

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **May 20, 2008**

RE: **Analysis Report**

Balances As Of:	<u>5/14/08</u>	<u>5/9/07</u>
<u>GSD 4% RESERVE FUND</u>	* \$21,891,153	\$985,007
<u>CONTINGENCY ACCOUNT</u>		
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$23,429,103	\$31,122,193
USD	\$15,945,572	\$12,243,660
<u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	\$61,509,540	\$37,755,360

* Assumes estimated revenues in fiscal year 2008 in the amount of \$23,722,200.
(Does not include pending 4% appropriations totaling \$18,150,702.)

– RESOLUTIONS –

RESOLUTION NO. RS2008-261 (COLE) – This resolution supplements certain prior resolutions by authorizing the issuance of series 2008 electric system revenue bonds in the amount of \$120,000,000, and revenue refunding bonds in the amount of \$95,000,000, as approved and recommended by the NES power board. Although the Metropolitan Charter grants NES complete control and authority over the operation of the electric system, NES cannot issue bonds without permission of the Metropolitan Government.

These new revenue bonds will be issued to provide funds for capital system improvements to the electric system. The refunding bonds will refund outstanding series 1998A and 1998B bonds. The interest rate on the bonds being issued cannot exceed 5.75% per annum. The resolution also approves the form of the bonds and the purchase agreement with the underwriters, who will purchase these revenue bonds initially and then be responsible for resale of the bonds. Morgan Keegan and Company is the lead and principal underwriter of the bonds.

These bonds are to be paid solely from the revenue of NES and will not be an obligation of the Metropolitan Government or be guaranteed by the taxing authority of the Metropolitan Government.

RESOLUTION NOS. RS2008-262 & RS2008-263 – These two resolutions provide proposed amendments to the Metropolitan Charter. The council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. These resolutions provide that the date for holding the referendum election on the Charter amendments is to be the August 7, 2008 general election. The Charter provides that resolutions proposing amendments to the Charter must be filed at least 80 days prior to the election. State election law provides that resolutions requiring the holding of elections on questions submitted to the people must be adopted between 45 and 60 days prior to the election. Thus, these resolutions should be deferred to the June 17, 2008, council meeting.

These proposed Charter amendments have been referred to the charter revision commission.

Resolution No. RS2008-262 (Hunt) approves an amendment to the Charter providing for staggered terms for members of council. If approved by the council and ratified by the voters, this amendment would make one-half of the district councilmember terms end every two years. Effective for the term beginning September 1, 2011, the five councilmembers-at-large and the district councilmembers for the odd-numbered districts would serve for a term of four (4) years, and the district councilmen for the even-numbered districts would serve for an initial term of six years (6) years. From and after the term beginning September 1, 2017, the district councilmembers for the even-numbered districts would serve for a term of four years, thus providing staggered terms for district councilmembers.

Resolution No. RS2008-263 (Ryman) approves an amendment to the Charter to require the mayor to submit the operating budget for the Metropolitan Government to the council not later than May 25th. For most of the Metropolitan Government's 45 year existence, the operating budget was filed on May 25th, with a final approval deadline of June 30th. The council approved a resolution in 2006 placing an amendment to the Charter on the ballot that required a March 25th filing deadline for the budget. This amendment was approved by the voters in November 2006.

Requiring the budget to be filed not later than March 25th provides some real challenges for the Metropolitan Government. This requirement makes it very difficult for the director of finance to accurately predict projected revenues for the next fiscal year. A substantial portion of the Metropolitan Government's revenue is comprised of state funds, and the state legislature does not approve the state's budget until May at the earliest. As the council is aware, just last week the Governor presented a revised budget to the General Assembly, which projects substantially lower revenues than originally estimated. This Charter amendment would simply restore the filing deadline to May 25th.

RESOLUTION NO. RS2008-264 (CLAIBORNE) – This resolution authorizes the reapplication for an amendment to a portion of the Music Valley Drive planned unit development. This amendment to the PUD, which would allow the development of another hotel on the property, failed to receive sufficient affirmative votes at the March 4, 2008, Metro council meeting to move on to third reading. The Metropolitan Code provides that a reapplication to amend the official zoning map that has been previously disapproved by the council cannot be considered for a period of one year following the last action of the council unless the council reinitiates the zoning.

This resolution will allow the council to reconsider this PUD amendment in the ordinary rezoning process prior to the one-year period.

RESOLUTION NO. RS2008-265 (PAGE, BURCH & OTHERS) – This resolution accepts the south Nashville community plan 2007 update including the Nolensville Pike corridor detailed neighborhood design plan, which was adopted by the planning commission on December 13, 2007. The south Nashville community plan, formerly known as the subarea 11 plan, is one of fourteen subarea plans making up the general plan, which is used by the planning commission in its decision making process regarding zoning. This plan update is the result of nine community meetings held between March and October 2007. This resolution is simply a memorializing of the plan by the council, as the plan has no binding effect on zoning decisions made by the council.

RESOLUTION NO. RS2008-266 (COLE) – This resolution approves a grant in the amount of \$750 from the Tennessee arts commission to the Metro arts commission for the Americans for the Arts annual conference. These funds will be used to provide assistance with registration fees for members attending the national conference.

RESOLUTION NO. RS2008-267 (MURRAY, FOSTER & COLE) – This resolution approves a grant in the amount of \$20,000 from the Metropolitan development and housing agency (MDHA) to the Metropolitan board of parks and recreation for summer enrichment programs for youth. MDHA has funding available for these activities as part of the federal community development block grant program. These funds will be used to provide a five-day-a-week summer enrichment program for youth in the Cleveland Park neighborhood between June 9 and August 8, 2008. This program consists of outdoor recreational activities, music, arts and crafts, and field trips. Participants will be offered lunch through the Metro action commission free lunch program.

RESOLUTION NO. RS2008-268 (COLE & FOSTER) – This resolution approves an application for a grant in the amount of \$2,500 from the National Endowment for the Humanities to the Metropolitan Nashville public library for the “John Adams Unbound” exhibit. This traveling exhibit will provide information regarding the life of President Adams and his contributions to the founding of America. The \$2,500 will be used for a library staff member to attend a training session and for other program expenses.

RESOLUTION NOS. RS2008-269 (COLE) – This resolution approves a grant in the amount of \$46,378 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) for programs to provide training for the benefit of the International Association of Heat & Frost Insulators & Allied Workers Local 86 union. These funds will be used to train 37 apprentices regarding commercial and industrial insulation. The term of the grant is from March 6, 2008 through December 31, 2008. A similar grant was approved by the council in April 2008 for the benefit of the plumbers and pipefitters union.

RESOLUTION NOS. RS2008-270 & RS2008-272 through RS2008-274 (COLE) – These four resolutions approve 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. These resolutions shift funds between the various programs as a result of the federal government’s new financial reporting forms. The state requested that we modify these NCAC grant budgets to show the administrative funds as a line item in the program grants, rather than as a separate grant.

Resolution No. RS2008-270 approves an amendment to a youth worker grant by increasing the grant amount by \$184,964 in administrative funds for a new grant total of \$1,849,644.

Resolution No. RS2008-272 approves an amendment to an administrative grant by transferring the \$299,109 in administrative funds to the three program grants (adults, youth and dislocated workers).

Resolution No. RS2008-273 approves an amendment to an adult worker grant by transferring \$220,533 in program funds to the dislocated worker grant, and increasing the grant amount by \$32,466 in administrative funds, for a new grant total of \$324,664.

