

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director  
Metropolitan Council Office

DATE: **August 7, 2007**

RE: **Analysis Report**

Balances As Of:	<u>8/1/07</u>	<u>7/26/06</u>
<u>GSD 4% RESERVE FUND</u>	* \$26,578,984	\$25,620,665
<u>CONTINGENCY ACCOUNT</u>		
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE SCHOOL FUND</u>	Unavailable	Unavailable

\* Assumes estimated revenues in fiscal year 2008 in the amount of \$23,603,821

**-- BILL ON PUBLIC HEARING --**

**ORDINANCE NO. BL2007-1567** (MURRAY, RYMAN & OTHERS) - This ordinance approves the Skyline Development Plan to be administered by the Metropolitan Development and Housing Agency (MDHA). The plan includes the area along Dickerson Pike from the I-24 overpass near Berry Street to the intersection of Dickerson Pike and Douglas Avenue, extending west to the interstate. The area includes 148 total parcels, approximately 40% of which are used for commercial purposes, with more than one-half of the commercial uses related to automobile services. 26% of the properties in the area are currently vacant, and 16% are used for industrial purposes. The purpose of the plan is to provide mechanisms for the redevelopment of the area, including the acquisition and/or demolition of blighted structures and the use of tax increment financing as an incentive for developers.

The plan governs the future redevelopment of property within the area through restrictions on permissible uses and design guidelines for the construction or rehabilitation of buildings. Permitted uses within the plan include multi-family dwellings, churches, schools, daycares, offices, retail establishments, restaurants, cultural facilities, and public facilities. The plan prohibits certain intensive commercial uses such as car washes, automobile sales, automobile repair/services, nightclubs, liquor stores, and adult entertainment establishments. Any property owner wishing to construct a new building or rehabilitate an existing structure would be required to submit a site plan, landscape plan, and a detailed architectural design of the exterior of the structures to MDHA for review by a design review committee. Further, no demolition permit could be issued prior to approval of a plan for re-use by MDHA. Signs would be limited to on-premises signs. No future billboards would be permitted.

MDHA would be required to provide relocation assistance to any individuals or businesses displaced as a result of the implementation of the plan.

The property within the area included within the proposed plan has a current assessed value of \$9 million, which generates property taxes in the amount of \$425,000. The future increase in the value of property to be developed in conjunction with this plan is estimated to exceed \$30 million. In order to encourage the redevelopment of the area, this ordinance authorizes MDHA to use tax increment financing in an amount not to exceed \$5 million. The final maturity date on any debt backed by the tax increment must be on or before December 31, 2037.

This ordinance has been approved by the planning commission.

– RESOLUTIONS –

**RESOLUTION NO. RS2007-2105** (RYMAN) – This resolution approves a grant in the amount of \$12,500 from the National Center for Civic Innovation to the finance department for the government performance reporting trailblazer program. These funds will be used to support publication of performance reporting and for gathering public input on ways to improve government performance reporting. Specifically, the finance department will use the funds to solicit public feedback regarding the performance information to be presented on the Metro website detailing the performance of the various Metro departments. This report is designed to be concise and user-friendly. The finance department will receive public feedback through the website and through neighborhood group meetings.

**RESOLUTION NO. RS2007-2106** (RYMAN & PEPPER) – This resolution approves an annual grant in the amount of \$9,000 from the state commission on children and youth to the juvenile court to improve juvenile court services. These grant funds will be used to provide training to juvenile court youth services officers, who are responsible for receiving and investigating complaints, making recommendations to the judge, and making referrals to other agencies. The term of the grant is from July 1, 2007 through June 30, 2008.

**RESOLUTION NO. RS2007-2107** (RYMAN & PEPPER) – This resolution approves an annual grant in the amount of \$6,250 from the state administrative office of the courts to the state trial courts for the coordination of parenting plans, divorce education, and mediation services. The term of this grant is from July 1, 2007 through June 30, 2008. These funds will be used to provide on-call mediation services for divorce cases involving minors, providing interpreters for non-English speaking divorcing parents, and payment for the costs of guardian ad litem services.

**RESOLUTION NO. RS2007-2108** (RYMAN & PEPPER) – This resolution approves a grant in the amount of \$227,997 from the Community Foundation of Middle Tennessee to the Metropolitan police department to identify, investigate and prosecute criminal street gangs in Nashville. These federal pass-through funds will be used to pay the overtime salaries for the Metro Anti-Gang Unit for 36 months. The grant will provide funding for four additional shifts per month for the gang unit. The term of the grant is from January 1, 2006 through December 31, 2008.

**RESOLUTION NO. RS2007-2109** (GILMORE & RYMAN) – This resolution approves an amendment to a contract between the Metropolitan health department and the United Way of Metropolitan Nashville to arrange for assistance in the planning, development and delivery of services for individuals infected with or affected by HIV/AIDS. Under the terms of this contract, which was approved by the council in June 2007, the United Way will coordinate case management, medical, nursing, dental, diagnostic, rehabilitation, and home health services for persons eligible under the Ryan White Treatment Modernization Act of 2006. In addition, the United Way will provide support services such as transportation services, attendant care, homemaker services, day care, nutrition services, and housing referral services for these persons.

United Way was to be paid \$1,046,965 to perform the services under this contract. This resolution amends the contract to increase the amount United Way is to receive under the contract for its

services to \$3,117,037. This substantial increase in the contract amount is the result of increased federal funding for the program. All of the federal funding must be used for direct HIV services. United Way has the contract to provide these services for the state, so Metro is using United Way as a subcontractor for this year. The health department will be issuing a request for proposals (RFP) to solicit bids for providing these services in the future.

**RESOLUTION NO. RS2007-2110** (GILMORE & RYMAN) – This resolution approves an annual grant in the amount of \$2,191,400 from the state department of health to the Metro health department for operation of the Women, Infants and Children (WIC) program in Nashville to provide nutritious food to low-income women, infants, and children. These federal funds are used to pay the salaries and benefits of the health department employees administering the WIC program. The term of the grant is from October 1, 2007, through September 30, 2008.

**RESOLUTION NO. RS2007-2111** (GILMORE & RYMAN) – This resolution approves an amendment to a grant from the state department of health to the Metropolitan board of health for food safety services. The amendment increases the amount of the grant by \$25,000, for a total grant award of \$79,900. These federal pass-through funds are used to pay the salary of an environmental specialist with experience in restaurant inspections and food safety whose primary responsibility will be to participate in multi-state consortium projects through the center for disease control. The term of the grant is from January 1, 2007 through December 31, 2007.

**RESOLUTION NO. RS2007-2112** (GILMORE & RYMAN) – This resolution approves an annual grant in the amount of \$208,000 from the state department of health to the Metro health department for the commodity supplemental food program. This is a federal program that provides nutritious food to eligible low-income clients who are vulnerable to inadequate nutrition. The majority of these federal funds are used to pay the salaries and benefits of the health department employees in the commodity food program. The term of the grant is from October 1, 2007 through September 30, 2008.

