

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **November 15, 2005**

RE: **Analysis Report**

Balances As Of:	<u>11/9/05</u>	<u>11/10/04</u>
<u>GSD 4% RESERVE FUND</u>	*\$31,010,163	\$13,429,480
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	Unavailable	Unavailable

* Assumes estimated revenues in fiscal year 2006 in the amount of \$21,037,500.

– RESOLUTIONS –

RESOLUTION NO. RS2005-999 (WALLS) – This resolution approves a contract between Foundations Associates, Inc., and the Metropolitan board of health to provide residential treatment services and halfway house placement to homeless persons with co-occurring disorders of mental illness and chemical dependency. Pursuant to this grant, Metro agrees to pay Foundations Associates \$80,000 to provide these services for the remainder of the fiscal year. The contract provides that Foundations Associates will be paid \$175 a day for the first through third day of client residential treatment, and \$110 per day for days four through twenty-one, for a maximum of \$2,500 for each client treated. Foundations Associates will be compensated for halfway house placement services in the amount of \$14.25 per day. The contractor will be required to maintain general liability, automobile, workers' compensation and professional liability insurance. In addition, the contractor agrees to indemnify the Metropolitan Government for any claims resulting from its actions in performing the contract, and agrees to pay Metro's litigation expenses in the event Metro prevails in any legal action to enforce the terms of the contract.

This resolution is to be withdrawn at the request of the health department, as Metro has now lost the funding to pay for the services.

RESOLUTION NO. RS2005-1020 – This resolution appropriates \$27,000 from the general fund reserve fund (4% fund) to the county clerk to purchase cash drawers and office chairs. Four percent funds may only be used for the purchase of equipment and repairs to buildings. A copy of the supporting information sheet required by Ordinance No. 086-1534 is attached to this analysis.

RESOLUTION NO. RS2005-1049 (WALLACE) – This resolution provides a proposed amendment to the Metropolitan Charter to prohibit members of council from holding any other elected office. The Charter currently prohibits members of council from holding another elective or appointive office in the Metropolitan Government, but does not prohibit members from holding state or federal elected offices. If this amendment was adopted and ratified, councilmembers would be prohibited from holding any other elective office in the federal, state, or local government. A similar amendment failed to receive the required 27 votes by the council in June 2003.

The Council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. This resolution provides that the date for holding the referendum election on the Charter amendment is to be the August general election in 2006, since there are no regular elections to be held in 2005. State election law requires that resolutions requiring the holding of elections on questions submitted to the people which are to be held at the regular election must be filed with the election commission not less than 60 days prior to the August election. Thus, this resolution must be deferred indefinitely.

RESOLUTION NO. RS2005-1050 (JAMESON & LORING) – This resolution approves amendments to two agreements relating to the construction and operation of the district heating and cooling plant and energy distribution system, and for the purchase of fossil fuels to operate the system. In January 2002, the Council authorized the issuance of \$66.7 million in revenue bonds for the construction of the energy distribution system (the "EDS"), and approved agreements with Constellation Energy Source, Inc. for the design, construction, operation, and maintenance of the new energy generation facility ("the EGF"). Prior to the construction of this new system, the Thermal Transfer Corporation operated a system that converted solid waste through an incineration process into steam and chilled water for purposes of heating and cooling certain downtown buildings. The new system converts fossil fuels and electricity into steam and chilled water to heat and cool the buildings.

The original contract for design, construction, operation, and maintenance of the EGF with Constellation was for an initial term of 15 years, with a possible extension of three additional five-year periods. The estimated cost of construction was \$51,613,321, with possible additional costs in improving the existing distribution system. Pursuant to the contract, Constellation is paid a management fee of approximately \$3,551,770, which is increased annually based upon the CPI (inflation rate) but not in excess of 3 percent. Pursuant to the terms of the fuel purchase agreement, Constellation furnishes fuel to operate the EGF. The electricity used is obtained by Constellation from Nashville Electric Service (NES) and the natural gas used is to be obtained at or below the price charged by Nashville Gas Company. The contracts further provide that Metro has the obligation to meet shortfalls in the new system's revenues necessary to operate and maintain the system.

This resolution approves amendments to the management agreement and the fuel purchase agreement with Constellation. The majority of the changes in the agreements are technical corrections and clarifications. According to Metro's District Energy System (DES) liaison, a number of issues have been raised since the execution of the contracts that required clarifications. Although Metro and Constellation have had a working understanding regarding the clarifications, the contracts need to be officially amended to avoid disputes in the future. A detailed synopsis of the proposed changes to the contracts has been provided to members of council by Metro's bond counsel. Below is a summary of the modifications to the two contracts.

Amendment to the Management Agreement

As stated above, the majority of the corrections and modifications are technical in nature that will not have a negative affect on Metro or customers of the DES. The changes in the amended and restated agreement include the following:

- Constellation Energy Source, Inc. is now Constellation Energy Projects & Services Group, Inc. Therefore, the contract has been modified to reflect this name change.
- The contract is amended to reflect the fact that four customers of the old thermal system did not sign new contracts.
- The overdue rate is changed from 1 ½% over prime to 1% over prime.
- A new "service start-up period" has been added. The existing contract included a service start-up date, which was to take place after construction of the facility, and a service commencement date. The service start-up period allows Constellation to deliver steam and chilled water prior to the actual operating phase of the system after reliability tests are conducted, but they are not required to provide service until service commencement.

