

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director  
Metropolitan Council Office

DATE: **February 3, 2009**

RE: **Analysis Report**

Balances As Of:	<u>1/28/09</u>	<u>1/30/08</u>
<u>GSD 4% RESERVE FUND</u>	* \$27,892,850	\$21,556,153
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$19,718,317	\$23,492,102
USD	\$13,510,632	\$15,945,572
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	\$52,554,640	\$61,508,540

\* Assumes estimated revenues in fiscal year 2009 in the amount of \$12,409.774

– RESOLUTIONS –

**RESOLUTION NO. RS2009-623** (FORKUM) – This resolution approves a grant in the amount of \$4,840 from the Community Foundation of Middle Tennessee to the Davidson County sheriff’s department to construct 36 dog houses for families who adopt pets from Metro animal control that need assistance with housing for the pet. The dog houses are constructed by inmates participating in the PAWS program. The term of the grant is from December 1, 2008 through November 30, 2009.

**RESOLUTION NO. RS2009-624** (FORKUM) – This resolution approves an amendment to a grant in the amount of \$128,132 from the U.S. department of homeland security to the Metropolitan Nashville fire department for the fire prevention and awareness program. These funds are used to teach the fire department personnel about the various cultures in Nashville and their fire prevention knowledge, as well as to promote the fire safety campaign in the 22 predominant languages in Nashville. There is a required local match of \$32,033 to be provided through the fire department’s operating budget.

This resolution approves an amendment to the scope of work for the grant to allow for the use of an outside agency to meet the objectives of the multicultural educational training program.

**RESOLUTION NOS. RS2009-625 & RS2009-626** (FORKUM) – These two resolutions approve grants from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to provide skills shortage program funds to the Plumbers and Pipefitters union and TRW Automotive. The grant terms are from January 1, 2009 through December 31, 2009.

**Resolution No. RS2009-625** approves a grant in the amount of \$112,426 for the Plumbers and Pipefitters union and TRW Automotive. The Plumbers and Pipefitters Union will use \$49,260 of the funds to train 23 provisional journeymen and 20 journeymen plumbers in the plumbing trade. The union will be responsible for a \$28,000 match for the grant. TRW Automotive in Lebanon will receive \$63,166 in state funds for skill shortage projects.

**Resolution No. RS2009-626** approves a grant in the amount of \$11,243 for NCAC administrative support of the skills shortage program.

**RESOLUTION NO. RS2009-627** (FORKUM) – This resolution approves an amendment to a grant in the amount of \$5,000 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to provide administrative funds to assist the Sheet Metal Workers’ Local Union No. 177 with training for entry-level applicants. This resolution simply extends the term of the grant through March 31, 2009.

**RESOLUTION NO. RS2009-628** (FORKUM) – This resolution approves an interlocal agreement between the Metropolitan Government and the City of Franklin for participation in the fuel hedging program to be authorized by Ordinance No. BL2009-371 on third reading. State law allows 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. Ordinance No. BL2009-371 approves a master agreement with Fifth Third Bank for the fuel hedging program.

Pursuant to this contract, Metro will act as the lead agency in the fuel hedging transactions with Fifth Third. The City of Franklin agrees to hedge a percentage of its total annual fuel usage. If Franklin is due a refund based upon the price established in the hedging contract, and Fifth Third does not refund Franklin directly, Metro will make the payment upon receiving the funds from the bank. The City of Franklin reserves the right to opt out of any future fuel hedging agreements, but will be responsible for all payments required under previous fuel hedging transactions. This agreement may be terminated by either party upon 90 days written notice.

This agreement is for the benefit of the City of Franklin to allow them to take advantage of Metro's fuel hedging program since their fuel needs are not substantial enough to establish a hedging program on their own.

Ordinance No. BL2009-371 should be taken out of order for consideration on third reading prior to taking action on this resolution.

– **BILLS ON SECOND READING** –

**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 railroad 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.

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  
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**ORDINANCE NO. BL2008-352** (continued)

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 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.

The council office recommends that the ordinance be amended to remove the exception for craft and specialty microbrew beers, and to clarify that malt beverages could be sold in a factory-packaged four pack.

**ORDINANCE NO. BL2009-375** (GILMORE) – This ordinance renames a portion of Jackson Street between 9<sup>th</sup> Avenue North and Rosa L. Parks Boulevard as "Locklayer Street". This name change was requested by the residents in the area, since this one-block section of Jackson Street is really an extension of Locklayer Street, and the discrepancy could cause confusion for motorists and emergency personnel.

This name change has been approved by the traffic and parking commission.

