

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **April 7, 2009**

RE: **Analysis Report**

| Balances As Of: | <u>4/1/09</u> | <u>3/25/08</u> |
|--|----------------|----------------|
| <u>GSD 4% RESERVE FUND</u> | * \$28,317,051 | \$21,891,153 |
| <u>GENERAL FUND UNDESIGNATED FUND BALANCE</u> | | |
| GSD | \$19,998,867 | \$23,429,103 |
| USD | \$13,510,632 | \$15,945,572 |
| <u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u> | | |
| | \$52,554,640 | \$61,509,540 |

* Assumes estimated revenues in fiscal year 2009 in the amount of \$4,057,888

– RESOLUTIONS –

RESOLUTION NO. RS2009-684 (FORKUM) – This resolution approves the new four year plan for reappraisal and equalization of assessment for Davidson County. Pursuant to state law, a reappraisal of all property must be conducted in every county at least every six years, but local governments are allowed by state law to conduct an appraisal every four years.

The reappraisal program will begin July 1, 2009, and provides for the reevaluation of some 273,364 parcels of property in Davidson County. The property reevaluation will be completed in the year 2013, which will be the next reevaluation year. The plan provides that 43,818 parcels will be inspected in year one, 123,757 in year two, and 105,789 in year three. The fourth year is the reevaluation year in which approximately 275,000 parcels are estimated to be reviewed. The cost of the reappraisal program, which is funded in the annual operating budget of the assessor of property, funds the salary and benefits for the employees and other related costs for the program. The total cost of the program is estimated to be as follows:

| FY 2010 | FY 2011 | FY2012 | FY2013 |
|-------------|-------------|-------------|-------------|
| \$1,159,900 | \$2,006,200 | \$2,154,800 | \$4,012,700 |

The state has provided approximately \$200,000 per year in previous years as the state's share of the reappraisal functions by the Metro assessor of property to help fund the reappraisal program. However, the assessor does not know how much funding, if any will be provided by the state for the next reappraisal. The resolution provides that any funds received from the state will be expended solely for assisting in the cost of the reappraisal.

State law requires that the reappraisal plan be approved by the Council by resolution.

RESOLUTION NO. RS2009-685 (FORKUM & BENNETT) – This resolution approves an application for a grant in the amount of \$179,875.20 from the U.S. department of justice to the Davidson County sheriff's office (DCSO) to fund a gang coordinator position for a two year period. The gang prevention and coordination program will focus on the three zip codes in Nashville that have the highest rates of incarceration and recidivism. The grant coordinator will oversee programs working with offenders while incarcerated, as well as after their release back into the community. The program will help offenders obtain their GED and connect them with prospective employers. The program will also provide aftercare for all participants in the program, which will consist of weekly meetings at Trevecca Community Church.

RESOLUTION NO. RS2009-686 (HUNT & FORKUM) – This resolution approves a grant in the amount of \$300,000 from the state department of environment and conservation to the Metro board of parks and recreation for the construction of new facilities at the Metro park located on Morgan Road in Joelton. These funds, along with the required \$300,000 match from Metro parks capital funds, will be used to renovate the community center and construct a new playground and picnic pavilion. The term of the grant is from April 15, 2009 through April 14, 2012.

RESOLUTION NO. RS2009-687 (MATTHEWS, FORKUM & GOTTO) – This resolution appropriates \$125,000 in grant funds from Bells Landing Partners, LLC to the Metropolitan planning commission for a transportation study and economic analysis for the proposed May Town Center development. Bells Landing Partners, LLC, the developer on the project, has agreed to reimburse the planning department for the \$85,000 cost for the economic impact study to be performed by Dr. William Fox of the UT Center for Business and Economic Research, as well as the \$40,000 cost for the transportation study to be performed by RPM Associates.

The planning commission has the authority under the Metro Charter to “receive gifts for planning purposes.” However, the Council must act to appropriate the funds.

RESOLUTION NO. RS2009-688 (FORKUM) – This resolution authorizes the department of law to settle the Metropolitan Government’s property damage claim against UCW, Inc. for the amount of \$6,141,98. On September 9, 2008, UCW, Inc. was working on a state road project under the I-40 viaduct when it struck a Metro water main. This resolution settles the claim for the amount of the repair cost to the water main.

– BILLS ON SECOND READING –

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.

Substitute Ordinance No. BL2009-407, which approved on third reading at the last Council meeting, reduced the capacity charges to \$250 for water and \$750 for sewer.

