

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: **July 15, 2008**

RE: **Analysis Report**

Balances As Of:

7/9/08

7/11/07

GSD 4% RESERVE FUND

\* \$41,892,960

\$25,262,684

GENERAL FUND

GSD

Unavailable

Unavailable

USD

Unavailable

Unavailable

GENERAL PURPOSE

SCHOOL FUND

Unavailable

Unavailable

\* Assumes estimated revenues in fiscal year 2009 in the amount of \$23,566,797  
(Does not include pending 4% appropriation totaling \$13,740,502)

– RESOLUTIONS –

**RESOLUTION NO. RS2008-302** (COLE) – This resolution appropriates \$13,740,502 from the general fund reserve fund (4% 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. Four percent funds may only be used for the purchase of equipment and repairs to buildings.

The balance in the general fund reserve fund as of July 9, 2008, was \$28,152,458. This consists of unrealized revenue for fiscal year 2009 in the amount of \$23,566,797. The resolution provides that “The Director of Finance may schedule acquisitions authorized herein to ensure an appropriate balance in the Fund.” A copy of the supporting information sheet required by Ordinance No. O86-1534, as well as additional information provided by the department of general services regarding the vehicles to be purchased, is attached to this analysis.

**RESOLUTION NO. RS2008-352** (COLE) – This resolution authorizes the department of law to compromise and settle the lawsuit brought by Mark and Sylvia Young against the Metropolitan Government for the amount of \$251,428. On May 10, 2006, Mark Young, a Metro firefighter residing in Lebanon, Tennessee, was riding as a rear passenger on a fire truck (Rescue 12) in response to a reported house fire on Raines Avenue. The fire truck was traveling westbound on Polk Avenue, which has a posted speed limit of 40 m.p.h. It had been raining all morning and was raining while the fire truck was en route to the fire. The fire truck began to slide as it approached a curve. The driver attempted to regain control, but the vehicle spun out of control and rolled over. Of the four firemen on the truck, it was immediately evident that Mr. Young had sustained the worst injuries.

Mr. Young was transported to Vanderbilt Hospital and diagnosed with a fractured C6 and C7 vertebra, and underwent spinal fusion surgery consisting of a bone graft and the placement of screws. After surgery, Mr. Young was in physical therapy for three months before returning to light duty work with the fire department on July 31, 2006. Mr. Young returned to full duty as a fire engineer on September 18, 2006, which is less physically demanding than the job of a firefighter, but is a higher pay grade than a firefighter. Mr. Young’s doctor has assigned him a permanent impairment rating of 25% to the body as a whole.

Mr. Young and his wife filed suit against the Metropolitan Government alleging that the driver of the fire truck was negligent in driving too fast for the road conditions and in his failure to maintain control of the vehicle. In addition, the Young’s allege that the tire tread on the fire truck was worn down beyond the appropriate level. Mr. Young has incurred medical bills totaling \$120,214. His wife incurred \$3,893.25 in lost wages as an employee with the Wilson County school system while caring for him, and has made a claim for loss of consortium since his injury continues to prevent him from performing household duties and has harmed their relationship.

No disciplinary action was taken against the driver of the fire truck. The fire department’s vehicle accident review board determined that disciplinary action was unwarranted due to the weather conditions and the dispute as to whether the tire tread was insufficient.

The department of law recommends settling both claims for the amount of \$251,428, which is to be paid out of the self-insured liability fund.

The council office would point out that since this was an injury-on-duty, the plaintiff should have no out-of-pocket medical expenses. Further, it is questionable whether the plaintiff's injury resulted in a loss of earning capacity since he returned to work at a higher salary than he was making at the time of the accident. Since the fire department vehicle accident review board took no disciplinary action against the driver, there is apparently some dispute as to liability. Under the Tennessee Government Tort Liability Act, the maximum exposure of the Metropolitan Government is \$250,000 per claim.

