MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **August 21, 2007**

RE: **Analysis Report**

Balances As Of:	**8/15/07**	**8/9/06**
GSD 4% RESERVE FUND	***** $26,540,553	$27,151,722
CONTINGENCY ACCOUNT		
USD	$50,000	$50,000
GENERAL FUND		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
GENERAL PURPOSE SCHOOL FUND	Unavailable	Unavailable

* Assumes estimated revenues in fiscal year 2008 in the amount of $23,691,619

– RESOLUTIONS –

RESOLUTION NOS. RS2007-2124 & RS2007-2125 (RYMAN) – These two resolutions amend the pay plan for the general employees of the Metropolitan Government to increase the salary of the mayor and to reflect changes in the federal minimum wage laws. The existing pay plan was approved by the council in June 2005. The civil service commission approved these pay plan modifications, but did not approve a recommended increase in the salaries for the positions of vice mayor and members of council.

Resolution No. RS2007-2124 increases the salary of the mayor from $136,500 to $160,000. The salary of the mayor was last increased in 2003 when it went from $75,000 to $136,500. The salary of the mayor, vice mayor and council members cannot be increased during the term of office. Although $160,000 is higher that the average for the cities Metro human resources used in the comparison, it is estimated that after four years the $160,000 salary will be lower than the average of the comparable cities. The list of the comparable cities with the corresponding mayor salaries is attached to this analysis.

Resolution No. RS2007-2125 amends the pay plan to reflect changes in the federal minimum wage laws. The federal minimum wage was recently increased by Congress to $5.85, which became effective July 24, 2007. Congress included an escalator provision in the minimum wage legislation, which will result in an increase in the minimum wage to $6.55 beginning July 24, 2008, and $7.25 beginning July 24, 2009. The only Metro workers employed at the minimum wage rate are part-time/seasonal workers. This resolution simply amends the pay plan to substitute the part-time/seasonal rate chart to provide for these changes in the minimum wage laws.

RESOLUTION NO. RS2007-2126 (WHITE & WALLACE) - This resolution elects one member to the Board of Directors of the Industrial Development Board of the Metropolitan Government to fill the unexpired term of Don Driscoll. Three persons were nominated at the August 7, 2007 Council meeting to fill this vacancy: Floyd Shechter, John C. Hobbs, Jr. and Freda Player. The Council will hold the election at the August 21, 2007 meeting. The person elected will serve the remainder of the term, which expires August 23, 2009.

The council office has been informed that Floyd Shechter has withdrawn his name from consideration.

RESOLUTION NO. RS2007-2127 (WALLACE) – This resolution appropriates $1,200,000 in Capitol Mall urban development action grant (UDAG) repayments for the John Henry Hale HOPE VI affordable housing program. The UDAG program is a federal program whereby funds are loaned to developers and repaid to the Metropolitan development and housing agency (MDHA) instead of the federal government. MDHA is required by federal law to use the UDAG loan repayments in the "pocket of poverty" areas of the Metropolitan Government. MDHA has secured $20 million in HOPE VI funds from the U.S. department of housing and urban development to initiate the total revitalization of the John Henry Hale Homes housing development. Pursuant to this resolution, MDHA will use the $1.2 million in UDAG repayments to complete the financing for the construction of 28 additional rental apartments at the John Henry Hale homes.

RESOLUTION NOS. RS2007-2128 through RS2007-2133 (JAMESON) – These six resolutions approve grants and amendments to grants from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to prepare adults, youth and dislocated workers for re-entry into the labor force and to provide training for those facing serious barriers to employment. The grant terms are from July 1, 2007 through June 30, 2009.

Resolution No. RS2007-2128 approves an adult worker grant in the amount of $292,198.

Resolution No. RS2007-2129 approves an amendment to an adult worker grant by shifting $220,533 from a dislocated worker grant for a new grant total of $512,731.

Resolution No. RS2007-2130 approves a dislocated worker grant in the amount of $735,112.

Resolution No. RS2007-2131 approves an amendment to the $735,112 dislocated worker grant by decreasing the grant award by $220,533, for a new total of $514,579. These funds are being shifted to the adult worker program.