**RESOLUTION NO. RS2007-2113** (GILMORE & RYMAN) – This resolution approves an annual grant in the amount of \$127,296 from the state department of health to the Metropolitan health department for alcohol and drug abuse diagnosis, prevention, rehabilitation, and treatment services. These funds will be used for outpatient, hospitalization, and residential treatment services. The term of the grant is from July 1, 2007 through June 30, 2008.

**RESOLUTION NO. RS2007-2114** (RYMAN & GILMORE) – This resolution approves a contract between the state department of health and the Metropolitan board of health regarding health research studies using data supplied by the state department of health. Pursuant to this contract, the Metro board of health will be permitted to use health-related databases maintained by the state for the purpose of producing investigative reports and developing a programmatic initiative to evaluate the quality of healthcare, assess the effectiveness of policy changes designed to improve

quality of care, identify groups at risk of adverse health outcomes, and quantify effects of medications and other therapeutic interventions. All confidential information that is obtained from the state databases will not be distributed to any third party by Metro. Metro will not be required to pay for the access to the databases.

The term of this contract is from December 1, 2007, through November 30, 2012. A similar contact was approved by the council in 2003 with a term expiring in November 2007.

**RESOLUTION NO. RS2007-2115** (GILMORE & RYMAN) – This resolution approves a second amendment to a grant from the state department of health and human services to the Metro board of health to provide healthcare services to homeless persons at the downtown clinic. This amendment increases the amount of the grant by \$644,560, for a total grant award of \$1,469,103, and extends the term of the grant through October 31, 2008.

**RESOLUTION NO. RS2007-2116** (RYMAN) – This resolution approves an agreement with the City of Belle Meade for the distribution of street and road funds for road repairs by Belle Meade during the 2006-2007 fiscal year. The City of Belle Meade, along with the satellite cities of Oak Hill and Forest Hills, maintain the roads within their corporate limits instead of Metro public works. The cities of Goodlettsville and Berry Hill do not participate in such contracts with Metro because they do not turn over their state tax revenues to Metro. Ordinance No. O87-1935 established a procedure for the distribution of street and road funds to the eligible satellite cities, and provided that these annual contracts are to be ratified by resolution of the Metro Council with 21 affirmative votes.

Pursuant to this agreement, the City of Belle Meade will be paid \$51,000 for maintenance of their roads.

**RESOLUTION NO. RS2007-2117** (LORING, RYMAN & TYGARD) – This resolution amends Resolution No. RS2007-2084 to substitute the map and property description for the Opryland Hotel and Convention Center property designated as a tourist development zone and a secondary tourist development zone. Resolution No. RS2007-2084 was adopted at the last council meeting to designate the property as a tourist development zone to allow for the increased sales tax revenues generated by the Opryland expansion to be used for debt service on the project. A supplemental analysis of the Gaylord Opryland proposal is attached to this analysis.

**RESOLUTION NO. RS2007-2118** (LORING, RYMAN & TYGARD) – This resolution approves an interlocal cooperation agreement between the Metropolitan Government, the industrial development board, and the state to provide a mechanism for the flow of funds for the PILOT payments and the redirected sales and hotel occupancy taxes used to pay a portion of the debt on the expanded Opryland Convention Center and Hotel facility. A supplemental analysis of the Gaylord Opryland proposal is attached to this analysis.

**RESOLUTION NOS. RS2007-2119 & RS2007-2120** – These two resolutions authorize the installation and maintenance of aerial encroachments over the public right-of-way. Ordinance No. O87-1890 allows such aerial encroachments to be approved by resolution of the council rather than ordinance.

**Resolution No. RS2007-2119** (PEPPER & WALLACE) authorizes the Vanderbilt Medical Center to install three signs over the public right-of-way along 21<sup>st</sup> Avenue South and Blakemore Avenue.

Vanderbilt 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.

**Resolution No. RS2007-2120** (WALLACE) authorizes the Metropolitan Transit Authority to install aerial encroachments on the public right-of-way at 400 Charlotte Avenue. The encroachment will consist of two metal awnings and perforated metal screens. MTA is not required to indemnify the Metropolitan Government or provide the standard liability insurance for encroachments since it is a governmental entity.

**– BILLS ON SECOND READING –**

**ORDINANCE NO. BL2005-637** (WALLACE) – This ordinance amends the Metropolitan Code of Laws to permit parking within the central business improvement district (CBID) between the hours of 6:00 p.m. and 6:00 a.m. Thursday evenings through Sunday evenings in places where signs would otherwise prohibit parking. This would essentially allow parking in no standing zones and loading zones.

This ordinance has been disapproved by the traffic and parking commission.

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

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

**ORDINANCE NO. BL2006-1250** (SUMMERS) – This ordinance abandons the right-of-way for Ridgefield Court. This closure has been requested by Ensworth School. Consent of the affected property owners is on file with the department of public works. This ordinance has been approved by the planning commission and the traffic and parking commission.

**ORDINANCE NO. BL2006-1307** (WALLACE) – This ordinance amends the Metropolitan Code to delete the \$200.00 police department impound lot (tow-in lot) storage fee, except for those vehicles that are seized as a result of criminal activity. On June 27, 2006, the council enacted Ordinance No. BL2006-1094 to implement an additional flat \$200.00 storage fee for vehicles stored at the tow-in lot over and above the daily storage charges. This fee was part of an increase in various fees charged by the Metropolitan Government to generate additional revenue needed to balance the operating budget. The fiscal year 2006-2007 operating budget relied on approximately \$23.8 million in “revenue enhancements” in order to balance the budget. The \$200 storage fee is currently not charged for items left less than two hours, or for stolen vehicles that are claimed by the owner within 24 hours. This ordinance would make the \$200 storage fee applicable only to those vehicles that are seized as a result of suspected criminal activity. If this ordinance is adopted, the fee would no longer apply to vehicles towed to the tow-in lot for minor infractions.

The director of finance has refused to certify the availability of funds for this ordinance. Since this tow-in lot storage fee was used to balance the current operating budget, the police department would have to cut services to offset the lost revenue.

**ORDINANCE NO. BL2007-1449** (HUNT) – This zoning text change would require developers electing to use the cluster lot option for subdivisions within a planned unit development (PUD) district to provide recreational facilities for use by the residents. The cluster lot option allows developers to build on smaller lots if at least 15% of the gross land area within the development is designated as

open space. The code does not require that the open spaces be improved with recreational facilities. This ordinance is essentially the same as Ordinance No. BL2007-1365, which would require recreational facilities in cluster lot subdivisions that are not within a PUD. Ordinance No. BL2007-1365 has been deferred indefinitely to allow this ordinance to catch up.