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RESOLUTION NO. RS2005-1050 (continued)

- The fixed operating costs have been reduced by \$150,000. This \$150,000 is now only to be paid by Metro if actual costs of maintaining the DES are incurred.
- The marketing incentive provisions were amended to allow Constellation to receive an incentive of 10% of each monthly invoice for the first three years of service if Washington Square, Public Square Parking, or BellSouth sign a customer contract after June 14, 2007.
- The contract adds a "reasonable efforts" standard to Constellation's obligation to guard against damage to the EGF or injuries caused by third parties, rather than making Constellation liable for such damage or injury.

Amendment to the Fuel Purchase Agreement

- The contract is amended to reflect that Metro has entered into a contract with Atmos Energy for the purchase of natural gas, which is to extend through May 2006. Pursuant to the amended contract, the Atmos contract may be assigned to Constellation at the end of its term. Under this new amended agreement, Metro will be required to purchase fuel from Constellation rather than purchasing it on its own. Constellation will be required to use reasonable efforts to obtain natural gas at or below the price charged by Nashville Gas Company.
- The overdue rate is changed from 1 ½% over prime to 1% over prime.
- The contract is amended to allow Constellation to use price hedging to manage the risk of fluctuations in fuel prices. Price hedging is a practice where purchasers of commodities buy in advance at a fixed rate for later delivery to insure against unfavorable changes in price. The contract provides that a price hedge shall be entered into only by mutual agreement of Metro and Constellation.

The ordinance approving the initial contracts (Ordinance No. BL2001-921) provided that amendments to the agreements may be approved by a resolution adopted by the council.

RESOLUTION NO. RS2005-1051 (MCCLENDON) – This resolution approves an amendment to the contract between the Metropolitan Government and Factory Mutual Insurance Co. (FM Global) for a property and casualty insurance policy for property owned by the Metropolitan Government. On June 21, 2005, the council approved the original insurance contract with FM Global. The term of the insurance policy is for five years commencing July 1, 2005, with an annual premium payment of \$1,611,234. Although the Metropolitan Government is essentially self-insured for liability purposes, we do maintain property and casualty insurance for our buildings. The Metropolitan Government currently has approximately \$5 billion in insured values.

This amendment makes several changes to the terms of the insurance coverage. First, the amendment adds a list of countries for which Metro property will not be covered. These countries are those for which trade relations with the U.S. are unlawful, such as Cuba, Iran, North Korea, and China. Second, the amendment deletes the coinsurance and currency devaluation provisions. Finally, the amendment limits the coverage for damage to outdoor property. The original contract provided coverage for outdoor land improvements, including, but not limited to, lawns, golf courses, landscaping, and sprinkler systems. This amendment removes the phrase "but not limited to", thus limiting the coverage only to landscaping including lawns, greens, fairways, tees, shrubs, trees, gardening, and sprinkler systems.

RESOLUTION NO. RS2005-1052 (MCCLENDON) – This resolution approves a grant in the amount of \$500 from the state arts commission to the Metropolitan arts commission to provide a portion of

the cost to send a staff person to the 2006 Americans for the Arts Annual Conference to be held in Milwaukee, Wisconsin. There is a required \$500 match to be provided from the arts commission's operating budget.

RESOLUTION NO. RS2005-1053 (MCCLENDON) – This resolution approves a third amendment to a grant from the state board of probation and parole to the Metropolitan Government for funding the Davidson County community corrections program. This program provides alternative punishments for non-violent offenders consisting of offender supervision, residential programs, and day reporting center programs. The original grant was in the amount of \$2,459,274, and was subsequently amended twice to increase the award by \$20,753 and \$70,581, respectively. This resolution further amends the grant to increase the amount by \$319,780 for a total grant award of \$2,870,388.

RESOLUTION NO. RS2005-1054 (MCCLENDON & WILHOITE) – This resolution approves a grant in the amount of \$100,000 from the state department of labor and workforce development to the Nashville career advancement center to support reintegration counselors for persons displaced by hurricane Katrina. The funds will be used to provide intensive career and life counseling directly to Katrina evacuees in Middle Tennessee with the purpose of helping these individuals return to self-sustaining employment. The term of the grant is from October 12, 2005 through April 12, 2006, with a possible one-year extension.

RESOLUTION NOS. RS2005-1055 & RS2005-1056 (MCCLENDON) – These two resolutions approve annual grants from the state department of labor and workforce development, under the provisions of the Workforce Investment Act of 1998, to provide funding to the Nashville career advancement center (NCAC) to prepare adults, youth, and dislocated workers for re-entry into the labor force, and to offer training to those facing serious barriers to productive employment. These are federal pass-through funds that provide operating funds for NCAC. The term of the two grants is from October 1, 2005, through June 30, 2007.

Resolution No. RS2005-1055 approves dislocated worker in the amount of \$1,161,807.30.

Resolution No. RS2005-1056 approves an adult worker grant in the amount of \$1,059,948.90.

RESOLUTION NO. RS2005-1057 (DOZIER, MCCLENDON & WILHOITE) – This resolution approves a grant in the amount of \$800,076.37 from the state department of transportation to the Metro police department for the Governor's Highway Safety Program. These federal pass-through funds will be used to pay overtime officer enforcement teams to reduce traffic related crash fatalities by focusing on alcohol or drug impaired drivers. The extra enforcement is conducted in the late-night and early-morning hours with the goal of reducing traffic related fatalities by ten percent. The term of this grant is from October 1, 2005 through September 30, 2006.

