County.
3. Council Member's or family member's ownership of property located in Davidson County.
4. Council Member's or family member's position with any for-profit or non-profit entity, labor group, or educational or other institution, regardless of whether income is received for such position. This would include membership on boards of charitable organizations.
5. Financial interests in any litigation involving the Metropolitan Government.
6. Debts in excess of \$5,000 owed to any one creditor, excluding debts owed to family members or established financial institutions in the ordinary course of business (i.e. car loans, mortgages, etc.).

This annual disclosure statement must be amended within 30 days of the occurrence of any material change to the disclosures. In addition, Members of Council having a direct or indirect personal interest in any legislation would be required to notify the vice mayor and the clerk as far in advance as reasonably possible.

Members of Council would also be required to file a monthly benefit reporting statement listing all benefits received, including meals, admissions, tickets to events, and travel expenses. This would not include disclosure of meals furnished to the council as described above.

This ordinance would also abolish the council board of ethical conduct and replace it with the "council board of conduct". This board would have the same functions as the current board. The size of the board would be increased from 5 to 7, with the addition of one member selected by the Tennessee Society of Certified Public Accountants, and one member selected by the Nashville Neighborhood Alliance. The complaint and investigation procedures are essentially the same as the current procedures, but include detailed hearing procedures to be followed by the board in the event the board calls a hearing on the complaint.

The Council Office would remind the council that this ordinance is the result of months of meetings by the ethics review task force, which was selected by the council and included the director of the Council Office as a member. The task force held two public hearings for input from citizens and Council Members prior to submitting the final version of the proposed ordinance.

ORDINANCE NO. BL2005-660 (JAMESON, HAUSSER & OTHERS) – This ordinance approves a sublease agreement with the regional transportation authority (RTA) for a one-acre portion of Riverfront Park to construct and operate a commuter rail station. In 1984, the Metropolitan Government transferred ownership of the Riverfront Park property to the U.S. Army Corps of Engineers as a result of the U.S. government’s expenditure of over \$2.1 million in the development of the park. The Corps of Engineers in turn leased the property back to the Metropolitan Government for a term of 50 years at no rental cost to Metro to be used as a park. The RTA desires to sublease a portion of this property for the construction, operation, and maintenance of a new commuter rail station. The term of this sublease will expire upon the expiration of the lease with the federal government in 2034. RTA is to pay the Metropolitan Government a one-time payment of \$40 as rent for the entire term of the sublease. The sublease requires RTA to pay for the costs of all utilities and to require any contractor performing work on the property to maintain liability insurance in the amount of \$2 million naming the Metropolitan Government as additional insured. This sublease may be terminated by either party upon providing twelve months written notice to the other party. RTA will have the sole authority to operate or stop operation of the rail service, but will be deemed to be in default of the agreement if commuter rail service ceases for a period of two consecutive years.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-661 (NEIGHBORS) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Cates-Cottas Development to provide sewer service to the Galestone subdivision in Williamson County. The developer has agreed to contribute \$2,000 per connection for 33 single family homes, for a total contribution of \$66,000 toward the cost of the projects in aid of construction. These funds are to be deposited into the water and sewer extension and replacement fund. This is a typical participation agreement entered into by the Metropolitan Government, acting through the department of water and sewerage services, whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

This bill is to be withdrawn at the request of the department of water and sewerage services, as the developer has sold the tract of land. Agreements with the new owners of the property will be forthcoming.

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2004-259 (MCCLENDON, HAUSSER & OTHERS) – 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. BL2005-635, also on third reading, would increase the tip size of markers to ¼ of an inch for purposes of being classified as a graffiti implement.

ORDINANCE NO. BL2004-345 (MURRAY & MCCLENDON) – This ordinance, as amended, amends the Metropolitan Code of Laws to require that the front entrances of new single-family homes constructed within single and two-family zoning districts face a public or private street. This ordinance would prevent constructing homes on narrow lots that face another home, instead of facing the street. This ordinance would not apply to property that is within a redevelopment district or zoning overlay, which specifically includes a design review process that evaluates whether an alternative front façade location is desirable.