This ordinance would require developers utilizing the cluster lot option within PUD districts to provide active recreational facilities on a portion of the designated open space. The ordinance defines "recreational facilities" to include tennis courts, basketball courts, playgrounds, baseball/softball diamonds, or volleyball courts. For developments that are designed and marketed as retirement or senior citizen housing, "recreational facilities" would also include park benches, gazebos, swings and other similar types of alternative equipment. The recreational facilities required under this ordinance must be located within usable open space areas and would be prohibited from being located in natural areas with slope greater than 15%, floodplain, sinkholes, or areas that would impact cultural resources.

The ordinance includes a sliding scale to determine the number of required recreational facilities. The sliding scale is as follows:

- Residential developments containing fewer than 25 units would be exempt from the requirement to install recreational facilities.
- One recreational facility would be required for developments containing between 25 and 49 total residential units.
- Two recreational facilities would be required for developments containing between 50 and 99 total residential units.
- Three recreational facilities would be required for developments containing between 100 and 149 total residential units.
- Four recreational facilities would be required for developments containing more than 149 residential units, plus an additional recreational facility for every 100 residential units in excess of 150 units.

There is a proposed amendment for this ordinance prepared by the planning department modifying the type and number of recreational facilities that would be required.

This ordinance was disapproved by the planning commission.

**ORDINANCE NO. BL2007-1451** (SUMMERS, ISABEL & HUNT) – This ordinance, as amended, amends the Metro Code to require nonprofit organizations receiving funding from the Metropolitan Government to make their board meetings open to the public whenever the board is deliberating the expenditure of Metro funds. Nonprofit organizations are currently required by federal law to make their Form 990 tax returns available for public inspection. However, there is no requirement that board meetings be open.

This ordinance would require every nonprofit organization receiving funding through the general fund or the hotel/motel occupancy tax to make all meetings of their board of directors open to the public whenever the allocation or expenditure of Metro funds is being deliberated by the board. Failure to abide by these requirements would result in a forfeiture of the funds provided by Metro to the organization during the current fiscal year.

The council office would point out that in addition to grants made to nonprofit organizations, Metro has a number of contracts with nonprofit organizations to provide services for the government. This ordinance could impact the willingness of these organizations to enter into future contracts with the Metropolitan Government.



**ORDINANCE NO. BL2007-1452** (DREAD) – This ordinance would prohibit the “booting” of vehicles within the area of the Metropolitan Government. Certain wrecker companies operating within the Nashville area have agreements with businesses to place a disabling device on vehicles parked on their private property without authorization or without paying the required parking fee. The code does not expressly prohibit this activity.

This ordinance would prohibit anyone other than the vehicle owner, lien holder or police officer from placing a boot on a vehicle within the area of the Metropolitan Government. The ordinance defines “booting” as the attachment of any device to a vehicle that prohibits the vehicle from being driven. This ordinance was recommended by the director of the transportation licensing commission.

There is a substitute for this ordinance that would allow property owners/lessees to authorize booting on their property, but this authority could not be delegated to a third party. Further, there would be a 24 hour waiting period before a vehicle to which a booting device has been applied could be towed.

**SUBSTITUTE ORDINANCE NO. BL2007-1453** (DREAD) – This substitute ordinance amends the beer permit provisions in the Metro Code to allow restaurants holding a state liquor license to be exempt from the minimum distance requirements for obtaining a beer permit upon the adoption of a resolution by the council receiving 21 affirmative votes. 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.

Unlike the original version of this ordinance, the substitute only applies to restaurants with a valid state liquor license. Further, a public hearing before the council public safety – beer and regulated beverages committee would be required before the resolution could be considered. Another important distinction between this substitute and the original version of the bill is that any permit received pursuant to a resolution exempting the restaurant from the minimum distance requirements would not be transferable to another applicant. Thus, if the applicant sold the business or the property to another owner, the new owner would have to obtain another exemption from the council.

The council has considered legislation to exempt certain establishments from the minimum distance requirements on several occasions, but the legislation has never been approved by the council. The council making individual exemptions to applicants could give rise to equal protection issues under the U.S. Constitution.

**ORDINANCE NO. BL2007-1455** (SHULMAN) – This ordinance, as amended, establishes a transportation “working group” whose responsibility will be to determine the needs of Nashville as it relates to mass transit. This working group is to be created by the vice mayor with the assistance of members of council. The group is to consist of representatives from Metro transit agencies, members of council, and representatives from groups interested in mass transit. The working group will be charged with assessing the following:

- Current mass transit programs in Nashville
- Studies that have been completed regarding the mass transit needs in Nashville
- Staffing responsibilities and budgetary needs for mass transit
- Public funding requirements and potential sources of funding for mass transit
- Mass transit programs in other cities of a comparable size to Nashville

The working group is to make its recommendation to the mayor and the council not later than January 31, 2008.

**ORDINANCE NO. BL2007-1545** (WALLACE) – This ordinance amends the Metropolitan Code to require Metro employees driving Metro-owned vehicles to be CPR certified. These Metro employees would have 180 days from the enactment of this ordinance to obtain the required CPR certification. The department of general services, with the assistance of the health department, would be required to provide the CPR training classes to the employees. The ordinance would not apply to employees that are unable to perform CPR due to a medical condition.

The director of finance has refused to certify that funds are available for this ordinance. According to the finance director's letter, the cost of providing the training would be \$330,000, plus an additional \$339,356 in employee time. A copy of the letter is attached to this analysis.

**ORDINANCE NO. BL2006-1549** (WALLACE) – This ordinance establishes a procedure for the delivery of legislation adopted by the council to the mayor's office. The Metropolitan clerk is responsible for all legislation that is filed for consideration by the council. Once legislation is approved by the council, it is delivered by the clerk to the mayor for his consideration in accordance with the Charter. The Charter provides that the mayor typically has 10 days in which to approve or veto legislation before it becomes effective without his signature. However, if less than 10 days remain between the date the legislation is delivered and the next regular council meeting, then the mayor essentially has another two weeks in which to make a decision regarding the legislation. The Charter does not include a procedure for the delivery of legislation to the mayor. The council will recall that this was an issue regarding the timing of the mayor's veto of the newsrack legislation.

This ordinance would require the clerk to deliver legislation adopted by the council to the mayor not later than the next business day, regardless of whether the mayor is out of the city or is otherwise unable to review the legislation at the time it is delivered.

The council office would point out that the clerk would be in violation of this ordinance anytime the council suspends its rules to consider late items or amendments offered from the floor that have not been prepared prior to the council meeting. For example, the council recently suspended its rules to approve a resolution modifying a council discretionary fund appropriation to MDHA. This resolution was not prepared until the day after the council meeting, and was not signed by the sponsor until two days after the meeting.

**SUBSTITUTE ORDINANCE NO. BL2007-1552** (WALLACE) – This substitute ordinance amends the Metro Code to establish a comprehensive commercial nondiscrimination program. This ordinance is essentially identical to a program utilized by the Memphis City Schools. The objective of the program is to promote open competition in Metro's procurement process and to protect Metro from "becoming a passive participant in any unlawful discrimination." This objective is accomplished

through the designation of local small business enterprises (LSBEs), which include local businesses that maintain a limited amount of gross annual revenues and/or total number of employees.