Resolution No. RS2008-274 approves an amendment to a dislocated worker grant by increasing the previous award by \$81,679 in administrative funds and \$220,533 in program funds for a new total award of \$816,791.

RESOLUTION NO. RS2008-271 (COLE) – This resolution approves a grant in the amount of \$1,712,030.48 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to prepare youth for entry into the labor force and to provide training for those facing serious barriers to productive employment. These federal pass-through grant funds provide part of the operational funding for the NCAC youth worker program. The term of the grant is from April 1, 2008 through June 30, 2010.

Although this grant contract is for the benefit of the youth worker program, the resolution incorrectly identifies it as a dislocated worker grant.

RESOLUTION NO. RS2008-275 (COLE) – This resolution exempts the employee benefit board from the contested case procedures under the Uniform Administrative Procedures Act. State law provides that contested hearings by county civil service boards that affect the employment status of a civil service employee must follow the procedures set forth in the Uniform Administrative Procedures Act. This means that an administrative law judge is to hear appeals of the decisions prior to an employee taking the case to court. A recent court decision held that the Metro employee benefit board acted as a county civil service board, and thus must follow the procedures under the Act, which results in additional delay and costs for the employee.

An example of a contested case heard by the employee benefit board would be an employee that applies for a disability pension and is denied. Processing the application can take up to 90 days, since medical records for the employee must be obtained and reviewed. Employees seeking a disability pension in many cases have used all of their leave by the time the decision is made. If the employee who is denied a disability pension decides to appeal, there are currently two different appeal processes depending on civil service status. Appeals of civil service employees must comply with the Uniform Administrative Procedures Act and can take as much as 6 to 12 months longer before the appeal is finally adjudicated. Thus, the employee is not earning any income while moving through the long appeal process.

In April 2008, the Governor signed a law enacted by the Tennessee General Assembly that allows the council to exempt the Metro employee benefit board from the Uniform Administrative Procedures Act upon adoption of a resolution receiving 27 affirmative votes. Exempting the benefit board from this Act will decrease the time for the appeals process and will keep the department of human resources and/or the employee benefit board from using its resources to hire administrative law judges to hear the appeals. Further, it will make the appeals process more consistent for civil service and non-civil service employees. Appeals to the civil service commission will still have to comply with the contested case procedures in the Uniform Administrative Procedures Act.

RESOLUTION NO. RS2008-276 (CRADDOCK & COLE) – This resolution approves an application for a grant in the amount of \$1,098,969.73 from the state department of transportation to the Metropolitan police department to enhance enforcement of driving under the influence (DUI) laws. This is a continuation grant that provides funds for the police department to pay overtime wages for officers conducting enhanced DUI enforcement at targeted locations between the hours of 7:00 p.m. and 3:00 a.m. on Thursdays, Fridays and Saturdays, and on those holidays historically associated with heavy alcohol consumption. The funds will also be used to staff strategically placed sobriety check points on these holidays.

RESOLUTION NO. RS2008-277 (CRADDOCK & COLE) – This resolution approves an application for a bulletproof vest partnership grant in the amount of \$43,020 from the U.S. department of justice to the Metropolitan Government. These funds will be used to purchase 239 new bulletproof vests for various public safety agencies. There will be a required match of \$43,020 once the grant is awarded. The vests will be distributed as follows: 225 for the police department; 12 for the sheriff's department; and 2 for the parks department.

RESOLUTION NO. RS2008-278 (CRADDOCK & COLE) – This resolution approves an application for a grant in the amount of \$200,000 from the U.S. department of justice to the Metropolitan police department for the Healing Hearts Intensive Victims Services Project. This project will focus on providing counseling and victim advocacy services to families and friends of homicide victims. The grant funds will be used to pay for the training of personnel, costs for providing therapeutic retreats, and the costs for consultants to implement the program. There is no required cash match for the grant, but the police department will provide payroll and fringe benefits for the employees participating in the program as an in-kind match.

RESOLUTION NO. RS2008-279 (COLE & MAYNARD) – This resolution approves a grant in the amount of \$550,600 from the state department of health to the Metro health department to provide TenderCare outreach services for enrolled children. These funds will be used to pay salaries and indirect costs of health department employees to conduct community outreach activities designed to reach pre-teen, teen and young adult populations. The term of this grant is from July 1, 2008 through June 30, 2009.

RESOLUTION NO. RS2008-280 (MAYNARD & COLE) – This resolution approves an annual grant in the amount of \$1,398,900 from the state department of health to the Metropolitan health department for tuberculosis (TB) outreach and control services. These funds will be used to operate the health department's tuberculosis program consisting of direct patient care, the monitoring of existing and suspected TB cases, and operation of the TB clinic. The term of the grant is from July 1, 2008 through June 30, 2009. This grant is made up of \$1,074,477 in state funds and \$324,423 in federal funds. Approximately \$1,200,000 of these funds will be used to pay the salaries and benefits of the 22 health department employees providing these services.

RESOLUTION NO. RS2008-281 (MAYNARD & COLE) – This resolution approves an amendment to a grant from the state department of health to the Metropolitan health department for breast and cervical cancer screenings. These federal pass-through funds are used to pay the salary of a regional coordinator to continue implementation of a screening service for breast and cervical cancer by reaching out to targeted populations, monitoring women with abnormal test results, and providing community education about the importance of early screening.

The council actually approved this amendment in February 2008 increasing the amount of the grant by \$39,200, for a total grant award of \$94,200. However, the state subsequently changed the effective date of the amendment. Thus, the council must approve the revised amendment for it to become effective.

RESOLUTION NO. RS2008-282 (MAYNARD & COLE) – This resolution approves an amendment to a grant from the U.S. environmental protection agency to the Metropolitan board of health for operation of the air pollution control program of the health department. The health department is responsible for enforcing the provisions of the federal clean air act within the jurisdiction of the Metropolitan Government, and these funds are used to help defray the cost of our air pollution control program. This resolution increases the amount of the grant by \$245,275, for a total grant award of \$401,136. This resolution does not increase the required local match of \$560,000 to be provided from the health department's budget.

RESOLUTION NO. RS2008-283 (MAYNARD & COLE) - This resolution approves an annual grant in the amount of \$815,200 from the state department of health to the Metropolitan board of health to provide care coordination services for the children's special services program. These funds will be used to pay the salaries of health department personnel in the children's special services program whose duties include making financial and medical eligibility determinations for enrolled children, comprehensive pediatric and developmental assessments, audiology and speech pathology services, as well as administrative and clinical support. This grant is comprised of \$367,700 in state funds and \$447,500 in federal funds. The term of the grant is from July 1, 2008 through June 30, 2009.

RESOLUTION NO. RS2008-284 (MAYNARD & COLE) – This resolution approves a contract between the Metropolitan board of health and the state health department to provide for laboratory services for testing particulate matter and other environmental tests. The federal Clean Air Act requires local government testing for particulate matter 2.5 microns or greater in size using licensed testing facilities. The state's facility possesses the required license for these tests. The term of this contract is from July 1, 2008 through June 30, 2011. Pursuant to this contract, Metro will pay \$24 per test to be billed monthly. This a continuation of a contract that has been in place for a number of years.

RESOLUTION NOS. RS2008-285 & RS2008-286 – These two resolutions approve an amendment to an existing grant and a new grant from the state department of health to the Metro health department to fund the help us grow successfully (HUGS) program. The services provided by this program include regular home visits, as well as periodic health, developmental, behavioral, and nutritional assessments.

Resolution No. RS2008-285 (Maynard & Cole) approves an amendment to the fiscal year 2008 HUGS program grant by increasing the amount of the grant by \$211,100 for a total grant award of \$610,200.

