

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **December 20, 2005**

RE: **Analysis Report**

Balances As Of:	<u>12/14/05</u>	<u>12/21/04</u>
<u>GSD 4% RESERVE FUND</u>	*\$22,356,763	\$13,333,475
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$4,000
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 \$17,114,863

– BILL ON PUBLIC HEARING –

ORDINANCE NO. BL2005-875 (JAMESON) – This ordinance approves a fifth amendment to the Rutledge Hill redevelopment plan to allow the construction of a new minor league ballpark at the former thermal site. A detailed analysis of this ordinance is included in the supplemental analysis of the Sounds stadium legislation.

– RESOLUTIONS –

RESOLUTION NO. RS200-989 (WALLACE & CRADDOCK) – This resolution appropriates \$75,000 from the unappropriated fund balance of the general services district to fund a best practices study. This appropriation would provide funds to employ necessary consultants to conduct a Best Practices Study of the council office. Such study would include a study of the current council office, current staffing of the council office, and the need for additional staffing.

Rule 15 of the Council Rules of Procedure provides that "no resolution or ordinance involving the appropriation or expenditure of money, upon being filed, shall be placed on the agenda by the Metropolitan clerk until the Director of Finance has furnished a statement of the availability of funds." The director of finance has provided a statement that the funds are not available for this appropriation. The council has established a policy of maintaining a minimum unappropriated fund balance of five percent. The substitute budget adopted by the council for this fiscal year did not fund this study.

It is estimated that the unappropriated fund balance will be close to five percent, if not below, but the exact amount will not be determined until the audit is completed. Adoption of this resolution could be deemed by credit rating agencies as a violation of the previous council policy adopted by resolution.

RESOLUTION NO. RS2005-1084 (TYGARD) – This resolution appropriates \$50,000 from the contingency account of the general fund of the general services district to a reserve account for a historical preservation trust fund. The purpose of a historical preservation trust fund would be to help acquire and preserve historic properties in Davidson County that are in a state of disrepair. This resolution would essentially tie up this \$50,000 amount to ensure that it would only be used for such a preservation trust in the event it is created prior to June 30, 2006. The resolution expressly provides that in the event the trust fund is created this fiscal year and raises matching funds in the amount of \$50,000 in private contributions, the council may adopt another resolution appropriating the funds from the reserve account to be used in furtherance of the purposes of the trust fund. In the event the trust fund is not created this fiscal year, the appropriation would lapse on June 30, 2006.

The \$50,000 contingency account has typically been reserved by the council for emergency purposes, although the council did appropriate funds from this account to various nonprofit organizations during the previous fiscal year. The director of finance has refused to sign this resolution as to the availability of funds, since this program is not of an emergency nature and the logistics involved in establishing such a fund would likely prevent its creation during this fiscal year.

RESOLUTION NOS. RS2005-1086 (GREER) – This resolution authorizes The Shop Trust, LLC to install and maintain an awning above the sidewalk at 2600 12th Avenue South facing Montrose Avenue. Ordinance No. O87-1890 allows such aerial encroachments to be approved by resolution of the council rather than ordinance. The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the encroachments, and is required to provide a \$300,000 certificate of public liability insurance naming the Metropolitan Government as an insured party. This resolution has been approved by the planning commission.

RESOLUTION NOS. RS2005-1104 through RS2005-1110 (MCCLENDON) – These seven resolutions appropriate funds from the general fund reserve fund (4% fund) to various departments. Four percent funds may only be used for the purchase of equipment and repairs to buildings. These projects were included as part of the mayor’s capital spending plan, but held until adequate funding was in place. The total amount of these seven resolutions is \$8,653,400. The balance in the general fund reserve fund as of December 14, 2005, was \$31,037,163. This assumes unrealized revenue for fiscal year 2006 in the amount of \$17,114,863. The resolutions provide that “The Director of Finance may schedule acquisitions authorized herein to ensure an appropriate balance in the Fund.” Copies of the supporting information sheets required by Ordinance No. O86-1534 are attached to this analysis.

Resolution No. RS2005-1104 appropriates \$6,500 from the general fund reserve fund to the municipal auditorium for a copier and defibrillator.

Resolution No. RS2005-1105 appropriates \$5,700 from the general fund reserve fund to the election commission for a laser jet printer.

Resolution No. RS2005-1106 appropriates \$15,300 from the general fund reserve fund to the historical commission for a document scanner, printers, scanning and indexing software, and computer equipment.

Resolution No. RS2005-1107 appropriates \$13,500 from the general fund reserve fund to the law department for fax machines, scanners and printers.

Resolution No. RS2005-1108 appropriates \$117,500 from the general fund reserve fund to the emergency communications center for replacement chairs and furniture.