ORDINANCE NO. BL2004-431 (GREER) – This zoning text change, as amended, would require the planning commission to notify the district councilmember of all requests to modify a planned unit development (PUD) within five days of receiving the request. The zoning code currently does not require that district councilmembers be notified about PUD plans. The code makes a distinction between major and minor modifications to a PUD plan. Major modifications require council approval by ordinance, whereas minor modifications only require approval of the planning commission, or in many cases can be handled administratively upon approval of the executive director of the planning commission. Modifications to PUDs that must be approved by council include:

- Land area being added or removed.
- Modification of special performance criteria or design standards set forth in the enacting ordinance.
- A change in land use beyond that permitted by the underlying zoning district.

The planning commission can consider all minor modifications subject to the following limitations:

- The change does not alter the basic development concept of the PUD.
- The boundary of the PUD is not expanded.
- There is no change in the general PUD classification (i.e. residential to commercial).
- There is no deviation from special performance criteria or design standards.
- No new vehicle access point to an existing street is proposed.

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ORDINANCE NO. BL2004-431 (continued)

- There is no change from a PUD approved exclusively for single family homes to any other type of residential structure.
- The total floor area of commercial property is not increased more than ten percent.
- The range of permitted uses is not expanded beyond that allowed in the underlying zoning district.

According to the planning commission staff analysis, minor modifications that are approved by the executive director of the planning commission include restriping a parking lot, moving the location of a dumpster, modifications to landscaping, and small additions. This ordinance would require that notification be sent to district councilmembers of all PUD modifications, regardless of the magnitude of the modification. This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2005-521 (WILHOITE) – This ordinance renames a portion of Long Hunter Court as “Nashboro Greens”. This is a private road that intersects with and then runs parallel to Longhunter Lane. The planning commission has sent notices to the affected residents regarding this name change.

Although this ordinance purports to rename the road by amending the official street and alley maintenance and acceptance map, this section of roadway is actually a private road. The Metropolitan Code of Laws does provide that the Council can name private streets and roads by ordinance, however such ordinances should not amend the official street and alley acceptance and maintenance map. The Council Office is of the opinion that this ordinance should be withdrawn or deferred indefinitely, and that a new ordinance be filed to rename this private street. This ordinance has been approved by the planning commission and the ECD board.

SUBSTITUTE ORDINANCE NO. BL2005-583 (KERSTETTER & TOLER) – This substitute ordinance amends the Metropolitan Code of Laws to expand the hours of the juvenile curfew. The current curfew makes it unlawful for children under the age of 18 to be on public property or private property without the consent of the owner between the hours of eleven p.m. and five a.m., Sunday through Thursday, and twelve midnight to five a.m. Friday and Saturday, during the months of September through May. The curfew for the months of June through August is twelve midnight to five a.m. seven days a week. This ordinance would make the hours of the curfew eleven p.m. to five a.m. seven days a week, 365 days a year.

ORDINANCE NOS. BL2005-595 THRU BL2005-597 (WALLACE) – These three ordinances abandon sections of Metropolitan Government right-of-way that are no longer needed by the Metropolitan Government.

Ordinance No. BL2005-595 abandons the unbuilt Alley No. 202 from Van Buren Street to the railroad right-of-way. This closure has been requested by Andrew B. DiMartino on behalf of S.E.C., Inc. Consent of affected property owners is on file with the department of public works. This ordinance has been approved by the planning commission and the traffic and parking commission.

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ORDINANCE NOS. BL2005-595 THRU BL2005-597 (continued)

Ordinance No. BL2005-596 (Wallace) closes Alley No. 530 from Jefferson Street north to the I-40 right-of-way. This ordinance has been approved by the planning commission and the traffic and parking commission. The department of public works has not received documentation regarding consent of the affected property owners. Adoption of this ordinance prior to receiving such documentation could result in legal liability to the Metropolitan Government.