LSBEs seeking to participate in the program must submit a notarized form to the purchasing agent's division of minority and small business assistance (DMSBA), which is a part of the finance department. Contractors seeking to do business with Metro would be required to submit several documents before they will be allowed to submit proposals. First, contractors would be required to submit a promise of nondiscrimination stating that they (1) agree to adopt Metro's equal opportunity in contracting policies; (2) will attempt certain good faith efforts to solicit LSBE participation; and (3) will not engage in discriminatory conduct. Failure of a contractor to fulfill these promises will constitute a material breach of contract, which may result in cancellation of the contract, suspension, and/or debarment. Second, contractors would be required to submit a statement of successful subcontractors and a statement of interested subcontractors/vendors. Third, the contractor would be required to submit a statement of bid proposals/price quotations giving the potential subcontractor's name race, gender, national origin, business size and price quotation.

To demonstrate good faith efforts, contractors would be required to deliver written notice of the proposal to at least three LSBEs. The DMSBA is to maintain a list of qualified LSBEs that contractors can utilize. Contractors will also be required to divide the contract into small, economically feasible segments that could be performed by a LSBE. If a LSBE is rejected, the contractor must submit a written explanation for the rejection to the DMSBA. Contractors will be required to keep detailed records of all correspondence regarding the project for at least five years.

The DMSBA will be responsible for verifying the certification of LSBEs, maintaining an up-to-date database of LSBEs, monitoring utilization of LSBE participation in Metro procurement contracts, and investigating written complaints. The DMSBA will be required to submit an annual report to the council outlining a summary of the purchases and contracts placed with the LSBEs and the relative percentage of the total purchases and contracts for that period.

This ordinance provides that in the event the semiannual review by the DMSBA shows an underutilization of LSBEs, the DMSBA may implement "goals" for selected contracts, which would be race conscious measures to increase minority business participation. This would allow the inclusion of LSBEs as an additional factor in the evaluation of proposals. If goals are established, then all contractors would be required to use good faith efforts to achieve the goals. Progress toward the goals would be based on the percentage of the dollar amount of the work performed by the LSBE.

This ordinance also provides for a prompt payment program and a mobilization fee to assist LSBEs. The prompt payment program would require all Metro contractors to pay their subcontractors a minimum of their pro rata share of progress payments made by Metro to the prime contractor. Any payments not made in accordance with this prompt payment program will accrue interest at the rate of 10% per year, or at the rate provided in the written contract. The purchasing agent may also implement a mobilization fee on an individual basis to assist LSBEs in financing. If prime contractors are required to pay this fee, they would be given credit for the mobilization fee on the final pay application. The awarding of an up-front mobilization fee would be considered payment for services and would be deducted from the final payment of the contract.

The council office would point out that the U.S. Supreme Court in recent years has limited the ability of local governments to implement race-based measures to increase minority participation in the procurement process. The Fourteenth Amendment Equal Protection clause has been interpreted by the U.S. Supreme Court to require that cities have a compelling governmental interest in order to legislate on the basis of racial classifications. Such legislation and/or policies are analyzed by the

courts using a strict scrutiny standard of review. In order to survive strict scrutiny, the government must submit evidence identifying specific instances of discrimination. A generalized assertion of past discrimination is inadequate.

The director of finance has refused to certify that funds are available for this ordinance. According to the finance director's letter, this ordinance would require additional funding of at least \$250,000 to implement, plus the addition of two full-time positions in the DMSBA. A copy of the letter is attached to this analysis.

Metro's disparity study consultant, Griffin & Strong, has drafted a similar commercial nondiscrimination ordinance which has yet to be reviewed by the procurement standards board.

**ORDINANCE NO. BL2007-1558** (RYMAN, WHITE & OTHERS) – This ordinance approves a new contract between the Metro traffic and parking commission and the Nashville Downtown Partnership for management of Metro's parking facilities. In October 2002, the council approved a similar contract with the Downtown Partnership for operation of the parking facilities through June 30, 2005, with a possible two-year extension. This contract was extended in 2005 for two years. Upon expiring June 30, 2007, the traffic and parking commission approved an additional 90-day temporary extension.

Pursuant to this contract, the Downtown Partnership will operate the Church Street garage located behind the downtown public library and the Public Square garage located next to the courthouse. The Downtown Partnership will be paid a fixed monthly management fee in the amount of \$5,250 for the Church Street garage and \$3,750 for the public square garage. Metro will receive 16% of all the revenues generated from the Church Street garage. The Downtown Partnership guarantees that the minimum payment to Metro generated by the Church Street garage will not be less than the 2006 payment of \$301,200. Although this payment is considerably less than the 2002 contract, however, the previous contract provided for the operation of five parking facilities, whereas the new contract is only for two garages. Metro will receive all of the net operating revenue for the Public Square garage since these funds are pledged toward debt service.

Any surplus revenue generated would be equally divided between the Metropolitan Government and the Downtown Partnership. The surplus revenue is defined as the gross profit of the Church Street garage less the payment to Metro, the Partnership management fee, and the expenses incurred by the Partnership for operating the shuttle program transporting workers from the parking lots surrounding LP Field, including the lots used by Metro employees.

Payments and financial reports must be submitted to Metro on a monthly basis. In addition, an annual financial audit must be delivered to the traffic and parking commission within 60 days of the end of the reporting year. The rates to be charged and hours of operation for the parking facilities will be set by the traffic and parking commission. The Downtown Partnership will annually review parking rates in the downtown area and make recommendations to the commission regarding adjustments. Ordinary expenses for the operation and maintenance of the garages will be paid by the Downtown Partnership from the parking facility revenues. The Partnership agrees to indemnify Metro for any claims arising out of their performance of the contract and will be required to maintain workers' compensation, garage public liability and property damage, and garage keepers legal liability insurance.

The term of this lease is from the effective date through June 30, 2010, with a possible two-year extension. The extension of the contract would not require council approval. The council amended the ordinance in 2002 to require council approval of any extension.

**ORDINANCE NO. BL2007-1559** (GILMORE, BROWN & OTHERS) – This ordinance approves amendments to agreements with the state department of environment and conservation (TDEC) regarding the maintenance of closed solid waste facilities. State law requires that all owners of closed landfills either put up a performance bond or execute a contract agreeing to pay a penalty if the site is not adequately maintained. The Metro Government has entered into contracts with TDEC in lieu of a performance bond as assurance of financial responsibility for our solid waste facility maintenance duties. The ordinance provides that the overall required financial assurance levels have increased as a result of inflation, and it is necessary that the agreements be modified to reflect the adjusted levels. The modifications to financial assurance for the various closed facilities are as follows:

- Metro compositing/mulching facility – increase from \$78,586 to \$87,276
- Bordeaux sanitary landfill – increase from \$1,064,789 to \$2,615,327
- Thermal ash landfill – decrease from \$464,702 to \$408,527
- Thermal ash landfill ext – increase from \$1,130,082 to \$1,254,912
- Due West Superfund site – decrease from \$2,091,024 to \$2,034,512

These amounts would only be paid if Metro failed to adequately maintain the sites. Future amendments to this ordinance may be approved by resolution of the council.