Resolution No. RS2008-286 (Cole & Maynard) approves the fiscal year 2009 HUGS program grant in the amount of \$610,200.

RESOLUTION NO. RS2008-287 (COLE & MAYNARD) – This resolution approves a grant in the amount of \$2,088,000 from the state department of health to the Metropolitan health department to provide dental services to children that qualify for the TennCare program. These funds will be used to retain dental personnel to provide oral disease prevention services to school children in grades K-8 attending schools with a high population of low-income students. The oral disease prevention services to be provided include oral health education, dental screenings, referral and follow-up for children who need urgent dental treatment, and dental sealants with parental consent. The term of the grant is from July 1, 2008 through June 30, 2011, with \$696,000 to be provided from the state to the health department over the next three fiscal years.

RESOLUTION NOS. RS2008-288 & RS2008-290 (MAYNARD) – These two resolutions approve clinical affiliation agreements between educational institutions and the Metropolitan board of health to provide clinical experience to nursing students. The agreements are with Lipscomb University and Vanderbilt University, respectively. Pursuant to these agreements, the Metro health department will provide clinical training experiences to nursing students as part of their public health training. Students will not receive any compensation and there is no cost to the Metropolitan Government for providing this service.

Metro has participated in similar clinical experience programs in the past. The term of the agreements are for five years, but may be terminated by either party upon 30 days written notice. The universities will be required to provide assurance that the students are covered by health and professional liability insurance, and the schools agree to assume responsibility for all of their students participating in the program.

Resolution No. RS2008-288 approves a clinical affiliation agreement with Lipscomb University.

Resolution No. RS2008-290 approves a clinical affiliation agreement with Vanderbilt University.

RESOLUTION NO. RS2008-289 (MAYNARD) – This resolution approves a contract between the Metropolitan board of health and United Neighborhood Health Services (UNHS) to provide a pilot smoking cessation program. UNHS operates several local primary care clinics, which the health department wishes to utilize for a pilot smoking cessation program. Pursuant to the contract, UNHS will survey and screen patients to determine if they use tobacco and if they are interested in quitting. UNHS will also offer counseling services through the Tennessee Tobacco Quitline and dispense a one-month supply of the smoking cessation drug Chantix. The drug will be provided at no cost to Metro through the Tennessee Department of Health. The Metro health department will be responsible for training UNHS staff on screening patients and in providing the drug, but UNHS will not receive any compensation for providing the services.

The term of this agreement is from April 1, 2008 through March 31, 2013.

RESOLUTION NO. RS2008-291 (COLE & MAYNARD) – This resolution approves a grant in the amount of \$943,700 from the state department of health to the Metropolitan health department for sexually transmitted disease services and HIV/AIDS prevention and surveillance. This is an annual federal pass-through grant that pays the salaries of health department employees to provide these services. Pursuant to the grant agreement, the funds are to be used for HIV prevention, active surveillance of HIV/AIDS cases, diagnostic and treatment services, and disease intervention services.

The term of this grant is from January 1, 2008 through December 31, 2009. This grant consists of \$864,300 in federal funds and \$79,400 in state funds.

RESOLUTION NO. RS2008-292 (COLE & MAYNARD) – This resolution approves an amendment to a grant from the U.S. department of health and human services to the Metro board of health to provide primary healthcare services to homeless persons. These grant funds are used to provide medical and mental health services to the homeless population. This resolution increases the amount of the grant by \$19,857, for a total grant award of \$836,243.

RESOLUTION NO. RS2008-293 (COLE & MAYNARD) – This resolution approves a grant in the amount of \$155,000 from the state department of health to the Metropolitan health department to provide community development services to reduce health disparities and increase the quality and longevity of life. The purpose of this program is to enhance the availability, accessibility and affordability of healthcare through health assessments, identifying disparities, and planning interventions. These funds will be used to provide on-going monitoring of the health status of our community, as well as to develop appropriate prevention and intervention strategies. The term of the grant is from July 1, 2008 through June 30, 2009.

RESOLUTION NO. RS2008-294 (COLE & MAYNARD) – This resolution approves a grant in the amount of \$282,600 for breast and cervical cancer screening. These federal pass-through funds are used to pay the salary of a regional coordinator to continue implementation of a screening service for breast and cervical cancer by reaching out to targeted populations, monitoring women with abnormal test results, and providing community education about the importance of early screening. The term of the grant is from July 1, 2008 through June 30, 2011. The health department is to receive \$94,200 over the next three fiscal years for this program.

RESOLUTION NO. RS2008-295 (COLE & MAYNARD) – This resolution approves a grant in the amount of \$390,100 from the state department of health to the Metropolitan board of health to provide family planning services in accordance with state law. Local health departments are required by state law to provide contraceptive procedures, supplies and information to all persons eligible for free medical services. Family planning services are defined as “providing individuals the information and means to exercise personal choice in the number and spacing of their children....” The term of the grant is from July 1, 2008 through June 30, 2009. This grant award consists of \$350,000 in federal funds and \$40,100 in state funds.

RESOLUTION NOS. RS2008-296 & RS2008-297 – These two resolutions approve contracts between the state department of transportation and the Metropolitan Government for the resurfacing of Mt. View Road and Hamilton Church Road. These are typical contracts with the state for road resurfacing authorized under the state-aid highway system program.

Resolution No. RS2008-296 (Cole & Evans) approves a contract for the resurfacing of a 3.28 mile section of Mt. View Road from Bell Road to Hamilton Church Road. The total cost of this project is \$618,700, with Metro providing \$29,169.85 in cash and \$125,505.15 as an in-kind contribution, and the state providing the balance of \$464,025.

Resolution No. RS2008-297 (Wilhoite, Evans & Cole) approves a contract for the resurfacing of a 3.28 mile section of Hamilton Church Road from Murfreesboro Road to Lavergne-Couchville Pike. The total cost of this project is \$724,400, with Metro providing \$34,154.12 in cash and \$146,945.88 as an in-kind contribution, and the state providing the balance of \$543,300.

RESOLUTION NO. RS2008-298 (EVANS & COLE) – 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 \$107,400 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, 2008, through June 30, 2009.

RESOLUTION NO. RS2008-299 (EVANS) – This resolution authorizes the Metropolitan Government to participate in a mutual aid agreement with participating public and private utilities regarding coordination and response to emergencies. The Tennessee Water/Wastewater Agency Response Network (TnWARN) has recommended that Metro participate in such an agreement. By executing the agreement, Metro will be able to request mutual aid and assistance, as well as receive requests for aid, from other participating members.

In the event of an emergency in Davidson County, Metro will be able to request assistance from other participating utilities consisting of personnel, equipment and/or supplies. If we make a request for aid, we will be responsible for reimbursing the participating utility providing the aid for their food, shelter, personnel, and equipment costs. Likewise, if we elect to provide aid, we will be entitled to reimbursement for the same costs. We will not be obligated to render aid, and if we choose to do so, our employees will remain under the control of Metro's supervising officials.

State law allows governmental entities to enter into these type mutual aid agreements to provide emergency and disaster assistance.

RESOLUTION NO. RS2008-300 (COLE & EVANS) – This resolution authorizes the director of public property administration to exercise options to purchase four flood prone properties. This purchase is part of the department of water services' on-going program to purchase flood prone properties using federal grant funds. Metro has acquired options to purchase the following properties for the following amounts:

- 4802 Milner Drive \$204,000
- 4806 Milner Drive \$215,000
- 4810 Milner Drive \$210,000
- 373 Wimpole Drive \$172,000

This resolution has been approved by the planning commission.