Substitute Ordinance No. BL2005-597 (Wallace) closes an unbuilt Alley No. 216 from Phillips Street southward to Alley #574. This ordinance has been approved by the planning commission and the traffic and parking commission. The department of public works has received an acknowledgement from the Metropolitan development and housing agency (MDHA), which is a property owner affected by this ordinance.

ORDINANCE NO. BL2005-629 (SUMMERS) – This zoning text change would require any planned unit development (PUD) that is inactive for six years to be reviewed by the planning commission and submitted to the council for approval prior to the issuance of any building or grading permits. This ordinance is of the same subject matter as Ordinance No. BL2004-224, which was deferred indefinitely in January 2005. Ordinance No. BL2004-224 would have required that all modifications to PUDs more than four years old be submitted to the council for approval. The ordinance also would have required council approval of all PUDs more than eight years old prior to the issuance of a building or grading permit.

This ordinance is a more comprehensive approach to the subject matter addressed by the prior ordinance. This ordinance classifies PUDs as “inactive” if (1) no building permit has been issued and substantial construction (not including site grading) has not begun; (2) less than sixty (continued on percent of the non-residential floor area allowed by the PUD has been constructed and six years have elapsed since the most recent building was completed; or (3) fewer than seventy-five percent of the residential units allowed by the PUD have been constructed and six years have elapsed since the most recent building was completed. The only exception is for PUDs with phasing schedules exceeding six years.

If a PUD has been determined to be inactive, no grading or building permit may be issued until the planning commission has reviewed the PUD and the Council takes action. Review of the inactive PUD can be initiated by the planning commission, a member of council, or the property owner affected by the inactive PUD. The planning commission will have ninety days to make a recommendation regarding the inactive PUD to the council. The council then will have six months to take final action on the PUD or phase of the PUD. The council has the option of re-approving, amending, or canceling the existing PUD, including making changes to the underlying base zoning district. If the council fails to take action within six months, the property may be developed according to the original PUD.

According to the planning commission staff analysis, there are currently sixty PUDs in Davidson County that have been approved by the Council but have never been built. This ordinance has been approved by the planning commission.

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ORDINANCE NO. BL2005-629 (continued)

There may be a proposed amendment to this ordinance that would exempt PUDs scheduled to be built in phases from having to be submitted to the council for re-approval if any work has begun on any phase, and would delay the effective date of the provisions of the ordinance for 180 days.

ORDINANCE NO. BL2005-633 (LORING) – This zoning text change would allow a property's frontage along a controlled-access highway (interstate) to be used in calculating permissible sign area. Presently, the zoning code does not allow a property's frontage on a controlled-access highway to be considered, but only allows frontage along a street to be used in calculating the sign area. This ordinance would allow either the lot frontage or the controlled-access highway frontage to be used in determining the permissible sign area, whichever would result in the largest sign.

This ordinance was disapproved by the planning commission.

ORDINANCE NO. BL2005-635 (HAUSSER & JAMESON) – This ordinance amends the graffiti chapter of the Metropolitan code of laws to change the definition of "felt tip marker" and "graffiti stick". The code currently prohibits minors from possessing graffiti implements on public property or on private property without the consent of the owner. Graffiti implements include felt tip markers and graffiti sticks with a tip width of one-eighth of an inch or greater. There is an exception to the prohibition of graffiti implements by minors when such implements are necessary for a school activity.

This ordinance would amend the definition of graffiti stick and felt-tip marker by increasing the width of the tip from one-eighth of an inch to one-quarter of an inch for purposes of being classified as a graffiti implement. This ordinance is related to Ordinance No. BL2004-259, also on third reading, which would prohibit the sale of graffiti implements to minors.