**RESOLUTION NOS. RS2008-361 & RS2008-362** – These two resolutions appropriate community development block grant (CDBG) funds for various improvements in the Cass Street and South Inglewood neighborhood strategy areas. CDBG funds are designated by federal law to be used for affordable housing activities and for neighborhood community improvement projects. Plans for these projects are available for review at the offices of the Metropolitan development and housing agency.

**Resolution No. RS2008-361** (Harrison) appropriates \$565,000 in CDBG funds for streetscape improvements in the Cass Street neighborhood strategy area. These improvements will include pedestrian crosswalks, sidewalks, signage, park benches, a park pavilion, trash receptacles, and street lights.

**Resolution No. RS2008-362** (Cole) appropriates \$475,000 of CDBG funds for park improvements in the South Inglewood neighborhood strategy area. These improvements will include repair of a walking track, conversion of a ball field, and lighting improvements.

**RESOLUTION NO. RS2008-363** (COLE) – This resolution approves an interlocal cooperation agreement between the Metropolitan Government and the industrial development board (IDB) for the administration and compliance monitoring of state endowment contracts. The IDB anticipates receiving future grants from the state department of economic and community development to promote the location of additional industries and businesses in Davidson County. Since the IDB does not have a staff, it is necessary that it contract with an agency to administer any grants it receives.

Pursuant to this agreement, the mayor's office of economic and community development will administer the grant and monitor the expenditure of the grant funds to ensure compliance with the terms and conditions of the grant. Further, the mayor's office of economic and community development will prepare a report demonstrating compliance of the expenditures and prepare any audit that may be required by the grant terms. The term of the agreement will be from the date of approval by the council through June 30, 2013.

State law allows such interlocal agreements to be approved by resolution of the council.

**RESOLUTION NO. RS2008-364** (COLE & JAMESON) – This resolution approves an amendment to a lease agreement between the state and the Metropolitan Government for use of a portion of the Tennessee Preparatory School (TPS) campus at 1200 Foster Avenue for the Nashville School of the Arts magnet. The original lease was approved by the council in 2003. Metro and the state now desire to extend the term of the lease for an additional six months through January 31, 2009.

Metro is not required to pay any "rent" for the premises, but is responsible for providing the "fair market value for use" of the premises. This includes the payment of all utilities, routine operating and maintenance expenses, and taxes. According to information provided by the board of education, they are working with the state on securing a long term lease for the TPS property for use by the

magnet school. This would include granting the school board the authority to make additions or renovations to the existing building.

The ordinance approving the initial lease agreement provided that any amendments or renewals to this lease must be approved by resolution of the Metropolitan Council receiving twenty-one affirmative votes.

This resolution has been approved by the planning commission.

**RESOLUTION NO. RS2008-365** (MAYNARD & COLE) – This resolution approves an agreement between the Metropolitan board of health and Columbia State Community College for the training of veterinary technician students. Pursuant to this agreement, the health department will provide veterinary clinical training experience to Columbia State students at the Metro animal control facility. Students will not receive any compensation and there is no cost to the Metropolitan Government for providing this service.

The term of the agreement is from July 1, 2008 through June 30, 2013. The school will be required to maintain professional liability insurance for its students.

**RESOLUTION NO. RS2008-366** (MAYNARD & COLE) – This resolution approves an amendment to and extension of a contract between the Metro board of health and Vanderbilt University for psychiatry training for Vanderbilt medical residents at the downtown clinic for the homeless. The original contract was approved by the council in August 2006. Pursuant to the agreement, Metro will pay Vanderbilt for the services provided by the residents at a rate of \$30 per hour per resident for four hours per week. The residents' duties under this contract are to perform psychiatric evaluations of new patients, treatment of both new and existing patients, and participation in outreach activities. Vanderbilt has agreed to indemnify the Metropolitan Government from any claims arising from the residents' actions, and maintains professional liability insurance in the amount of \$3 million.

This resolution approves an extension of the contract through October 31, 2008. The extended contract provides that Metro will reimburse Vanderbilt for the salary and professional liability insurance costs for one resident assigned to Metro at a rate of \$30 per hour for four hours per week, for a total amount not to exceed \$2,160, which is less than Metro was paying under the original contract.