**ORDINANCE NOS. BL2009-376 and BL2009-377** (TOLER) – These two ordinances abandon sanitary sewer lines and easements that are no longer needed by the department of water and sewerage services. The ordinances provide that future amendments may be approved by resolution of the council. These ordinances have been approved by the planning commission.

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**ORDINANCE NOS. BL2009-376 and BL2009-377** (continued)

**Ordinance No. BL2009-376** abandons an 8" sanitary sewer line and corresponding easement in connection with the Centennial Medical Center project located at 24<sup>th</sup> Avenue North and Charlotte Avenue.

**Ordinance No. BL2009-377** abandons an 8" sanitary sewer line and easement for the House of God Church project located at 2717 West Heiman Street. This ordinance also accepts a relocated 8" sewer line and easement, as well as two manholes.

**ORDINANCE NOS. BL2009-378** (HARRISON, GOTTO & OTHERS) – This ordinance authorizes the acceptance of easements for various stormwater projects in Davidson County. These easements are being acquired at no cost to the Metropolitan Government. This ordinance has been approved by the planning commission.

This ordinance authorizes the acceptance of 25 easements for the following properties:

<b><u>Property Address</u></b>	<b><u>Council District</u></b>
Tennyson Avenue, unnumbered	10
2556 and 2560 Jordan Ridge Drive	1
217 Donelson Pike	14
1501 Corporate Place	32
7661 Highway 70 South	22
377 Athens Way	2
744 East Argyle Avenue	17
544 McMurray Drive	27
110 One Mile Parkway	10
2712 Shacklett Drive	15
3544 Dickerson Pike	3
Tulip Grove Road, unnumbered	12
7240 and 7254 Centennial Place	20
2195 Nolensville Pike	17
East Campbell Road, unnumbered	10
101 East Campbell Road	10
Briley Park Boulevard South, unnumbered	3
3366 Briley Park Boulevard South	3
1112 Brick Church Pike	2
715 Massman Drive	15
590 Cheron Road	4
431 Old Hickory Boulevard	4
105 Linda Court	4
7100 Charlotte Pike	35
4806 Trousdale Drive	26
104 Gupton Court	1

**ORDINANCE NO. BL2009-379** (TOLER, FORKUM & RYMAN) – This ordinance authorizes the director of public property administration to acquire four parcels of property required for the construction of the water department’s Dry Creek project. The following properties are to be acquired: 35 Edenwold Road; 51 Edenwold Road; Edenwold Road, unnumbered; and Myatt Drive, unnumbered. The estimated cost of the acquisition is \$227,500, which will be paid out of the water and sewer extension and replacement fund. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2009-380** (DUVALL, FORKUM & TOLER) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Beazer Homes to provide a public pressure sewer extension through the construction of a sewerage pump station and force main for Beazer’s development at the Bradburn Village subdivision. The \$100,000 construction cost of the pump station will be at the sole expense of the developer.

**– BILLS ON THIRD READING –**

**SUBSTITUTE ORDINANCE NO. BL2008-306** (JAMESON & GILMORE) – This substitute 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.

First, this ordinance would prohibit speakers from being mounted to the exterior of a building or from being operated outside the premises. Restaurants with outdoor seating areas would be exempt from this prohibition, provided the sound from the speakers does not exceed 85 decibels. Special events and government entertainment facilities would also be exempt.

Second, the ordinance would prohibit establishments from aiming interior speakers toward exterior openings of a building when such sounds exceed 85 decibels measured fifty feet from the outside wall of the structure.

Finally, the ordinance sets an 85 decibel limitation on prerecorded music in the downtown area. Live music would be exempt from this limitation.

This ordinance was initiated through the work 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. Nashville’s ordinance would be the only noise ordinance the council office is aware of that specifically exempts live music.

**SUBSTITUTE ORDINANCE NO. BL2008-328** (BARRY & JAMESON) – This substitute 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 TDU equals two 2” 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.

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**SUBSTITUTE ORDINANCE NO. BL2008-328** (continued)

First, this ordinance would require residential developers to attain a tree density factor of 14 units per acre, excluding the building lots, using new and/or protected trees. The ordinance provides an incentive for protecting existing mature trees on the property by giving greater weight for existing trees toward the tree density calculation. The current language in the zoning code actually operates as a disincentive to protect existing trees.

Second, the individual single and two-family 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. 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.

This ordinance has been approved by the planning commission.

**SUBSTITUTE ORDINANCE NO. BL2008-345** (TOLER, EVANS & OTHERS) – This substitute 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 environmentally 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. Further, the department of water and sewerage services would have the authority to adopt and implement rules and regulations to require green infrastructure as part of private development, even if it is outside the geographic area of the stormwater master planning district.

**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 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. BL2009-370** (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, as amended, 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.

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.

Resolution No. RS2009-628 approves 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.