MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **January 20, 2009**

RE: **Analysis Report**

Balances As Of:	**1/13/09**	**1/9/08**
GSD 4% RESERVE FUND	***** $27,892,850	$21,556,153
GENERAL FUND UNDESIGNATED FUND BALANCE		
GSD	$19,718,317	$23,400,202
USD	$13,510,632	$15,945,572
GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE		
	$52,554,640	$61,508,398

* Assumes estimated revenues in fiscal year 2009 in the amount of $14,026,947

– RESOLUTIONS –

RESOLUTION NO. RS2009-603 (FORKUM, JAMESON & ADKINS) – This resolution designates property in the downtown and surrounding areas as a tourist development zone for the purpose of financing the downtown convention center ("Music City Center") complex. State law provides a mechanism whereby the local legislative body can designate an area not to exceed three square miles as a tourist development zone to capture the increased local and state sales taxes generated within the area to be used for the construction of convention centers and other similar public use facilities that will attract visitors. The state and Metro will continue to receive the amount of base sales tax revenues as established by the previous year's collections, which base amount is to be adjusted annually after the first year by the percentage change in the collection of local and state sales and use taxes for the entire county. The additional sales and use taxes will be available exclusively to pay the construction costs and debt service on the convention center debt for up to thirty years.

The area to be designated a tourist development zone consists of approximately 1,800 acres bordered by Jefferson Street to the north, I-24 to the east, I-40/I-65 to the south, and extending out to 21st Avenue at the southwest corner. A map showing the area to be included is attached to this analysis. State law provides that the area is not to be larger than three square miles and shall not extend more than one mile from the public use facility (convention center). A three-square-mile area would be 1,920 acres. Although the geographic boundaries would include LP Field and the Sommet Center, the resolution specifically excludes properties operated by the sports authority since the sales tax revenues are already pledged for these facilities.

State law also requires that an application be filed with the state department of finance and administration seeking certification of the area as a tourist development zone. If the state determines that the proposed boundaries exceed the area that is reasonably anticipated to benefit from the construction of the new public use facility, the department of finance and administration, in its sole discretion, may reduce the area accordingly.

A similar tourist development zone was approved by the council in July 2007 for the Opryland property to allow the increased sales tax revenues within the area to be used to pay the debt service on the proposed expansion of the Gaylord Opryland hotel and convention center. State law specifically allows the Metropolitan Government to have more than one tourist development zone.

RESOLUTION NO. RS2009-604 (FORKUM) – This resolution declares the official intent of the Metropolitan Government to reimburse itself for expenditures related to the construction of a new convention center from the proceeds of bonds to be issued by Metro at a later date. In August 2007, the council enacted Ordinance No. BL2007-1557 to authorize the collection of four new tourist accommodation taxes to create a funding mechanism for the construction of a new convention center in downtown Nashville. This ordinance basically incorporated the provisions of the state enabling legislation for these four taxes into the Metro Code. These four tourist accommodation taxes, consisting of a one-percent increase in the hotel/motel tax, an additional $2.00 per room hotel occupancy tax, a $2.00 tax on vehicles-for-hire leaving the airport, and a one percent tax on rental cars, may only be used for the construction of a convention center with a construction cost in excess of $400 million.
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RESOLUTION NO. RS2009-604 (continued)

In February 2008, the Council authorized the Metropolitan development and housing agency (MDHA) to begin the preliminary activities towards the construction of a new convention center in downtown Nashville. The costs of these predevelopment activities cannot exceed the funds collected through the four tourist accommodation taxes discussed above. This resolution also required that a conceptual design and budget estimate be presented to the council before any permanent financing is secured for the construction of the convention center.

This resolution is essentially a statement of Metro's intent to reimburse itself out of bond proceeds for costs spent on the convention center through the use of these dedicated convention center tax revenues prior to the issuance of the bonds. Such bonds will have a maximum principal amount of $500,000,000, and will be issued either by the Metropolitan Government itself, or an existing or yet-to-be-created entity such as a convention center authority. Once the bonds are sold, Metro's convention center fund will be reimbursed out of the bond proceeds. This resolution is necessary in order to comply with U.S. Treasury regulations governing the use of bond proceeds to reimburse expenditures originally paid from sources other than bond proceeds.

This resolution does not obligate the council to approve the financing mechanism for the convention center when it is brought forward. This resolution simply allows us to reimburse the convention center fund if and when the bonds are issued.

RESOLUTION NO. RS2009-605 (GILMORE & HODGE) – This resolution appropriates $8,555.28 in grant funds from the state department of agriculture to the Nashville farmers' market to provide advertising materials and local food promotion packages to merchants to better market their produce. In March 2008, the farmers' market divided its farm sheds into a direct sales area and a retail sales area. These grant funds will be used to promote and explain the changes to customers, to purchase posters and price cards, and to fund a special advertisement in the *Nashville CityPaper*. The term of the grant is from November 1, 2008 through May 31, 2009.

RESOLUTION NO. RS2009-606 (GILMORE & HODGE) – This resolution approves an amendment to the lease between the Metropolitan Government and the state for the farmers' market facility to allow alcohol to be sold on the premises. The current farmers' market facility was constructed pursuant to a memorandum of understanding approved by the council in 1994 whereby the state agreed to contribute a portion of the funding to construct the facility on state land. The Metropolitan Government owns the building itself, but the state owns the underlying real estate. The lease agreement was approved in 1995 for a 20-year term, with a possible renewal of two additional 20-year terms.

The lease agreement currently prohibits the sale of alcoholic beverages of any kind upon the premises. The parties have agreed to amend the lease to allow Metro to sell or permit the sale of alcoholic beverages at the farmers market upon receiving the required licenses/permits from the state alcoholic beverage commission and the Metropolitan beer board.