**RESOLUTION NO. RS2008-367** (MAYNARD & COLE) – This resolution approves a grant in the amount of \$906,300 from the state department of health to the Metropolitan board of health for bioterrorism preparedness services. These federal pass-through funds are primarily used to pay the salaries of a regional hospital coordinator, a volunteer coordinator, a nurse, an emergency preparedness director, an emergency response coordinator, a toxicologist, and an environmental epidemiologist. The funds are also used to collaborate with emergency personnel and hospitals regarding emergency preparedness and the continued development of a regional public health preparedness plan and communications system.

The term of the grant is from August 1, 2008 through July 31, 2009.

**RESOLUTION NO. RS2008-368** (MAYNARD & COLE) – This resolution approves a grant in the amount of \$63,200 from the state department of health to the Metropolitan health department for tobacco prevention services. These federal pass-through funds will be used to provide tobacco education services, to develop a comprehensive annual action plan to prevent initiation of tobacco use among young people, promote quitting among adult and youth tobacco users, and partner with community organizations to implement counter-marketing campaigns. The term of the grant is from July 1, 2008, through March 31, 2009.

The resolution provides that there is no cash match for the grant, but the grant budget does show a grantee participation requirement of \$44,200.

**RESOLUTION NO. RS2008-369** (MAYNARD & COLE) – This resolution approves an application for a grant in the amount of \$2,000 from 4-H Youth Development to the Metropolitan board of health for implementation of the Health Rocks! program. This is a program focusing on positive youth development and life skills as an approach to making healthy lifestyle choices. The program will be implemented by the health department youth advisory board.

**RESOLUTION NO. RS2008-370** (COLE & MAYNARD) – This resolution approves an annual grant in the amount of \$75,000 from the state department of health to the Metro board of health to provide dental services to the homeless at the Downtown Clinic. These grant funds are used to cover the costs for providing dental services to the homeless consisting of emergency, restorative, periodontal, prosthodontic, and dental hygiene treatment. The term of the grant is from July 1, 2008 through June 30, 2009.

**RESOLUTION NOS. RS2008-371 through RS2008-373** – These three 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 decrease the amount of the grants due to a rescission of part of the federal funding.

**Resolution No. RS2008-371** (Cole) approves an amendment to a youth worker grant by decreasing the grant amount by \$46,950 for a new grant total of \$1,802,694. The caption of this resolution incorrectly identifies the grant as a dislocated worker grant.

**Resolution No. RS2008-372** (Baker & Cole) approves an amendment to an adult worker grant by decreasing the previous award by \$31,579 for a new total award of \$1,456,852.

**Resolution No. RS2008-373** (Baker & Cole) approves an amendment to a dislocated worker grant by decreasing the previous award by \$46,752 for a new total award of \$1,939,101.

**RESOLUTION NO. RS2008-374** (COLE & CRADDOCK) – This resolution approves an application for a grant in the amount of \$197,100 from the U.S. department of justice to the Metropolitan police department to pay overtime for officers assigned to the gang prevention unit. It is estimated that there are 44 different gangs in Nashville, with a total membership of 3,000. Metro's gang unit is comprised of 15 full-time officers aimed at addressing the problems posed by

criminal gangs. These grant funds will be used to extend gang investigations and enforcement efforts for four additional days per month.

**RESOLUTION NO. RS2008-375** (COLE & CRADDOCK) – This resolution approves a grant in the amount of \$168,000 from the Tennessee emergency management agency to the mayor's office of emergency management to subsidize the Metro emergency management program. The funds are used to provide for the planning and administration of emergency management training exercises, and to purchase emergency management equipment. The term of the grant is from October 1, 2007, through September 30, 2008. There is a required dollar-for-dollar grantee participation match of \$168,000.

**RESOLUTION NO. RS2008-376** (COLE & CRADDOCK) – This resolution approves a grant in the amount of \$296,111.26 from the Tennessee emergency management agency to the Mayor's office of emergency management to support the ongoing efforts to prevent, respond to, and recover from incidents of terrorism. These federal pass-through funds are to be used to pay for training exercises, planning, management, and equipment purchases allowable under the Homeland Security grant program. The term of this grant extends through August 31, 2008.