ORDINANCE NO. BL2005-638 (BRILEY) – This ordinance, as amended, amends the Metropolitan code of laws regarding the composition of the Metropolitan action commission. Two members of council currently serve on the commission: the chair of the health, hospitals, and welfare committee, and the chair of the personnel committee. Since the chairs of these two committees only serve as chair for one year, their membership on the Metropolitan action commission is limited to one year. This ordinance would provide that these two committees would elect a member of the committee to serve on the Metropolitan action commission for a two-year term. The two chairs of the committees presently serving on the commission would continue to serve until the expiration of their terms as committee chairs.

ORDINANCE NO. BL2005-639 (TUCKER) – This ordinance would amend the Metropolitan code of laws to restrict members of Metropolitan boards and commissions created by ordinance from serving more than two consecutive terms. There are approximately 60 boards and commissions of the Metropolitan Government. Of these, 16 were created by the Charter. The Charter does not limit the (continued on next page)

ORDINANCE NO. BL2005-639 (continued)

number of terms for which members of boards and commissions can serve. Therefore, the council cannot by ordinance place term limits pertaining to members of boards and commissions created by Charter. Those boards and commission created by Charter include the board of education, the board of health, the planning commission, the traffic and parking commission, and the board of parks and recreation.

This ordinance would place a two consecutive term limit on members of boards and commissions, other than those created by Charter. Several of the boards and commissions already have a two term limit. These include the electrical examiners and appeals board, the fire and building code appeals board, the gas and mechanical examiners and appeals board, the plumbing examiners and appeals board, the human relations commission, the historic zoning commission, and the board of zoning appeals. The ordinance specifically provides that it would not operate to remove sitting members of boards and commissions, but would apply upon the expiration of their respective terms.

A list of all of the boards and commissions along with their respective terms is attached at the end of this analysis.

ORDINANCE NO. BL2005-640 (NEIGHBORS) – This ordinance authorizes the Metropolitan department of law to compromise and settle the claim of Calvin B. Champion, on behalf of Calvin D. Champion, deceased, against one current police officer and two former police officers for the amount of \$400,000.

On April 30, 2000, a relief caregiver employed by Outlook Nashville, Inc., was assigned to care for Mr. Champion, a 32-year-old mentally disabled and autistic man, so that his regular caregiver could have the weekend off. The female caregiver took Mr. Champion, along with her three-year-old son, to the Babies "R" Us store on Nolensville Road. Mr. Champion became agitated in the van, which was parked in the store parking lot, and starting hitting himself and the child. The caregiver removed Mr. Champion from the van, at which time he grabbed her shirt and ripped it. Some passers-by called 911 after observing what happened in the parking lot. The caregiver also subsequently called 911 and told the operator that she was the caregiver for a mentally ill man who was out of control. At this time, a female police officer approached the van and the caregiver hung up the phone.

The officer ordered Mr. Champion, who continued to hit and bite himself, to stop and stand where he was, but he kept advancing towards her and grabbed her shirt collar. She then sprayed pepper spray in Mr. Champion's face. At this point, Mr. Champion proceeded to enter the store, wipe his face on some clothing, and exit the store. As they exited, another officer arrived at the scene. The female officer told the arriving officer that she had sprayed Mr. Champion and that he was mentally ill. The officers attempted to take Mr. Champion into custody, but he pulled away from them and grabbed the female officer by the throat with both of his hands. A third officer arrived on the scene and a decision was made to take Mr. Champion to the ground inside the store on the carpeted foyer. After laying him on the ground, one officer held his legs while the other officers supported his upper body.

Mr. Champion continued to struggle and kick violently, and the officers attempted to calm him down by talking to him and patting on him. He was then handcuffed and a hobble restraint was placed on his legs. One of the officers attempted to contact the Mobile Crisis Response Team, which is an entity separate from the police department that has counselors available to assist the police if they
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ORDINANCE NO. BL2005-640 (continued)