Resolution No. RS2005-1109 appropriates \$5,251,100 from the general fund reserve fund to the finance department for roof assessments and renovations, furniture, fixtures and equipment for the courthouse, computers, and miscellaneous improvements to the police academy campus.

Resolution No. RS2005-1110 appropriates \$3,243,800 from the general fund reserve fund to information technology services for hardware and software, mobile data computers, and machinery and equipment for government access channel Metro3.

RESOLUTION NO. RS2005-1111 (MCCLENDON) – This resolution approves a grant in the amount of \$5,136 from the state department of human services to the Nashville career advancement center for operation of the Tennessee career center. The state department of workforce and development has a network of career centers across the state where employers can go to find workers, and where job seekers can get assistance and career information. The term of this grant is from July 1, 2005 through June 30, 2006.

RESOLUTION NO. RS2005-1112 (MCCLENDON) – This resolution transfers \$50,000 from the Community Impact EITC appropriation included as part of this fiscal year’s operating budget to United Way Family Resource Center. As part of the 2005-2006 operating budget adopted in June 2005, the council appropriated \$50,000 to Community Impact EITC for the purpose of increasing citizen awareness of the federal earned income tax credit. Subsequent to the adoption of the budget, Community Impact EITC became a part of the United Way organization. The Charter allows the council, at the request of the mayor, to transfer appropriations by resolution at the end of any quarter to another appropriation within the same section of the budget. This resolution provides that these funds will be used by United Way Family Resource Center exclusively for increasing citizen awareness and assisting in the utilization of the earned income tax credit.

RESOLUTION NO. RS2005-1113 (MCCLENDON & FORKUM) – This resolution approves a grant in the amount of \$50,000 from the Community Foundation of Middle Tennessee to the Nashville public library to provide literacy and GED tutoring. These federal pass-through funds will be used to pay the salaries of four part-time tutors to provide literacy and GED tutoring services in the Cameron/Tribble and Napier/Sudekum neighborhoods through the Project Safe Neighborhoods program. The term of the grant is from October 1, 2005 through September 30, 2006.

RESOLUTION NO. RS2005-1114 (DOZIER & MCCLENDON) – This resolution approves a grant in the amount of \$1,223,650 from the U.S. department of homeland security to the Nashville fire department for a firefighter wellness program. Prior to fiscal year 2004, the fire department offered annual medical physicals to firefighters. However, this program was eliminated as a result of budget reductions. These federal grant funds will be used for a comprehensive wellness program consisting of the following: (1) providing annual physicals to all 1,093 firefighters; (2) training 120 personnel as “peer fitness trainers”; (3) contracting with the health department to conduct nutrition classes; (4) administering a computerized annual personal wellness profile; and (5) purchasing aerobic exercise equipment for each fire station. A required match of \$305,912 will be provided from the operating budget of the fire department.

RESOLUTION NO. RS2005-1115 (FOSTER & MCCLENDON) – This resolution approves a grant in the amount of \$132,412.50 from the state emergency management agency to the Metropolitan Government to acquire and demolish one flood-prone property located at 5008 West Durrett Drive. This property has been identified as being in a special flood hazard area and qualifies for assistance under the federal flood mitigation assistance (FMA) grant program. The FMA program is a pre-disaster grant program that provides funding to states and municipalities to reduce or eliminate the risk of repetitive flood damage to buildings insurable under the national flood insurance program. These federal pass-through funds will be used to acquire and demolish the structure to be maintained in the future as open space. Properties are only acquired under this program on a voluntary sale basis. The term of this grant is from September 14, 2005 through September 30, 2008. There is a required local match of \$44,137.50 to obtain this grant.

RESOLUTION NO. RS2005-1116 (MCCLENDON) – This resolution accepts \$8,911.24 in compromise and settlement of the Metropolitan Government’s property damage claim against Arthur Ralston. On May 7, 2005, a Metro police vehicle was stopped at a red light at the intersection of Lebanon Pike and Old Hickory Boulevard when it was struck in the rear by a pick-up truck owned by Arthur Ralston and driven by Katherine Green. According to the accident report, the driver of the pick-up was arrested for DUI. The police officer involved in the accident was injured, and \$867.95 has been recovered for medical bills and lost wages. This resolution settles the property damage portion of the claim for the cost of the damage to the police car.

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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.

The Council Office requested a list from the state alcoholic beverage commission of all liquor-by-the-drink establishments in Davidson County to compare with the list of restaurants that have a Metro beer permit. The Council received a list from the alcoholic beverage, but it included restaurants from all over the state. After attempting to sever out those establishments that are not in Davidson County, it appears that approximately 38 out of a total of 440 establishments have a state liquor-by-the-drink license but do not have a Metro beer permit. However, this does not mean that all these establishments do not meet the minimum distance requirements in the Code. In fact, quite a few of these establishments may not be in business.