Resolution No. RS2007-2132 approves an amendment to a youth worker grant by increasing the grant amount by $1,204,220 for a new grant total of $1,664,680.

Resolution No. RS2007-2133 approves an amendment to an administrative grant by increasing the grant amount by $247,947 for a new total grant award of $299,109.

RESOLUTION NO. RS2007-2134 (JAMESON) – This resolution approves an amendment to a grant in the amount of $110,000 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to participate in a recruitment campaign for Embraer Air and assist with additional hiring needs. Under the terms of this grant NCAC will manage the recruitment campaign for Embraer Air based upon a hiring schedule of 160 employees. The career center is to provide screening of applicants and referral of qualified candidates from its existing customer pool of applicants, and will also provide on-the-job training for approximately 60 employees. This resolution extends the term of the grant through September 30, 2007.

RESOLUTION NO. RS2007-2135 (GILMORE & JAMESON) – This resolution approves a second amendment to a contract between the Metropolitan board of health and the Campus for Human Development for the operation of an educational day center for the homeless. This resolution extends the contract for one year for a new contract term of July 1, 2007 through June 30, 2008. The Campus for Human Development will be paid $150,000 to provide these services.

RESOLUTION NO. RS2007-2136 (BROWN & JAMESON) – This resolution approves an annual joint funding agreement between the department of water and sewerage services and the U.S. department of interior – geological survey for the continuation of a program of water resources investigation. The federal government will provide $84,400 for this program, with a local match of $102,500 to be provided by the department of water and sewerage services. This annual contract provides streamflow monitoring at seven sites and continuous water-quality monitors at four sites within the area of the Metropolitan Government. The term of the contract is from July 1, 2007, through June 30, 2008.

RESOLUTION NO. RS2007-2137 (WHITE, BROWN & JAMESON) – This resolution approves an amendment to a contract between the Metropolitan Government and the U.S. department of army corps of engineers for improvements to the J. Percy Priest Dam. The project to be funded through this contract consists of the placement of a minimum flow aeration valve, connecting pipes, upstream standpipe intake, and a gate valve. This total estimated project cost is $686,000, with Metro contributing $171,500 as its 25% share of the cost.

This amendment simply changes the date of the planning and design analysis from December 28, 2006 to April 13, 2007.

RESOLUTION NO. RS2007-2138 (BROWN & JAMESON) – This resolution authorizes the Metropolitan Government to enter into an interlocal agreement with the Nolensville/College Grove Utility District to provide customer information needed to bill for sewer service provided by the Metro department of water and sewerage services. Under state law, municipalities are authorized to enter into interlocal agreements with other public agencies for joint undertakings, subject to approval by the local legislative body. The Nolensville/College Grove Utility District provides water service to certain properties in Williamson County, but does not provide sewer service. Rather, sewer service is provided to these properties by the Metro water department. In order to determine the sewer portion of the bill, the water department relies on the actual water usage indicated on the water meter. Pursuant to this agreement, the Nolensville/College Grove Utility District will provide the Metro water department the actual water consumption for these customers in an electronic format. The utility district will be responsible for reading the water meters on a monthly basis and Metro will pay $0.25 per meter read. The agreement further provides that Metro water services will have the authority to turn off water service for Metro sewer customers receiving water from the utility district if sewer bills remain delinquent for more than thirty days. Metro will be entitled to charge such delinquent customers its standard turn on and turn off charges.

A similar agreement with the Gladeville Utility District was approved by the council in December 2006.

RESOLUTION NOS. RS2007-2139 & RS2007-2140 – These two resolutions approve an application and corresponding agreement for a fast track infrastructure development program (FIDP) grant in the amount of $249,984 from the state department of economic and community development to the Metropolitan Government to provide research initiatives for Vanderbilt University. These grant funds have been requested by Vanderbilt's Division of Sponsored Research for a study in the lubrication of nano and micro machines. Vanderbilt has received a federal grant from the Office of Naval Research for this program, which will be the matching funds provided for the FIDP grant. The grant application provides that this research project will "advance the mission of the scientific community by developing cutting edge computational and experimental research and educational programs in molecular rheology, and will particularly address vapor phase lubricants and ionic liquids." This research is expected to assist the U.S. department of defense in developing battlefield sensors and navigation systems.