RESOLUTION NOS. RS2008-301 through RS2008-306 (COLE) – These six resolutions appropriate funds from the general fund reserve fund (4% fund) to various departments. Four percent funds may only be used for the purchase of equipment and repairs to buildings. The total amount of these six resolutions is \$18,150,702.

The balance in the general fund reserve fund as of May 14, 2008, was \$21,891,153. This consists of unrealized revenue for fiscal year 2008 in the amount of \$23,722,200. The resolutions provide that "The Director of Finance may schedule acquisitions authorized herein to ensure an appropriate balance in the Fund." Copies of the supporting information sheets required by Ordinance No. O86-1534 are attached to this analysis.

The council has traditionally deferred all 4% resolutions for one meeting to allow individual members of council to seek more specific information from department heads about particular purchases they are interested in.

Resolution No. RS2008-301 appropriates \$750,000 from the general fund reserve fund to the fire department for miscellaneous equipment and furniture.

Resolution No. RS2008-302 appropriates \$13,740,502 from the general fund reserve fund to the general services department for preventive maintenance, major maintenance, miscellaneous roof repairs, replacement vehicles, police department motorcycles, and water/back flow projects for various Metro buildings.

Resolution No. RS2008-303 appropriates \$100,000 from the general fund reserve fund to the health department for miscellaneous equipment and furnishings.

Resolution No. RS2008-304 appropriates \$1,310,200 from the general fund reserve fund to information technology services for computer hardware. These funds will be used to replace 1,060 computers.

Resolution No. RS2008-305 appropriates \$1,000,000 from the general fund reserve fund to the police department for miscellaneous computer hardware and software.

Resolution No. RS2008-306 appropriates \$1,250,000 from the general fund reserve fund to the public library for new and replacement books and materials.

RESOLUTION NO. RS2008-307 (COLE) - This resolution authorizes the department of law to compromise and settle the claims of a rape victim and her husband against the Metropolitan Government and the Metropolitan hospital authority for a total amount of \$485,000. On November 24, 2004, an individual was the victim of a rape at her place of employment. The police department was called to the scene, arrested the assailant, and transported him to jail. The victim was transported to Nashville General Hospital for a medical legal exam, which was performed by a nurse practitioner working as an independent contractor for the hospital. These exams are conducted on all rape victims in order to gather evidence to be used in the criminal prosecution.

At the time of the victim's exam, Nashville General Hospital did not have appropriate measures in place to counsel victims about the availability of antiretroviral drugs that can be effective in preventing the HIV virus from establishing a permanent infection in the event the rapist is HIV positive. These drugs must be taken within 72 hours of exposure to be effective. Further, the hospital protocol at the time incorrectly stated that there were no known drugs available to prevent the contraction of viral STDs. However, the hospital authority had been using these drugs since the 1990s for employees that had been exposed to the HIV virus. The victim discovered in February 2005 that she was HIV positive as a result of the rape, well after the time in which the prophylactic drugs could be effective.

The assailant was not tested by the police department for HIV immediately upon arrest, although state law requires this immediate testing. In November 2004, the police department did not have a policy in place to ensure that this testing was done. The defendant was not tested until several weeks later. If the defendant had been tested immediately, it would have been known within a short period of time that he was HIV positive.

No disciplinary action was taken against any of the employees involved since it was a failure of adequate government policies that gave rise to the claims. Both Nashville General Hospital and the police department have revised and updated their policies concerning rape incidents to ensure that a similar tragic occurrence does not happen in the future. Victims are now advised of the existence of the antiretroviral drugs and the hospital offers the first dose at the time of the exam. The police department now transports rape suspects directly to Nashville General Hospital for HIV testing immediately upon being arrested.

As a result of being HIV positive, the victim will likely incur medical bills over her life totaling between \$300,000 and \$600,000. Further, as a result of the HIV medication, the victim is unable to work. She frequently suffers from bouts of depression and her relationship with her husband has been severely damaged.

The department of law recommends settling the victim's claim for \$250,000, which is the maximum amount permitted under the Tennessee Governmental Tort Liability Act. The department of law also recommends settling the loss of consortium claim of her husband for \$235,000. The total amount of \$485,000 is to be paid out of the self-insured liability fund. If this case went to trial, it is likely that both plaintiffs would be awarded the maximum amount permitted under the Tort Liability Act.

RESOLUTION NO. RS2008-308 (COLE) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government's claim against Randall L. Fowler in the amount of \$26,500. Mr. Fowler received a disability pension in 1995 based upon a determination that he was no longer medically able to fulfill the duties of a police officer. While receiving a disability pension, Mr. Fowler worked for Fowler Profile Links, Inc., which is owned by Mr. Fowler's wife. Disability pensioners are not allowed to earn more than a certain limited amount without having their pensions reduced accordingly. Although Mr. Fowler was paid as an independent contractor of the corporation, he had a credit card issued in his name, which he allegedly used to charge tens of thousands of dollars in personal expenses to be paid by the company.

The Metropolitan Government filed suit against Mr. Fowler in 2002 alleging that he received an economic benefit from the use of the credit card, which should have been reported to Metro. Thus, he allegedly received pension benefits he was not entitled to as a result of his failure to report this additional income. Metro estimates that Mr. Fowler improperly received between \$17,628.85 and \$33,583.34 in disability pension benefits. The department of law recommends settling this lawsuit for a total payment of \$26,500 to Metro to be paid in one lump sum within 30 days.

RESOLUTION NO. RS2008-309 (COLE) - This resolution authorizes the department of law to settle the Metropolitan Government's subrogation claim against Elizabeth Gilmore and Thomas Gilmore in the amount of \$19,371. On January 7, 2005, a Metro police officer was traveling westbound on Elliston Place when Elizabeth Gilmore pulled out in front of her causing the officer to strike the vehicle driven by Ms. Gilmore and owned by Thomas Gilmore. The police officer sustained personal injuries as a result of the accident, eventually undergoing knee surgery. The officer's medical bills, which were paid by Metro, totaled \$19,437. In addition, Metro paid the officer \$10,365 in injury-on-duty wages.

Although liability is not at issue, there is some dispute as to whether the officer's knee injury was solely caused by the accident, as she has been an avid runner both before and after the accident. The officer made a settlement demand of \$100,000 as part of the mediation. The defendants' insurance company has offered to pay the \$25,000 policy limit. In addition, the officer has uninsured motorist coverage with a policy limit of \$100,000. The police officer has a pending settlement of \$65,000 consisting of a combination of the defendant's insurance proceeds and the uninsured motorist coverage, which is 35% less than the total insurance coverage that may be available if she was successful at trial. The department of law recommends reducing Metro's subrogation claim by 35% as well, for a total payment to Metro of \$19,371.

RESOLUTION NO. RS2008-310 (COLE) – This resolution authorizes the department of law to compromise and settle the Metropolitan Government's claim against Charles Gary Mallory in the amount of \$60,800. Mr. Mallory received a disability pension in 1992 based upon a determination that he was no longer medically able to work as a police officer. While receiving a disability pension, Mr. Mallory started a security business called Mallory Security, Inc. The company pays Mr. Mallory a

salary, which he reported to the Metropolitan Government. However, the Metropolitan Government believes that Mr. Mallory received additional economic benefits from the company that were not reported.

The Metropolitan Government filed suit against Mr. Mallory in 2004 alleging that he underreported his outside earnings while receiving a disability pension. Mr. Mallory countersued alleging that the Metropolitan Government discriminated against him because he is disabled. The court dismissed all of Mr. Mallory's claims.