There is a proposed amendment for this ordinance that would eliminate the 180 day window of opportunity, thus requiring Council approval of such establishments by resolution immediately upon enactment of the ordinance.

ORDINANCE NO. BL2005-841 (TYGARD) – This ordinance would have amended the former Metropolitan Code of Laws provisions pertaining to ethical standards for members of council. This ordinance was an alternative to the proposed ordinance recommended by the ethics review task force (Substitute Ordinance No. BL2005-659), which was adopted by the council on third and final reading at the last meeting. Since Ordinance No. BL2005-659 has been enacted, the code provisions this ordinance attempts to amend have been abrogated. Thus, this ordinance should be withdrawn.

ORDINANCE NO. BL2005-858 (COLE, RYMAN & OTHERS) – This ordinance amends the Metropolitan Code of Laws to place additional restrictions and requirements regarding the ability of

the Metropolitan Government to privatize government services. The Metro code currently requires all privatization contracts with a value in excess of \$100,000, or one that would result in the loss of more than two Metro employees, to be approved by resolution of the council. Contracts for professional services do not have to be approved by council, regardless of the dollar amount involved.

This ordinance would require these privatization contracts to be approved by ordinance, rather than resolution. In addition, it expands the definition of privatization contracts to include contracts that would (1) result in the termination or relocation of one or more Metro employee; or (2) would eliminate any vacant position funded in the operating budget to provide such governmental service; or (3) has a value in excess of \$100,000 (other than contracts for professional services). Further, no person or business would be eligible to contract for the privatization of government services if they provided consulting services to Metro in the previous year.

Finally, the ordinance places additional conditions that must be satisfied prior to contracts for the privatization of government services becoming effective. First, all Metro employees who were providing such services must be offered employment with the Metropolitan Government at the same or greater level of pay. Second, a comprehensive written justification and cost-benefit analysis must be filed with the council at the time the ordinance approving the privatization contract is filed.

ORDINANCE NO. BL2005-861 (CRAFTON) – This ordinance amends the building code provisions of the Metro Code of Laws to prohibit the issuance of a building permit if the applicant or property owner has violated a stop work order within the past year. The building code provides that the director of codes administration may issue a stop work order in writing if work on any building or structure is being done contrary to the building code or in a dangerous or unsafe manner. When an emergency exists, the director is not required to give written notice of the stop work order. This ordinance would prohibit any applicant from obtaining a building permit if they have been found by a court to have violated a stop work order within the past twelve months.

ORDINANCE NO. BL2005-876 (RYMAN) – This ordinance amends the Metropolitan Code of Laws to add a member of the council public safety committee to the safety advisory board. The safety advisory board currently consists of seven members appointed by the mayor. The purpose of the board is to formulate and monitor the Metropolitan employee safety program, and report its findings to the executive secretary of the employee benefit board. This ordinance would increase the size of the board to eight members, with the eighth member to be elected by the council public safety committee from among its membership for a term of two years.

ORDINANCE NO. BL2005-877 (GILMORE) – This ordinance amends the Metropolitan Code of Laws to allow owners of stolen motor vehicles to reclaim their vehicle at the Metro tow-in lot without paying a storage fee. The code currently provides that the police department is to notify all owners of stolen motor vehicles whose vehicles are located and taken to the Metro tow-in lot, and the owner has 24 hours to reclaim the vehicle and remove it from the lot without being charged a storage fee. If the owner fails to remove the vehicle within 24 hours of notification, the owner is charged the regular daily storage fee from the time the vehicle is brought to the tow-in lot. This ordinance would allow an owner of a stolen motor vehicle that is drivable to reclaim the vehicle without paying a storage (continued on next page)

ORDINANCE NO. BL2005-877 (continued)

fee, whether the vehicle is picked up within 24 hours or not. Pursuant to this ordinance, the owner of a stolen vehicle that is inoperable would still only have 24 hours to pick the vehicle up and avoid the

storage fee. A similar ordinance that would have extended the 24 hour reclamation provision to 72 hours was deferred indefinitely in June 2004.

ORDINANCE NO. BL2005-878 (JAMESON, FORKUM & OTHERS) – This ordinance authorizes the acquisition of a small portion of railroad property by negotiation or condemnation, declares the former thermal site property to be surplus, and transfers the property to the industrial development board to allow for the construction of a new minor league ballpark and mixed-use development on the property. A detailed analysis of this ordinance is included in the supplemental analysis of the Sounds stadium legislation.

ORDINANCE NO. BL2005-879 (JAMESON, FORKUM & OTHERS) – This ordinance approves a memorandum of understanding between the Metropolitan Government, the Nashville Sounds, Struever Bros. Eccles & Rouse, the industrial development board, and the Metropolitan development and housing agency regarding the construction of a new minor league ballpark and mixed-use development at the former thermal site. A detailed analysis of this ordinance is included in the supplemental analysis of the Sounds stadium legislation.