The original lease agreement allows amendments to be approved by resolution of the council receiving at least twenty-one affirmative votes.

RESOLUTION NO. RS2009-607 (FORKUM) – This resolution approves a grant in the amount of $11,454 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to upgrade the skills of 12 employees at AmMed Direct located in Antioch. This will consist of management and leadership training including customer service, employee development, communication, time management, and strategic planning. The incumbent worker training program is administered by NCAC for workforce area 9, which includes the counties of Davidson, Rutherford, Wilson and Trousdale Counties. The term of the grant is from December 1, 2008 through June 30, 2009.

No Metropolitan Government funds will be used for this training program.

RESOLUTION NO. RS2009-608 (FORKUM & BENNETT) – This resolution approves an application for a Children With Incarcerated Parents Grant in the amount of $150,000 from the Memorial Foundation to the Davidson County sheriff's office. The sheriff's office is seeking this funding to provide a program for incarcerated parents and their children to aid in a successful re-entry. The program will target 100 at-risk youth in grades 4, 5, and 6 who have one or more incarcerated parent. If awarded, these grant funds will be used to pay the salaries of a program director and staff person, and to purchase the materials needed for the program. The purpose of the program is to mentor kids and provide after school activities, as well as to provide the parents with access to the sheriff's office education and job skills programs.

RESOLUTION NO. RS2009-609 (FORKUM) – This resolution authorizes the director of public property administration to exercise an option to purchase three parcels of property for use as part of Peeler Park. The first tract to be acquired consists of 257.73 acres and is located on Neelys Bend Road. The second two tracts are located on Menees Road and consists of 64.21 acres and 60.397 acres, respectively. This property is to be acquired at a total cost of $2,700,000, although the funding has yet to be approved by the council. If the council does not adopt this resolution prior to February 28, 2009, the grantors of the option will have the right to terminate the option. The grantors also have the right to terminate the option if Metro does not provide adequate proof of funding for the purchase price or the board of parks and recreations has not approved the acquisition prior to April 30, 2009. Once approved by the council, Metro will have until June 30, 2009 to exercise the option.

It is unusual for the council to approve an option to purchase property for parks purposes prior to the option being approved by the parks board. As stated above, the option may be terminated by the grantors if the parks board does not approve the transaction prior to April 30, 2009.

This property acquisition has been approved by the planning commission.

RESOLUTION NO. RS2009-610 (FORKUM & GOTTO) – This resolution approves a grant in the amount of $20,000 from the Metropolitan development and housing agency (MDHA) to the Metropolitan historical commission to perform environmental review required by federal law for development proposals using federal funds to determine potential adverse effects to historic properties. MDHA is responsible for administering the federal community development block

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RESOLUTION NO. RS2009-610 (continued)

grant (CDBG) and HOME programs. CDBG funds are used to provide matching funds for affordable housing developments. HOME funds are used to provide a mixture of owner-occupied and rental rehabilitation, new housing ownership programs, new multi-family housing opportunities, down payment assistance and housing assistance through non-profit community housing development organizations. These federal grant programs require compliance with the National Environmental Policy Act, part of which requires a review under the National Historic Preservation Act to identify historic properties potentially affected by developments using the federal funds.

MDHA desires to contract with the Metropolitan historical commission to review MDHA proposals and identify historic properties potentially affected by each proposal. The historical commission will also assess the effects each proposal will have on the historic properties and seek ways to avoid or minimize the potential effects. The term of this grant is from April 1, 2008 through March 31, 2009, with a possible twelve month extension.

RESOLUTION NO. RS2009-611 (TOLER) – This resolution authorizes the Metropolitan Government to enter into an interlocal agreement with the Nolensville/College Grove Utility District to transfer water service for the Shire of Owl Creek subdivision development in Williamson County to Metro water services. This subdivision is comprised of lots on Concord Road at Waller Road. Under state law, municipalities are authorized to enter into interlocal agreements with other public agencies for joint undertakings, subject to approval by the local legislative body. The contract provides that the cost of connecting the property to Metro's water distribution lines will be at the sole expense of the developer. Metro will bill the new customer(s) in Williamson County at Metro water services' published water rates.

Metro water services has entered into similar agreements with the Nolensville/College Grove Utility District to provide water service to parcels in Williamson County. Metro already provides sewer service to properties served by the utility district.

RESOLUTION NO. RS2009-612 (FORKUM) – This resolution authorizes the department of law to settle the lawsuit brought by the U.S. department of justice against the Metropolitan Government for alleged violations of the federal Fair Housing Act (FHA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and settles the claims of two individual plaintiffs in the Teen Challenge v. Metropolitan Government lawsuit. In February 2007, the council approved Ordinance No. BL2006-1260 to remove rehabilitation services as a permitted use in the agricultural zoning districts AG and AR2a 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. After enactment of Ordinance No. BL2006-1260, a lawsuit was filed against the Metropolitan Government by Teen Challenge, which is an organization that had been seeking to locate a rehabilitation services establishment on AR2a property, alleging that the ordinance violates the FHA and the RLUIPA. Subsequent to the filing of the Teen Challenge lawsuit, the U.S. department of justice (DOJ) initiated an investigation of the Metropolitan Government and its land use policies. After concluding its investigation, the department of justice filed suit against the Metropolitan Government seeking injunctive relief, monetary damages and civil penalties for violations of the FHA and RLUIPA. The complaint (continued on next page)

alleges that Metro discriminated against Teen Challenge on the basis of the disabled status of the participants in Teen Challenge's program through the delay and subsequent denial of the application for a building permit. The complaint further alleges that the council's removal of rehabilitation services as a permitted use in the AG and AR2a districts was a violation of the FHA and RLUIPA.