RESOLUTION NO. RS2005-1058 (MCCLENDON, DOZIER & WILHOITE) – This resolution approves a grant in the amount of \$29,818.66 from the U.S. department of justice to the Metropolitan

Government to purchase bulletproof vests for the benefit of the police department, parks department, juvenile court, and the sheriff's office. This grant is part of the federal bulletproof vest partnership program. There is a required match of \$29,818.66 for this grant. These funds will purchase 205 vests at a cost of \$290 per vest.

RESOLUTION NO. RS2005-1059 (MCCLENDON, DOZIER & WILHOITE) – This resolution approves an amendment to a grant in the amount of \$256,000 from the U.S. department of justice to the Metropolitan police department for gang resistance training. These funds are for the gang resistance education and training (GREAT) program, which uses law enforcement officers to provide instruction to school-aged children in life-skill competencies, gang awareness, and anti-violence techniques. This resolution extends the term of the grant until June 30, 2006 and increases the amount of the grant award by \$256,000.

RESOLUTION NO. RS2005-1060 (WALLS & MCCLENDON) – This resolution approves a grant in the amount of \$499,600 from the Greater Nashville Regional Council to the Metropolitan social services commission for nutrition services. These grant funds are essentially federal pass-through funds to provide nutritious meals to low-income handicapped and elderly individuals in Nashville. The funds will be used to provide the food and transportation for congregate meals, as well as at-home delivery of hot meals to various areas that have a high concentration of low-income elderly residents. There is a required local match of \$48,444 to be provided from the social services commission's operating budget.

RESOLUTION NO. RS2005-1061 (TOLER & MCCLENDON) – This resolution approves a contract between the state department of transportation (TDOT) and the Metropolitan Government for the relocation of Expressway Park Drive. Pursuant to state law, TDOT is authorized to contract with local governments for the construction and maintenance of roadways to provide access to industrial areas and to facilitate the expansion of industry. On October 18, 2005, the council approved an application for the grant funding under this state program to relocate Expressway Park Drive so that Purity Dairies, Inc. can construct a new cooler building adjacent to its present facilities. This project will involve paving, striping, and signage for access to the Purity Dairies property. Purity has already performed all of the grading and drainage work. Pursuant to this contract, TDOT will be responsible for the entire \$181,000 construction cost associated with the roadway relocation. The Metropolitan Government will be responsible for providing the right-of-way for the project.

RESOLUTION NO. RS2005-1062 (WALLACE) – This resolution authorizes Tennessee Art League to install and maintain a three-foot sign reading "Tennessee Art League" above the existing sidewalk at 808 Broadway. Tennessee Art League has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the sign, and is required to post a \$300,000 certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party. Ordinance O87-1890 authorizes aerial encroachments to be approved by resolution rather than ordinance.

This resolution has been approved by the planning commission.

RESOLUTION NO. RS2005-1063 (MCCLENDON) – This resolution authorizes the department of law to accept \$8,134.22 in settlement of the Metropolitan Government's property damage claim

against Chester King. On February 2, 2005, Mr. King struck the rear of a Metro police car that was parked in the right lane of Ed Temple Road near Buchanan Street making a traffic stop. The cost to repair the damage to the rear of the patrol car was \$8,134.22. The police officer was injured as a result of the accident, and Metro is continuing to seek reimbursement for his lost wages and medical expenses that were paid by Metro. The department of law recommends settling the property damage portion of the claim for the full amount of the damage done to the police car.

RESOLUTION NO. RS2005-1064 (MCCLENDON) – This resolution authorizes the department of law to accept \$6,416.47 in settlement of the Metropolitan Government’s personal injury claim against Saul Levison. On August 16, 2004, a public works ready response truck was parked on the shoulder of Ellington Parkway assisting a stranded motorist. Mr. Levison was traveling at a high rate of speed on the shoulder of the roadway and struck the public works vehicle. The Metro employee was injured as a result of this accident and incurred medical bills totaling \$4,596 and lost wages in the amount of \$1,820.47.

The department of law recommends settling this claim in the amount of \$6,416.47 for the full amount of the medical bills and lost wages. The property damage portion of the claim in the amount of \$15,034.82 has already been settled.

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- BILLS ON SECOND READING -

ORDINANCE NO. BL2003-1 (WALLACE) – This ordinance amends the beer permit requirement provisions in the Metro Code of Laws to exempt restaurants that already have a state on-premises liquor consumption license from Metro’s minimum distance requirements to obtain a beer permit. The Code currently prevents a beer permit from being issued to an establishment located within 100 feet from a church, school, park, daycare, or one or two family residence. However, the council in July of 2003 enacted Substitute Ordinance No. BL2003-1353 establishing an exemption from the minimum distance requirements for restaurants located on property subject to a planned unit development (PUD) that already have a state on-premises liquor consumption license. Substitute Ordinance No. BL2003-1353 was essentially a compromise bill in an effort to take a step toward enabling restaurants with a state liquor license to obtain an on-sale beer permit without meeting the established distance requirements in the Code. Pursuant to state law, the Tennessee alcoholic beverage commission can take the applicant’s location into consideration when determining whether to grant a license for on-premises consumption, but no set distance requirements are included in the state law.

