

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **February 2, 2010**

RE: **Analysis Report**

Balances As Of:	<u>1/27/10</u>	<u>1/28/09</u>
<u>GSD 4% RESERVE FUND</u>	* \$24,150,556	\$27,892,850
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	\$25,160,041	\$19,718,317
USD	\$22,180,965	\$13,510,632
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	\$27,354,208	\$52,554,640

* Assumes estimated revenues in fiscal year 2010 in the amount of \$23,023,700

– RESOLUTIONS –

RESOLUTION NO. RS2010-1108 (HODGE, GOTTO & GILMORE) - This resolution confirms the election of one member to the board of directors of the industrial development board (IDB) of the Metropolitan Government. Three persons have been nominated to fill one vacancy on the IDB board. The election will be held by the council on February 2, 2010, to fill the vacancy through August 23, 2013. A late substitute resolution will be offered once the election has concluded.

RESOLUTION NO. RS2010-1109 (TYGARD & STEINE) – This resolution approves an intergovernmental agreement between the Metropolitan Government and the Metropolitan Nashville hospital authority to make changes to the hospital authority's employee benefits system. The Metropolitan Government entered into a contract with the hospital authority when the authority was created in 1999 to facilitate the transfer of duties from the board of hospitals. The intergovernmental agreement states that Metro is to provide the same services it provided to the board of hospitals, including benefits and civil service administration. Since the transfer in 1999, employees of the hospital authority have been a part of the Metropolitan Government's employee benefit system.

In an effort to reduce costs and to be more competitive with other hospitals, the hospital authority is proposing that all new employees hired after the effective date of this resolution receive only group dental and optional medical insurance benefits administered by Metro. All pension, disability, injury-on-duty (workers compensation), life insurance, and retiree medical benefits for new employees will be administered by the hospital authority under a new plan. Existing hospital authority employees will retain their current benefits administered by the Metropolitan Government.

The council office recommends that this resolution be amended to correct the effective date of the resolution. The resolution provides that it is to "take effect on November 1, 2010, or on such other date as the hospital authority requests by presenting an amended resolution to the Metropolitan Council." Under this language, the resolution duly adopted by the council implausibly may never take effect. The Metro Charter provides that legislation is to take effect 20 days after its adoption unless the welfare of the government requires that it take effect sooner. If the hospital authority and Metro want the provisions of the resolution to take effect at a later date, a separate section should be added to this resolution providing for such.

RESOLUTION NO. RS2010-1110 (STEINE) – This resolution approves an application for a grant in the amount of \$100,000 from the state arts commission to the Metropolitan arts commission for general operational support. The arts commission typically receives an annual state grant to help cover its operating costs.

RESOLUTION NO. RS2010-1111 (STEINE) – This resolution approves a contract between the Metropolitan Government and Pitney Bowes for the lease of a postal metering system for use by the department of general services. The equipment is to be leased for 48 months at a monthly cost of \$1,038, for a total contract amount of \$49,824. This contract was competitively bid, with Pitney Bowes being the only company to respond.

The Metropolitan Code provides that the lease of equipment in excess of \$5,000 per year must be approved by resolution of the Council.

RESOLUTION NOS. RS2010-1112 & RS2010-1113 (STEINE & BAKER) – These two resolutions approve intergovernmental agreements with Dickson County and the City of Cookeville for the distribution of state grant funds to assist with the investigation of internet crimes against children. Pursuant to a previously-approved grant agreement, the Metropolitan police department has agreed to distribute a portion of the state grant funds to surrounding Middle Tennessee Internet Crimes Against Children agencies. Metro will distribute \$25,000 in state grant funds to the Dickson County sheriff's office and to the Cookeville police department. The terms of the agreements are from July 1, 2009, through June 30, 2010. The grant funds are to be used for equipment, training, and travel expenses related to the investigations in the respective jurisdictions.

Resolution No. RS2010-1112 approves the agreement with the City of Cookeville.

Resolution No. RS2010-1113 approves the agreement with Dickson County.

RESOLUTION NO. RS2010-1114 (STEINE & HUNT) – This resolution authorizes the Metropolitan Government to enter into an intergovernmental agreement with Williamson County to improve the sewer service to the Town of Nolensville fire hall located at 7347 Nolensville Road. Pursuant to this agreement, Williamson County government will pay the entire \$50,000 cost of extending the sewer main to serve the property. These funds are to be deposited into the water and sewer extension and replacement fund.

