

## CITY COUNCIL RESOLUTION

WHEREAS, Ordinance 5063, a Charter amendment approved by referendum in 2004, provides that the City of Memphis civil service employees hired after January 3, 2005, must live within the City of Memphis; and

WHEREAS, Ordinance 5265, a Charter amendment approved by referendum in 2008, provides that all employees outside of civil service are required to live within the City of Memphis; and

WHEREAS, the city attorney opined that this residency limitation did not apply to those employees hired before the effective date of 5265 because the Tennessee Constitution forbids the application of any retrospective law which impairs or divests a vested right; and

WHEREAS, both these Charter amendments were interpreted by the City of Memphis as only being able to restrict residency requirements of future employees; and

WHEREAS, the City cannot retroactively impair or divest the right of those employees hired before January 3, 2005; and

WHEREAS, the City Council, in 2010, wanted to expand the residency requirements of those persons required to live within the City of Memphis and not to restrict those allowed to live outside Shelby County; and

WHEREAS, the City Council submitted Ordinance 5345 to the public, which approved it by referendum in November 4, 2010; and

WHEREAS, Ordinance 5345 expanded the residency boundaries to Shelby County for those current employees required to live within the City of Memphis and for new hires; and

WHEREAS, on November 15, 2010, the City Attorney opined that Ordinance 5345 "will expand the geographic residency limits to Shelby County." With respect to whether it will apply to those employees allowed to live outside the county, the City Attorney stated, "I do not believe it will "take away" any rights of employees hired before 2005."; and

WHEREAS, the Council's intent, the Tennessee Constitution, a prior City Attorney, and the current City Attorney all agree that Ordinance 5345 should not and could not require those employees who had the right to live outside Shelby County to have to move within the County; and

WHEREAS, the city's Personnel policy as evidenced by the Personnel Policy Manual was changed with regard to those employees who live outside the County as follows:

*"Employees hired on or before January 3, 2005 residing outside Shelby County, Tennessee on or before the date of January 3, 2011, shall not be required to move into the County. However, if such employees change place of residence, and fail to move within Shelby County while still employed by the City of Memphis, said employees shall be terminated."*

WHEREAS, the city's Charter provides that the Mayor "shall be responsible to the Council for the administration of all units of the city government under his jurisdiction and for carrying out policies adopted by the Council;" and

WHEREAS, the City Council desires to revise the policy of the city to accurately reflect its intent, the Tennessee Constitution, and the opinions of two City Attorneys.

NOW, THEREFORE, BE IT RESOLVED that the City of Memphis Personnel Policy Manual, PM-14-02, be revised by (1) deleting the third paragraph of Section I and (2) inserting, "Employees hired on or before January 3, 2005 may reside outside Shelby County, Tennessee."

ADOPTED: March 15, 2011

Jim Strickland