In order to avoid costly and time-consuming litigation, the parties have agreed to this consent decree. The main elements of the consent decree are as follows:

- Metro agrees not to adopt, implement or enforce zoning regulations that discriminate on the basis of disability.
- Metro agrees that it will make reasonable accommodations in its application of land use rules and policies when necessary to afford a person with disabilities an equal opportunity to use and enjoy a dwelling, nor to substantially burden religious exercise. This is basically a restatement of federal law.
- As a condition of settlement, the council must have adopted Ordinance Nos. BL2008-243 and BL2008-333. The council approved Ordinance No. BL2008-243 in July 2008, which restored rehabilitation services as a permitted use in the AG and AR2a zoning districts. Ordinance No. BL2008-333, currently on third and final reading, provides a process for disabled persons to request reasonable accommodations from Metro to ensure they are not being discriminated against through the application of our zoning ordinances and policies. Since adoption of this ordinance is a condition to the settlement, Ordinance No. BL2008-333 should be taken out of order at the January 20, 2009, council meeting and approved prior to consideration of this consent decree.
- Metro will be required to provide detailed findings supporting the denial of any future application for a zoning or building permit for a dwelling to house drug/alcohol dependent persons. A copy of these written findings must be provided to the applicant within ten days from the date the decision is made.
- Metro must designate a FHA and RLUIPA compliance officer who will be responsible for advising Metro departments about land use decisions involving these federal laws.
- Within 90 days of entry of the consent decree with the court, Metro will be required to provide FHA and RLUIPA training to all members of council, the planning commission, the board of zoning appeals, those serving as special counsel to the council, the legal department attorneys that provide advice on land use issues, the designated compliance officer, the zoning administrator and his staff, and the planning commission staff. The trainer must be an independent third party that is approved by the DOJ. This training must be video taped and shown to newly elected, appointed and hired individuals to fill positions required to receive the training initially. Proof of attendance at the training must be provided to the DOJ. The council office would point out that all persons required to receive the training must attend one of the training sessions or Metro will be in violation of the federal consent decree.
- Metro must provide the DOJ with a copy of any proposed change to the Metro Code that would affect housing for persons recovering from alcohol or drug dependency.
- Metro must submit compliance reports to the DOJ every six months, which will include documentation of housing discrimination complaints received by Metro and a summary of each zoning request related to housing for those recovering from drug or alcohol dependency.

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RESOLUTION NO. RS2009-612 (continued)

- Metro will be required to pay aggregate damages of $50,000 to the individual plaintiffs in the Teen Challenge lawsuit, plus a civil penalty to the U.S. government of $20,000, for a total settlement of $70,000. The council office would point out that this penalty is substantially less that the penalty that could be assessed if the matter went to trial since the court could find multiple violations of the FHA as opposed to treating Metro's actions as one violation. The FHA provides for civil penalties of $50,000 for the first violation and $100,000 for each subsequent violation. Further, the FHA allows the federal government to seek monetary damages for individual plaintiffs. Teen Challenge has presented proof that between 18 and 46 individuals were not allowed to participate in their program as a result of Metro's actions.
- Metro also agrees to pay the compensatory damages finally awarded in the Teen Challenge lawsuit after all applicable post-judgment motions and appeals are concluded.
- This consent decree will be effective for four years from the date it is entered with the court.

The council office strongly encourages the council to approve this consent decree. In the event this case went to trial, Metro could be subject to much higher damages and civil penalties, attorney fees, additional injunctive relief, and a loss of or restriction on federal grant funding.

RESOLUTION NO. RS2009-613 (FORKUM) – This resolution authorizes the department of law to settle AT&T's property damage claim against the Metropolitan Government for the amount of $27,118.54. On January 30, 2008, a Metro water services crew was working to replace the water lines at 907 and 908 Goodbar Drive when an employee struck an underground cable belonging to AT&T. This excavation was outside of the area designated for digging under the Tennessee One-Call system. The department of law recommends settling this claim for a payment to AT&T in the amount of $27,118.54, which is approximately $5,500 less than AT&T's actual repair costs.

The Metro employee involved in the incident received disciplinary action consisting of a verbal reprimand.

RESOLUTION NO. RS2009-614 (FORKUM) – This resolution authorizes the department of law to settle the personal injury lawsuit brought by Evelyn Dobbins against the Metropolitan Government for the amount of $10,000.00. On August 23, 2005, Ms. Dobbins was injured when she tripped over a raised sidewalk panel on Fifth Avenue North. As a result of the fall, Ms. Dobbins broke her nose and sustained bruises to forehead, hand and knee, incurring medical bills in the amount of $5,810.00. The department of law recommends settling this claim for $10,000, since it is likely that the court would find that Metro had notice of the dangerous condition of the sidewalk. One year prior to the accident, an inspector recommended that the sidewalk on Fifth Avenue North between Union Street and Deaderick Street be replaced. The sidewalk in question has since been repaired by Metro public works.

RESOLUTION NO. RS2009-615 (FORKUM) – This resolution authorizes the department of law to settle the Metropolitan Government's property damage claim against Roscoe Gant for the amount of $7,343.59. On May 17, 2008, a Metro fire truck was attempting to turn onto Montrose Avenue from 12th Avenue South when the truck was hit by a vehicle driven by Roscoe Gant, who failed to yield the right-of-way. Mr. Gant was subsequently determined to be intoxicated at the time of the accident. The collision caused damage to the front fenders, front bumper, and right front side of the fire engine totaling $7,343.59. The department of law recommends settling this claim for the cost to repair the Metro vehicle.