This ordinance would provide that restaurants possessing a valid license issued by the state alcoholic beverage commission for on-premises liquor consumption would have 180 days from the enactment of this ordinance to apply to the beer board for a permit and be exempted from the minimum distance requirements. After the 180 day window of opportunity, any restaurant possessing a valid state on-premises liquor consumption license desiring to be exempt from the minimum distance requirements could only do so if the council adopts a resolution approving the exemption. The council would have 60 days from the date that the council and the district councilmember are notified by the beer board that such an application requesting an exemption has been filed in which to adopt such a resolution. Failure by the council to approve or disapprove within 60 days would be deemed an approval by the council. This is similar to the Code provisions regarding the council’s approval of certain special exception uses such as landfills and waste transfer stations.

SUBSTITUTE ORDINANCE NO. BL2005-659 (BRILEY, JAMESON & ADKINS) - This substitute 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.

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SUBSTITUTE ORDINANCE NO. BL2005-659 (continued)

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 the following: (1) compensation paid by an employer; (2) fees earned from outside employment; (3) meals, gifts and other nominal benefits furnished by an employer; and (4) 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, admissions to events, or travel expenses in excess of \$100 from a single source in a given year. The ordinance also expressly prohibits the acceptance of meals provided to the entire council by persons or organizations that have had or are likely to have matters pending with the council.

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 quarterly benefit reports. The council office would be required to assist in the preparation of the reports, although the individual council members would remain responsible for the validity of all information provided. The annual disclosure statement would include the following information:

1. Sources of income for members of council and their spouses. This only requires the disclosure of the source of income, not the amount of income received. 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 spouses of 5% or more in any business with offices in Davidson County.
3. Councilmember's or spouse's ownership of property located in Davidson County.
4. Councilmember's or spouse'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 owned to family members or established financial institutions in the ordinary course of business (i.e. car loans, mortgages, etc.).

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This substitute ordinance contains a 60-day delayed implementation provision for the filing of the first annual disclosure statement after the ordinance is enacted. 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. Further, members of council would be required to provide the Metropolitan clerk with a copy of their campaign disclosures filed with the election commission.

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, and will have the same membership composition as the current board of ethical conduct. 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 councilmembers prior to submitting the final version of the proposed ordinance.

There is a housekeeping amendment for this ordinance making a technical correction. In addition, there may be proposed amendments to remove the required disclosure of client/customer names and to remove spouses from the disclosure requirements.

ORDINANCE NO. BL2005-717 (KERSTETTER, ALEXANDER & TYGARD) – This ordinance amends the Metropolitan Code of Laws to allow apprentice plumbers to work under the direction of a licensed plumber as an alternative to an apprenticeship program registered with the U.S. department of labor. In June 2004, the council enacted major modifications to the plumber certification provisions of the Metro code. The 2004 amendment requires that plumbers now be "licensed" rather than "certified". The 2004 ordinance also requires apprentice plumbers to be enrolled in a registered apprenticeship program and complete 2,000 hours of practical experience and 600 hours of classroom training. Thus, a person is unable to obtain an apprentice license if he/she merely works under the direction of a licensed plumber.

This ordinance would allow a person to obtain an apprentice license if the person is either enrolled in a registered apprenticeship program or is regularly employed as an apprentice by a state registered and bonded plumbing contractor, and who works at the trade of plumbing under a licensed master or journeyman plumber toward obtaining a minimum 8,000 hours of practical experience.

ORDINANCE NO. BL2005-836 (NEIGHBORS, MCCLENDON & OTHERS) – This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2005-2006. State law allows county legislative bodies to appropriate funds for such programs and establish guidelines for participation in the program and the disbursement of such funds. The council appropriated \$700,000 in the current fiscal year's operating budget for a (continued on next page)

ORDINANCE NO. BL2005-836 (continued)

property tax relief program for the elderly. This ordinance authorizes the Metropolitan trustee to establish rules and procedures for implementation of the program and directs the trustee to disburse the funds accordingly to all eligible taxpayers. All persons who qualify for the state property tax relief program and whose income does not exceed \$12,980 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2006.

ORDINANCE NO. BL2005-837 (LORING & JAMESON) – This ordinance amends the Metropolitan Code of Laws to prohibit tree care firms from topping trees. As the council will recall, Ordinance No. BL2005-763, which has been deferred indefinitely, is a zoning text change bill that makes various changes to the tree section of the zoning code. However, Ordinance No. BL2005-763 also would amend the urban forester provisions found in title 2 of the code to prohibit anyone from topping a tree unless the urban forester determines that other pruning practices are impracticable. This ordinance would make the tree topping prohibition only applicable to individuals or firms engaged in tree care and removal as a business. The council office would recommend that the tree topping provisions be amended out of Ordinance No. BL2005-763 in lieu of the provisions of this ordinance if and when the other ordinance is brought back before the council.

ORDINANCE NO. BL2005-838 (WHITMORE & DREAD) – This ordinance amends the Metropolitan Code of Laws beer permit provisions to exempt restaurants located within the same structure as another restaurant possessing a valid retailer’s on-sale beer permit from the minimum distance requirements to obtain a beer permit. The Code currently prevents a beer permit from being issued to an establishment located within 100 feet from a church, school, park, daycare, or one or two family residence. This ordinance would allow restaurants that are located within the same building or structure as another restaurant with a valid on-sale beer permit to obtain a permit of their own, even though they technically do not meet the minimum distance requirements of the code.