**RESOLUTION NO. RS2008-377** (CRADDOCK & COLE) – This resolution approves an application for a grant in the amount of \$97,030 from the state department of transportation to the Metropolitan police department to purchase twelve Intoximeters used to administer breath alcohol tests (BAT) to suspected alcohol impaired drivers. The police department currently has a shortage of BAT machines, which delays officers in the performance of their duties while waiting for a BAT machine to become available to complete the testing. If awarded, there will be no Metro cash match required for the grant.

**– BILLS ON SECOND READING –**

**ORDINANCE NO. BL2008-246** (CRADDOCK & WILHOITE) – This ordinance amends the Metropolitan Code to allow the police department to transport children found loitering during school hours to either the juvenile detention center or to the new truancy center. The code currently prohibits a child under the age of 18 who is subject to the state compulsory school attendance law from loitering in public places during school hours. Children found loitering in violation of this code provision “may be taken into custody”, meaning they are transported to the juvenile detention center.

The council recently approved funding for a new truancy center recommended by the mayor as part of the fiscal year 2009 budget. In order to implement the truancy center program, the code needs to be amended to allow children found loitering to be transported to the center.

**ORDINANCE NO. BL2008-247** (DUVALL & FOSTER) – This ordinance approves the acceptance of the donation of a conservation easement from Hanover Ridge, LLC for the Metro parks greenway system. This perpetual easement for approximately twelve acres of property located north of Mt. View Road and east of Bell Forge Parkway will be utilized as part of our greenway area with a pathway for bicycles or pedestrian travel, nature trail, and/or natural area. The acceptance of the conservation easement has been approved by the board of parks and recreation and the planning commission.

**ORDINANCE NO. BL2008-248** (TYGARD) – This ordinance would require all Metro departments to provide the council with a report describing their actions to reduce paper consumption and postage expenses. The fiscal year 2009 budget includes in excess of \$3 million government-wide for mailing expenses. This ordinance simply requires each Metro department to submit an annual written report not later than September 30 outlining the department’s actions to reduce the amount of paper used and postage expenses.

**ORDINANCE NO. BL2008-249** (GOTTO) – This ordinance amends the dumpster collection restrictions contained in the Metropolitan Code to extend the distance from residential structures for which nighttime dumpster collection is prohibited. The Code currently prohibits the emptying of trash dumpsters located within 300 feet of a residential structure between the hours of 11:00 p.m. and 7:00 a.m. This ordinance would extend the distance to 1,000 feet.

**ORDINANCE NO. BL2008-250** (STANLEY & EVANS) – This ordinance authorizes the Metropolitan Government to enter into a renewal of an easement by the U.S. Army Corps of Engineers for property along Smith Springs Road in the Percy Priest Lake area. The purpose of the easement is to allow the water pipeline across five parcels of property owned by the federal government. This easement will be for a term of twenty years beginning February 11, 2008 and extending through February 10, 2028. There is no direct cost associated with this easement.

This ordinance has been approved by the planning commission.

**– BILLS ON THIRD READING –**

**ORDINANCE NO. BL2008-202** (COLEMAN) – This zoning text change would designate “religious institution” as a permitted use in the shopping center regional (SCR) district. The zoning code currently allows religious institutions by right in all agricultural, mixed-use, office, commercial, and industrial zoning districts, however, the use is not permitted in the SCR district. The SCR district is intended for high intensity retail, office and consumer service uses, and includes areas around the major malls and shopping centers in Davidson County, such as Rivergate, Hickory Hollow, Green Hills, and Nashville West.

Although religious institutions would be permitted in the SCR district under this ordinance, any SCR property subject to a planned unit development (PUD) overlay that does not allow this type of use may require the individual PUD to be amended by the council before the facility could obtain a use and occupancy permit.

This ordinance has been approved by the planning commission.