Metro estimates that Mr. Mallory improperly received between \$40,000 and \$60,000 in disability pension benefits. The department of law recommends settling this lawsuit for a total payment of \$60,800 to be paid over the next three years. Mr. Mallory is to pay \$300 a month for 36 months, and is to make a lump sum payment of \$50,000 plus 10% interest within 36 months. If he fails to make this payment on time, the lump sum amount will increase to \$65,000 for a total recovery of \$75,800.

RESOLUTION NO. RS2008-311 (COLE) - This resolution authorizes the department of law to accept \$11,390.91 in settlement of the Metropolitan Government's claim against Simon Nguyen. On October 27, 2007, a Metro police officer was traveling south on Briley Parkway when his patrol vehicle was struck by a vehicle driven by Simon Nguyen. Mr. Nguyen's failure to yield the right-of-way caused the accident, which resulted in medical costs and damage to the police car totaling \$11,390.91. The department of law recommends accepting \$11,390.91 as a full settlement for this claim.

RESOLUTION NO. RS2008-312 (COLE) - This resolution authorizes the department of law to compromise and settle the claim of Nashville Speedway, USA against the Metropolitan Government, as well as settlement of the Metropolitan Government's claim against Nashville Speedway USA and Dover Motorsports. In 1995, Nashville Speedway, USA (then owned by Bob Harmon) entered into a lease agreement with the board of fair commissioners for the exclusive operation of races at the fairgrounds. Nashville Speedway, USA agreed to pay 50% of its annual net profits from operating the races to the Metropolitan Government. Dover Motorsports purchased Nashville Speedway, USA from Mr. Harmon and his partner in October 1997 and the board of fair commissioners approved the continuation of the lease under the new ownership. Dover Motorsports paid Metro \$241,473 as its 50% net profit payment for fiscal year 1999, which was its first full year. Dover Motorsports then paid \$42,463 as the first quarter payment for the next fiscal year. However, Dover Motorsports ended up reporting a net loss of \$66,188 for fiscal year 2000.

Dover Motorsports filed suit against Metro alleging that it should be reimbursed the first quarter payment in the amount of \$42,463 since it reported a net loss for the entire fiscal year. Metro countersued essentially alleging that it is owed more than \$100,000 due to the speedway overstating expenses.

The parties have agreed to dismiss both lawsuits in exchange for Dover Motorsports becoming a \$25,000 sponsor of the 2008 state fair, and a \$25,000 sponsor of the 2009 state fair if it is held at its current location. The department of law recommends accepting this settlement offer, as Metro has had little success in finding evidence that the expenses were overstated.

RESOLUTION NOS. RS2008-313 through RS2008-318 – These six resolutions authorize the installation, construction, and maintenance of aerial encroachments over the public right-of-way. The

applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachments, and are required to post a certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party. Ordinance No. O87-1890 authorizes aerial encroachments to be approved by resolution rather than ordinance. These resolutions have been approved by the planning commission.

Resolution No. RS2008-313 (Jameson) authorizes Fifth Third Center to install a sign located above the right-of-way at 424 Church Street. This sign is for the Fifth Third Center parking garage and is to measure three feet in height by three feet in width.

Resolution No. RS2008-314 (Gilmore) authorizes YMCA of Middle Tennessee to install awnings at 1000 Church Street that will overhang the McLemore Street right-of-way. The awnings will consist of an entrance canopy for the renovated downtown YMCA facility and a long canopy overhang along the building.

Resolution No. RS2008-315 (Gilmore) authorizes YMCA of Middle Tennessee to install awnings and design elements at 900 Church Street that will overhang the McLemore Street right-of-way. The awnings will consist of four canopies over the sidewalk along McLemore Street.

Resolution No. RS2008-316 (Gilmore) authorizes Dennis Clark, doing business as Elan Hair Salon, to install an awning over the right-of-way at 1201 – 5th Avenue South. This awning will be twenty feet long and extend two feet over the sidewalk above the windows of the retail space.

Resolution No. RS2008-317 (Gilmore) authorizes Sun Real Estate, LLP, doing business as Homewood Suites, to install a sign on the corner of the building located at 706 Church Street. This double-faced building sign will measure 15' in height and 2'10" in width.

Resolution No. RS2008-318 (Cole) authorizes Manuel Zeitlin, doing business as Zeitgeist Gallery, to install, construct and maintain an aerial sign encroachment in the right-of-way at 1819 – 21st Avenue South. This encroachment will consist of a six-foot tall sign hanging ten feet above the sidewalk.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2008-206 (COLE & CRADDOCK) – This ordinance amends the Metropolitan code of laws to include certain employees of the sheriff's department in the fire and police pension plan. Certain public safety employees receive more favorable retirement benefits than other Metro employees due to the physical and mental demands of the job. While these benefits were traditionally provided only to police officers and fire fighters, the law was amended in 2003 to add sheriff's department correctional officers and parks special police (park rangers) based upon the degree of danger involved in these positions.

Some employees within the sheriff's office are performing many of the same duties as correctional officers, but since they do not have the title of correctional officer, are not entitled to the enhanced

pension benefit. This ordinance would include the additional employees of the sheriff's office that perform public safety duties as part of the police/fire pension plan. The ordinance adds a definition for "sheriff's officer" as part of the police/fire pension plan, which includes sheriff's office employees that spend a majority of their workday engaged in direct inmate contact in a secured environment or armed agents responsible for serving civil process, orders of protection, body attachments, or performing evictions. An actuarial determination of the cost of adding these additional sheriff's office employees in the police and fire pension plan has been made and the study and formulating committee and employee benefit board have determined that these additional employees should be eligible to receive the public safety benefits. This ordinance is the final step in a process that was initiated in 2002.

One important distinction between the pension benefits provided by this ordinance and those received by policemen and firemen is that these sheriff's office employees will only be entitled to receive the enhanced benefit (or receive credit under the plan) for the time they are actually performing the duties listed above. Thus, a sheriff's officer that is promoted to a manager would no longer be entitled to the benefit since he/she would no longer be in direct contact with inmates or serving process. The new manager would receive credit under the enhanced plan for the time he/she served as a sheriff's officer, but would not continue to accrue time under the plan.

The actuarial information on this pension change is on file with the council office. This pension change will result in an annual increase in the Metro contribution rate of approximately 0.09% of total covered compensation.

Since the funding for this ordinance is included as part of the 2008-2009 operating budget, this ordinance is to be deferred to track with the operating budget.

There is a substitute for this ordinance to clarify that former sheriff's office employees that performed these functions who are still employed by the Metropolitan Government in another capacity will get credit under the police/fire pension for their period of service.

ORDINANCE NOS. BL2008-207 through BL2008-209 – These three ordinances authorize the Metropolitan Government to enter into participation agreements to provide public pressure sewer extensions through the construction of sewerage pump stations and force mains. The construction of the pump stations will be at the sole expense of the developers.

Ordinance No. BL2008-207 (Gotto, Evans & Cole) approves a participation agreement with Towering Oaks Developing Group, LLC for the construction of a pump station and force main for its development at the Towering Oaks subdivision. The developer agrees to contribute \$150,000 to fund the additional operation and maintenance costs for the proposed pump station and force main.

Ordinance No. BL2008-208 (Evans & Cole) approves a participation agreement with Old South Properties, Inc. the construction of a pump station and force main for its development at Old Hickory Pumping Station. The developer agrees to contribute \$70,000 to fund the additional operation and maintenance costs for the proposed pump station and force main.