The FIDP is a state program in which the Metropolitan Government, the Greater Nashville Regional council, and private businesses participate to obtain grant funds for infrastructure improvements. These funds are available to businesses that create new jobs through the expansion of facilities.

Resolution No. RS2007-2139 (Pepper, Brown & Jameson) approves the state FIDP grant application pertaining to the research initiatives for Vanderbilt University. There is a required match of $499,968, which is to be provided by Vanderbilt. No Metropolitan Government funds are pledged for this grant. Vanderbilt anticipates that this project will employ three full-time employees, one graduate student, and two graduate research assistants.

Resolution No. RS2007-2140 (Brown, Pepper & Jameson) approves an agreement with Vanderbilt University regarding the implementation and funding of the grant. Vanderbilt is required to maintain commercial liability insurance in the amount of $1 million per occurrence, and agrees to indemnify the Metropolitan Government for claims arising out of the performance of the agreement. The term of the agreement is from its effective date through April 6, 2009.

RESOLUTION NO. RS2007-2141 (JAMESON) – This resolution approves a grant in the amount of $85,000 from the Nashville Public Library Foundation to the public library for the T.O.T.A.L. program. This program, which stands for Totally Outstanding Teen Advocates for the Library, was formerly called the Neighborhood Builders Youth Engagement program. These funds were donated to the Nashville Public Library Foundation by Bank of America. The T.O.T.A.L. program consists of a leadership team of five youth who will develop and implement a program to promote the benefits of the public library system to other teens.

RESOLUTION NO. RS2007-2142 (PEPPER & JAMESON) – This resolution approves an intergovernmental agreement with the U.S. bureau of alcohol, tobacco, firearms and explosives for the use of the eTrace firearms tracking system. This is an internet-based application that will enable the police department to submit, retrieve, store and query firearms tracing information. There is no fee charged to the police department for the use of this system. The term of this agreement is for ten years from its effective date.

RESOLUTION NO. RS2007-2143 (PEPPER & JAMESON) – This resolution approves an interlocal agreement between the U.S. department of justice drug enforcement administration (DEA) and the Metropolitan police department for assistance with the Middle Tennessee drug enforcement task force. The purpose of the drug enforcement task force is to gather intelligence data and conduct undercover operations related to illegal drug trafficking. Pursuant to this agreement, the police department will assign one officer to the task force. The DEA will assign three special agents to the task force, and will provide the necessary funds and equipment to support the activities of the task force. The DEA agrees to reimburse the police department up to $15,854.25 for overtime paid to the Metro officer participating in the drug enforcement task force. The term of this grant is from the date of its execution through September 30, 2008. A similar agreement was approved by the council in 2006.

RESOLUTION NO. RS2007-2144 (BROWN & JAMESON) – This resolution approves a consent decree to settle legal action brought by the U.S. department of justice and the state of Tennessee against the Metropolitan Government regarding sewage overflows in violation of the Clean Water Act and the Tennessee Water Quality Control Act. The U.S. environmental protection agency (EPA) and the state department of environment and conservation (TDEC) are prepared to file suit against Metro

to collect civil penalties and require corrective measures to be implemented because of environmental contamination issues associated with the overflow from Metro water services' wastewater collection system in violation of both state and federal environmental protection laws. Metro water services (MWS) maintains separate sanitary sewer and combined sewer systems, which flow either to wastewater treatment plants or to combined sewer overflows. Over the past 20 years, MWS has reduced the volume of sewer system overflow by 99% through the replacement of sewer lines and the rehabilitation of 317 miles of the wastewater collection system. MWS has also recently begun implementation of several recommendations from a self-assessment study regarding the capacity, management, operation and maintenance of our sanitary sewer system. Although MWS has made great strides to reduce the flow of wastewater into the Cumberland River, overflows continue to occur, especially during wet weather. In order to avoid costly and time-consuming litigation, the parties have agreed to this consent decree, which will require MWS to shift some of its capital priorities and pay a monetary penalty to the federal government.