ORDINANCE NO. BL2005-880 (TOLER) – This ordinance approves the adoption of the additions, deletions, and/or other amendments to the Official Street and Alley Acceptance and Maintenance Map for the Metropolitan Government made during the previous year. These amendments are submitted annually by the department of public works. The map shows the dedicated streets and alleys that were either accepted or abandoned for public maintenance by Metro.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-911 (DREAD) – This ordinance amends the Metropolitan Code of Laws to require after hours clubs to obtain a permit from the beer permit board. Currently, after hours clubs are not regulated by any Metro agency unless they serve beer or are considered sexually oriented businesses. This ordinance essentially incorporates after hours establishments into the regulations governing dancehalls. The code currently requires that all dancehalls obtain a permit from the beer permit board in order to operate. By broadening these regulations to include after hours clubs, such establishments would have to submit an application to the beer permit board, along with a \$100 application fee, indicating the name of the applicant, name and location of the business, and the name of any person or entity having at least a five percent ownership interest in the establishment. The ordinance defines “after hours establishment” as a commercial establishment open to the public after 3:00 a.m., or an establishment open to the general public that allows customers to bring alcoholic beverages onto the premises. The definition expressly excludes sexually oriented establishments, which are regulated by the sexually oriented business licensing board.

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ORDINANCE NO. BL2005-911 (continued)

Pursuant to this ordinance, no permit could be issued for any after hours establishment if any person having at least a five percent ownership interest in the establishment has been convicted during the

past fivers of a crime of moral turpitude. The beer permit board defines a crime of moral turpitude as being murder, any sex crime, the sale of illegal drugs, and embezzlement. In addition, it would be unlawful for an after hours establishment to allow any indecent or violent act to occur on the premises. The ordinance grants the authority to the beer permit board to adopt rules and regulations to effectuate the purpose of the law and to secure compliance.

ORDINANCE NO. BL2005-912 (TOLER) – This ordinance amends the Metropolitan Code of Laws provisions regarding the testing, maintenance, and operation of private fire hydrants. The Code currently provides that private fire hydrants are to be tested by the fire department every six months. There is a \$40.00 fee for these inspections conducted by the fire department. This ordinance would transfer the testing responsibilities from the fire department to the department of water and sewerage services. The ordinance provides that the private fire hydrants are to be tested in accordance with procedures and at such intervals as determined by the fire chief. In addition to the \$40.00 inspection fee, this ordinance would require owners of private fire hydrants to reimburse the water department for the actual costs for materials and parts consumed as part of the test. The ordinance further grants authority to the fire department and water services to promulgate rules and regulations required to implement the ordinance.

ORDINANCE NO. BL2005-913 (TYGARD, GOTTO & OTHERS) – This ordinance names the newly constructed Gateway bridge the “Korean War Veterans Memorial Bridge”. From 1950 to 1953, 1.8 million U.S. troops served during the period of hostilities in Korea. Over 33,000 American troops died during the Korean War, with over 8,000 troops still missing in action. The last time the Council formally named a bridge by ordinance was in 1994 when the Jefferson Street Bridge was renamed the “Kelly Miller Smith Memorial Bridge”.

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2005-845 (RYMAN, DOZIER & OTHERS) – This ordinance names the proposed plaza in front of the Metropolitan Courthouse the “Richard H. Fulton Plaza”. The Metro Code of Laws provides that no building of the Metropolitan Government may be named except pursuant to an ordinance enacted by the council. Richard H. Fulton was mayor of the Metropolitan Government from 1975 through 1987, after serving as a senator in the Tennessee General Assembly and a member of the U.S. House of Representatives. Mayor Fulton’s accomplishments include the construction of the Nashville Convention Center and Riverfront Park, the first use of tax increment financing through the Metropolitan Development and Housing Agency, the creation of the Arts Commission and the Historical Zoning Commission, the construction of nine new community centers, and the opening of 21 new parks.

Prior to the construction and renovation currently underway at the courthouse site, the property where this new plaza is to be built was maintained by the board of parks and recreation as a park facility. The council office is of the opinion that the council does not have the legal authority under the Metropolitan Charter to name a park. Rather, this authority is vested solely with the board of parks and recreation.

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. BL2005-857 (WALLACE, JAMESON & WHITMORE) – This ordinance authorizes the mayor to submit the five year consolidated plan for housing and community development programs for the Metropolitan Government to the U.S. department of housing and urban development (HUD). This five year consolidated plan was prepared by the Metropolitan development and housing agency (MDHA) and is to be administered by MDHA. The plan includes the allocation of funds received from HUD for community development block grants (CDBG), the HOME investment partnerships program (HOME), the emergency shelter grant program (ESG), and the housing opportunities for persons with AIDS (HOPWA).