ORDINANCE NO. BL2005-839 (TYGARD & FORKUM) – This ordinance authorizes the director of public property and the director of parks and recreation to accept a perpetual conservation easement for use in connection with the development of the Harpeth River greenway adjacent to Old Harding Pike. This easement is being granted by Calvin W. Fite, Jr., Ramona W. Fite, and Julian T. Fite at no cost to the Metropolitan Government. This easement acceptance consists of a 20-foot wide permanent conservation easement and a 15-foot wide temporary construction easement to allow for the construction of a pathway.

ORDINANCE NO. BL2005-840 (DOZIER) – This ordinance approves a lease agreement between the Metropolitan Government and Greensboro I, L.P. for property located at 804 Second Avenue North to be used as office space by the Metropolitan police department. Metro is seeking to lease approximately 7,200 square feet of office space for the police department’s domestic violence division to be used for administrative uses and counseling services. The term of the lease is for five years, with a possible five-year extension upon the agreement of both parties. The monthly rental payments pursuant to the lease are as follows:

- Year 1: \$10,334 per month
- Year 2: \$10,497 per month
- Year 3: \$10,660 per month
- Year 4: \$10,823 per month
- Year 5: \$10,986 per month

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ORDINANCE NO. BL2005-840 (continued)

The above rental amount is to include base rent for the property, taxes, insurance, tenant improvements, common area maintenance, and utilities. In the event the option on the five-year extension is exercised, the rental payments will be as follows:

- Year 6: \$7,426 per month
- Year 7: \$7,584 per month
- Year 8: \$7,742 per month
- Year 9: \$7,900 per month
- Year 10: \$8,058 per month

Greensboro I, LP (the "lessor") will be responsible for maintenance and repair of the building, roof, electrical wiring, light fixtures, and the plumbing and HVAC systems. In addition, the lessor will provide garbage pickup, utilities, ancillary parking at the corner of Ash Street and Third Avenue, nine assigned parking spaces in the front of the leased premises, and three parking spaces in the rear of the premises. Further, the lessor will be required to make certain tenant improvements in accordance with Metro's specifications.

This lease may be terminated by Metro upon 90 days written notice, provided that Metro will be required to pay \$89.75 per day for the remaining days of the lease term and \$40.12 per day for the ancillary parking.

This lease has been approved by the planning commission.

ORDINANCE NO. BL2005-841 (TYGARD) – This ordinance amends the Metropolitan Code of Laws provisions pertaining to ethical standards for members of council. This ordinance is an alternative to the proposed ordinance recommended by the ethics review task force (Substitute Ordinance No. BL2005-659), which is also on second reading. This ordinance essentially takes several aspects of the ethics review task force's bill and places them into the current law.

The current ethical standards of conduct are based on conflicts of interests, although the term "conflict of interest" is not defined in the code. 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 councilmember, 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.

This ordinance incorporates the following concepts from Substitute Ordinance No. BL2005-659 into the existing ethics law for members of council:

- Members would be required to notify the vice mayor and the Metropolitan clerk in writing of conflicts they have regarding legislation pending before the council.

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ORDINANCE NO. BL2005-841 (continued)

- The definition of benefit is specifically worded to include, but not be limited to, an advance, award, contract, compensation, deposit, favor, fee, honorarium, loan, payment, reward, or remuneration.
- Members would be prohibited from accepting or soliciting gifts for family members intended to influence their vote.
- Members would be prohibited from accepting food or admission tickets from any single source in excess of \$100 in any calendar year. The \$100 limitation would not apply to charity fundraising events.
- Members would be prohibited from accepting any food or beverage from an individual or organization that has had or is likely to have matters pending with the council.
- The annual and quarterly disclosure requirements contained in Substitute Ordinance No. BL2005-659 are included in this ordinance with the exception that members who are self-employed would not be required to disclose the names of individual clients or customers.

This ordinance and Substitute Ordinance No. BL2005-659 should not both be adopted on third reading, as they amend the same sections of the code.

ORDINANCE NO. BL2005-842 (CRADDOCK, GOTTO & OTHERS) – This ordinance amends the Metropolitan code of laws to implement standards of conduct for employees of the Metropolitan Government. This ordinance mirrors the provisions of Substitute Ordinance No. BL2005-659, also on second reading, which would implement new standards of conduct for members of council. This ordinance lists the standards of conduct contained in Substitute Ordinance No. BL2005-659, and makes them applicable to all Metro employees, including appointed officials, Metro elected officials (other than members of council), and employees of elected officials. The disclosure provisions contained in Substitute Ordinance No. BL2005-659 would only apply to: (1) the mayor; (2) the employees in the mayor’s office, including members of the mayor’s cabinet; (3) the employees in the council office; (4) the holders of elected offices created by the charter; and (5) all directors, executive directors, assistant directors, and associate directors of Metro agencies, boards and commissions, excluding Nashville Electric Service, the airport authority, and the Metropolitan Transit Authority.

The council office would point out that all employees of the Metropolitan Government are covered by an ethics policy enacted by executive order of the mayor, which has been in effect for a number of years. Further, the mayor and department heads are required to file disclosures similar to those contained in this ordinance with the bond rating agencies and financial institutions to ensure that they do not have any conflicts of interest.

This ordinance would not be applicable to state elected officials nor their employees, and would likely not be applicable to employees within the classified civil service system absent action by the civil service commission, as the charter provides that the civil service rules adopted by the commission have the full force and effect of law. The employees that are not in the classified service include: (1) elected officials; (2) the director of finance; (3) the director of law and the Metropolitan attorneys; (4) the employees in the mayor’s office; (5) the employees in the council office; (6) the executive director of boards and commissions; (7) professional personnel employed by the board of health; (8) employees of the judges; and (9) deputies to the court clerks, trustee, tax assessor, and register of deeds.