This is a typical participation agreement entered into by the department of water and sewerage services whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service. The properties benefiting from the sewer connections become regular customers of Metro water services and pay the same sewer rates as customers in Davidson County.

RESOLUTION NO. RS2010-1115 (STEINE) – This resolution authorizes the department of law to compromise and settle the claim of Paul Young against the Metropolitan Government for the amount of \$9,000. On April 3, 2008, Metro water services drilled a sewer tap into what was thought to be a sewer force main, but in reality was a potable water line owned by White House Utility District serving a number of customers in the area. The hardware had been installed by A & H Plumbing for a future connection to the tap from the residence located at 1570 Springfield Highway.

Mr. Young filed suit against Metro, White House Utility District, and A & H Plumbing alleging that the cross-connection of the sewer line into the water line caused his home to become contaminated. Mr. Young claims he suffered a serious infection as a result of washing his prosthetic eye in the contaminated water, incurring medical bills totaling \$17,187.96.

The department of law recommends settling the lawsuit against Metro for \$9,000 given the likelihood that the Metropolitan Government would be found to be partially at fault if the case went to trial. This amount will be paid from the self-insured liability fund.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2010-612 (BAKER & DOMINY) – This ordinance amends the Metropolitan Code pertaining to vehicles left running while unattended. The Code currently makes it unlawful to leave a vehicle unattended without first turning off the engine and removing the key from the ignition. The purpose of this law is to prevent auto thefts.

This ordinance would essentially exempt vehicles that have remote starting devices where the doors remain locked while unattended. There is a proposed amendment that would allow any vehicle to remain idling on private residential property while unattended as long as the keys are not left in the ignition.

A similar ordinance that would have allowed a vehicle on private property to remain idling while unattended when the outside temperature is below forty degrees was deferred indefinitely in March of last year.

ORDINANCE NO. BL2010-614 (STEINE & CLAIBORNE) – This ordinance amends the Metro Code abolishing the Public, Educational and Governmental (PEG) access oversight committee, providing for the dissolution of the Community Access Corporation (CAC), and creating a new Education, Community and Arts Television Corporation to take the place of the Metropolitan Educational Access Corporation (MEAC) that would fulfill the functions of these other entities. The purpose of this ordinance is to consolidate the various education, community, and arts television functions under one entity.

The PEG access oversight committee was created in 1995 for the purpose of coordinating access to the government access cable channels in an effort to better serve the community. The PEG committee has no oversight or control of any of the programming on the channels.

The CAC was created by the council in 1984 to have the responsibility for program production and the day-to-day operation of the public access channels. The CAC is a separate non-profit corporation and hires a staff to operate the community access channel, which is channel 19 on Comcast. The CAC board consists of thirteen members, seven of whom are appointed by the mayor and confirmed by the council.

MEAC was created by the council in 2001, and is structured in essentially the same manner as CAC. MEAC is a non-profit corporation whose directors are appointed by the mayor and approved by the council. The function of MEAC is to have responsibility for program production and management of the educational access channels, which are currently channels 9 and 10 on Comcast.

This ordinance would consolidate all of these functions into one new organization to be called the Nashville Education, Community, and Arts Television Corporation (NECAT) in an effort to provide more accountability. This action is the result of a recent audit of MEAC, PEG and CAC performed by the department of finance that found a number of serious deficiencies. The most noteworthy problems involve MEAC, especially its former executive director. The audit indicates that more than \$45,000 in MEAC funds were misappropriated and over \$18,000 in improper commissions were paid to the executive director due to a lack of board oversight and proper internal controls. If the findings in the audit are true, the actions taken by the former executive (continued on next page)

ORDINANCE NO. BL2010-614 (continued)

director of MEAC likely amount to criminal theft and/or fraud. For example, it appears the former executive director used MEAC funds for personal expenses including a vacation, costs for obtaining a passport, payments to his landlord for his personal residence, payments to his son, cable television service at his home, and questionable cash withdrawals from ATMs. A Suburban SUV belonging to MEAC was also noted as missing.

While the vast majority of the problems stem from MEAC's former executive director, the audit also noted deficiencies with the other organizations, including poor control over inventorying assets and payroll processing issues. The audit recommended that a new organization be created to manage the activities of the three existing entities.