Any property that may need to be acquired under any of these programs may only be acquired for public use and approved by ordinance, unless the owner consents in writing to sell the property for the program. The exercise of the power of eminent domain under the development plan is expressly reserved for the Metropolitan Council, except in the case of open projects approved by the council in accordance with state law. Additionally, all requested program expenditures must be approved by resolution of the Metropolitan Council.

CDBG funds are based on new entitlement funding in the amount of \$5,300,000, with program income of \$600,000 during the coming year. These CDBG funds are designated for affordable housing activities to provide matching funds and for neighborhood activity funds for youth initiative programs (continued on next page)

ORDINANCE NO. BL2005-857 (continued)

and community projects. A large portion of the CDBG funds are targeted at specific neighborhood strategy areas (NSAs) and commercial district areas. These funds will be used for planning initiatives in the following three commercial district target areas: Murfreesboro Road, 8th and Lafayette, and Clarksville Pike. Maps that set out the boundaries for all of the NSAs and commercial district target areas are on file with MDHA. The greatest portion of CDBG funds are used for housing rehabilitation, infill housing related projects, and neighborhood-related public facilities.

HOME funds are to provide a mixture of owner-occupied and rental rehabilitation, new housing ownership programs, new multi-family housing opportunities, down payment assistance and housing assistance. A required twenty-five percent local match must be provided from repayments of urban development action grants (UDAG). UDAGs are federal loans made to qualifying programs, essentially in the downtown area, which are repaid to the Metropolitan Government to be expended in approved programs that target persons living in pockets of poverty.

ESG funds are allocated to local homeless shelter providers to help cover operational expenses, rehabilitation, prevention, and essential services. Local matching funds required under this program must be provided by the local non-profits that participate in the program as subgrantees.

The **HOPWA** program provides housing related assistance for low-income persons with AIDS and their families.

Attached at the end of this analysis are the program allocations under these various programs beginning April 1, 2006, through March 31, 2009. These federal programs funded by HUD have been in existence for over 30 years.

ORDINANCE NO. BL2005-859 (COLE & JAMESON) – This ordinance amends the Metropolitan Code of Laws to prohibit the hoarding of animals. This ordinance would make it unlawful to possess more than five “companion animals” if the owner does not properly care for the animals. The ordinance defines “companion animal” to include dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and other species that a reasonable person would consider to be a pet. Proper care would include adequate food and water at least once a day, adequate medical treatment, and adequate shelter consisting of a structure with a roof and at least three sides with room for the animal to stand up, lie down, and turn around.

This ordinance also adds some penalty provisions for violation of the ordinance. First, the ordinance states that a person in violation of this ordinance is “guilty of a misdemeanor”. The council office would point out that the word “misdemeanor” implies that this a criminal offense, and only the state legislature has the authority to designate an act a crime. A violation of the Metropolitan code is a civil offense punishable only by a maximum fine of fifty dollars, pursuant to state constitutional limitations. This ordinance also purportedly gives authority to the general sessions court to impose penalties in addition to a fifty dollar fine. The ordinance provides that the court may order a violator to do any or all of the following:

1. Prohibit the person from owning companion animals for a period of time the court deems reasonable.
2. Require the person to participate in animal cruelty prevention and education programs.
3. Require the person to undergo a mental health evaluation and comply with any recommendations resulting from the evaluation.

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ORDINANCE NO. BL2005-859 (continued)

4. Forfeit all animals that are the basis of the conviction.
5. Sterilize the companion animals. (Sterilization would be mandatory after the second conviction.)
6. Pay appropriate fees and fines.

SUBSTITUTE ORDINANCE NO. BL2005-863 (MURRAY) – This ordinance amends the building code to place additional requirements in order to obtain a demolition permit for a historic structure. This ordinance was drafted in response to the actions surrounding the demolition of the Evergreen home. State law provides that no residential structure may be demolished without approval by the local legislative body if the structure was (1) constructed before 1865; (2) is repairable at a reasonable cost; and (3) the structure has a historical significance besides age itself. This ordinance would add a procedure to the code for determining whether a structure falls within the state law provisions requiring council approval prior to demolition, and would require that the demolition of all historic structures first be approved by the executive director of the historic commission.

First, the ordinance would require an applicant for a demolition permit for a structure constructed prior to 1865 to present a report to the director of codes administration and the executive director of the historical commission prepared by a qualified historic restoration consultant that states the following:

- The qualifications of the person making the report. (The consultant must be a professionally licensed architect or general contractor with a specialty in historic buildings.)
- The structural condition of the building to be demolished.
- An estimated cost to repair the structure.
- A valuation from a qualified historic properties real estate appraiser of the structure to be demolished.