ORDINANCE NO. BL2005-843 (MCCLENDON & JAMESON) – This ordinance amends the employee benefit section of the Metropolitan Code of Laws to extend the “in-line-of-duty medical treatment

network" pilot program. In December 2003, the Council enacted Ordinance No. BL2003-58 to authorize the "in-line-of-duty medical treatment network" for a two-year period ending January 1, 2006. At the time Ordinance NO. BL2003-58 was enacted, the code provided that the employee benefit board was authorized to establish a panel of pre-approved medical providers to furnish treatment for in-line-of-duty injuries to be known as the "in-line-of-duty medical treatment network", if the employee benefit board determined it was financially feasible to do so. The Code provided that once such a network is established, medical care benefits (health insurance) would no longer cover work-related injuries, but such injuries would be covered by Metro through the network instead. This provision is similar to the workers' compensation laws applicable to private employers whereby an employer may furnish an injured employee with a list of three or more doctors from which the employee may select for treatment.

Ordinance No. BL2003-58 provided that at the end of the two-year pilot period, the program will terminate and the benefit board will determine whether to continue the network. The employee benefit board has voted to extend the pilot program for an additional year. If the network is continued after the three-year pilot period, then health insurance benefits will no longer cover work-related injuries.

ORDINANCE NO. BL2005-844 (TOLER) – This ordinance amends the Metropolitan Code of Laws provisions that prohibit cross connections to the public drinking water supply. The current law prohibits cross connections for any purpose whatsoever. A cross connection is any connection between the Metro water supply system and any other system that could cause a backflow into Metro's system. This ordinance updates our code provisions to be in compliance with state and federal law. The Safe Drinking Water Act requires that our cross connection provisions reference our cross connection control plan. This ordinance authorizes the department of water and sewerage services to develop and administer a cross connection control plan, and provides that a copy of the plan is to be on file with the Metropolitan clerk. This ordinance prohibits cross connections except with the written consent of Metro water services where such cross connection is consistent with the criteria in the plan.

ORDINANCE NO. BL2005-846 (WALLACE) – This ordinance declares Metropolitan Government-owned property located at 1822 Pearl Street 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 board of public education has determined that this property is no longer needed for school purposes. The council must approve the disposition of all property maintained by the school board before it can be sold. The proceeds of the sale will be credited to the unappropriated school fund.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-847 (HART & TOLER) – This ordinance changes the name of McIver Street, between Gallatin Pike and Burrus Street, to "Hunters Meadow Lane". This name change has been approved by the planning commission and referred to the emergency communications district.

ORDINANCE NO. BL2005-848 (TOLER) – This ordinance accepts an easement for property located at 2004 Pittway Drive to allow for the construction of a stormwater project. This easement is being

donated by Culligan Water Properties, LLC at no cost to the Metropolitan Government in order that the stormwater project may be completed.

ORDINANCE NO. BL2005-849 (TOLER) – This ordinance abandons a twenty-foot drainage easement, and accepts a replacement twenty-foot easement, at Darsino’s Retail Center located at 6601 Sugar Valley Drive. The easement to be abandoned is no longer needed by the department of water and sewerage services. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-850 (ADKINS & TOLER) – This ordinance authorizes the director of public property administration to acquire seven easements by negotiation or condemnation for the purpose of constructing a new 36-inch water main at Powell Avenue. Easements are to be acquired for the following properties:

- 3332 and 4061 Powell Avenue
- Powell Avenue, unnumbered
- Sidco Drive, unnumbered
- 3664 and 4633 Trousdale Drive
- 648 Grassmere Drive

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-851 (TOLER) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Yazdian Construction Co. to provide sewer service to a development in Williamson County known as Nolensville Commercial. Yazdian Construction Co. has agreed to contribute \$8,000 for a total of four units of flow. These funds will be deposited into the water and sewer extension and replacement fund.

ORDINANCE NOS. BL2005-852 & BL2005-853 – These two ordinances accept funds from private developers to fund traffic infrastructure improvements. These funds will be deposited into a fund designated by the director of finance as a contribution towards the improvements.

Ordinance No. BL2005-852 (Gilmore & Toler) accepts \$34,370 from Tyler Ring for traffic infrastructure improvements at Cato Road necessitated by the Creekside Trails development.

Ordinance No. BL2005-853 (Toler) accepts \$40,000 from Lenox Village for traffic infrastructure improvements at Holt Road.

ORDINANCE NOS. BL2005-854 & BL2005-855 – These two ordinances accept easements to allow for the completion of multiple stormwater projects. These easements are being donated by the property owners at no cost to the Metropolitan government in order that the stormwater projects may be completed. These two ordinances have been approved by the planning commission.