The main elements of the consent decree are as follows:

- MWS must submit a corrective plan of action to the EPA and TDEC addressing the conditions causing sewer system overflows. This plan of action must include a December 31, 2008 completion date for the Dry Creek pump station sewer system overflow location and a December 31, 2009 completion date for the Barker Road location.
- MWS must continue implementation of the capacity, management, operation and maintenance programs from the self-assessment study recommendations.
- MWS must submit an inter-jurisdictional agreement program within six months that covers agreements for the treatment of sewage by MWS from municipal satellite sewer systems. This program must require the satellite cities to properly manage and maintain their sewer collection systems. Metro would be allowed to physically disconnect the satellite cities from our sewer system if they do not comply with the management, operation and maintenance obligations. Metro would not be required to renew any existing agreements or enter into new agreements with the satellite cities upon their expiration.
- MWS must develop a pump station operation plan.
- MWS is required to make sewer service available to the 329-home Brandywine subdivision and to 12 homes on Sanitarium Road by December 31, 2010. These two locations have been ranked by the health department as the areas in Davidson County most in need of sewer service expansion. The 40 year-old Brandywine subdivision has experienced at least 117 observed septic tank failures, not including those that may be contaminating the ground water. This will require installing 30,000 feet of sewer line and service stub outs to the right-of-way at each home at a cost of $2.6 million. Homeowners will be responsible for installing individual grinder pumps and running the lines from their homes to the stub line. The Sanitarium Road project will involve the installation of 2,000 feet of sewer line at a cost of $200,000.
- MWS is required to pay a civil penalty to the federal government in the amount of $282,019.
- MWS is required to make a grant to the Cumberland River Compact in the amount of $282,019 to address water quality issues. The Cumberland River Compact is a nonprofit organization whose mission is to enhance the water quality of the Cumberland River through education and by promoting cooperation with citizens, businesses and agencies. These funds will be used for Project Blue Streams, which is a new small stream restoration project the Cumberland River Compact is implementing in Davidson County. This will involve the building of 60 rain gardens per year over the next five years and the planting of 10,000 trees. The grant will consist of five annual payments in the amount of $50,000, and one payment in year six totaling $32,019.

- The consent decree provides for future penalties for unpermitted discharges and for failure to comply with the provisions of the consent decree.
- MWS will be required to submit quarterly progress reports to the EPA and TDEC, plus a comprehensive annual report.

Metro must achieve full compliance with the requirements in the consent decree within nine years.

RESOLUTION NO. RS2007-2145 (JAMESON) – This resolution authorizes the department of law to compromise and settle the lawsuit brought by the Metropolitan Government against Comcast in the amount of $1,062,798.20. State law requires all businesses operating within Davidson County to obtain a business license from the county clerk and pay the required business taxes. Failure to pay these taxes results in a penalty in the amount of 5% a month (up to a maximum of 25%) plus interest. The Metropolitan Government filed suit against Comcast for failure to obtain a business license from the county clerk and failure to pay business taxes from 2001 to 2006.

State law contains essentially two mechanisms for the collection of delinquent business taxes. First, the county clerk can issue a distress warrant upon written notice to the taxpayer. The distress warrant directs the sheriff to seize and sell the business's personal property to satisfy the delinquent taxes owed. In the alternative, the government can file a lawsuit to collect the delinquent taxes, penalties and interest. Tennessee case law equates delinquent privilege taxes to a debt, and the county may file suit to collect the debt. The lawsuit filed by Metro sought $2,682,374.08 from Comcast in unpaid taxes, penalties and interest. Further, the lawsuit sought a doubling of this amount pursuant to state statute as a penalty for the failure to obtain a business license. Comcast has disputed the amount of the taxes owed, as well as the amount of penalties and interest Metro is entitled to.

The department of law recommends that this lawsuit be settled for $1,062,798.20, which represents approximately five years of the unpaid taxes and interest for the two most recent years. The county clerk and the state of Tennessee agree that this settlement is fair and reasonable based upon the amount of taxes owed. State law provides that in the event the county clerk fails to collect delinquent business taxes, the state has the duty to collect the taxes after six months and is entitled to retain all of the taxes collected. Based upon language included in a 2001 court of appeals decision, Comcast disputes the jurisdiction of Metro to continue to pursue collection since more than six months has elapsed.