Upon receipt of the report, the historic zoning commission will make a determination at a public meeting as to whether the structure meets the criteria set out in the state law described above. If the structure does meet the criteria, the commission will initiate legislation for consideration by the council.

Second, the ordinance would require that the executive director of the historical commission approve a demolition permit prior to its issuance for a structure that is listed or is eligible for listing on the National Register of Historic Places, or meets the state law criteria discussed above and is not included as part of a historic overlay district. The director of the historical commission must take action within 90 days of the permit application.

ORDINANCE NO. BL2005-866 (DREAD) – This ordinance amends the Metropolitan Code of Laws pertaining to the notice requirements for holders of caterer’s beer permits. In February 2005, the council enacted Ordinance No. BL2005-498, which created a separate beer permit for caterers. This ordinance was modeled after the state law provisions that allow caterers to obtain a caterer’s license for the sale of alcoholic beverages if they maintain a permanent catering hall (i.e., a restaurant). Ordinance No. BL2005-498 allows a holder of a state caterer’s liquor license to obtain a Metro caterer’s beer permit. The ordinance requires caterer’s permit holders to give advanced notice to the beer board of the date, time, and location of each catered event at which beer is to be served. This ordinance clarifies that the notice is to be either written notice by mail or facsimile not later than one business day prior to each event.

ORDINANCE NO. BL2005-867 (TOLER) – This ordinance amends the water/sewer title of the Metropolitan Code of Laws to eliminate the requirement that customers of the department of water and sewerage services sign a written contract to obtain service. The ordinance would also allow customers to cancel service upon oral notice. The code currently provides that after a property owner has installed a water and/or sewer line at the owner's expense, and such line has been approved by the department, the customer must make a written contract with the department in order to obtain service. The code further provides that service is to continue until the customer orders in writing that service be discontinued, or the customer fails to comply with the department's regulations. This ordinance would eliminate the written contract and written notice provisions. Rather, the customer's act of orally requesting service will constitute an acceptance of a contract for service. A copy of the standard terms of service would then be mailed to the customer with their first bill.

ORDINANCE NO. BL2005-868 (SHULMAN, JAMESON & MCCLENDON) – This ordinance, as amended, permits a change in control of MCImetro Access Transmission Services LLC resulting from the plan of merger between MCI, Inc. (MCI), Eli Acquisition LLC (Eli) and Verizon Communications, Inc. (Verizon). In October 1994, the Council approved five ordinances that granted franchises to five different companies to operate telecommunication systems using fiber optic cable. The five franchises were primarily for the purpose of serving hotels, motels, hospitals, and office buildings. One of these franchises was granted to Access Transmission Services (ATS), Inc. MCImetro Access Transmission Services LLC, which is a wholly owned subsidiary of MCI, Inc., is a successor to ATS by change. MCI has reached a merger agreement with Eli and Verizon, which will result in a change of control of MCImetro Access Transmission Services LLC for purposes of the franchise granted by Metro.

The Metropolitan Code of Laws provides that no telecommunications franchise may be transferred without the written permission of the Metropolitan Government by ordinance of the council. According to the ordinance, MCImetro Access Transmission Services has agreed to fulfill all of the obligations of the existing franchise and will be required to submit written documentation evidencing its agreement.

ORDINANCE NO. BL2005-869 (COLE & FORKUM) – This ordinance authorizes the director of public property administration to accept an easement for use as part of the Cumberland River greenway. The easement is being granted by the U.S. Army Corps of Engineers for the purpose of constructing a pedestrian foot bridge crossing the Cumberland River at the Cheatham Lock and Dam.

This ordinance has been approved by the planning commission and the board of parks and recreation.

ORDINANCE NO. BL2005-870 (BRADLEY & TOLER) – This ordinance authorizes the director of public property administration to acquire easements, by negotiation or condemnation, in connection with the extension of Smith Springs Parkway from Paddington Way to Arvington Way. This ordinance would essentially allow the condemnation of an 80-foot wide section of right-of-way consisting of 1.8 total acres for purposes of constructing and maintaining the roadway.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-871 (TOLER & TUCKER) – This ordinance authorizes the mayor to enter into a supplemental utility relocation contract with the state department of transportation (TDOT) in connection with the state route 45 bridge over Whites Creek. The original utility relocation contract for this project, which was entered into in April 2004, was at a cost of \$3,140. This contract supplement increases the amount to be paid by Metro to \$54,734 to cover additional installation expenses for fill soil, a temporary traffic signal system, and an additional water and sewer line relocation. This amount is to be paid from the water and sewer extension and replacement fund.