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ORDINANCE NOS. BL2005-854 & BL2005-855 (continued)

Ordinance No. BL2005-854 (Forkum, Coleman & Others) authorizes the acceptance of easements for the following properties:

- 20 Culvert Street
- 3410 Gallatin Pike
- 11 Burton Hills Boulevard
- 4131 Andrew Jackson Parkway
- 936 Firestone Parkway
- 417 Myatt Drive
- 4108 Belmont Boulevard
- 3109 Granny White Pike
- 748 Wedgewood Avenue

Ordinance No. BL2005-855 (Hausser, Ryman & Others) authorizes the acceptance of easements for the following properties:

- 586 Tulip Grove Road
- 588 Tulip Grove Road
- Tulip Grove Road, unnumbered
- 8300 Highway 70
- 400 Oakbluff Lane
- 1221 18th Avenue South
- 1382 Rural Hill Road
- 2610 Grandview Avenue
- 2606 Grandview Avenue
- 601 Marriott Drive
- 4300 Hillsboro Pike
- 6401 Harding Pike
- 15th Avenue South, unnumbered

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2005-706 (JAMESON & COLE) – This ordinance amends the Metropolitan Code of Laws to establish a process and procedure for the naming of Metropolitan Government buildings and open spaces. The Code currently provides that all Metropolitan Government buildings may only be named by ordinance. Such ordinance must include biographical information about the person for whom the building is to be named.

This ordinance would add specific procedures and restrictions to the Code for naming buildings. First, no public structure or space would be able to be named after a living person, unless the person contributed money or land for the structure or space with an express condition on the donation that it be named in a certain manner. Second, no public structure or space could be named in honor of an elected or appointed public official while the official is in office. Third, the ordinance would place the administration of naming public buildings in the hands of the Metropolitan historic zoning commission. The commission would be required to establish a formal procedure for the naming of the buildings, including a specific mechanism for soliciting and measuring public input. Once the commission decides on a name, the commission would then forward its recommendation to the council for approval by resolution receiving 21 affirmative votes.

The provisions of this ordinance would not apply to the board of parks and recreation, the library board, the Metropolitan transit authority, and the board of public education, as these boards are responsible for the naming of buildings under their control.

There may be a proposed amendment offered for this ordinance that would expressly exclude the board of parks and recreation and the school board from the applicability of the ordinance, and would place the administration of naming public buildings with the historical commission rather than the historic zoning commission. As this ordinance is currently on third and final reading, unanimous consent of the council to suspend the rules will be required in order for this amendment to be considered.

SUBSTITUTE ORDINANCE NO. BL2005-728 (BURCH) – This substitute ordinance amends the Metropolitan Code of Laws to prohibit soliciting employment within the right-of-way. This ordinance is modeled after ordinances that have been enacted in several California cities. This ordinance would make it unlawful for any person to stand along a street and actively solicit employment from any person in a motor vehicle, and would likewise prohibit persons in motor vehicles from actively soliciting employment of any person in the right-of-way. The Metro Code already prohibits persons from standing within the Metro right-of-way for purposes of soliciting employment or contributions, but does not extend to persons seeking out workers.

ORDINANCE NO. BL2005-761 (LORING, WILLIAMS & OTHERS) – This zoning text change amends various provisions of the code regarding the eligibility, placement, lot size, and design standards of two-family structures (duplexes). This ordinance is a modified draft of Ordinance No. BL2004-408, which was deferred indefinitely in November 2004. Under the current zoning code, duplexes are permitted by right in the RM (multi-family) zoning districts, the mixed-use districts, and the OR (office and residential) districts. Duplexes are permitted with conditions in the AR2a and R (one and two-family) districts. The code currently does not limit the concentration of duplexes and does not require any particular design standards applicable only to duplexes.

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ORDINANCE NO. BL2005-761 (continued)

This ordinance would substantially alter the permitted location, placement and design of duplexes in Davidson County. First, this ordinance would require that the minimum lot size for duplexes in the R districts be at least 120 percent of the minimum lot size for single-family homes. Second, the ordinance would restrict the number of duplexes on a given block. A maximum of four duplexes would be permitted on any one block, and in no event would more than two duplexes be allowed to be constructed next to each other. Third, the ordinance places some standards on the design of duplexes. If more than one entrance is proposed, one must face the street and the other must be located to "compliment and enhance the neighborhood's development character." In addition, garages must be recessed at least five feet from the front façade and be designed to compliment the neighborhood's character. No driveway access would be allowed if the lot is served by an alley unless at least fifty percent of the lots on the same block face have driveways. Fourth, this ordinance would allow two detached dwelling units on those lots where duplexes are permitted. The zoning code currently requires that all duplexes be attached. This provision would essentially allow two single-family homes on one lot without going through the subdivision process.

Finally, a development plan would have to be submitted to and approved by the planning director for duplexes that would be the lesser of 5,000 square feet or 30% of the total lot area. No site work could begin, nor could any building or grading permit be issued, until the planning director approves this plan. The standards for reviewing the development plan are based on comparable structures in the neighborhood. "Comparable structures" include structures across the street, next door, or located to the rear of the lot. The proposed duplex would be required to have similar height, roof pitch, massing, building placement, and building materials as the comparable structures. In addition, the development plan for any structure eligible for listing on the national register of historic places would first have to be approved by the Metropolitan historic zoning commission before being considered by the planning department. Further, the ordinance would expressly prohibit the board of zoning appeals from being able to grant a variance on a duplex development plan.

The Council Office is of the opinion that the design limitations on two-family structures contained in this ordinance violate state law. The Tennessee Code Annotated, as part of the granting of zoning power to county and municipal governments, limits zoning ordinances to the regulation of the following: (1) the location, height and size of buildings and other structures; (2) the percentage of lots which can be occupied; (3) the size of yards and open spaces; (4) the density and distribution of population; and (5) the uses of property. A separate statute provides for design standards as part of historic zoning districts, however, this statute does not extend to design restrictions as part of other zoning ordinances. Although the zoning code currently includes various design-related provisions, this ordinance, extend the design standards and design review process into uncharted territory.