Under this ordinance, NECAT will be responsible for establishing rules and regulations regarding the use and schedule of the public access channels, to hire employees, and for defining the mission for each of the channels. NECAT will be required to submit an amended and restated corporate charter for approval by resolution of the council within 90 days after the effective date of this ordinance. The seven existing members of the MEAC board will continue to serve until the expiration of their term. NECAT will also be responsible for obtaining an annual audit from an independent accounting firm approved by the director of finance.

All production facilities will be managed and operated by the Metro department of information technology services (ITS) staff. NECAT will not have any authority over government access television (Metro3), which is operated by ITS. The council office would point out that the Metropolitan Government will have no control over the content of any programming on the education, arts, and community access channels.

ORDINANCE NO. BL2010-616 (PAGE) – This is a routine ordinance that readopts the Metropolitan Code prepared by Municipal Code Corporation to include all ordinances enacted on or before August 24, 2009. 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. BL2010-617 (JAMESON) – This ordinance amends the Metro Code provisions pertaining to the location restrictions for liquor stores. Pursuant to the Metro Charter, liquor stores may only be located within the urban services district (USD). The Metro Code imposes further restrictions on the physical location of liquor stores. No liquor store can be located within 50 yards of a private residence or library on the same side of the street, within 100 yards of a church, or within 200 yards of a school or another liquor store. This ordinance would allow liquor stores to be located within 50 yards of a church within the boundaries of 5th Avenue North, Church Street, Broadway, and the Cumberland River in downtown Nashville.

ORDINANCE NO. BL2010-618 (HARRISON) – This ordinance abandons a portion of Alley No. 1609 extending from 24th Avenue North to a dead end. The applicant, T. Pool Manager, LLC, is the owner of all of the affected properties. This alley is no longer needed for right-of-way purposes. The ordinance also abandons any utility easements held by Metro. This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2010-619 (GILMORE) – This ordinance renames McLemore Street, located between 10th Avenue North and Rosa L. Parks Boulevard, as “YMCA Way”. McLemore Street is a one block street that runs along the side of the downtown YMCA. This name change has been requested by the YMCA of Middle Tennessee. Although the Metro Code prohibits the naming of streets for the purpose of promoting a private business, Metro public works has decided that the YMCA is a charitable organization rather than a business.

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

– BILLS ON THIRD READING –

ORDINANCE NO. BL2009-586 (JAMESON & GILMORE) – This ordinance, as amended, creates a new zoning district called the “Downtown Code” (DTC) applicable to 823 acres of downtown Nashville. Most downtown properties are currently zoned commercial core (CC) or core frame (CF) permitting an array of high intensity uses. A smaller number of parcels are zoned for industrial and mixed-uses.

The DTC is a 99-page document that will govern the future development of downtown. The purpose of the DTC is to allow a broad range of non-residential and residential uses, reduce reliance on automobiles for transportation, create a better pedestrian streetscape, create open space, and to promote infill development. In order to accomplish these goals the DTC provides greater development rights, allows additional uses, and grants height bonuses for developing open space and workforce housing. The DTC divides the downtown area into 15 sub-districts, with each sub-district having its own set of guidelines for setbacks, height, width, and depth.

One key change between the existing downtown zoning and the proposed DTC, is that the DTC would allow single and two-family residences in the downtown area. The DTC also would increase the permitted maximum building height for much of downtown. The 2nd Avenue and Broadway area would continue to have an eight-story height limitation to protect the historic nature of the area. The DTC gives special attention to pedestrian-oriented design, and designates the ground level of buildings for “active uses”, which include retail, office, residential, institutional, and recreational uses. Further, the DTC includes development standards to provide for the creation of urban neighborhoods where residents can live, work, and shop.

This ordinance also includes standards for environmental sustainability and energy efficiency by encouraging pedestrian activity and by providing height bonuses for developments that achieve a LEED Silver rating.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2009-587 (JAMESON & GILMORE) – This is a housekeeping ordinance that amends the Metro Code to remove any non-zoning references to the commercial core (CC) zoning district, which is to be replaced by the new “downtown code” (DTC) that is the subject matter of Ordinance No. BL2009-586. Numerous sections outside of the zoning code reference the CC district, which, if not amended, would cause confusion once the district is replaced by the new DTC district.