ORDINANCE NO. BL2005-872 (HAUSSER) – This ordinance closes a portion of Alley No. 912 from 30th Avenue South southwest to a dead end. This closure has been requested by ETI Corporation to allow for curb cut modifications and improvements for the proposed First Tennessee Bank at 3011 West End Avenue. There is no future need for this section of the alley for right-of-way purposes. 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 the traffic and parking commission.

p:billstrd

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **December 20, 2005**

RE: **Supplemental Analysis Report Concerning
Proposed Nashville Sounds Ballpark Stadium**

ORDINANCE NO. BL2005-875 (JAMESON) – This ordinance approves a fifth amendment to the Rutledge Hill redevelopment plan to allow for the construction of a new baseball stadium and mixed-use development at the former location of the downtown thermal transfer plant. This redevelopment plan was approved in 1986 and has been subsequently amended on four different occasions. The last amendment in 1997 added the Rolling Mill Hill property as part of the redevelopment district.

First, this ordinance expands the boundaries of the redevelopment plan to include the former thermal site property. The only way tax incrementing financing can be used to repay the debt on the construction of the stadium is if the property is included as part of a redevelopment plan administered by the Metropolitan development and housing agency. Second, the ordinance adds the use “stadiums or other sports facilities” to the list of permitted uses under the redevelopment plan. Third, the amount of the total permissible tax increment financing is increased from \$15.5 to \$35.5 million. Finally, the expiration date of the plan is extended from December 31, 2020 to December 31, 2040.

ORDINANCE NO. BL2005-878 (JAMESON, FORKUM & OTHERS) – This ordinance declares the thermal site property to be surplus and authorizes the director of public property administration to convey the property to the industrial development board for construction of a new minor league baseball stadium and mixed-use development. As provided in the memorandum of understanding, which is the subject matter of Ordinance No. BL2005-879, the industrial development board will be the entity responsible for the construction of the new stadium.

This ordinance also authorizes the director of public property administration to acquire a railroad spur by negotiation or condemnation, which is necessary in order for the project to proceed. This railroad property is included in a 1946 deed to the Tennessee Central Railway Company. This property is not being used for railroad purposes.

ORDINANCE NO. BL2005-879 (JAMESON, FORKUM & OTHERS) – This ordinance approves a memorandum of understanding (MOU) between the Metropolitan Government, the Nashville Sounds, the industrial development board (IDB), the Metropolitan development and housing agency (MDHA), and Struever Bros. Eccles & Rouse regarding the construction of a new \$43 million minor league baseball stadium on the former thermal site property. The MOU essentially sets forth the agreement reached by the parties for the financing and construction of the ballpark and mixed-use development, and establishes the conditions that must be satisfied in order for the project to be constructed. This ballpark development is to be constructed on a twelve acre site next to the Cumberland River, which consists of the former thermal property owned by Metro and a portion of Rolling Mill Hill owned by MDHA. This project will involve the development of two tracts: the ballpark tract and the mixed-use tract. The stadium itself will be constructed on the ballpark tract. The mixed-use tract will be developed by Struever Bros., and will consist of a mixture of residential and commercial uses. This development is to be completed essentially at the same time as the stadium. It is anticipated that all of the transactions discussed below between Metro, the IDB, the Sounds and Struever Bros. will take place at a single closing once the deal is approved by the Council.

The essential terms of the MOU are as follows:

- The Metropolitan Government will convey the thermal site property to the IDB, who will in turn sell the property to MDHA for \$17 million. This sale price is to be financed by approximately \$20 million in tax increment financing (TIF), which consists of the \$17 million sale price and \$3 million in carrying and financing costs. TIF is a financing mechanism authorized by state law whereby the increased tax revenue generated by a development is used to pay the debt service on the construction of the development, which is typically secured by private financial institutions.
- The Sounds will be responsible for securing private banks to lend the TIF financing. Metro is obligated to convey the property free of any environmental contamination and in construction-ready condition.
- Once MDHA determines that the improvements to the mixed-use tract will provide sufficient incremental tax to support the TIF financing, MDHA will issue non-recourse promissory notes to facilitate the TIF financing.
- MDHA will lease the ballpark to the IDB for 30 years, plus two possible five year extensions. The IDB will in turn lease the ballpark to the Sounds. The IDB will be the entity responsible for the construction of the stadium under the supervision and management of the Sounds. Ownership of the stadium, once it is completed, will remain with the IDB.
- In addition to the TIF financing, Metro agrees to remit to the IDB sales tax rebates to the extent legally available under state law for debt service on the ballpark construction.
- MDHA will sell the mixed-use tract to Struever Bros. for approximately \$3 million, which will also be applied toward the construction costs of the ballpark. The Sounds will be responsible for obtaining private financing of approximately \$23 million, in addition to the \$20 million sale price financed by TIF. If the construction costs exceed \$43 million, the Sounds will be solely responsible for the increase.
- Prior to the conveyances described above, sufficient evidence must be provided to Metro, MDHA, and the IDB that the ballpark construction financing is irrevocably committed. There will be no financial liability on Metro to cover the construction costs of the stadium in the event the Sounds default on the loans. This is a significant

difference between this project and the coliseum, which was constructed using general obligation bonds issued by the Metropolitan Government and backed by tax dollars.