The council office is of the opinion that Metro's failure to collect the delinquent taxes for more than six months does not relinquish jurisdiction to the state for collection. The state did not attempt to collect the delinquent taxes owed by Comcast. However, the court of appeals case does give Comcast an argument that Metro is precluded from attempting to collect the taxes.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2005-651 (WALLACE) – This ordinance, as amended, 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, that are disabled so as to obstruct traffic, or when the driver has been arrested for DUI.

SECOND 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.

Finally, a development plan would have to be submitted for duplexes that would be the lesser of 5,000 square feet or 30% of the total lot area. 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 planning director would make a recommendation to the zoning administrator regarding whether the proposed duplex conforms to the comparable structures. 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.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1178 (NEIGHBORS & TYGARD & OTHERS) – This zoning text change would designate "car wash" as a use permitted with conditions under the zoning code, rather than requiring car washes to be a part of a specific plan (SP) district. In March 2006, the council enacted Ordinance No. BL2006-972 making most automotive uses no longer permitted in the commercial zoning districts. Rather, such uses have to be approved individually by the council as part of an SP district. The SP district was created by the council in September 2005 to give the council more control over how the property is developed than a straight zone change to another zoning district. The SP district is designed to be an alternative zoning process to address the unique characteristics of an individual property through a site specific plan. A detailed plan is to be created for each property, which must be followed by the developer.

This ordinance essentially puts car washes back in the same position they were in prior to the enactment of Ordinance No. BL2006-972, which is permitted with conditions. This ordinance specifies certain conditions that must be met before a car wash can be permitted. These conditions are as follows:

1. The car wash would have to be set back at least fifty feet from any residential district.
2. The washing facilities must be located within an enclosed structure.
3. Car washes must be separated from adjacent property by a 6-8 foot tall masonry wall.
4. Hours of operation would be limited to 8:00 a.m. to 10:00 p.m. if the car wash is located within 100 feet of a residential district.
5. No outdoor loud speakers would be permitted.
6. No vehicles for sale may be parked on the premises.

This ordinance has been approved by the planning commission with a recommendation that the council address parking for automatic car washes. There is a proposed amendment for this ordinance incorporating some additional conditions for car washes, such as a requirement that an attendant be on duty at all times and that the vehicular ingress and egress be gated and closed at night. This would essentially prohibit any coin-operated car washes as a use permitted with conditions. Rather, coin-operated car washes would be required to be rezoned as a SP.

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. BL2006-1285 (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.

SUBSTITUTE ORDINANCE NO. BL2007-1364 (EVANS) – This zoning text change would substitute the regulations pertaining to historic home events and historic bed and breakfast homestays. The purpose of this ordinance is to be an alternative to Ordinance No. BL2006-1206, which has been deferred indefinitely, that would add more stringent standards applicable to historic home events. Under the zoning code, "historic home events" must be permitted by the board of zoning appeals (BZA) as a special exception use. The zoning code defines historic home event as "the hosting of events such as, but not limited to, weddings or parties for pay at a private home which has been judged to be historically significant by the historic commission." The code includes certain criteria that must be met in order for property to be allowed to hold these home events, such as parking standards, limited meal service, and a requirement that the home be owner-occupied. There are currently only four properties permitted as a historic home event use in a residential area.

This ordinance would create two separate categories of historic home events. The standard historic home event use would only be permitted in residential areas as part of a neighborhood landmark overlay district. The use would be permitted by right in all other zoning districts. The second category of historic home event uses would be called a "limited historic home event". A limited historic home event would be permitted by special exception (SE) in residential districts, requiring approval of the board of zoning appeals (BZA). The ordinance establishes new standards for the BZA to consider in determining whether to grant an SE use for a limited historic home event. These new standards are as follows:

1. Applicants and holders of special exception permits would expressly be expected at all times to comply with the property standards code, zoning regulations, and restrictions placed upon the applicant by the BZA.
2. Once Metro takes three or more zoning and/or codes enforcement actions against the special exception permit holder, the zoning administrator is to request a show cause hearing before the BZA to consider revocation of the permit. Further, a show cause hearing is to be

requested if the zoning administrator becomes aware that the permit holder has not adhered to promises made to the BZA at the time the permit was granted.