Adoption of this ordinance would create hundreds of nonconforming uses that could result in a loss of value for existing properties and also a loss of revenue to Metro. Enforcement and necessary due process of law issues make such a district subject to abuse. This ordinance allows the executive director of the planning commission great latitude and allows appeals to the planning commission. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-796 (BRADLEY) – This ordinance adopts the 2002 edition of the National Electric Code, the 2000 edition of the International Residential Code for One and Two-Family Dwellings, and the 2003 edition of the American National Standard Code of Accessible and Useable Buildings and Facilities, to make them a part of the Metro building code. The Metropolitan Government adopts the most recent editions of the building codes approximately every three years.
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ORDINANCE NO. BL2005-796 (continued)

Metro is currently operating under the 1999 edition of the National Electrical Code and the 1998 edition of the Code of Accessible and Useable Facilities. Adoption of the most recent editions will help bring the government into conformity with the ADA guidelines. This ordinance has been recommended by the director of codes administration.

ORDINANCE NO. BL2005-797 (WALLACE & WHITMORE) – This ordinance, as amended, approves the Jefferson Street redevelopment plan to be administered by the Metropolitan development and housing agency (MDHA). Redevelopment plans are a tool authorized by state law to remove urban blight and rehabilitate blighted areas. Various redevelopment plans have been approved by the council over the years, including the Capitol Mall plan, the Five Points plan, the Arts Center plan, the Phillips-Jackson Street plan, and the East Bank plan.

The Jefferson Street redevelopment plan area consists of the area surrounding a two-mile section of the Jefferson Street corridor that stretches from 12th Avenue to 28th Avenue. Presently, this area is a mixture of residential, mixed-use, institutional, commercial, retail, and office uses. The general condition of the area is blighted as a result of overgrown vacant lots and dilapidated buildings. Once adopted, this redevelopment plan will allow for the acquisition of land by negotiation or condemnation for redevelopment purposes, as well as the demolition and relocation of existing residences and businesses as necessary. MDHA will provide assistance to individuals and businesses that are displaced by the implementation of the plan. In the event MDHA desires to obtain property using the power of eminent domain, the council must first approve such condemnation by resolution. Councils in the past have not permitted MDHA to use condemnation authority without a resolution adopted by council on a specific parcel of property. This type of redevelopment plan is the method approved by the U.S. Supreme Court that has raised a great deal of concern over property rights.

The following uses will be permitted within the project area:

- Single-family, two-family, and multi-family residential
- Hotels/motels
- Churches
- University-related facilities
- Schools and daycares
- Offices
- Medical offices/hospitals
- General retail not including liquor sales or adult-oriented products
- Service retail
- Restaurants not featuring drive-through service
- Nightclubs not including adult entertainment
- Theaters
- Cultural facilities
- Public facilities and parks

As with all redevelopment districts, proposed site plans and landscaping plans must be submitted to and approved by the MDHA design review committee prior to the issuance of any building permits for a development. The design of all new development should complement the scale, massing, and general character of the existing development. Billboards and general advertising signs will be prohibited. Developers will be entitled to appeal any decision of the design review committee to the MDHA administrative appeals board. In addition to the site and design approval, no demolition of a building or structure shall occur without the consent of MDHA.

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ORDINANCE NO. BL2005-797 (continued)

Pursuant to the terms of the plan, MDHA intends to use the tax increment financing tools authorized by state law. Tax increment financing requires that the additional property taxes generated as a result of a redevelopment plan go to the redevelopment area for additional improvements, rather than to the Metropolitan Government general fund. The total property tax revenues to be received from the area are estimated to be \$220,000 this year. MDHA is estimating a future increase in the value of property to be redeveloped in excess of \$25 million. This would provide for a total net annual increase in tax dollars of approximately \$500,000. The amount of debt backed by tax increment financing shall not exceed \$3 million.

This redevelopment plan will be in effect until December 31, 2035. The plan may only be amended with the approval of MDHA and by ordinance enacted by the council. However, once part of the property has been sold or contracted for sale by MDHA, the plan cannot be amended in any way that will adversely affect the undeveloped property without the consent of the owner or parties to the contract.

ORDINANCE NO. BL2005-798 (WALLACE) – This ordinance approves a third amendment to the Phillips-Jackson Street Redevelopment Plan. This redevelopment plan was first adopted in 1993 and amended in 1999 and 2001. The plan is basically for the redeveloped area surrounding the Bicentennial Mall, between Interstate 40 and Interstate 65 and the Cumberland River, to Hume Street. The Phillips-Jackson Street Redevelopment district provides for general residential, mixed use, public use (which is the Bicentennial Mall and the Farmers Market), commercial services, and general business uses.

This amendment extends the expiration date for the plan from December 31, 2024 to December 31, 2030. In addition, the amendment increases the amount of project costs to be financed through tax increment financing from \$4 million to \$11 million, with a final maturity on the bonds on or before December 31, 2030.

ORDINANCE NO. BL2005-799 (FORKUM, RYMAN & CRADDOCK) – This ordinance authorizes the director of public property administration to acquire four parcels of property by negotiation or condemnation for the construction of a new fire hall in the Neely's Bend Road area. These four parcels are located on Larkin Springs Road and consist of a total of 2.61 acres. Any future amendments to this ordinance may be approved by resolution of the council receiving twenty-one affirmative votes.

This ordinance has been approved by the planning commission.