

Ord. #5512

AN ORDINANCE TO AMEND THE CHARTER OF THE CITY OF MEMPHIS, SAME BEING CHAPTER 11 OF THE ACTS OF 1879, AS AMENDED, PURSUANT TO THE PROVISIONS OF ARTICLE 11, SECTION 9 OF THE CONSTITUTION OF THE STATE OF TENNESSEE (HOME RULE AMENDMENT) SO AS TO IMPROVE THE EFFECTIVENESS OF CIVIL SERVICE HEARINGS AND TO SUBMIT THE PROPOSED REFERENDUM ORDINANCE TO THE QUALIFIED VOTERS OF THE CITY OF MEMPHIS AT THE NEXT STATE GENERAL ELECTION .

WHEREAS, Article 11, Section 9 of the Constitution of the State of Tennessee provides that it shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at a special election election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that the present Charter of said City consisting of the provisions of the Act of the State of Tennessee for the year 1879, Chapter 11, as amended, and pursuant to Article 11, Section 9 of the Constitution of the State of Tennessee (Home Rule Amendment) the following proposal shall be published and submitted by the City of Memphis to its qualified voters at the next state general election, and which shall be held at least sixty (60) days after such publication:

Section 1.

Question:

Shall the Home Rule Charter of the City of Memphis, Tennessee be amended to update the Charter provisions relating to the civil service commission to: 1) Increase the number of civil service commission members 2) Make administrative updates to civil service hearing process and procedures and 3) Allow the Director of Personnel to consider performance as a measure for personnel evaluations?

Sec. [240]. - Composition of Commission.

There is hereby created a Commission to be composed of fourteen (14) members, to be known as the Civil Service Commission of the City of Memphis.

Sec. [241]. - Qualifications of members; compensation.

Members of the Civil Service Commission shall be residents of the City of Memphis or maintain their principal place of business within the City of Memphis. This provision shall supersede any other Charter provisions to the contrary relating to residency. Preference for individuals residing within the City of Memphis will be given for appointment to the Commission. The Council of the City of Memphis shall have the power to fix the qualifications and compensation of the members of the Civil Service Commission and to pass such ordinances as may be required to carry out the purposes and provisions of this article. At least seven (7) of Commissioners shall be licensed attorneys, current or former judges and/or individuals with prior experience as an administrative law judge for any local, state or federal agency.

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Sec. [242]. - Appointment of members.

The Mayor shall appoint members to the Commission, with the approval of a majority of the Council, for the following terms: two (2) members for a term of one (1) year, two (2) members for a term of two (2) years, and three (3) members for a term of three (3) years. One of said Commissioners shall be designated by the Mayor to serve as Chairman of the Commission. In the event that the Chairman is unable to attend a Commission hearing, the Mayor shall have the power to designate someone from the Commission membership to serve as substitute Chairman. Subsequent to the initial terms of the Commissioners, as provided for in this section, each Commissioner appointed thereafter shall serve for a term of three (3) years, except in instances when the Commission is expanded. Any additional members shall be appointed in staggered terms consistent with this provision.

Sec. [243]. - Oath of Commissioners.

The said Commissioners shall qualify and take an oath to uphold the Constitutions of the United States and of the State of Tennessee, and faithfully to discharge the duties of their respective offices neutrally and without bias, and, upon the organization thereof, shall undertake the duties of said office.

Sec. [245]. - Powers and duties of Commissioners.

The Civil Service Commission shall have the power and it shall be its duty to conduct hearings to review disciplinary actions, limited to suspensions, dismissals, or demotions of any employees not exempted from the provisions of this article. In the course of any hearing conducted under the provisions of this article, the Civil Service Commission shall have power to administer oaths, to subpoena and require the attendance of witnesses within the City and the production by them of books and papers pertinent to any matter of inquiry, and to examine such witnesses under oath in relation to any matter properly involved in such proceeding. For such purposes, the Commission may invoke the power of any court of record in the City, or judge thereof, to compel the attendance and testimony of witnesses and the production of books and papers in compliance with such subpoena.

Any Commissioner who is a licensed attorney, a current or former member of the judiciary and/or has served as an administrative law judge for any other local, state or federal agency shall be entitled to act as a hearing officer. Each hearing officer shall have the same powers and duties of the Commission.

Sec. [248]. - Hearings.

Upon an employee's appeal from his termination, demotion, or suspension, a hearing shall be held before a hearing officer which shall be randomly selected from the qualified Commissioners, . within a reasonable time thereafter, not to exceed ninety (90) days from filing of the appeal. Any employee who has been indicted by a federal or state grand jury or against whom a presentment or information has been filed shall be granted, upon his request and at his election, a postponement of hearing before the Civil Service Commission until such indictment, presentment, or information has been finally disposed of by a court of competent jurisdiction. Any employee seeking to hold a matter in abeyance may be prohibited from seeking back wages for the period of time that the matter was held in abeyance.

The hearing shall be conducted by the selected hearing officer. The hearing officer may reverse or sustain the disciplinary action of the City. If the hearing officer reverses a termination of an employee, the hearing officer may remand the matter to the City for further discipline or may reverse the termination and impose a suspension if appropriate. The secretary of the Commission shall have the duty of convening said hearing. At such hearing both the appealing employee and the official whose actions are being reviewed shall have the right to be heard and to present evidence and to be represented by themselves or by representative. The burden of proof required to sustain the action of the City shall be by a preponderance of the evidence. If, after a presentation of the proof, the hearing officer finds that there exists a reasonable basis for the disciplinary action taken, the action of the City shall be sustained. The decision of the hearing officer shall be stated in writing and shall include the hearing officer's findings of fact and conclusions there from within ninety (90) days of the conclusion of the hearing.