**ORDINANCE NO. BL2007-1560** (RYMAN, BROWN & EVANS) – This ordinance approves an agreement and an addendum to the contract between the state department of transportation (TDOT), the City of Belle Meade, and the Metropolitan Government for repairs to a bridge on Hillwood Boulevard over Richland Creek. The project will be managed by TDOT, but Metro and Belle Meade will be responsible for right-of-way and/or easement acquisition and certain utility relocations. The total project cost is estimated to be \$1,499,000. The contract provides that 80% of the project cost will be covered by federal bridge rehabilitation funds. Metro and Belle Meade would be responsible for any amount in excess of the federal participating costs, with Metro paying 80% of this local portion and Belle Meade paying 20%.

The addendum to the contract provides that if the contract amount exceeds the estimated construction cost, Metro or Belle Meade can cancel the contract upon notification to TDOT.

Amendments to this ordinance may be approved by resolution of the council.

**ORDINANCE NO. BL2007-1561** (RYMAN) – This ordinance transfers a telecommunications franchise granted to Xspedius Management Company of Chattanooga, LLC, to Time Warner Telecom of the Mid-South, LLC. 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 ICG Access Services, Inc. In 2005, the council approved the transfer of the franchise from ICG to Xspedius Communications. On June 4, 2007, Time Warner notified Metro of its intent to acquire the communications network covered by the Xspedius

Communications franchise. In order for Time Warner to take over the Nashville operations, it is necessary that the franchise be transferred from Xspedius to Time Warner Telecom.

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. Time Warner has agreed to fulfill all of the obligations of the existing franchise and the name on the franchise surety bond has been changed to Time Warner. This ordinance will have no financial impact on the Metropolitan Government.

**ORDINANCE NO. BL2007-1562** (JAMESON, RYMAN & DOZIER) – This ordinance authorizes the transfer of the thermal site property to the Metropolitan development and housing agency (MDHA) for redevelopment as a public amphitheater or public facility with associated green space, and mixed-use commercial and residential development. This ordinance is very similar to Ordinance No. BL2007-1459, which was withdrawn at the July 17 council meeting. The primary difference is that this ordinance is not limited to an amphitheater, but would allow any type of public use facility. Further, the council would have to assent to the project before any contracts could be executed for development of the property.

In February 2006, the council enacted BL2005-878, which approved 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 and mixed-use development on the former thermal site property. As provided in the MOU, the IDB was to be the entity that actually owned the stadium.

This ordinance would transfer the thermal property to MDHA for the construction of an amphitheater or other public facility in place of the ballpark. The prior ordinance authorizing the transfer of the property to the IDB was repealed by Ordinance No. BL2007-1433. Pursuant to this ordinance, the property would be transferred to MDHA conditioned upon the following:

- The property must be developed as an amphitheater or a public facility with associated green space and mixed-use commercial and residential development within four years from the date of transfer. If the project is not completed within four years, ownership of the property will revert to the Metropolitan Government.
- The property must be used as an amphitheater or public facility for at least 40 years. If at any time during the 40 years the property ceases to be used as an amphitheater or public facility, the property will revert to the Metropolitan Government.
- All requests for proposal issued by MDHA must allocate additional "points" or consideration to proposals that pursue LEED certification.
- MDHA cannot enter into any contracts for development of the property until the proposal has been approved by the council by ordinance. If the council fails to take action within 60 days from the date the proposal is submitted to the council, MDHA may proceed with development of the property.

Future amendments to this ordinance may be approved by resolution of the council.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2007-1563** (WALLACE, COLEMAN & RYMAN) – This ordinance authorizes the Metropolitan development and housing agency (MDHA) to acquire five parcels of property located at 16<sup>th</sup> Avenue North and Jo Johnston Street by negotiation or condemnation. MDHA has identified additional property in the vicinity of Martin Luther King, Jr. Magnet School necessary for the completion of the John Henry Hale redevelopment project. The public purpose for this acquisition using MDHA funds is to construct a social service center on the property. MDHA already owns several parcels of property on this block. Statistical reports from the police department show significant criminal activity taking place on and in the vicinity of the property to be acquired over the past year.

**ORDINANCE NO. BL2007-1564** (TOLER, BROWN & RYMAN) – This ordinance authorizes the director of public property administration to acquire eight parcels of property for the Cedarmont Drive bridge replacement and channel widening project. The funds to defray the cost for the property acquisition are available from the 2004 capital spending plan. The properties to be acquired are as follows:

- 320 Cedarmont Drive
- 324 Cedarmont Drive
- 328 Cedarmont Drive
- 400 Cedarvalley Drive
- 401 Cedarvalley Drive
- 404 Cedarvalley Drive
- 501 Cedar Drive
- 505 Cedar Drive

Amendments to this ordinance may be approved by resolution of the council. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2007-1566** (JAMESON) – This ordinance abandons a portion of the South 5<sup>th</sup> Street right-of-way from Woodland Street northwestward to a dead end. This closure has been requested by Ragan Smith Associates. The application states that the reason for the closure is that section of roadway is a nuisance to the neighborhood and that all of the adjoining properties have frontage on Woodland Street. Consent of the affected property owners is on file with the department of public works. The Metropolitan Government will retain all easements.

This ordinance has been approved by the planning commission.

**– BILLS ON THIRD READING –**

**SUBSTITUTE ORDINANCE NO. BL2005-761** (SUMMERS & JAMESON) – 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.

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 substitute also creates a new two-family structure overlay district that would allow property owners and developers to obtain council approval to build duplexes when they otherwise would not be allowed by the two-family structure provisions in this ordinance.

There is a proposed second substitute for this ordinance addressing concerns raised by the council office, as well as concerns expressed by some members of council. The council office is concerned that the current bill pending with the council allows the executive director of the planning commission great latitude in approving or disapproving certain duplexes. Further, the pending ordinance would allow appeals of the planning director’s decision to the planning commission. To remedy these concerns, the second substitute provides that the planning director is to make a recommendation to the zoning administrator regarding whether the proposed duplex conforms to the comparable structures. Appeals of the zoning administrator’s decision on whether to allow the duplex would be



made to the board of zoning appeals. Finally, the second substitute removes the ability to build two separate single-family homes on one lot without going through the subdivision process.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2006-1285** (WILLIAMS) – This zoning text change creates a new land use called “passive park”, and provides a definition for passive parks. The zoning code currently defines “park” as being one of the three following uses:

1. An area open to the public for recreational uses;
2. An area predominantly kept in a natural state; or
3. Governmental property specifically designated as a park, natural area or recreation area, provided that greenways are not to be considered parks under the zoning code.

This ordinance defines “passive” park as an outdoor facility open to the public for any passive recreational activity such as pedestrian activities, hiking and jogging, or that serves as a historical, cultural or archeological attraction. Passive parks would have to be maintained in a natural state.