**SUBSTITUTE 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., the Mary Parish Center, and the YWCA Domestic Violence Program as the agencies to receive the funds. State law allows local governments to impose a \$45.00 “victims assistance assessment” to create a program or fund existing programs that assist victims of crime and their families. 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.”

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 the nonprofit organizations.

There is a second substitute for this ordinance that adds three additional victims assistance programs to be funded through the litigation tax. The additional organizations are Ujima House, Inc., Nashville Children’s Alliance and the Sexual Assault Center (formerly known as the Rape and Sexual Abuse Center). At the time this ordinance was originally prepared and filed, state law provided that only one existing program could be funded with this litigation assessment and required that the program to be funded be specifically named in the legislation authorizing the litigation assessment. However, this statute was amended in May 2008 to allow local governments to fund multiple programs with the victims assistance assessment.



**ORDINANCE NO. BL2008-231** (STANLEY, COLE & EVANS) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Phillips Development, LLC, to provide a public pressure sewer extension through the construction of a pump station and force main at the Ravenwood subdivision. The construction of the pump station will be at the sole expense of the developer, and the developer agrees to contribute \$158,100 to fund the additional operation and maintenance costs for the proposed pump station and force main.

**ORDINANCE NO. BL2008-243** (GOTTO, COLE & OTHERS) – This zoning text change would add “rehabilitation services” as a permitted use in the agricultural (AG and AR2a) zoning districts. The zoning code defines rehabilitation services as the treatment for addictive, mental or physical disabilities on either a twenty-four hours a day or an outpatient basis. In February 2007, the council approved Ordinance No. BL2006-1260 to remove rehabilitation services as a permitted use in the AG and AR2a districts. The use has always been prohibited in the other residentially zoned districts. There are only a few rehabilitation services facilities located in the agricultural zoning districts, including Cumberland Heights on River Road. All other medical uses remain permitted in the AG and AR2a districts.

After enactment of Ordinance No. BL2006-1260, a lawsuit was filed against the Metropolitan Government by an organization that had been seeking to locate a rehabilitation services establishment on AR2a property alleging that the ordinance violates the federal fair housing act. Subsequent to the filing of the lawsuit, the U.S. department of justice initiated an investigation of the Metropolitan Government and its land use policies to determine whether Metro is in violation of the fair housing act. In light of the lawsuit and pending investigation, the department of law recommends that the council restore “rehabilitation services” as a permitted use in the AG and AR2a districts.

The council office is of the opinion that this ordinance should be enacted to show the department of justice that the Metropolitan Government is not deliberately and willfully discriminating against persons with disabilities. Failure to enact this ordinance could be deemed by the Department of Justice as evidence of discriminatory intent and could subject the Metropolitan Government to penalties and sanctions that include injunctive relief, civil penalties, attorneys’ fees, and a loss of or restriction on federal grant funding.

This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2008-245** (RYMAN) – This zoning text change would require all amendments to the official zoning map or zoning regulations to be submitted to the department of law for approval as to form and legality. The Metro Charter provides that it is the duty of the department of law to assist in preparing legislation upon request of the mayor or any member of council. Currently, most legislation proposed by the administration and the various Metro departments or agencies is submitted to the department of law for review and approval as to form and legality. However, the planning department does not submit zoning bills to the department of law. Rather, such bills are prepared by the planning department staff and sent directly to the council office for filing.

The council rules require the director of finance to approve legislation as to availability of funds if the legislation would require the appropriation or expenditure of money. Further, the rules require the department of law to recommend the settlement of all claims before the legislation can be considered by the council. However, there are no requirements in the Charter or council rules that specifically require zoning bills to be submitted to the department of law.

This ordinance would require all amendments to the official zoning map or zoning text changes to be approved by the department of law as to form and legality, whether prepared by the planning department or the council office. Requiring the legal department to review all amendments to the official zoning map would add another step in an already lengthy process, which could delay the filing of such legislation with the council.

There is a proposed amendment for this ordinance that would require the department of law to provide a statement as to the legality of zoning bills and zoning text amendments prior to the consideration of the bills on third reading.

This ordinance has been approved to the planning commission.