ORDINANCE NO. BL2009-404 (MURRAY) – This ordinance amends the Metropolitan Code to prohibit former members of Metropolitan Government boards and commissions from being eligible to serve as the director or assistant director of the board or commission upon which he/she served for a period of two years following the date of discontinuation of service. The Charter prohibits members of boards or commissions from holding any other remunerative position within the Metropolitan Government while they are on a board or commission, unless the Charter specifically provides otherwise. However, persons no longer serving on a board or commission are free to apply for any position within the Metropolitan Government.

ORDINANCE NO. BL2009-415 (GARRETT, GOTTO & OTHERS) – This ordinance amends the Metropolitan Code to preempt the board of health’s decision to require food service establishments to post calorie information on their menus and menu boards. On March 5, 2009, the board of health adopted a new regulation requiring any restaurant with fifteen or more locations nationwide to display calories for menu items clearly on the menu board and printed menus. The first phase of the regulation requiring the posting of calorie information is set to take effect on March 10, 2010. The regulation exempts schools, religious institutions, hospitals, prisons, entertainment facilities, and hotels.

The department of law has opined that the adoption of this regulation is within the powers granted by the Metropolitan Charter and state law to protect the public health. There is currently no federal, state or local law that would preempt the health department from enacting and enforcing this regulation.

Section 10.104 of the Charter provides that no rule or regulation adopted by the board of health can be contrary to any Metropolitan ordinance. Thus, the Council Office is of the opinion that the Council has the authority to preempt the health department from enforcing this regulation upon the enactment of an ordinance to that effect.

This ordinance expressly provides that notwithstanding any rule or regulation adopted by the board of health, no food service establishment will be required to print, post, list, display, or otherwise disclose the calories of any item on any menu or menu board.

– BILLS ON THIRD 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.

The council office would point out that this ordinance is likely preempted by federal law. Railroads engage in interstate commerce, and as such fall within the jurisdiction of the U.S. Congress under the Commerce Clause of the United States Constitution. Further, two federal statutes expressly preempt state and local regulation of railroads in the areas of safety and rail facility operations. There is a case currently pending in federal court regarding a local ordinance in Cayce, South Carolina that required railroads to paint their bridges. This South Carolina case is in the early stages of litigation, so we do not know how the court will rule. Thus far, the City of Cayce has not defended the railroad's position that the ordinance is preempted. Rather, the City is arguing that the federal court should abstain from hearing the case until the state court matters are resolved.

Given the substantial costs involved in painting railroad bridges, enactment of this ordinance would most certainly result in litigation.

ORDINANCE NO. BL2009-405 (FORKUM) – This ordinance amends the Metropolitan Code to allow part-time Metropolitan Government employees who are injured during the course and scope of their employment to have their medical expenses paid by the Metropolitan Government. Section 13.12 of the Charter provides that “[a]ny employee of the Metropolitan Government entitled to benefits under any benefit plan established for the Metropolitan Government” is entitled to medical care at Metro’s expense for injuries arising out of and in the course of employment. Title 13 of the Charter defines “employee” as persons who are “regularly employed” by Metro. Since part-time employees are not considered “regularly employed” and are not entitled to benefits, they are not technically covered by the Charter in-line-of-duty (IOD) medical care provisions.

This ordinance provides that any employee who is not regularly employed (meaning they work less than twenty hours per week) is entitled to medical treatment at the expense of the

Metropolitan Government for accidental injury arising out of and in the course of employment. Such injured part-time employee will be entitled to emergency medical treatment at the nearest hospital. Any further necessary treatment will be chosen from a panel of medical providers authorized by the department of human resources.

No medical treatment will be paid for by Metro for any part-time employee that is injured as a result of willful misconduct, intentional self-inflicted injury, intoxication, illegal drug use, or willful failure or refusal to use a safety device. The human resources department will determine whether a part-time employee's injury qualifies as a valid IOD claim. Injured part-time employees will be required to notify the department of human resources within 10 days after the injury.

The ordinance grants a subrogation interest to Metro for any monetary award or settlement an employee receives from a third party that caused the injury.

This ordinance specifically does not apply to part-time employees of the board of education.

