

AN ORDINANCE TO ESTABLISH A POLICY THAT PREVENTS THE CITY FROM EMPLOYING SPECIAL ATTORNEYS TO PURSUE EXTRAORDINARY LITIGATION AS HEREINAFTER DEFINED WITHOUT THE CONSENT OF THE COUNCIL

WHEREAS, the Council has the authority to appropriate funds, establish budgets, and to approve policies for the City; and

WHEREAS, Section 193 and 194 of the City Charter establishes the duty of the City Attorney to prosecute and to defend, as the case may be, all suits brought by or against the City and to settle all lawsuits in which the City is a party; and

WHEREAS, Section 839 of the Charter authorizes the Mayor with approval of the Council to employ special attorneys for and on behalf of the City of Memphis whenever they shall deem it necessary; and

WHEREAS, the Charter of the City of Memphis provides that the Mayor shall be responsible to the Council for carrying out policies adopted by the Council, however, the Mayor is responsible for the administration of all units of city government; and

WHEREAS, the Council adopts the budget for the City Attorney to carry out the duties prescribed in Section 193 of the Charter to prosecute and defend all suits brought by or against the City; and

WHEREAS, the Council does not desire to interfere with nor impair the administrative powers of the Mayor or the duties of the City Attorney to prosecute or defend suits brought by or against the City as the relate to normal litigation of the City; and

WHEREAS, that the Council desires to establish a policy that prevents the City from employing special attorneys to pursue Extraordinary Litigation as hereinafter defined without its consent.

NOW, THEREFORE, BE IT ORDAINED By the Memphis City Council that Council approval shall be required before any special attorney is employed by the City to file suit regarding any Extraordinary Litigation as hereinafter defined.

Section 1. Definitions.

“Extraordinary Litigation” means, for the purposes of this Ordinance, any litigation other than litigation pursued by the City in the ordinary course of its usual and customary business affairs and said definition shall exclude any suit filed by the City:

- (a) to enforce its contractual rights;
- (b) to enforce any ordinance or resolution of the City;
- (c) to enforce any state law;

- (d) to collect any debt or taxes dues and owing to the City or any of its enterprise funds;
- (e) to appeal any Civil Service decision;
- (f) to assert any counter-claim, cross-claim or third party claim permitted by the Tennessee Rules of Civil Procedure;
- (g) to enforce any franchise agreement or contract to which the City is a party; or
- (h) similar to any of the foregoing.

Section 2. Nonconflicting – Conflicting laws.

BE IT FURTHER ORDAINED That all laws constituting the present Code of Ordinances of the City of Memphis, be and the same are here continued in full force and effect, and all laws in conflict therewith are hereby repealed.

Section 3. Severability.

BE IT FURTHER ORDAINED that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

Section 4. Effective Date.

BE IT FURTHER ORDAINED That this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

MYRON LOWERY
Council Chairman

Attest:

Comptroller

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