RESOLUTION NO. RS2009-616 (FORKUM) – This resolution authorizes the department of law to settle the Metropolitan Government's property damage claim against Roy Hardy for the amount of $11,788.44. On August 20, 2008, a Metro general services employee was stopped on Charlotte Pike at the White Bridge Road intersection when he was rear-ended by a vehicle operated by Roy Hardy. Mr. Hardy's careless driving was deemed to be the cause of the accident. The department of law recommends settling this claim for the full amount of property damage.

RESOLUTION NO. RS2009-617 (FORKUM) – This resolution authorizes the department of law to settle the personal injury claim of Patricia Malone against the Metropolitan Government for the amount of $9,500.00. On March 25, 2008, a Metro public works garbage truck was backing up to turn around at the intersection of Elmhurst Avenue and Lucile Street when he backed over a vehicle driven by Ms. Malone. Ms. Malone initially sought treatment at Vanderbilt Medical Center and was subsequently treated at the Center for Spine and Joint at Summit Hospital, incurring medical bills totaling $7,536.69.

The department of law recommends settling this claim for $9,500 since the Metro employee's negligence was the obvious cause of the accident. The Metro employee that caused the accident received disciplinary action consisting of a written reprimand.

RESOLUTION NO. RS2009-618 (FORKUM) – This resolution authorizes the department of law to settle the personal injury lawsuit brought by Michelle Stewart against the Metropolitan Government for the amount of $27,500.00. On August 13, 2004, Ms. Stewart's vehicle was rear-ended while stopped on Whites Creek Pike by a Metro police car that was traveling too fast for the road conditions. The collision caused Ms. Stewart's vehicle to strike the vehicle in front of her. Ms. Stewart sustained injuries to her neck, shoulders and back as a result of the accident, incurring medical bills totaling $9,146.25. The property damage portion of Ms. Stewart's claim has already been paid by Metro.

The department of law recommends settling this claim for $27,500 to compensate Ms. Stewart for her medical bills, as well as pain and suffering. The Metro police officer employee that caused the accident received disciplinary action consisting of a written reprimand and was required to attend a remedial driving class.

RESOLUTION NO. RS2009-619 (FORKUM) – This resolution authorizes the department of law to settle the Metropolitan Government's claims in the U.S. Airways, Inc. and PSA Airlines, Inc. Chapter 11 bankruptcy case for a total payment of $162,224.00 to Metro. U.S. Airways, Inc. and PSA Airlines, Inc. (a subsidiary of U.S. Airways) filed for Chapter 11 bankruptcy protection on September 12, 2004. The bankruptcy court set a deadline of March 11, 2005 for the filing of pre-petition proofs of claim, and August 22, 2005 for administrative claims. Metro filed two claims for pre-petition 2002 utility taxes in October 2004 for $149,023.66 and $1,778.40, respectively (including penalties and interest). Metro also filed two administrative claims in July 2005 for post-petition 2004 utility taxes of $64,382.63 and $2,532.55.

U.S. Airways and PSA Airlines objected to the 2002 utility tax claims alleging that no tax liability is owed, that the amounts are overstated or incorrect, and that the tax claims pertain to taxing periods that precede their previous bankruptcy case filed in August 2002. The debtors also objected to the administrative claims for the 2004 taxes, arguing that these are really pre-petition tax obligations rather than administrative expenses.

Federal law allows the bankruptcy court to determine whether the 2002 claims should be allowed, and to determine the amount the taxes should be if owed. Further, the court has the authority to reduce or disallow the penalty and interest portions of the claims.

There is also a legal question as to whether the claims for the 2004 taxes were timely filed. This bankruptcy case was filed in Virginia, which is in the Fourth Circuit. The Fourth Circuit Court of Appeals has held that the date of the tax assessment is to be used in determining whether a tax claim is pre-petition or post-petition, which in Tennessee is January 1. However, the Sixth Circuit Court of Appeals, which includes Tennessee within its jurisdiction, has held that the date the taxes become due is to be used in determining the pre or post-petition status. The taxes became due the third Monday in October. Metro's claims for the 2004 taxes were filed using the date recognized by the Sixth Circuit rather than the Fourth Circuit.

The department of law recommends settling this case for a lump sum of $162,224. If Metro litigated the case further, we would be required to retain counsel in Virginia at our expense. If we prevailed, payment of Metro's claims could be paid over a six year period from the assessment date. Given the uncertainty about whether the court would allow the 2004 claims and would modify the penalties and interest for the 2002 claims, the department of law believes it is in Metro's best interest to accept the lump sum settlement.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2008-249 (GOTTO & DUVALL) – This ordinance, as amended, 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 within the general services district.

ORDINANCE NO. BL2008-258 (CRAFTON) – This ordinance amends the Metropolitan Code to impose an additional fee for building permits for construction or demolition permits within historic zoning overlays. The fee schedule in the building code for building permits is based upon the total valuation of the construction; the bigger the job, the higher the fee. If no building permit is needed for the issuance of a use and occupancy permit, the fee for the certificate is fifty dollars.

This ordinance would impose an additional fifty dollar fee to be charged for applications to demolish, repair, or construct a building within a historic zoning overlay. According to information provided by the historical commission staff in June 2008, the staff handles approximately 325 cases per year in the overlay districts. With the addition of the new historic zoning overlays in recent months, this number is expected to increase this year. The former director of the historical commission advised the council office that some cases take dozens of hours to review, while others take only a few hours. By law, the Metropolitan Government cannot charge fees that exceed the cost of providing the service. The fiscal year 2009 budget for the historical commission's historic zoning program is $237,300. While some cases obviously take longer to review than others, a review of 400 cases this year would average out to be $593.25 per case.

There is an amendment to this ordinance that would exempt interior repairs and alterations, since the historical commission does not review these permits.