Further, organized team sports would be prohibited in passive parks. Passive parks would be permitted as a special exception use in all residential districts, requiring approval by the board of zoning appeals, but would be permitted by right in all other zoning districts.

This ordinance would also add certain conditions that passive parks would have to meet in order to be eligible for a special exception. First, the driveway access would have to be from a collector street unless a traffic study indicates that traffic can be safely and efficiently accommodated by the existing local street network without negatively impacting the surrounding neighborhood. Second, a landscape plan would be required to be submitted along with a recommendation from the urban forester. Third, only the least amount of lighting necessary to ensure the safety of visitors would be permitted. Finally, approval of a passive park would be contingent upon the park owner’s commitment to maintain the property in a safe, clean and functional manner.

The planning commission recommended disapproval of this ordinance.

There is a proposed amendment removing Metro parks from the ordinance.

**SUBSTITUTE ORDINANCE NO. BL2007-1389** (GILMORE & MURRAY) – This substitute ordinance amends the Metro Code to require the health department to notify the public upon the spraying of airborne pesticides. Specifically, this ordinance would require the health department to take the following actions in the event it is determined that pesticide spraying is necessary:

1. Post signs informing neighborhood residents that the department of health will be spraying airborne pesticides not less than forty-eight (48) hours prior to spraying pesticides in the area.
2. Provide residents notice of spraying by an automated telephone message, or upon request, provide written notice by email informing them when airborne pesticides will be sprayed in their neighborhood.
3. Provide a 150-foot buffer zone around property that is on the “no-spray list”. Airborne pesticides are not to be sprayed within 48 hours of any air quality alert.

The health department would be exempt from any of the requirements in this ordinance if the director of health determines that a documented threat to public health exists.

The health department currently honors requests from individual homeowners that do not wish to have their property sprayed for mosquitoes. Individuals can contact the health department by phone or email to request that they be placed on the no-spray list.

The director of finance has refused to certify that funds are available to implement this ordinance. According to the finance director's letter, this ordinance would cost at least \$35,300 annually to administer. A copy of the finance director's letter is attached to this analysis.

**ORDINANCE NO. BL2007-1468** (BROWN) – This ordinance authorizes the acquisition of an easement for property located at 6713 Quiet Lane in Williamson County to allow for the completion of a project by the department of water and sewerage services. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2007-1543** (GOTTO) – This zoning text change modifies the code provisions governing the rebuilding of nonconforming structures. Whenever the council changes the base zoning of a property so that the existing use is no longer consistent with the uses permitted in the new zoning district, the property is considered a "nonconforming use." The code currently allows the owner of a duplex in an RS district that is damaged or destroyed, either intentionally or by accident, to rebuild the structure as long as a building permit is obtained within one year. This ordinance increases this time limit to five years.

This ordinance also removes a provision in the zoning code prohibiting a change in use when rebuilding a nonconforming structure. Since another section in the code more specifically regulates changes in use for a nonconforming structure, there is no need for this existing provision. Finally, this ordinance removes a provision in the code prohibiting the floor area ratio (FAR) for any altered nonconforming use from exceeding the FAR permitted by the current zoning district.

The planning commission approved this ordinance with a condition that the provision pertaining to the FAR for altered nonconforming uses be reinstated.

There is an amendment addressing the planning commission's concern, as well as decreasing the amount of time in which a nonconforming duplex could be rebuilt to two years.

**ORDINANCE NO. BL2007-1546** (DREAD, JAMESON & DOZIER) – This ordinance amends the Metropolitan Code of Laws to require after hours clubs to obtain a permit from the department of codes administration. According to documentation prepared by the police department, after hours clubs have had a high number of calls for police assistance, and numerous shootings have taken place outside some of the establishments. After hours clubs are currently not regulated by any Metro agency unless they serve beer or are considered sexually oriented businesses. Therefore, it is difficult for police and other Metro agencies to make sure these clubs are being operated in a safe manner.

This ordinance would require owners and operators of after hours establishments to obtain a permit from the department of codes administration. The ordinance defines "after hours establishments" as commercial establishments open to the public after 3:00 a.m. that allow customers to bring alcoholic beverages onto the premises, or nightclubs marketed to teenagers and open to persons under the age of 18 without the presence of a parent or legal guardian. Applicants would be required to pay a one-time permit application fee of \$250 plus the cost for providing background checks. The application must provide 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. There would be a \$100 renewal fee for the permit.

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 ten years of a crime of moral turpitude or if the establishment has had a beer permit revoked within the past five years. In addition, it would be unlawful for an after hours establishment to allow any indecent or violent act to occur on the premises, to allow persons under the age of eighteen to loiter about the premises when alcoholic beverages are being consumed, or to allow anyone under the age of 21 to consume alcohol on the premises. Failure by a permit holder to abide by this provision would make the permit holder strictly liable for property damage or injury caused by anyone under the age of twenty-one that was consuming alcohol on the premises.

After hours establishments would also be responsible for providing an adequate number of security guards to patrol the premises, including parking facilities used by the establishment. In addition, the establishment would be required to submit a security plan to the police department at the time the application is filed, which plan is to be monitored by the police department on an ongoing basis. If the police department determines that the security plan is no longer sufficient, a new plan must be submitted within seven days or the permit is to be revoked. Further, the ordinance provides that the police department is to regularly enter these establishments to ensure they are complying with the requirements of the ordinance. The ordinance also includes a detailed appeals process in the event a permit is denied or revoked.

This ordinance is similar to Ordinance No. BL2007-1016, which was deferred indefinitely in June 2006, that would have placed the regulatory authority for after hours clubs with the beer board.

**ORDINANCE NO. BL2007-1547** (DREAD) – This ordinance makes some minor revisions to the taxicab provisions in the Metro Code, which were requested by the transportation licensing commission. First, the ordinance clarifies the purpose and intent of the code provisions pertaining to towing firms located outside Davidson County that occasionally deliver vehicles within the county. The code currently exempts such towing firms occasionally doing business unless they both pick up and deliver vehicles within Davidson County. This ordinance would clarify that the code provisions governing the licensing of tow trucks would not apply to firms occasionally doing business within the area of the Metropolitan Government unless they pick up or deliver vehicles in the county more than five times in a month. Second, the ordinance clarifies that the transportation licensing commission has the authority to suspend or revoke a firm's license to perform nonconsent tows if they have been found to be in violation of the requirements of the code.

**ORDINANCE NO. BL2006-1548** (HODGE & FOSTER) – This ordinance abandons an unnumbered alley from Alice Avenue southward to the dead end. This section of alleyway runs parallel to Nolensville Road at the intersection of Alice Avenue, southward to the dead end. This closure has been requested by Inglesia Latino Americano Unida, which is the church that owns one of the adjacent properties. The Metropolitan Government will retain all easements. Consent of the affected property owners are on file with the department of public works. This ordinance has been approved by the planning commission and the traffic and parking commission.