If any party is dissatisfied with the ruling of the hearing officer the decision of the hearing officer may be appealed to the full Commission within fourteen (14) days of the issuance of the findings of fact and conclusions of law. Alternatively, the decision of the hearing officer and/or the Commission shall be appealable by either the City or the employee as provided by State law.

Sec. [249]. - Director of personnel.

There shall be a Director of Personnel, who shall be appointed by the Mayor with the approval of a majority of the Council. The Director of Personnel shall be subject to removal by the Mayor with the concurrence of a majority of the Council. His term of office shall be the same as that of the appointing Mayor, and he shall continue in office until his successor has been appointed and approved. The Director of Personnel shall be entitled to set forth criteria for advancement based on merit and with the application of sound business principles in the administration of persons, and shall prescribe methods whereby appropriate records of the work of employees may be kept. Said director shall likewise prescribe methods for grading the work of employees in the various departments affected herein, shall measure such work by performance, fidelity to duty, punctuality, proper exercise of judgment, cooperation with superiors and other employees of the City of Memphis, courtesy to the general public, and other pertinent factors, to the end the said departments and the personnel thereof may function for the advancement of efficiency of said departments, and the promotion of public safety and welfare. There shall be no discrimination in the City employment of personnel because of religion, race, sex, creed, political affiliation, or other nonmerit factors, nor shall there be any discrimination in the promotion or demotion of City employees because of religion, race, sex, creed, political affiliation, or other nonmerit factors.

Section 2. Publication of Home Rule Amendment

BE IT FURTHER ORDAINED, That the Comptroller is hereby directed to cause the

Ordinance to be published pursuant to provisions of Article 11, Section 9 of the Constitution of the State of Tennessee.

Section 3. Delivery to Election Commission

BE IT FURTHER ORDAINED, That the Comptroller of the City of Memphis shall certify adoption of this Ordinance to the Shelby County Election Commission in charge of holding the next state general election, and request that this proposed amendment to the Home Rule Charter of the City of Memphis be placed on the ballot.

Section 4. Proposal and preference

BE IT FURTHER ORDAINED, That the Comptroller of the City of Memphis is hereby

directed to deliver a copy of this Ordinance to the Shelby County Election Commission, together with a suggested proposal and the following form of preference to be placed on the ballot in the next state general election:

Shall the Home Rule Charter of the City of Memphis, Tennessee be amended to update the Charter provisions relating to the civil service commission to: 1) Increase the number of civil service commission members 2) Make administrative updates to civil service hearing process and procedures and 3) Allow the Director of Personnel to consider performance as a measure for personnel evaluations?

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Commissioners, as provided for in this section, each Commissioner appointed thereafter shall serve for a term of three (3) years, except in instances when the Commission is expanded. Any additional members shall be appointed in staggered terms consistent with this provision.

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the City shall be by a preponderance of the evidence. If, after a presentation of the proof, the hearing officer finds that there exists a reasonable basis for the disciplinary action taken, the action of the City shall be sustained. The decision of the hearing officer shall be stated in writing and shall include the hearing officer's findings of fact and conclusions therefrom within ninety (90) days of the conclusion of the hearing.

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I, Brian Collins, Director of Finance for the City of Memphis do hereby
certify that the net cost to the City if this Amendment is adopted is estimated
to be \$_____.

FOR THE AMENDMENT (YES) _____

AGAINST THE AMENDMENT (NO) _____

Section 5. Effective Date of Charter Amendment

BE IT FURTHER ORDAINED, That this Ordinance shall take effect for the purposes set

forth herein sixty (60) days after approval by a majority of the qualified voters voting thereon in the next state general election, the public welfare, requiring it.

Section 6. Certification of Results

BE IT FURTHER ORDAINED, That the Shelby County Election Commission certify the result of said election to the Comptroller of the City of Memphis, who shall see that said result is made a part of the Minutes of the Council of the City of Memphis.

Section 7. Nonconflicting – Conflicting Laws

BE IT FURTHER ORDAINED, That upon adoption of this Home Rule Amendment, all laws constituting the present Charter of the City of Memphis, not in conflict with this amendatory Home Rule Ordinance, be and the same are here continued in full force and effect, and all laws in conflict therewith are hereby repealed.

Section 8. Severability

BE IT FURTHER ORDAINED, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not effect the remaining parts of this ordinance, it being hereby declared to be the legislative intent to have passed the remainder of this ordinance notwithstanding the parts so held to be invalid, if any.

Section 9. Publication

BE IT FURTHER ORDAINED, that this ordinance shall be published immediately after the adoption hereof.

Section 10. Enactment of City Ordinance

BE IT FURTHER ORDAINED, that this ordinance shall take effect from and after the date it shall have passed by the Council signed by the Chairman of the Council, certified and delivered to the office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

Sponsored by: Kemp Conrad

Shea Flinn, Memphis City Council

Edmund Ford Jr., Chairman, Memphis City Council

THE FOREGOING ORDINANCE
551a PASSED

1st Reading 5-7-13

2nd Reading 5-21-13

3rd Reading 8-26-13

Approved Edmund Ford Jr.

Chairman of Council

Date Signed: 9/13/13

Approved: [Signature]

Mayor, City of Memphis

Date Signed: 9/10/13

Comptroller

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Supak

Comptroller