ORDINANCE NO. BL2009-605 (JAMESON & HUNT) – This ordinance abandons a 15 foot water and sewer easement for property located at 714 Ramsey Street. This easement, which contains a private sanitary sewer line at the proposed East River Apartments, is no longer needed by the department of water and sewerage services. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2009-606 (BENNETT) – This ordinance amends the Metro Code to prohibit the outdoor sale of animals. The code already prohibits mobile vendors from selling goods or wares along the roadside, which includes animals. However, there is no specific provision applicable just to animals.

This ordinance, modeled after an ordinance in Lebanon, Tennessee, would prohibit the outdoor sale or gifting of dogs, cats, or other domestic animals in any outdoor public place. Included within the definition of “outdoor public place” are public rights-of-way and public or private parking lots. The ordinance exempts the Metro health department and 501(c)(3) nonprofit organizations whose primary purpose is the care and adoption of animals. The ordinance also exempts persons selling or giving away animals on their own property.

ORDINANCE NO. BL2009-607 (GOTTO & STEINE) – This ordinance grants a telecommunications franchise to Access Fiber Group, Inc., in accordance with the Metro Code. In January 2008, the council adopted Resolution No. RS2007-64 to grant Access Fiber Group, a Birmingham, Alabama-based company, permission to install and maintain approximately 26 miles of fiber optic cable on existing utility poles in Davidson County for the sole purpose of serving the Bank of New York facility at 420 Woodfolk Avenue. Resolution No. RS2007-64 included a provision prohibiting Access Fiber from providing local telecommunications service, and in the event the company decided to provide such service, it would be required to obtain a telecommunications franchise. Access Fiber now desires to provide telecommunications service in Davidson County.

This ordinance grants Access Fiber a fifteen year franchise. The company will be required to pay five percent of its gross revenues to the Metropolitan Government as consideration for granting the franchise. Access Fiber is also required to provide a bond in the amount of \$500,000 guaranteeing the company's performance of its obligations under the franchise, as well as a \$1,000,000 certificate of liability insurance naming the Metropolitan Government as additional insured.

The application for this franchise has been approved by the planning commission.

ORDINANCE NO. BL2009-608 (STEINE & HUNT) – This ordinance, as amended, approves a utility relocation contract between the department of water and sewerage services and the state department of transportation (TDOT) to relocate certain department of water and sewerage services' facilities required by TDOT's Murfreesboro Road bridge project over Mill Creek. The total cost of the utility relocation project is estimated to be \$250,340, with TDOT being responsible for 100% of the costs.

This is a typical agreement entered into by Metro and TDOT for the relocation of utilities associated with TDOT improvement projects.

ORDINANCE NO. BL2009-610 (MOORE & HUNT) – This ordinance abandons an 8-inch sanitary sewer line and easement located at Morning Star Missionary Baptist Church, 19 Hart Street, that is no longer needed by the department of water and sewerage services, and accepts a relocated 8-inch sewer line and easement. The ordinance provides that future amendments may be approved by resolution of the council. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2010-613 (CLAIBORNE) – This ordinance adds a new section to the building code specific to house moving. The code currently requires persons desiring to move a house to obtain a permit from the department of codes administration. Once a house has been moved from its foundation, it must be moved from the site within 30 days. The owner of the house then has 90 days after it is moved to make the necessary improvements to the structure to bring it up to code standards, although the department of codes administration may grant extensions upon the showing of delay caused by matters beyond the control of the owner or house mover. Although these timeframes are expressly provided in the code, many house movers fail to follow these provisions and houses have been left for months after they have been moved from the foundation and had the brick or siding removed.

Under this ordinance, if the house is moved to another location within Davidson County, the applicant would be required to file an application for a foundation permit at the time the house moving permit application is filed. The house would have to be moved to its new foundation or to a location outside of Davidson County within 45 days after the permit is obtained. If a house is moved outside of the county, it could not be moved back in unless another permit is obtained and would have to be permanently affixed to its new foundation within 30 days. All houses being moved would be required to be covered with an appropriate house wrap.

Once a house is moved to its new foundation, the owner would have 150 days to bring the house up to code. The codes department could grant one 60-day extension upon a showing of delay beyond the owner's control. This ordinance would also prohibit a person from obtaining another house moving permit if they have been found guilty of violating the house moving code provisions or failing to satisfy the conditions of a permit within the past 12 months.