**ORDINANCE NO. BL2007-1550** (PEPPER, GOTTO & OTHERS) – This ordinance authorizes a rental inspection program in accordance with state law, and designates certain areas within Davidson County as rental inspection districts. In 2006, the Tennessee General Assembly enacted enabling legislation for a local rental inspection program. The state law authorizes local legislative bodies to adopt a residential rental dwelling inspection ordinance to address properties within designated areas that are deteriorated or in the process of deteriorating. The purpose of the ordinance is to prevent further deterioration of these properties and to protect the health, safety and welfare of the inhabitants.

This ordinance authorizes the codes department to inspect residential rental units within the rental inspection districts that are deteriorated or in the process of deteriorating. The ordinance defines “deteriorated” as any structure that (1) because of physical condition, use or occupancy, is a public nuisance or an attractive nuisance; (2) is a fire hazard or otherwise is unsafe; (3) has had the utilities removed or disconnected so that the property is unfit for human habitation; or (4) because of neglect or lack of maintenance, has become a place for the accumulation of trash or a haven for rodents. The rental inspection districts established by the ordinance are to remain in effect for 10 years, but may be extended by the council. The director of the department of codes administration is to make reasonable efforts to notify rental property owners within the districts of the enactment of this ordinance and that they are required to notify the codes department if they are maintaining a dwelling unit used for rental purposes. There is to be no penalty for the failure to register unless the codes department has given the property owner actual or written notice to do so. There is no registration fee or inspection fee that will be charged to property owners for implementation of this ordinance.

The ordinance authorizes the codes department to inspect any property they deem to be deteriorating to ensure that the dwelling units are in compliance with applicable housing, building, plumbing, electrical, fire and health codes. The codes department can require follow-up inspections as necessary. The ordinance, as well as the state enabling legislation, provides that the codes inspectors may only enter the property with the consent of the occupants or with a valid search warrant. If, after inspection, the property is found to be in compliance with the applicable codes, the property owner gets a four-year exemption from future inspections. However, this exemption can be revoked if the property becomes in violation of the applicable codes.

This ordinance establishes the following areas as rental inspection districts:

- a. Urbandale - Nations
- b. Sylvan Heights
- c. Hadley Washington - Meharry
- d. North Nashville - Buena Vista - Metrocenter
- e. Napier - Trimble - Wedgewood / Houston
- f. Airport - Murfreesboro Pike
- g. Edgefield - Shelby Hills
- h. Cleveland Park - McFerrin Park
- g. Greenwood – Eastwood
- h. Vanderbilt – 21st
- i. Hermitage
- j. South Madison
- k. Madison Park
- l. Edenwold

The ordinance provides that the codes director may schedule a phased implementation of this ordinance for the above districts over a three year period.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2006-1551** (ISABEL & TOLER) – This ordinance declares Metropolitan Government-owned property located in the 2<sup>nd</sup> council district 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 proceeds of the sales will be credited to the general fund. This ordinance has been approved by the planning commission. This ordinance approves the disposition of the following properties:

<b><u>Map/Parcel No.</u></b>	<b><u>Address/Location</u></b>
060-09-0 009.0	Old Matthews Road
070-04-0 157.00	Hobart Street
070-04-0 158.00	Hobart Street
070-04-0 159.00	Hobart Street
070-04-0 161.00	Hobart Street
070-08-0 017.00	Lincoln Street
070-08-0 033.00	Hobart Street
070-08-0 040.00	McKinley Street
070-08-0 051.00	McKinley Street
070-08-0 052.00	McKinley Street
070-08-0 067.00	McKinley Street
070-08-0 081.00	McKinley Street
070-08-0 082.00	McKinley Street
070-08-0 083.00	McKinley Street
070-08-0 093.00	Free Silver Road
070-08-0 149.00	West Trinity Lane
059-05-0 011.00	Vistaview Drive
059-16-0 215.00	Old Matthews Road
071-09-0 113.00	Cross Street
071-09-0 114.00	Cross Street
071-09-0 115.00	Cross Street

**ORDINANCE NO. BL2007-1553** (WALLACE) – This ordinance abandons the right-of-way for Alley No. 106 from 8<sup>th</sup> Avenue North to Alley No. 113, and Alley No. 113 from Church Street to Commerce Street. This closure has been requested by the U.S. General Services Administration to allow for construction of a new U.S. Courthouse. Consent of the affected property owners is on file with the department of public works. All easements will be retained by the Metropolitan Government. This ordinance has been approved by the planning commission and the traffic and parking commission.

**ORDINANCE NO. BL2007-1554** (WALLACE) – This ordinance abandons portions of right-of-way for Coffee Street from Alley No. 519 northeastward to the dead end, Nassau Street from Coffee Street to I-65, and Alley No. 516 from Coffee Street to I-65. These closures have been requested by the St. Cecilia Congregation, the abutting property owner. All easements are being retained by Metro

Government. Consent of the affected property owners is on file with the department of public works. This ordinance has been approved by the planning commission and the traffic and parking commission.

**ORDINANCE NOS. BL2007-1555 & BL2007-1556** (LORING, TYGARD & RYMAN) – These two ordinances approve a funding mechanism for the financing of an \$80 million portion of the proposed expansion of the Gaylord Opryland hotel and convention center. These ordinances, along with two resolutions, make up the total legislative package for this project. A separate analysis of the Gaylord proposal is included with this analysis.

**ORDINANCE NO. BL2007-1557** (JAMESON & TYGARD) – This ordinance, as amended, authorizes the collection of four tourist accommodation taxes to create a funding mechanism for the construction of a new downtown convention center. This legislation essentially incorporates the provisions of the state enabling legislation for these four taxes into the Metro Code. The new taxes that would be collected under this ordinance are as follows:

**1% increase in hotel/motel tax**

This ordinance would increase the hotel/motel tax by one percent to be used to finance the construction of a convention center. The current hotel/motel tax is five percent of the room rate charged by the hotel or motel. One cent of the tax is already dedicated for the construction, operation and financing of a convention center. This ordinance would increase the total tax to six percent, with two cents being designated specifically for the construction of a convention center. An additional cent would be for tourist-related activities, which may include funding a convention center.

**Additional hotel occupancy privilege tax**

This ordinance would add a new \$2.00 tax upon the occupancy of each hotel room within the area of the Metropolitan Government. This tax could only be used for the purpose of paying construction costs of a new publicly-owned convention center with a cost in excess of \$400 million. Revenues from this tax could also be used for the operation, promotion, management and marketing of a new convention center. This tax would terminate once the outstanding debt on the convention center has been retired.

**Tax on vehicles leaving the airport**

This ordinance would add a new \$2.00 tax on the privilege of contracted vehicles exiting the Nashville airport. This would include taxis, limos, and shuttle vans. The operator of the contracted vehicle would be responsible for keeping accurate records to determine the amount of the tax due. Failure to pay this tax would be a Class C misdemeanor under state law. Persons owing delinquent taxes would be liable for interest in the amount of 8% per year, plus an additional penalty of 1% per month, as provided in the state enabling legislation. As with the additional hotel occupancy tax, this tax could only be used for the purpose of paying construction costs of a new publicly-owned convention center with a cost in excess of \$400 million, and would terminate once the convention center debt is paid off.