ORDINANCE NO. BL2008-306 (JAMESON, DUVALL & GILMORE) – This ordinance amends the Metropolitan Code to add noise restrictions within the downtown area. The noise ordinance was amended by Ordinance No. BL2008-259 in September 2008 to add a "plainly audible" standard for determining violations and adding certain restrictions pertaining to motor vehicle noise. However, Ordinance No. BL2008-259 retained the exemption for the downtown area from the noise ordinance restrictions.

This ordinance would basically set a maximum decibel of 85 Db(A) for downtown properties, with certain exceptions. For condominium and apartment units, the decibel measurement would be taken from the interior of another residential unit in the same complex (if the sound is coming from a residential unit), or from the boundary line of the nearest residentially-occupied property at street level (for noise from bars, nightclubs, etc.). The ordinance would not apply to special events in the downtown area for which a permit has been issued, or to any outdoor entertainment facilities owned by Metro (LP Field and Riverfront Park). The ordinance would also prohibit amplified sound from businesses to attract customers greater than 85 Db(A) from any point within the boundary line of the nearest residentially-occupied property.

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ORDINANCE NO. BL2008-306 (continued)

This ordinance is the result of a task force made up of downtown residents that began looking at this issue in September 2006. The task force toured downtown at night and took noise measurements at various locations. The 85 decibel limitation is greater than the noise ordinance in Las Vegas and New York City, and is in line with the noise ordinance in Austin, Texas, which is comparable to downtown Nashville as it pertains to the mixture of live music venues and residential living. An example of noise at approximately 85 Db(A) would be a heavy truck passing by 50 feet away. As another example, the noise emitted from a vacuum cleaner ranges from 60 to 85 Db(A).

There is a proposed substitute that would add a preamble to the ordinance providing legislative intent, as well to exempt live music in the downtown area from the noise restriction. The substitute would also prohibit outdoor speakers within the downtown area, except for restaurants with outdoor seating.

ORDINANCE NO. BL2008-328 (BARRY & JAMESON & OTHERS) – This ordinance extends the tree density requirements contained in the zoning code to certain residential development. The zoning code includes tree density provisions for new commercial development of fourteen units per acre. A tree density unit (TDU) is based upon the size of the tree using a caliper measurement for replacement trees and the diameter at breast height for protected trees. For example, one tree density unit equals two 2-inch caliper trees.

The zoning code currently includes an exemption from the tree ordinance for certain kinds of residential property. The code provides that the tree protection and replacement requirements do not apply to a platted lot zoned for single-family or two-family dwellings for which a valid building permit has been issued. This clearly means that individual homeowners are not required to meet the tree density provisions. The code provides that this exception for single and two-family lots does not apply to "residential developments that require final site plan or special exception approval", which technically would include new planned unit developments (PUDs) and specific plan districts (SPs). However, the code has been interpreted by the department of codes administration to exempt all residential development.

First, this ordinance would amend the code to clarify that only individual lots not part of a new subdivision for which a valid building permit has been issued would be exempt from the tree density requirements. Second, this ordinance would establish a sliding scale for tree density in residential subdivisions. As stated above, all commercial development must attain a tree density factor of fourteen units per acre. This ordinance would require that all new single and two-family residential subdivisions attain a tree density factor based upon the following incremental sliding scale using protected or replacement trees, or both:

Number of single or two-family units:	Tree density factor:
Between 2 and 25	at least 14 units per acre
Between 26 and 50	at least 12 units per acre
Between 51 and 75	at least 10 units per acre
76 or more units	at least 7 units per acre

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ORDINANCE NO. BL2008-328 (continued)

This ordinance has been approved by the planning commission. The planning commission staff recommends an amendment to this ordinance to include a definition of "new subdivision", and to make several housekeeping technical changes to the existing tree provisions in the zoning code.

There is a proposed substitute for this ordinance that accomplishes the following:

1. Several housekeeping technical changes were made to the existing code.
2. There would be no watering requirement for residential property since all residences are required by the building code to have a hose bib on the front and rear of the house.
3. An incentive to preserve existing trees is provided.
4. Single and two-family residential property, excluding the building lots, would be required to attain a tree density factor of fourteen units per acre, using new and/or protected trees. The individual building lots would be required to have one 2" caliper tree for every thirty feet of lot frontage, or portion thereof. Long, narrow lots would be required to attain a tree density factor of seven units per acre.
5. As an alternative to planting new trees, a builder could petition the urban forester for credit to preserve the existing trees on the building lot, as long as the overall tree density is not less than seven units per acre.

ORDINANCE NO. BL2008-345 (TOLER, EVANS & OTHERS) – This ordinance, commonly referred to as the "Green Streets" ordinance, amends the Metro Code to require the department of water and sewerage services to develop a stormwater master planning district. The purpose of this ordinance is to plan for environmental friendly stormwater projects within the area of the combined sewer system (CSS), which includes a 14 square mile area consisting predominately of downtown Nashville.

This ordinance requires Metro water services, in cooperation with Metro public works, the planning department, and the Metropolitan development and housing agency, to develop a plan for the installation of green infrastructure within the stormwater master planning district, which as noted above, is the area of the combined sewer system. "Green infrastructure" is an approach to wet weather management that incorporates the use of practices and technologies that capture and reuse stormwater. Such practices include the construction/installation of rain gardens, porous pavement, green roofs, planters, tree boxes, and swales. The initial plan is to be submitted to the council not later than 90 days after the enactment of this ordinance, and is to be updated annually.

The director of Metro water services will be required to submit a list of green street projects to the mayor for suggested inclusion as part of the capital improvements budget. Once the capital improvements budget is adopted, Metro water services will be required to submit a prioritized list of green street projects to the mayor for recommended inclusion as part of the next capital spending plan. Any green street project within the stormwater master planning district will be maintained by Metro water services working in conjunction with the department of public works.

Additional areas of Davidson County could be included within the stormwater master planning district in the future upon adoption of a resolution of the council to that effect.