Ordinance No. BL2008-209 (Stanley, Cole & Evans) approves a participation agreement with Beazer Homes for the construction of a pump station and force main for its development at the Villages of Riverwood subdivision. The developer agrees to contribute \$362,000 to fund the additional operation and maintenance costs for the proposed pump station and force main.

ORDINANCE NO. BL2008-210 (EVANS & COLE) – This ordinance abandons an 8” sanitary sewer line and easement that is no longer needed by the department of water and sewerage services at the West Nashville Heights Church of Christ located at 6833 Old Charlotte Pike and 825 Templeton Drive. This sewer line will be converted to a private service line on the property. The ordinance provides that future amendments may be approved by resolution of the council. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-211 (RYMAN, EVANS & OTHERS) – This ordinance authorizes the negotiation, acquisition and acceptance of easements required for the installation of grinder pumps to be completed by the department of water and sewerage services. The easements have been executed by the respective property owners for the following properties:

- 65 Harbor Cove Drive
- 326 Dry Creek Road
- 950 Forest Acres Court
- 3821 Leona Pass
- 3809 Leona Pass
- 3829 Leona Pass
- 508 Pauls Trail
- 640 Gaylemore Drive
- 812 Leona Pass
- 2554 Miami Avenue
- 2514 Miami Avenue
- 3817 Leona Pass
- 3808 Leona Pass

The ordinance provides that future amendments may be approved by resolution of the council. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2007-212 (MATTHEWS, COLE & OTHERS) – This ordinance authorizes the acceptance of 21 easements for various stormwater projects in Davidson County. Easements are to be accepted for the following properties:

- 140 3rd Avenue South
- 5948, 5946, 5944, 5942, 5940, 5938, 5936, 5934, 5932, 5930, 5928, 5926, 5924, 5922, and 5920 O'Brien Avenue
- 2028 and 2022 West End Avenue
- 3127B Parthenon Avenue
- 8050 Highway 100
- 4601 Ashland City Highway
- 2141 Fairfax Avenue
- 618 Thompson Lane
- Valley View Road, unnumbered
- 550 Great Circle Road
- 2806 Dickerson Pike
- 314 Natchez Court
- 301B Madison Street

- Cato Road, unnumbered
- Murfreesboro Pike, unnumbered
- 480 Hogan Road
- 405 Northcrest Drive
- 3851 Industrial Parkway
- 1949 Old Hickory Boulevard
- 4349 Shady Dale Road
- 3901 Granny White Pike
- 112 17th Avenue North
- Hayes Street, unnumbered

ORDINANCE NO. BL2008-213 (GILMORE) – This ordinance amends the Metropolitan code to increase the rate of special assessment for the Gulch central business improvement district (GCBID). Central business improvement districts are permitted under state law and allow the imposition of an additional assessment on all property located within the area to provide enhanced services such as promotion and marketing, advertising, health and sanitation, public safety, security services, recreation, cultural enhancements, and business recruitment and retention in the district. Under state law, 51% of all real property owners must petition the government to create the district, representing two-thirds of the assessed value within the area seeking designation. The council approved the creation of an initial downtown CBID in 1998. In August 2006, the council approved the creation of a separate GCBID for “the Gulch” area of downtown Nashville, which consists of approximately twenty blocks whose boundaries are, basically, Interstate 40 to the west and south, Broadway to the north, the CSX railroad right-of-way to the northeast, and 8th Avenue South to the east.

The ordinance creating the GCBID provided an assessment equal to fifteen cents (\$0.15) per \$100 of assessed value. This special assessment is essentially an additional property tax levy that is collected by Metro at the same time other property taxes are collected. The Gulch district management corporation board, which acts as the management agency for the GCBID, has approved a resolution increasing the assessment from fifteen cents (\$0.15) per \$100 of assessed value to ninety-one cents (\$0.91) for calendar year 2009. This rate is to decrease over the subsequent three years as follows:

- Forty-three cents (\$0.43) per \$100 of assessed value for calendar year 2010
- Twenty-five cents (\$0.25) per \$100 of assessed value for calendar year 2011
- Twenty cents (\$0.20) per \$100 of assessed value for calendar year 2012 and subsequent years

The resolution requesting the increase was approved at an election by the property owners within the area of the GCBID in accordance with state law.

The council must approve the increase in the rate of special assessment before it becomes effective, and must hold a public hearing prior to the vote on third and final reading.

ORDINANCE NO. BL2008-214 (JAMESON) – This ordinance authorizes the imposition of a \$45.00 litigation tax on all criminal cases in Davidson County and designates CASA, Inc. as the agency to receive the funds. State law allows local governments to impose a \$45.00 “victims assistance assessment” to create a program or fund an existing program that assists victims of crime and their families. If the local government chooses to fund an existing program, state law provides that the

program be specifically named in the legislation authorizing the litigation assessment. State law currently does not allow multiple programs to be funded through this litigation tax.

The state enabling legislation provides that the types of programs that can be funded through the assessment include "rape crisis centers, domestic violence shelters, victim of crime hotlines and information programs, individual, group and family counseling services, crisis intervention programs, support groups and other similar programs designed to assist victims of crime, their families or survivors." CASA of Nashville, which is an acronym for Court Appointed Special Advocate, is an organization that provides trained community volunteers to advocate for abused and neglected children in court.

This \$45.00 assessment, which is in addition to all other taxes, court costs, and fines, will be collected by the criminal court clerk from any person who enters a guilty plea or is found guilty of committing a criminal offense for which a maximum possible punishment exceeds \$500 and for which jail time is possible. This means that a criminal defendant does not actually have to be fined more than \$500 or sentenced to jail in order for the assessment to apply. The first \$3.00 of the assessment will be retained by the criminal court clerk to defray processing and handling costs associated with collecting the assessment. The remaining \$42.00 will be distributed to CASA, Inc.

ORDINANCE NO. BL2008-215 (COLE, EVANS & OTHERS) – This ordinance amends the Metropolitan Code provisions pertaining to water/sewer capacity and tap fees. In June 2006 and June 2007, the council approved certain "revenue enhancements" necessary to balance the department of water and sewerage services' operating budget. One aspect of these revenue enhancements included an increase in tap fees and capacity fees. In 2006, a new "capacity charge" of \$500 was enacted for all new single-family equivalent connections to the public water supply system. This fee was expected to generate \$1.28 million in new revenue. In addition, the 2006 ordinance increased the capacity charge on all new single-family equivalent connections to the public sewer system from \$500 to \$1,000 per connection, which was expected to generate \$3.75 million in annual revenue for the water department. The 2006 ordinance also increased the tap fees for water and sewer connections between 34 and 41 percent. A year later, the capacity charges were doubled to \$1,000 per unit of flow for water connections and \$2,000 per unit of flow for sewer connections. This fee increase was anticipated to generate \$2,900,000 in additional revenue for fiscal year 2008.

Since the enactment of these capacity fee increases, several small businesses have been required to pay substantial sums of money for water/sewer connections, both for new construction and for renovations of existing buildings where water/sewer capacity is expected to increase (i.e., a former retail establishment being renovated for a restaurant use). This ordinance will allow certain water/sewer customers to pay these fees in even monthly installments over a three year period. Water customers using connections to the public water system no larger than 1 ½ inches and with expected usage averaging 5,000 gallons or less per day, other than single-family residential developments or combined single-family and commercial developments, will be allowed to make equal monthly installments without interest for 36 months. Sewer customers using a four-inch, six-inch or eight-inch connection with expected sewer usage of 5,000 gallons per day or less (excluding single-family residential developments or combined single-family and commercial developments) will also be authorized to pay the tap and capacity fees over 36 months.