**Tax on rental cars**

This ordinance would add a tax of one percent of the gross proceeds derived from the lease or rental of any passenger vehicle, truck or trailer for a period of five days or less. This tax would not apply to any automobile rented as a replacement vehicle when the renter's vehicle is being repaired, nor would it apply to car dealers. This tax could only be used for the purpose of paying construction costs of a new publicly-owned convention center with a cost in excess of \$400 million, and would terminate once the convention center debt is paid off.

The council office would point out that although this legislation does not approve the construction of a new convention center, the revenues derived from three of these new taxes could only be used for the construction of a convention center with a construction cost in excess of \$400 million. Thus, the next council would likely feel pressure to approve the new convention center since the taxes are already being collected and cannot be used to fund other governmental needs.

This ordinance also would require contractors building a new convention center to pay their employees the prevailing wage rate that state contractors are required to pay. Further, Metro would be required to actively solicit minority-owned businesses for participation in the construction of a new convention center. At the time the state enabling legislation for the convention center funding was enacted, a provision was added requiring entities soliciting bids for the construction of a convention center using public financing to actively solicit bids from minority owned businesses. Such entities building a convention center using public funds must strive to maximize the participation of minority owned businesses through both prime and second tier business contracting opportunities. Metro will be required to monitor the results of minority owned business participation and submit a quarterly report to the state comptroller.

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director  
Metropolitan Council Office

DATE: **August 7, 2007**

RE: **Analysis Report:  
Gaylord Opryland Proposal**

Gaylord is proposing to construct a \$400 million expansion to its existing Opryland Hotel and Convention Center facilities. This addition will add 400,000 square feet of convention space and a new 400-room hotel. Gaylord estimates that this expansion project will attract an additional 400,000 tourists per year, will create 1,300 new jobs, and will bring \$34.6 million in additional state and local tax revenue. Gaylord is seeking Metro's assistance in securing \$80 million of the construction price as an incentive for constructing the project in Nashville. Gaylord proposes to transfer the Opryland property to the industrial development board (IDB), who will in turn lease the property back to Gaylord. Gaylord will be required to make payments in lieu of taxes (PILOT payments) to the IDB in an amount equal to what the property taxes would be if Gaylord had legal title to the property. The IDB will issue revenue bonds in the amount of \$80 million, which would be secured by the PILOT payments and the additional tax revenues generated from the new project. In addition, Gaylord will be able to use a portion of the hotel occupancy taxes generated on the property to pay off the debt on the expansion. Further, Gaylord will be allowed to capture the increased sales taxes generated from the expansion toward payment of the debt.

The deal is structured to result in no risk to the Metro taxpayers for repayment of the bonds, and Metro will continue to receive the same amount of property and sales taxes it is currently receiving from the Opryland property. Only the increased revenues generated by the expansion will be applied toward the debt service.

**Ordinance No. BL2007-1555** authorizes an additional one percent hotel occupancy tax to be levied on the Opryland Hotel and redirects two percentage points of the existing hotel occupancy tax derived from the Gaylord Tourist Development Zone. The Tennessee General Assembly recently modified the state law pertaining to the hotel occupancy taxes to allow the Metropolitan Government to impose an additional one percent tax either throughout Davidson County or in a tourist redevelopment zone. The tax can be imposed throughout Davidson County to help fund the construction of a new convention center. In the alternative, the additional tax can be imposed within a tourist development zone for improvements within that zone. Resolution No. RS2007-2084 declared the Opryland property to be a tourist development zone, thus authorizing the additional one percent to be used for the repayment of Gaylord's debt.

In the event the council approves Ordinance No. BL2007-1557, which would levy the additional one percent hotel occupancy tax county-wide, the tax authorized by this ordinance will be reduced and the county-wide one percent tax generated from the Opryland facility would be used to repay the Gaylord debt.



This ordinance also provides that two percentage points of the existing hotel occupancy tax derived from the Gaylord Tourist Development Zone are to be deposited into Metro's general fund to be used for debt service on the expansion, but only to the extent that the tourist accommodation tax from the tourist development zone exceeds the proceeds for the prior fiscal year by three percent.

**Substitute Ordinance No. BL2007-1556** authorizes the IDB to accept payments in lieu of ad valorem taxes (PILOT payments) for the Opryland Hotel and Convention Center, which payments are to be used to pay the debt on the bonds for the Gaylord expansion project. State law grants the council the power to delegate to the IDB the authority to negotiate and accept PILOT payments, provided that the payments are in furtherance of the IDB's purpose. The purpose of the IDB under state law is to maintain and increase employment opportunities by promoting industry, trade and commerce through the inducement of commercial enterprises to locate or remain in the state. The IDB will have the authority to accept PILOT payments from Gaylord for 25 years, which will be the life of the bonds. The ordinance provides that the IDB cannot negotiate and accept such PILOT payments until the state commissioner of economic development and the comptroller of the treasury have determined that it is in the best interest of the state to do so. Further, the final version of the PILOT agreement must be approved as to legality by the Metro director of law.

This ordinance also requires Gaylord to ensure that minority-owned businesses are solicited for participation in the expansion project for both prime contractor and subcontractor opportunities. At the time the state law was amended to allow for the use of public funds to help finance the construction of the Gaylord expansion project, as well as the proposed downtown convention center, a provision was added to the state law requiring entities soliciting bids for the construction of a convention center using public financing to actively solicit bids from minority owned businesses. Such entities building a convention center using public funds must strive to maximize the participation of minority owned businesses through both prime and second tier business contracting opportunities.

**Resolution No. RS2007-2117** amends Resolution No. RS2007-2084 to substitute the map and property description for the Opryland Hotel and Convention Center property designated as a tourist development zone and a secondary tourist development zone. Resolution No. RS2007-2084 was adopted at the last council meeting to designate the property as a tourist development zone to allow for the increased sales tax revenues generated by the Opryland expansion to be used for debt service on the project.

**Resolution No. RS2007-2118** approves an interlocal cooperation agreement between Metro, the IDB, and the state providing a mechanism whereby the PILOT payments and the redirected sales and hotel occupancy taxes can be applied toward the IDB bonds. The agreement designates U.S. Bank National Association as the escrow agent for the acceptance of the PILOT payments, the incremental sales taxes, and the hotel occupancy taxes generated by the expanded facility. The escrow agent will determine what portion of the funds are needed for debt service on the bonds and will pay this amount to the bond trustee on an annual basis. Any excess revenues not needed for debt service or the required reserves will be distributed to Metro and the state based on their respective shares of the balance. Any fees charged by the escrow agent will be paid by Opryland Hotel. The agreement is structured to ensure that Metro will not receive less tax dollars from the Opryland facility than it is currently receiving.