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ORDINANCE NO. BL2008-345 (continued)

There is a proposed substitute for this ordinance that would allow the department of water and sewerage services to adopt and implement rules and regulations to require green infrastructure as part of private development outside the geographic area of the stormwater master planning district.

ORDINANCE NO. BL2008-350 (HODGE, BURCH & EVANS) – This ordinance amends the Metro Code by adopting the 2006 edition of the International Fire Code in place of the National Fire Prevention Association (NFPA) fire code and life safety code, which were adopted pursuant to Ordinance No. BL2007-1390 in April 2007. As part of Ordinance No. BL2007-1390, the council adopted several local amendments to the NFPA fire code and life safety code that are more restrictive than the national standard and the state requirements. The state of Tennessee has recently adopted the 2006 International Fire Code as the standard for use throughout the entire state, which is to become effective on December 20, 2008.

Local governments that enforce their own fire codes have the authority under state law to adopt a code that is at least as restrictive as the state standards. Thus, local government regulations can be more restrictive than the state standards but cannot be less restrictive. This ordinance simply adopts the state standards with no local amendments, other than to specify that the fire flow requirements will be based on the methodology described in the Insurance Services Office's fire flow formula. The state standards provide that fire flow requirements must be determined by an approved method.

State law requires local governments to adopt a code edition that is within six years of the latest published editions.

ORDINANCE NO. BL2008-351 (GOTTO) – This ordinance amends the Metro Code to set maintenance standards for railroad bridges. The Code currently gives the traffic and parking commission the authority to survey all railroads crossings and to require the railroads to take corrective action to prevent accidents. The code also sets maximum speeds for trains operating within the area of the Metropolitan Government. Further, the Code requires railroad bridges built over the Metro right-of-way to be constructed according to plans approved by the director of public works. However, the Code includes no standards for the ongoing maintenance of railroad bridges.

This ordinance would require railroads owning and/or maintaining bridges within the area of the Metropolitan Government to keep the bridges in good structural condition and to paint all metal surfaces to inhibit rust and corrosion. All existing surfaces with rust or corrosion must be stabilized and painted to prevent future rust or corrosion.

State law requires that all ordinances affecting railroads be submitted to the commissioner of the Tennessee department of transportation, and that no such ordinance is to be effective until fifteen days after the registered agent of the railroad has been served with a copy of the ordinance.

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ORDINANCE NO. BL2008-351 (continued)

There is some question as to whether this legislation would be preempted by the Federal Railroad Safety Act. Since this ordinance pertains primarily to aesthetics rather than safety, an argument can be made that the Act would not apply. The Ohio court of appeals held that a city's property standards code could not be used to require CSX to paint its bridges since such code was intended to apply only to housing stock. However, the court did not hold that the city was prohibited from enacting a specific requirement pertaining to bridge appearance.

ORDINANCE NO. BL2008-352 (CRAFTON) – This ordinance amends the Metropolitan Code to reduce the amount of water/sewer capacity fees for connection to the water and sewer system. 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 $1,000 was enacted for all new single-family equivalent connections to the public water supply system. In addition, the 2006 ordinance increased the capacity charge on all new single-family equivalent connections to the public sewer system from $500 to $2,000. These fees were re-authorized in June 2007.

Since the enactment of these capacity fee increases, many developers and 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. In an effort to provide some relief to these businesses, the Council approved Ordinance No. BL2008-215 in June 2008 to allow certain water/sewer customers to pay these fees in even monthly installments over a three year period.

This ordinance would abolish the capacity charge for water connections and would reduce the sewer capacity fee from $2,000 to $500. This would essentially take the code back to its status prior to June 2006. This ordinance also provides that those customers who were on an installment plan pursuant to Ordinance No. BL2008-215 would have their remaining water capacity fee balance forgiven, and would receive credit for the amount they have paid toward the reduced sewer capacity fee. Any remaining balance on their sewer capacity fee installment plan would be forgiven once the reduced capacity fee has been paid in full.

The finance director has submitted a letter to the council as to why he is unable to certify funds are available for this ordinance, as required by Rule 15 of the Council rules of procedure. The administration is currently reviewing the entire fee structure for the water department, and will be making a comprehensive recommendation to the Council in 2009 regarding water/sewer rates and stormwater funding. A copy of the finance director's letter is attached to this analysis.

ORDINANCE NOS. BL2009-366 (TOLER) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Drees Homes to provide public sewer service to a lot on Bluff Road in Williamson County. In 2004, a subdivision plat was filed along with a $76,000 letter of credit by Devco Development to ensure completion of the sanitary sewer for the Bluff Road Acres subdivision. Devco failed to complete the sewer construction and Metro collected the $76,000. Drees Homes plans on constructing a residential structure on (continued on next page)

ORDINANCE NOS. BL2009-366 (continued)

a lot in this subdivision, which will require the sewer connection. Pursuant to this agreement, Metro will pay Drees Homes up to $76,000 for the construction of the sewer. The obligations of this agreement are contingent upon the City of Brentwood issuing a building permit for the construction of the home.

The property benefiting from the sewer connection will become a regular customer of Metro water services and pay the same sewer rates as customers in Davidson County.

ORDINANCE NO. BL2008-367 (TOLER & FORKUM) – This ordinance authorizes the Metropolitan Government to enter into a utility relocation contract with the state department of transportation (TDOT) to relocate certain department of water and sewerage services' facilities required by TDOT's project to construct the Chestnut Street Bridge over the CSX railroad right-of-way. Metro will be responsible for 100% of the relocation costs, estimated to be $301,410, which will be paid from the water and sewer extension and replacement fund. This is a typical agreement entered into by Metro and TDOT for the relocation of utilities associated with TDOT improvement projects.