3. Events with 30 or fewer people, including servers and other staff, may take place outside the historic home.
4. No more than 100 people would be allowed at an event under any circumstances. The BZA would have the authority to further limit the number of patrons at the event.
5. All interior and exterior work must be done in accordance with the U.S. Secretary of the Interior standards for the treatment of historic properties. The applicant may utilize the Metro historic zoning commission staff to ensure compliance with these standards.
6. All guest parking must either be on-premises or a shuttle service must be used for off-premises parking.
7. The historic home event may take place between the hours of 8:00 a.m. and 9:00 p.m. Monday through Thursday, and 9:00 a.m. through 11:00 p.m. on Friday and Saturday. Events would not be allowed on Sundays.
8. No amplified music would be allowed.
9. Meal and beverage service is limited to those guests invited by the host.
10. The home must be owner-occupied, and a site plan must be submitted detailing the personal living space, event preparation areas, and event location areas.
11. A historic home event permit may last no more than five years.
12. The BZA is to consider past codes and zoning enforcement actions taken against the property owner.
13. The SE use must be compatible with the general plan, and the planning commission is to make a recommendation to the BZA regarding its plan compatibility.
14. The limited historic home events must take place inside the historic structure.
15. All signs on the property must be no larger than four square feet.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2007-1430 (EVANS) – This zoning text change would add to the review and enforcement provisions to be used by the board of zoning appeals (BZA) in determining whether to grant a special exception (SE) use permit, and would clarify the role of the historic zoning commission in the review and approval of the neighborhood landmark (NL) zoning overlay. SE uses are not permitted by right, but are only allowed if they are approved by the BZA. Some examples of special exception uses in residential zoning districts include historic home events, day care facilities, churches, and recreational centers. In order for the BZA to grant a special exception permit, the applicant must prove that all of the code requirements for the SE use have been met. The code currently requires applicants to show that the proposed use will not adversely impact abutting properties, that features of historical significance will be preserved, and that traffic will not be negatively impacted. This ordinance would add some additional requirements that applicants for an SE use would have to meet in order to obtain the permit from the BZA. All of these provisions are included as part of Substitute Ordinance No. BL2006-1364, which is also on third reading. However, the council office is of the opinion that these provisions exceed the scope of the caption of Ordinance No. BL2006-1364, as that bill is limited to historic home event uses. This ordinance essentially copies the provisions from the substitute ordinance into a new ordinance with a broader caption.

This ordinance would add the following new general requirements for uses permitted by special exception:

1. The BZA would be required to consider past codes and zoning enforcement actions taken against the property owner.
2. The SE use must be compatible with the general plan, and the planning commission is to make a recommendation to the BZA regarding its plan compatibility.
3. Applicants and holders of special exception permits would expressly be expected at all times to comply with the property standards code, zoning regulations, as well as the guarantees and representations they make to the BZA.
4. Once Metro takes three or more zoning and/or codes enforcement actions against the special exception permit holder, the zoning administrator is to request a show cause hearing before the BZA to consider revocation of the permit. Further, a show cause hearing is to be requested if the zoning administrator becomes aware that the permit holder has not adhered to promises made to the BZA at the time the permit was granted. The show cause hearing would be publicly advertised in the same manner as other BZA hearings.
5. The BZA would be prohibited from granting variances to the general or specific standards of an SE permit.

This ordinance would also specify the manner in which the U.S. Secretary of the Interior standards apply to the treatment of historic properties. Compliance with these standards would be required before any changes could be made to any property that is listed on the National Register for Historic Places or is eligible for listing on the historic register. Finally, the ordinance would require that any existing or proposed NL overlay district be reviewed by the historic zoning commission to ensure that it complies with the applicable guidelines.

This ordinance has been approved by the planning commission.

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 in its current form, but the commission recommended approval if the amendment is adopted.

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 either make their board meetings open to the public whenever the board is deliberating the expenditure of Metro funds, or submit quarterly reports to the Council Rules Committee regarding how the funds were spent. 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 effective September 30, 2007. 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.

As an alternative to making their board meetings open to the public, nonprofit organizations receiving Metro grant funding would be required to submit quarterly reports on how the funding is being used by the organization. The first report would be due September 30, 2007. In addition, the director or CEO of the organization must be available to meet with the Rules Committee to further explain use of the funds.