In addition to authorizing a payment plan, this ordinance includes a provision that clarifies what constitutes a new connection for purposes of the capacity fees. A new connection is to include an

increase in water or sewer use of ten percent or more through an existing connection as compared to the average flow for the previous three years. Thus, a new connection does not necessarily mean new construction. Although the ordinance is currently being interpreted in this manner by the water department, this revised language will take away any ambiguity.

This ordinance also includes enforcement provisions for failure to pay the capacity charge. In the event of nonpayment, the water department will be allowed to discontinue water/sewer service. The code already allows the discontinuation of service for the nonpayment of tap fees, but capacity fees were not specifically mentioned. Further, failure to pay the capacity fees will constitute a lien against the property. Although the existing code includes the lien provision for the nonpayment of tap fees, it is questionable whether the Metropolitan Government has this authority under state law.

ORDINANCE NO. BL2008-216 (MOORE) – This ordinance amends the Metropolitan Code regarding the parking of motor vehicles on grassy areas. In June 2002, the council amended the code to require that all motor vehicles on private property be either stored inside a garage or parked on a paved or graveled area. Such paved/gravel area cannot exceed 25% of the total lot area. The department of codes administration has apparently interpreted the words “private property” in the existing ordinance to mean all property other than the public right-of-way. Thus, at least one public school has been cited for allowing parking on the grass during special events.

This ordinance simply amends the code to allow the parking of automobiles in grassy areas under the control of the Metropolitan board of public education during special events.

ORDINANCE NO. BL2008-217 (JAMESON) – This ordinance amends the Metropolitan building code to establish a “green permit”. In June 2007, the Council enacted Substitute Ordinance No. BL2007-1374 to require sustainable building design standards for new and renovated Metropolitan Government buildings and facilities. However, the code does not provide for any protocol or standards for sustainable private buildings to be designated by the Metropolitan Government as being “green”. In response to requests from certain developers and architects interested in sustainable buildings, the Council requested the Vice Mayor by resolution in February 2008 to appoint a Green Permit Task Force to make recommendations to the Council regarding the appropriate sustainable building protocol for the codes department to use in recognizing private sustainable buildings. This task force was appointed by the Vice Mayor, and made a recommendation in April that green permits be issued for buildings that meet certain standards.

The purpose of this ordinance is to implement the recommendations of the Green Permit Task Force. Pursuant to the ordinance, the department of codes administration would be required to issue a “green” certificate of occupancy if the applicant provides proof of certification by an outside organization as a sustainable building. For residential development, the applicant would have to submit proof of certification from either the U.S. Green Building Council’s LEED certification program or the EarthCraft House green building program. Commercial developments would be required to provide proof of LEED certification, as well as compliance with the U.S. Green Building Council’s water conservation qualifier, which requires that the building reduce water consumption by twenty percent.

Since the applicant will be required to be certified as a sustainable building using an outside organization, there will be no additional costs to the codes department in issuing the green permit. All the codes department will be required to do is to verify the certification. While the green permit will not result in any particular incentives from Metro, such as a reduction in permit fees, developers

will be able to market their building as green, which is becoming more and more popular with environmentally conscious companies and prospective homeowners.

ORDINANCE NO. BL2008-218 (COLE & GARRETT) – This ordinance repeals Ordinance No. BL2001-777 pertaining to the waiver of credit card processing fees. Credit card companies charge merchants a fee for accepting the cards at their places of business. Since Metro accepts credit cards for the payment of a variety of fees and services, Metro is charged the processing fee in the same manner as other merchants. State law requires that local governments set and collect a debit and credit processing fee equivalent to the amount the government is charged when these methods are used for payments, provided the processing fee charged these persons cannot exceed five percent of the payment collected. However, oddly enough, the state law was amended to allow governments to waive this processing fee if they wish to do so. In 2001, the Council enacted Ordinance No. BL2001-777 to waive the credit/debit card processing fee. It was the thought at the time of enactment that waiving the fee would encourage persons owing money to the Metropolitan Government to pay in a more timely manner, which would result in quicker payments to Metro. However, the fee waiver has been costing the Metropolitan Government millions of dollars a year.

In 2006, the council amended the 2001 ordinance to partially repeal the fee waiver for non-point-of-sale transactions. A point of sale transaction is one where the goods or services are purchased directly from Metro face-to-face or “over the counter”, such as payment for greens fees at Metro golf courses. Non-point-of-sale transactions include those payments made by phone or Internet. The 2006 ordinance authorized a 2.5% processing fee to be charged for all non-point-of-sale transactions.

Although the partial repeal of the fee waiver in 2006 helped reduce Metro’s expenses associated with the credit/debit card processing fees, the Metropolitan Government continues to absorb a significant financial loss in paying these fees for customers that use credit cards to pay fees and property taxes. This ordinance simply repeals Ordinance No. BL2001-777 in its entirety so that Metro will no longer be subsidizing persons making payments by credit or debit card.

There is a housekeeping amendment for this ordinance to clarify that this ordinance is repealing BL2001-777 and the subsequent amendments to that ordinance.

ORDINANCE NO. BL2008-219 (COLE) – This ordinance authorizes the Metropolitan Government to accept a donation of \$10,000 for the use and benefit of the Davidson County drug court program. A donor who wishes to remain anonymous has made an unrestricted \$10,000 cash donation to the drug court. All donations in excess of \$5,000 must be approved by the council by ordinance.

ORDINANCE NOS. BL2008-220 through BL2008-222 – These three ordinances abandon certain alley rights-of-way within the area of the Metropolitan Government. Consent of the affected property owners is on file with the department of public works. These ordinances have been approved by the planning commission and the traffic and parking commission.

Ordinance No. BL2008-220 (Harrison) abandons Alley No. 2007 extending southward from Fern Avenue to a dead end. This alley is located between Brick Church Pike and Evergreen Avenue. This closure has been requested by Dale & Associates on behalf of the property owner.

Ordinance No. BL2008-221 (Gilmore) abandons Alley No. 232 from Pine Street northeastward to Alley No. 233. This alley is located between 12th Avenue South and I-40. This closure has been requested by Littlejohn Engineering Associates on behalf of the adjoining property owners.

Ordinance No. BL2008-222 (Gilmore) abandons Alley No. 442 from Division Street northward to a dead end between 17th Avenue South and 18th Avenue South. This closure has been requested by Kennedy Capital Group, LLC.

ORDINANCE NO. BL2008-223 (TOLER) – This ordinance renames a portion of Carothers Road as “Grace Point Lane”. The Carothers Crossing development divided Carothers Road into two sections. This ordinance will rename one of these sections “Grace Point Lane” where it will tie into the proposed Grace Point Lane in the Carothers Crossing subdivision. This ordinance was disapproved by the planning commission but approved by the ECD board.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2008-151 (WILHOITE) – This zoning text change amends the definition of “family” under the zoning code to include a group of not more than eight unrelated elderly persons. In addition to the traditional definition of family, meaning persons related by blood, marriage or law, the zoning code allows up to three unrelated persons to live in a single dwelling unit, as well as group homes for the disabled of not more than eight individuals (including persons being treated for drug and/or alcohol dependency). Under the Fair Housing Amendments Act of 1988 (FHAA), local governments must make reasonable accommodations in rules that would afford disabled persons an equal opportunity to use a dwelling. The courts have determined that drug/alcohol dependent persons are considered disabled under the FHAA, but this protection obviously would not apply to all elderly persons.