encounter mentally unstable persons. Mobile Crisis did not have any counselors to send to the store at the time. While the officers were attempting to find a place to take Mr. Champion, he vomited on the floor. The caregiver's supervisor was reached, but was unable to provide any information about Mr. Champion's medical history or his diagnosis. One officer left to go to his patrol car, and upon returning Mr. Champion had vomited again. The officers pulled his head back a couple of feet so his face would not be near the vomit. After vomiting a third time, an officer checked his mouth to make sure he could breathe. At this point, an EMT first responder arrived on the scene. Mr. Champion's body then twitched and he vomited a fourth time. The first responder requested the officers to remove the handcuffs and they complied. The EMTs suctioned Mr. Champion's airway and proceeded to give him CPR. He was taken to the hospital in an ambulance, but did not survive. The official cause of death was determined to be "asphyxia due to position and gastric aspiration during restraint."

Mr. Champion's father and other family members filed suit in federal court against Outlook Nashville, Inc., the relief caregiver, the Metropolitan Government, and the three officers individually alleging that Mr. Champion's civil rights were violated due to excessive force by the police officers. At trial, a number of store employees testified that the officers lay on Mr. Champion's back until he stopped moving, and that one officer repeatedly pepper sprayed him after he was restrained. The officers disputed these witness accounts. The jury returned a verdict against Outlook Nashville and the

caregiver in the amount of \$3.5 million, and against the three officers in the amount of \$300,000 each. In addition, the plaintiffs were awarded attorney's fees and costs pursuant to federal law. The Metropolitan Government was not found to be at fault in causing Mr. Champion's death and had been previously dismissed from the lawsuit. The plaintiffs subsequently settled with Outlook Nashville and the caregiver for an undisclosed sum. The judgment against the officers was appealed but affirmed by the Sixth Circuit Court of Appeals in all respects, as well as the dismissal of the Metropolitan Government from the lawsuit. A petition for writ of certiorari was then filed on behalf of the three officers, which was denied by the U.S. Supreme Court.

The department of law and the chief of police recommend settling the case for the total amount of \$400,000, inclusive of attorney fees, to release all three officers. Although this is designated in the ordinance as a settlement, it is technically an indemnification of the officer's conduct, which was found by the jury and the federal courts to be a violation of the federal Civil Rights Act.

Section 2.40.140 of the Metropolitan code of laws provides that the Metropolitan Government is authorized to indemnify a government employee for a judgment against him/her up to \$50,000 for each person injured if the judgment results from conduct arising out of the performance of the employee's official duties, and the department of law has furnished defense counsel to the employee. In this case, the three officers were authorized to retain their own lawyer to represent them in negotiating a settlement after the judgment was entered.

In essence, the Council is being asked to approve indemnification in an amount of \$250,000 over and above the authority given to the department of law. The Council Office would caution the Council to consider the adoption of this ordinance based solely upon the facts of this unfortunate incident, and not as an expression of changing the current policy on indemnification.

No disciplinary action was taken against any of the three officers involved in this incident. There was no office of professional accountability investigation into this matter, and the district attorney agreed with the medical examiner's finding of accidental death.

ORDINANCE NO. BL2005-641 (WHITSON, SHULMAN & NEIGHBORS) – This ordinance authorizes the Metropolitan Government to enter into a utility relocation contract with the state department of transportation (TDOT) in connection with the slide repair on Highway 70 at 9 Mile Hill. TDOT is working to repair and relocate a portion of the roadway on 9 Mile Hill, as the edge of the highway is literally sliding down a steep embankment. As a result of this project, it is necessary to relocate some water and sewer lines, 46% of which are located on public highway right-of-way and 54% of which are located on private utility right-of-way. TDOT is liable for the relocation of utilities on private utility right-of-way, but is not liable for moving utilities on publicly owned right-of-way. Pursuant to this contract, the Metropolitan Government will relocate the water and sewer lines and is responsible for paying the entire \$82,072 cost of the relocation. These funds will be paid from the water and sewer extension and replacement fund, and will be transferred by the state from Metro’s local government investment pool account upon completion of the project.