This ordinance would not apply to organizations that receive funding from Metro for specific services provided pursuant to a contract.

SUBSTITUTE ORDINANCE NO. BL2007-1452 (DREAD) – This ordinance would regulate the "booting" of vehicles within the area of the Metropolitan Government. Certain 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 from towing a vehicle that has been booted unless the boot has remained on for twenty-four hours. The vehicle owner would be able to have the boot removed by paying a $65 fee plus one day of storage. This ordinance was recommended by the director of the transportation licensing commission.

There is an amendment for this ordinance that would require the booting company to include the phone number for the company on each booting device, and would require someone from the company to remove the boot within one hour from being called. Since this ordinance is on third reading, suspension of the rules will be required to consider the amendment.

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, as amended, 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 two 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.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2007-1544 (WALLACE, ISABEL & OTHERS) – This ordinance approves a lease agreement between Belmont University and the board of parks and recreation for the development and shared use of Rose Park. Belmont proposes to construct athletic facilities for its baseball, softball, soccer and track teams within the 25-acre Rose Park. These facilities will be used by Belmont for games and practices, and are to be shared by Belmont, Metro and the Edgehill community.

While Belmont will not pay any set rental amount for use of the park, the lease provides that Belmont will construct the athletic facilities on the property, as well as build a concessions building, locker rooms, and improvements to common areas, all at its own expense, which is estimated to be approximately $7 million. Metro will have the authority for scheduling the dates and times of Belmont and community events. Belmont is to schedule its events with Metro at least six months in advance. Metro will make reasonable efforts to schedule Belmont's first choice of intercollegiate competitions. Metro will be responsible for scheduling events sponsored by other school, neighborhood and community groups. Belmont estimates that the sports fields will be available for community uses at least 80 percent of the time during the park's regular operating hours.

Belmont will be entitled to all revenue generated as a result of Belmont events such as ticket sales, concessions and advertising. Belmont will have the authority to put up game day signs on the interior fences of the fields, which must be removed on non-game days. Belmont will also be responsible for installing one or more electronic scoreboards. All nighttime Belmont events must be scheduled in time to be completed and the lights turned off by 10:30 p.m. An exception is to be made for games

that go into overtime, extra innings, etc. All sound amplification on the property must be turned off by 10:00 p.m.

Belmont will be responsible for the repair and maintenance of the facilities caused by ordinary wear and tear. Metro will be responsible for damages occurring in connection with a community event. Belmont will be responsible for paying all utilities and for upkeep and janitorial service during its respective sports' competitive seasons. Further, Belmont will be required to provide security personnel and traffic control both on and near the park at its own expense. Belmont will also be required to maintain property damage insurance for the full value of the improvements, as well as premises liability insurance in the amount of $2 million per person naming Metro as an additional insured. Belmont agrees to indemnify Metro for any claims arising from Belmont's negligence or fault.

The term of this lease is for forty years, but may be terminated by either party upon one year's written notice. If Metro terminates the lease early, Metro will be required to pay Belmont the fair value of the improvements Belmont made to the property.

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

SECOND SUBSTITUTE ORDINANCE NO. BL2007-1552 (WALLACE) – This second 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 would be required 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, to be designated as an LSBE within Metro. 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. Once race/gender goals are implemented by the DMSBA, participation by women-owned LSBEs would only count toward the goals for increased women-owned business participation. Thus, African-American female LSBEs would only be counted toward the gender-based goals, not the race-based goals.

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 substitute ordinance would also require the DMSBA to conduct annual training seminars for LSBEs. Further, the ordinance would require the purchasing agent to develop bonding assistance regulations, which would include the waiver of payment and performance bonds on service contracts and the waiver of bonds on construction projects to the maximum amount allowed under law. Finally, the substitute ordinance includes a five-year sunset provision on the race-conscious elements of the ordinance.

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 to 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, as amended, 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 and must give weighted consideration to the proposal that would generate the most tax revenue for the Metropolitan Government.
- MDHA must hold a series of public meetings to allow members of the public to provide input regarding the proposal.
- 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 16th 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 5th 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.