ORDINANCE NO. BL2009-368 (TODD & BENNETT) – This ordinance amends the Metro Code to allow the Metropolitan police department to contract with satellite cities to provide extra-duty police services. In 1998, the council established a policy to allow extra-duty Metro police officers to work for private entities. Such private entities pay the Metropolitan Government for all of its costs in providing the officers and police vehicles during the event or activity. The costs include salaries, the use of police vehicles, increased risk of legal liability, and the cost of possible officer injuries in the performance of these services.

Certain satellite cities within the area of the Metropolitan Government have expressed an interest in having additional police services within their jurisdictions. This ordinance will allow the chief of police to contract with these satellite cities to provide extra-duty police services in the same manner as with private entities.

ORDINANCE NO. BL2009-369 (GILMORE) – This ordinance amends the Metropolitan Code to prohibit the sale of single container beers by off-sale beer permit holders within the downtown area of Nashville. The Metro Code currently provides that certain acts by beer permit holders are prohibited, such as the sale of beer to minors, the sale to intoxicated persons, allowing criminal activity on the premises, and allowing intoxicated persons to loiter on the premises. This ordinance would prohibit off-sale permit holders from displaying or selling beer from an ice tub on any property within the downtown interstate loop, as well as along Dr. D.B. Todd, Jr. Boulevard and Jefferson Street. Further, off-sale permit holders within these boundaries would be prohibited from selling single beers in containers less than 70 ounces in size or smaller than a factory-packaged six pack. The ordinance exempts craft or specialty beers produced by microbreweries.

A similar ordinance was considered by the council in 2003, but the provisions regarding the prohibition on single-item beers were amended out prior to its enactment.

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ORDINANCE NO. BL2009-369 (continued)

The council office recommends that the ordinance be amended to include a specific definition of craft and specialty beers, and to clarify that malt beverages could be sold in a factory-packaged four pack.

ORDINANCE NO. BL2009-370 (HARRISON) – This is a routine ordinance that readopts the Metropolitan Code prepared by Municipal Code Corporation to include all ordinances enacted on or before October 7, 2008. Municipal Code Corporation has the contract with Metro to codify all ordinances enacted by the council, as well as to update and maintain the on-line version of the Code. The council periodically readopts the Code to make sure the printed and online versions are kept up to date.

ORDINANCE NO. BL2009-371 (FORKUM) – This ordinance approves a master agreement between the Metropolitan Government and Fifth Third Bank to allow for hedging contracts for the purchase of gasoline and diesel fuel. In June 2008, the Tennessee General Assembly enacted a statute allowing municipalities, upon the approval of the local governing body, to enter into negotiated contracts with other municipalities and financial institutions for the purpose of stabilizing the net expense incurred in the purchase of gasoline and/or diesel fuel. Pursuant to the state statute, such hedging contracts are only to be used for actual fuel purchases during the 2008-2009 fiscal year. This statute was enacted at a time when gasoline was $4.00 a gallon and diesel fuel was approximately $4.70 per gallon. The purpose of the statute was to give local governments the flexibility to enter into fuel hedging contracts for budgetary purposes given the extreme market volatility at the time. As the council is aware, gas and diesel prices have dropped drastically in recent weeks.

Fifth Third Bank was selected by Metro for this fuel hedging program through a request for proposals (RFP) process. Hedging contracts typically involve the agreed-upon purchase of a certain quantity of fuel at a fixed price. If the price goes higher than the fixed price, Metro is protected from the increase since Fifth Third would cover the difference between the market price and the agreed-upon price. However, if gas prices drop further, Metro would pay the fixed higher price. By entering into such hedging transactions, Metro is basically buying a level of certainty to help with budgeting for fuel costs. No matter what the market price of fuel is over the coming months, we would know exactly what we are going to pay. There will be no administrative fee paid to Fifth Third in the performance of this contract.

This master agreement will allow the finance director to enter into future fuel hedging transactions to provide budgetary protection from possible rapid increases in fuel prices. Such future transaction will presumably be based upon the market prices at the time and Metro's assumptions regarding future short-term price fluctuations. The master agreement basically provides that both Metro and Fifth Third will pay what they agree to pay as part of the hedging transaction, and provides remedies for a default in payment and early termination provisions. As noted above, the state law authorizing this program is only for fuel purchases made prior to June 30, 2009.

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ORDINANCE NO. BL2009-371 (continued)

According to the information submitted by Fifth Third to the purchasing agent, it is anticipated that Metro will enter into hedging transactions for approximately one-half of our monthly fuel purchases. Metro's average monthly diesel consumption is 95,646 gallons for the office of fleet management (OFM), 128,270 gallons for the Metropolitan transit authority (MTA), and 54,000 gallons for Metro Nashville public schools (MNPS). The average monthly gasoline consumption is 169,820 gallons for OFM, and 1,087 gallons for MNPS.

The council office recommends that this ordinance be amended to require a monthly report to the council regarding the fuel hedging program. Such report should include (1) a list of transactions identifying the quantity of fuel purchased, the agreed-upon price, and the market price at the time of the transaction; (2) a copy of the contract for each transaction; and (3) a comparison between the amount budgeted for fuel and the amount actually paid under the hedging contracts.

There will likely be subsequent legislation filed by the administration approving an inter-local agreement between Metro and the City of Franklin allowing Franklin to participate in this fuel hedging program.

ORDINANCE NO. BL2009-372 (DUVALL, FORKUM & OTHERS) – This ordinance authorizes the director of public property administration to accept the donation of property located at the corner of Hamilton Church Road and Mt. View Road for use as part of the parks system. This property, totaling approximately 23.2 acres, is being donated by Global Construction, Inc.