Also incorporated into the MOU are two leases. One lease is for the property the ballpark is to be constructed on (the ballpark ground lease), and the other is for the ballpark itself (the construction management and ballpark lease). The terms of the leases are essentially the same. Some of the notable lease provisions are as follows:

- The Sounds will select the architects, engineers, and construction managers for the construction of the ballpark subject to approval by Metro, MDHA and the IDB. For any construction contract in excess of \$25,000, the Sounds will be required to provide a performance bond. Metro, MDHA, and the IDB will all have a representative involved in overseeing the construction.
- The Sounds will be required to maintain full replacement cost insurance in the amount of \$20 million, plus a \$10 million umbrella policy, to cover any damage to the ballpark both during and after construction. The Sounds and Metro will be named as joint loss payees on the insurance policies. The Sounds agree to indemnify Metro from liability resulting from actions or omissions of the organization or its employees.
- The term of the ballpark lease is for 30 years from the date of completion, with an option to extend for two additional five-year periods. The Sounds will be required to pay to the IDB an annual rent necessary to pay the debt service on the ballpark. The rent for ground lease is a nominal \$100 annually.
- The Sounds will be responsible for paying all utilities and providing security, traffic control and janitorial services.
- The Sounds will have the full responsibility for repair and maintenance to the ballpark to keep it in a "first class condition", which is defined as being in good condition (normal wear and tear expected) and having the same level of improvements as comparable facilities for a period of fifteen years. The council office would point out that this provision seems to indicate that the Sounds will only be required to maintain the facility at a level similar to comparable stadiums for half of the lease term. Metro will have no responsibility for the upkeep of the stadium other than paying \$500,000 per year toward maintenance. Metro currently pays the Sounds \$250,000 per year for maintenance at Greer Stadium. The Sounds will be required to provide an annual schedule showing use of the \$500,000 for the previous year. In addition, the Sounds will be required to provide annual income statements and an independent audit of its finances annually.
- The Sounds will have the exclusive naming rights and broadcast rights for the ballpark and will be entitled to receive all revenues from the ballpark including ticket sales, concessions, advertising, and the sale of naming rights. The Sounds have the right under the lease to sell advertising within the ballpark and to erect interior signs. Metro is entitled to one free full-page color advertisement in each program, one announcement on the scoreboard at each game promoting Nashville, and one announcement on the PA system.
- The Sounds will have the exclusive control over the clubhouse during the baseball season and have the right to use the ballpark for all games and practices. Metro will be entitled to 15 days free use of the ballpark on days that do not conflict with the Sounds' use of the facility. Metro will be responsible for any additional operating expenses resulting from its 15 days of use and will split revenues derived from any Metro use with

the Sounds 50/50. Metro will not be able to use the ballpark the day of, the day before, or the day after a Sounds home game without written consent of the Sounds.

- The Sounds will be required to use the word "Nashville" as part of their name for the duration of the lease. There is no requirement that the word "Sounds" be used. Thus, the team name could be changed in the future.
- If the Sounds lose their baseball franchise, they are still obligated to field a team at the ballpark for the same number of home games at the same or greater level of professional play and league affiliation. Further, the Sounds can assign this lease to another team without the consent of Metro, provided the team is in a same or higher level of professional league, and so long as the assignee agrees to assume all obligations of the Sounds under the MOU and demonstrates it is financially capable of assuming all obligations under the lease and the MOU. If the Sounds assign the lease, they are to be released from all liability.

The council office would stress that there is nothing in the agreements preventing the Sounds from selling the team to another organization as long as the new team agrees to abide by the terms of the agreements. While the Sounds have made representations to the Council that they have no intention of selling or leaving Nashville in the future, having a new state-of-the-art ballpark will certainly enhance the team's value and marketability.

This ordinance also designates the IDB as a "comparable municipal agency" for purposes of allowing the IDB to receive all of the sales tax revenues related to the operation of the new baseball stadium to be applied toward retiring the debt. Pursuant to state law, the sports authority, or a "comparable municipal agency", is authorized to receive all of the state and local sales tax revenue generated by a new minor league baseball stadium constructed by the municipal agency for a period of thirty years. This includes all sales tax revenues generated from ticket sales, concessions, and merchandise. This provision was added by the state legislature to allow these tax revenues to be used to benefit a minor league baseball team only within counties having a metropolitan form of government.

This ordinance provides that amendments to the MOU and any subsequent leases or agreements contemplated by the MOU may be approved resolution by of the Council receiving twenty-one affirmative votes.