ORDINANCE NO. BL2009-408 (BENNETT) – This ordinance, as amended, approves a licensing agreement between the Metropolitan police department and Gaylord Entertainment Company for the use of a boat ramp on the Cumberland River. Gaylord owns a boat ramp at the end of McGavock Pike on the Cumberland River known as the Williams Ferry Boat Ramp. The police department desires to have access to this boat ramp to respond to requests for emergency services. This license agreement simply provides that Metro will have the right to use this boat ramp and to make necessary improvements thereto at our own expense. This agreement may be terminated by either party upon 180 days written notice. Amendments to this license agreement may be approved by resolution of the Council receiving 21 affirmative votes.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2009-409 (BARRY & TOLER) – This ordinance abandons an 8-inch water line and easement and accepts a replacement 8-inch line and easement at the Belmont University School of Pharmacy located at 1510 Acklen Avenue and 1515 Wedgewood Avenue. This ordinance has been approved by the planning commission. Future amendments to this ordinance may be approved by resolution.

ORDINANCE NO. BL2009-412 (MCGUIRE & HUNT) – This ordinance amends the Metropolitan Code to prohibit the placement and distribution of unauthorized advertisements in publications. This legislation is the result of recent actions taken by a hate group to insert their propaganda into a legitimate publication, which was then distributed in the Green Hills area. This ordinance, modeled after a California law, would prohibit a person from inserting an unauthorized advertisement into a publication and redistributing such unauthorized advertisement to the public.

ORDINANCE NO. BL2009-413 (BARRY & BENNETT) – This ordinance approves a memorandum of understanding (MOU) between the Mayor's office of emergency management (OEM) and Belmont University to provide for the creation of a joint information center on

Belmont's campus in the event of a major disaster. The purpose of the MOU is to provide a broad framework to guarantee that a site will be available at Belmont to be used for the coordinated response and recovery efforts in a disaster situation. Belmont agrees to make space available on the campus for media to gather and press conferences to be held regarding the disaster. Belmont will provide work space for 30-40 people, a public address system, phones and internet access. OEM agrees to provide meals to public information officers at the site, portable generators, and IT support. The estimated time frame for activation of the joint information site will be 12 to 24 hours following the emergency, with a total duration of 5 to 10 days.

There is no cost to the Metropolitan Government for entering into this MOU.

ORDINANCE NO. BL2009-414 (FORKUM, LANGSTER & OTHERS) – This ordinance declares Metropolitan Government-owned property located in various council districts to be surplus, and authorizes the director of public property administration to sell the property in accordance with the standard procedures for the disposition of surplus property. The proceeds of the sales will be credited to the general fund. This ordinance approves the disposition of the following properties:

| <u>Address – Location</u> | <u>Council District</u> |
|----------------------------------|--------------------------------|
| 2937 Brick Church Pike | 2 |
| 2939 Brick Church Pike | 2 |
| 1701 McKinney Avenue | 2 |
| 2122 – 15th Avenue North | 2 |
| 2409 Middle Street | 2 |
| 2415 18th Avenue North | 2 |
| 1412 Clay Street | 2 |
| 1515 Jewel St. | 5 |
| 830 Stockell Street | 5 |
| 908 Stockell Street | 5 |
| 504 Vernon Winfrey | 5 |
| 1114 Lillian Street | 6 |
| 1516 Boscobel | 6 |
| 356 Larkin Springs | 9 |
| 1106 2nd Ave S. | 17 |
| 26 Garden Street | 17 |
| 2130 Canady | 17 |
| 707 Buchanan | 19 |
| 1704 17th Ave N. | 19 |
| 1617-16th Avenue N. | 19 |
| 1101 Cockrill Street | 19 |
| 1543 11th Ave N. | 19 |
| 1518-16th Avenue N. | 19 |
| 1601 Scovel Street | 19 |
| 1603 Scovel Street | 19 |
| 1818 Jefferson Street | 19 |
| 1514 B 14th Ave N. | 19 |
| 1514 14th Ave N. | 19 |
| 1027 Cheatham Pl | 19 |

| | |
|-------------------------|----|
| 1017 Monroe Street | 19 |
| 1001-11th Avenue N. | 19 |
| 204 Jackson St. | 19 |
| 1001-2nd Avenue N. | 19 |
| 1819 Jefferson Street | 19 |
| 0 D. B. Todd Blvd. | 19 |
| 705-18th Avenue N. | 19 |
| 0- 40th Avenue N. | 21 |
| 2912 Clifton Avenue | 21 |
| 3218 Torbett Street | 21 |
| 408-37th Avenue N. | 21 |
| 407 – 35th Avenue North | 21 |
| 605-26th Avenue N. | 21 |
| 5257 Tusculum Ct. | 32 |
| 5253 Tusculum Ct. | 32 |
| 5245 Tusculum Ct | 32 |
| 5241 Tusculum Ct. | 32 |
| 5237 Tusculum Ct. | 32 |
| 5918 Temple Road | 35 |
| 0 Highway 100 | 35 |