This ordinance would expand the definition of family to allow group homes for up to eight unrelated persons over the age of 65, plus two house parents, to live together in a single dwelling unit. Assisted living facilities and nursing homes are already permitted in residential zoning districts. This zoning text change would allow small elderly care facilities to be permitted anywhere one family is allowed to live, including single-family and two-family residential districts. These type group homes that would be considered a “home for the aged” under state law would be required to obtain a license from the Tennessee Department of Health in order to operate. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-153 (JAMESON) – This zoning text change amends the tree protection and replacement provisions in the code regarding the calculation of tree density. The code currently requires properties to achieve a tree density factor of at least fourteen units per acre. A tree density unit consists of two 2-inch trees in diameter. The code allows for a deduction in gross acreage from the tree density calculation for structures, areas covered by a pond, and fenced athletic fields. A recent Tennessee Court of Appeals decision held that parking areas are considered “structures”, and thus qualify for the deduction in acreage.

This ordinance would clarify that parking areas are not to be considered structures. The ordinance would exempt service areas, drive aisles, and parking/loading areas for tractor trailers from the tree density calculation, but employee parking and loading areas at commercial establishments would not be exempt.

There is a housekeeping amendment for this ordinance that clarifies the exemption in acreage is only for areas used by tractor trailers. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-167 (STEINE) – This zoning text change creates a new use called “animal boarding facility”, and makes the use permitted with conditions in the industrial warehousing/distribution (IWD) and industrial restrictive (IR) zoning districts. The only use similar to animal boarding included in the existing code are kennels, which are allowed as a special exception use only in the AG/AR2a, CS and CL zoning districts and require approval by the board of zoning appeals. The zoning code defines a kennel as “any lot, building, structure or premises used for the boarding, breeding, training, and/or raising of domestic animal/wildlife (excluding livestock)...” Thus, persons desiring to open a dog boarding business in an industrial area are prohibited from doing so by the zoning code.

This ordinance would create a new use in the zoning code called “animal boarding facility”, which is defined as any buildings or land used for the temporary boarding, care and grooming of domesticated dogs and cats for profit. This use would not include an animal hospital facility. Animal boarding facilities would be a use permitted with conditions in the IWD and IR zoning districts.

The conditions that would apply to the use are as follows:

1. No part of any building or structure in which animals are housed may be closer than two hundred feet, and no kennel run may be located within one hundred feet, from any existing residence.
2. Enclosures must be provided to allow adequate protection against weather extremes.
3. Each animal boarded at the facility must have sufficient space to stand up, lie down and turn around without touching the sides or top of cages.
4. Each run must have at least a six-foot high fence completely surrounding it.
5. All animals must have fresh water available at all times. Water vessels are to be mounted or secured in a manner that prevents tipping.
6. All on-site waste must be housed either within the kennel building or an accessory structure, and all waste must be disposed of in a sanitary fashion no less frequently than one time per week.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-169 (COLE, BENNETT & BARRY) – This ordinance amends the zoning code provisions applicable to financial institutions and check cashing, title loan, pawnshops, and cash advance establishments. Although these types of establishments are separately regulated by state law, the zoning code currently makes no distinction between these uses. Check cashing, title loan, and cash advance establishments are all considered “financial institutions” under the zoning code, although this term is not defined in the code. Pawn shops are considered retail establishments. Financial institutions are currently permitted by right in most of the mixed-use, office, commercial, and shopping center districts. The use is permitted with conditions in the MUN, ON and CN districts, with a requirement that such establishments not exceed 2,500 square feet of floor area.

This ordinance simply makes a distinction in the zoning code between the financial institutions, check cashing, title loan, pawnshops, and cash advance uses. The definition of financial institution in the ordinance would include establishments that provide a variety of financial services, including banks, credit unions and mortgage companies. The definitions of check cashing, title loan, pawnshop and cash advance reference the state law provisions that regulate these different types of establishments. The uses would be either permitted by right or permitted with conditions in the same districts as financial institutions and retail establishments currently are. Thus, although the different types of establishments will be considered separate uses, their treatment under the zoning code will remain the same.

The only real effect the council office sees this ordinance having would be to prohibit or limit pawnshops, check cashing, and cash advance establishments as part of an adopted specific plan (SP) district. Although some SPs, such as the SP for the Gallatin Pike corridor, prohibit pawnshops and title loan businesses, the zoning code does not presently include a definition of these types of uses.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-176 (COLE) – This ordinance approves an increase in the probation supervision fees for probation services provided by the general sessions court. This fee was established in 1991 at a rate of \$20 per month. The fee was increased to \$25 per month as part of the revenue enhancements associated with the fiscal year 2006-2007 budget, which was expected to result in \$516,000 in increased revenue.

This ordinance increases the probation supervision fee from \$25 to \$35 per month. The ordinance provides that the cost of operating the division of probation has increased since the fee was last increased in 2006. Using the 2006 revenue estimates, this should generate over \$1.1 million in additional revenue for the government. By law, the Metropolitan Government cannot charge more in fees than the cost of providing the governmental service.

ORDINANCE NO. BL2008-177 (STANLEY, EVANS & COLE) – This ordinance approves the acquisition of a right-of-way easement from Benson's Inc. This permanent easement is necessary to complete a paving project near the intersection of Dodson Chapel Road and Central Pike. This easement is being acquired at a cost of \$1,500. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-201 (STEINE & CLAIBORNE) - This zoning text change amends the code provisions pertaining to digital and LED display signs. Metro's current sign ordinance was approved in 1992 and has not been significantly modified since its adoption. The sign industry has evolved in recent years to include more and more electronic and digital technology, and Metro's sign ordinance does not adequately address some of this technology. Further, Metro's sign ordinance is not consistent with a recent change in state law pertaining to changeable message signs.

The code currently prohibits signs with graphics or displays that do not remain static for at least two seconds, except in the commercial attraction zoning district (Opryland area). A separate code provision prohibits billboards or signs in certain commercial districts "with lights or illuminations that flash, move, rotate, scintillate, blink, flicker or vary in intensity or color except for time/temperature/date signs." The existing code language has caused some confusion regarding

digital billboards, as these are not prohibited video signs, but may be considered signs with lights or illuminations that move.

This ordinance deletes the rather antiquated language pertaining to signs with lights that “flash, move, scintillate, blink, and flicker”. In its place, this ordinance would provide that video, continuous scrolling image, and animation signs are prohibited in all but the commercial attraction district. The ordinance would also increase the amount of time that digital or electronic signs must remain motionless from two seconds to eight seconds. Further, the ordinance provides that digital display billboards must be at least 2,000 feet apart. This ordinance would make the code consistent with the recent state law which requires images on billboards to remain motionless for eight seconds and requires that there be at least 2,000 feet of separation between digital billboards.

Although this ordinance is similar to Ordinance No. BL2007-152, which was deferred indefinitely by the council, there is one important distinction. Ordinance No. BL2007-152, as amended, would allow churches, schools, and community recreation centers to have LED signs in residential districts along arterial and collector streets. This ordinance, however, expressly prohibits LED signs in all residential districts.

This ordinance has been approved by the planning commission with certain recommended amendments, which are to be offered on third reading in the form of a substitute. The substitute ordinance will clarify that digital and LED signs are not permitted in any zoning district where residential uses are permitted. The substitute also clarifies that signs with any copy, graphics, or digital displays that change messages by electronic or mechanical means are prohibited from being located less than 100 feet from any agriculturally or residentially-zoned property.