ORDINANCE NO. BL2005-642 (GILMORE) – This ordinance amends the Metropolitan Government geographical information systems map to rename a private drive. Private streets and roads are named and included on our maps for purposes of providing emergency services, although the roadways are not maintained by the Metropolitan Government. This ordinance renames Denton Allen Road as “Briar Patch Lane”. This private drive extends off of Cotton Patch Road.

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

ORDINANCE NO. BL2005-643 (MURRAY) – This ordinance abandons a portion of the North Third Street right-of-way from Grace Street to its terminus. This closure has been requested by the Metropolitan parks department. There is no future governmental need for this section of roadway. Metro will retain all easements. Consent of affected property owners is on file with the department of public works. This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2005-644 (HAUSSER) – This ordinance, as amended, accepts a paved alley adjacent to Love Circle as public right-of-way to be maintained by the department of public works. The majority of the paved portion of this alley is already on Metropolitan Government property.

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

ORDINANCE NO. BL2005-645 (WHITMORE) – This ordinance closes a 100-foot portion of 31st Avenue North from Alley No. 1202 northward, and abandons an unnumbered alley from 31st Avenue North to I-440. This closure has been requested by Issac L. White of Hella Temple/Masonic Temple. There is no future governmental need for this section of roadway. The Metropolitan Government will retain all easements. Consent of affected property owners is on file with the department of public works. This ordinance has been approved by the planning commission and traffic and parking commission.

ORDINANCE NO. BL2005-646 (TOLER, NEIGHBORS & SHULMAN) – This ordinance accepts \$200,000 from Pulte Homes to fund traffic infrastructure improvements at Cloverland Drive. The development of the Wolf Chase subdivision in the area of Cloverland Drive 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.

ORDINANCE NOS. BL2005-647 (SHULMAN & NEIGHBORS) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with John and Gail Chamberlain to provide sewer service to their property in Williamson County. This is a typical agreement entered into by the Metropolitan Government acting through the department of water and sewerage services whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service. The Chamberlains have agreed to pay \$2,000 for one single-family home connection. These funds are to be deposited into the water and sewer extension and replacement fund.

ORDINANCE NOS. BL2005-652 AND BL2005-653 (BRADLEY & SHULMAN) – These two ordinances authorize the Metropolitan Government to enter into a renewal of two easements on property at J. Percy Priest Dam and Reservoir owned by the U.S. Army Corps of Engineers. These easements are being renewed for a twenty year period on behalf of the department of water and sewerage services at no cost to the Metropolitan Government. These two ordinances have been referred to the planning commission. Pursuant to the Metropolitan Charter, if the planning commission fails to act on a mandatory referral within thirty days it is deemed approved by the commission. This ordinance was referred to the planning commission on May 3, 2005. Therefore, the ordinance is deemed approved by the planning commission.

Ordinance No. BL2005-652 renews an easement for a sewer line located on a 0.18 acre parcel of property adjacent to Smith Springs Road. The term of the easement is from December 20, 2003, through December 19, 2023.

Ordinance No. BL2005-653 renews an easement for a water pipeline located on a 0.25 acre parcel of property adjacent to Hamilton Church Road. The term of the easement is from June 12, 2004, through June 11, 2024.

ORDINANCE NO. BL2005-655 (ISABEL) – This ordinance authorizes the director of public property administration to acquire two parcels of property and 16 utility easements by negotiation or condemnation in connection with the 18th Avenue North drainage improvement project. The cost of acquiring the property and easements will be paid from the water and sewer extension and replacement fund. The ordinance provides that the acquisition of additional easements or properties for these projects may be authorized by a resolution adopted by the Council. Easements are to be required for the following properties: 1707 Nubell Street, Nubell Street unnumbered, 2201 18th Avenue North, three unnumbered parcels on 18th Avenue North, and 1718, 1724, 1726, 1728, 1730, 1732, 1734, 1736, 1729, and 1733 Kellow Street. An unnumbered parcel on Hughes Street and 2319 - 23rd Avenue North are to be acquired in fee simple.

This ordinance has been approved by the planning commission.