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

ORDINANCE NOS. BL2009-373 (BAKER) – This ordinance abandons a portion of Basswood Avenue from Robertson Avenue northeastward to the dead end. This closure has been requested by Reostone, LLC, one of the adjacent property owners. This section of right-way is no longer needed for government purposes. The ordinance does retain all Metro easements. This ordinance has been approved by the planning commission and the traffic and parking commission.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2008-333 (GOTTO) – This zoning text change adds provisions to the code to ensure that the Metropolitan Government is providing adequate accommodations for persons with disabilities through the enforcement of the zoning code. This ordinance stems from the U.S. Department of Justice (DOJ) investigation and lawsuit regarding alleged discriminatory actions by the Metropolitan Government through amendments to and application of Metro's zoning laws. Upon completing its investigation, the DOJ filed a lawsuit against the Metropolitan Government to enforce the federal Fair Housing Act (FHA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The FHA prohibits discrimination against persons seeking to obtain housing on the basis of race, disability, religion, or other protected status, and requires local governments to make reasonable accommodations for disabled persons to ensure they have adequate housing opportunities. The RLUIPA prohibits the enforcement of land use regulations that are discriminatory on the basis of religion or substantially burden the exercise of religion.
The zoning code currently provides that the zoning administrator is responsible for the interpretation and administration of the zoning code. Although this language gives the zoning administrator a great deal of latitude in enforcing the code, there is nothing in the zoning code that specifically allows the zoning administrator to ignore the application of local laws that he deems to be a violation of the FHA, RLUIPA or ADA.

This ordinance, which has been recommended by the department of law and is a requirement of the DOJ as part of its settlement agreement, adds provisions to the zoning code to give the zoning administrator the authority to avoid the enforcement of zoning ordinances that are inconsistent with federal law and do not provide a reasonable accommodation to persons with disabilities. The ordinance provides that all zoning laws are to be construed and enforced in a manner that is consistent with federal law. The ordinance will require the zoning administrator to make reasonable accommodations in the "rules, policies, and practices of his office" to ensure that persons with disabilities are not being discriminated against. Further, the ordinance sets out a procedure in which disabled persons can submit a request in writing for a reasonable accommodation. The zoning administrator's decision regarding the reasonable accommodation will be appealable to the board of zoning appeals.

A proposed settlement of the DOJ lawsuit, which is the subject matter of Resolution No. RS2009-612, is currently pending with the council. Since the approval of this ordinance is a condition of the DOJ settlement, this ordinance should be taken out of order and approved prior to consideration of Resolution No. RS2009-612.

There is a proposed substitute for this ordinance to require historical commission approval of demolition permits for a structure on property for which a reasonable accommodation has been requested.

This ordinance has been approved by the planning commission.

ORDINANCE NOS. BL2008-348 (CLAIBORNE) – This ordinance abandons a portion of Century Boulevard from Perimeter Place Drive southeastward to a dead end. This portion of Metro right-of-way is no longer needed for government purposes. The ordinance retains all Metro easements. This ordinance has been approved by the traffic and parking commission and the planning commission.

ORDINANCE NO. BL2008-349 (PAGE & DUVALL) – This ordinance, as amended, amends the Metro Beer Code to prohibit an applicant from obtaining a beer permit if he/she has been released from incarceration within the past ten years for conviction of certain crimes. The code currently prohibits the issuance of a beer permit to an owner that has been convicted of a crime of moral turpitude within the past ten years. However, this does not take into account the sentencing. Thus, a person that has served 11 years in prison can be released and go straight to the beer board and obtain a permit.

This ordinance would prohibit the issuance of a beer permit if the applicant has been released from incarceration within the past ten years for conviction of one or more of the following crimes: premeditated murder; any sex-related crime; the illegal sale of schedule I and II controlled substances; fraud; or embezzlement. The ordinance also prohibits the employment of such a convicted felon that has been released from incarceration within the past ten years. Applicants with felony convictions would have the responsibility of furnishing proof of the date of release from incarceration.

This ordinance also clarifies that beer must be purchased directly from an authorized wholesaler before it can be resold.

ORDINANCE NO. BL2008-353 (BENNETT & FORKUM) – This ordinance approves the annual contract for services performed by the Metropolitan Government for the emergency communications district (ECD) relative to operation of the enhanced-911 service for fiscal year 2008-2009. The contract specifies certain services to be provided by the emergency communications center, the department of public works and the department of general services. The department of public works will maintain an updated Master Street Address Guide, and the department of general services will provide day-to-day staff and support services for operation of the enhanced-911 emergency communications systems. Metro also agrees to handle the procurement of goods and services upon request by the ECD through our purchasing division. Metro will also be responsible for training the Metro employees who will operate the system. ECD is to reimburse the Metropolitan Government in the amount of $4,900 for the services provided by the department of public works provided in the 2008-2009 fiscal year, plus the reimbursement of certain training costs, telephone expenses and equipment costs.

ORDINANCE NO. BL2008-365 (JERNIGAN & HODGE) – This zoning text change would increase the number of days a repaired vehicle can remain on the premises of an automobile repair establishment from twenty-one days to forty-five days. In 2006, the council enacted Ordinance No. BL2006-972 to require most automotive uses in commercial areas to be part of a SP district. The council added a condition through an amendment to Ordinance No. BL2006-972 prior to its adoption on third reading prohibiting vehicles to be repaired or serviced from remaining on the premises of the repair establishment for more than twenty-one days. However, this provision is inconsistent with a state law provision requiring automobile repair establishments and towing firms to hold a vehicle for at least thirty days before taking steps to sell the vehicle to recoup the unpaid repair charges.

This ordinance extends the time a vehicle can remain on the premises to forty-five days, which will provide the repair establishment up to fifteen days to sell the unclaimed vehicle.

This ordinance has been approved by the planning commission.