

ORDINANCE NO. 3054 [LIGHT, GAS AND WATER DIVISION AMENDMENTS]<sup>[10]</sup>

Adopted .....	Sept. 2, 1980
Referendum Election .....	Nov. 4, 1980

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 AMEND CERTAIN SECTIONS RELATIVE TO THE MEMPHIS LIGHT, GAS & WATER DIVISION TO PERMIT NECESSARY CHANGES IN THE BOARD ORGANIZATION, OFFICERS AND EMPLOYEES; TO PROVIDE FOR ADDITIONAL ENERGY FUNCTIONS AND SYSTEMS; TO ALLOW FOR ESTABLISHMENT OF RATES BY THE CITY COUNCIL OF NEW ENERGY SYSTEMS; TO PROVIDE FOR BOOKS AND ACCOUNTS; TO PROVIDE FOR INVESTMENT AND REINVESTMENT OF FUNDS AND RESERVES; TO AUTHORIZE FINANCIAL PROVISIONS; TO PERFORM OTHER FUNCTIONS ASSIGNED BY ORDINANCE BY THE CITY COUNCIL AND TO PROVIDE GENERAL ORGANIZATIONAL CHANGES AND TO SUBMIT THE PROPOSED ORDINANCE TO THE QUALIFIED VOTERS OF THE CITY OF MEMPHIS AT THE FIRST GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 1980.

WHEREAS, the Memphis Light, Gas & Water Division was established by an amendment to the Charter of the City of Memphis in 1939; and

WHEREAS, there have been few modifications of the provisions relating to the Memphis Light, Gas & Water Division since that time; and

WHEREAS, there have been substantial changes relative to energy and energy systems requiring modernization of provisions of the Charter relating to the Memphis Light, Gas & Water Division and its Board; and

WHEREAS, there is need for flexibility in the organization of the Memphis Light, Gas & Water Division and its role as a supplier of energy not only through the normal water, electric and gas systems but artificial gas, solar power and other new technologies; and

WHEREAS, there is a need to revise and allow for the modernization of the various divisions and the establishment of new divisions with appropriate financial provision but allowing flexibility of operation, and maintaining fiscal control by the rate-making power in the City Council.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Memphis that the present Charter of said City consisting of the provisions and the acts of the State of Tennessee for the year 1879, Chapter 11, as amended, being the same as further amended as follows:

**Section 1.**

The Memphis Light, Gas & Water Division shall have jurisdiction, control and management of energy systems such as coal gasification, fuel cell, solar, steam, cogeneration, and all other types of energy systems acquired by the City of Memphis for the manufacture, production, distribution or sale of all forms of energy including electricity, natural or artificial gas, steam or water, and the properties, agencies, and facilities used for any such purpose or purposes. The Council of the City of Memphis may likewise assign the management or control of the manufacture, production, distribution and sale of energy from refuse or sludge or other properties collected and controlled by other departments of the City upon such terms and conditions as the Council shall prescribe. The Memphis Light, Gas & Water Division shall perform such other functions as prescribed by ordinance.

The Board of Light, Gas & Water Commissioners shall have the power and authority to construct, purchase, improve, operate and maintain, within the corporate limits of the City of Memphis or elsewhere within the limits of Shelby County, or as permitted by State law, the energy systems as set forth above including all necessary equipment, property, rights-of-way, easements, and all other appurtenances usual for such facilities. The Board of Light, Gas & Water Commissioners shall have authority to make a schedule of rates for said energy systems and for different classes of consumers in accordance with the provisions now provided for establishing service rates with any rates or any change in rates to be presented in an application to the Council of the City of Memphis as presently provided.

The Board of Light, Gas & Water Commissioners shall have the right to make any and all contracts concerning such energy systems in accordance with the provisions now provided for contracts and have all other powers which presently exist in said Board as now provided in the Charter of the City of Memphis. The Memphis Light, Gas & Water Division, with the consent of the City Council, may contract with any person, federal agency, municipality, or public or private corporation for the construction or purchase of energy systems including joint ventures, partnership, or other financial arrangements under such terms and conditions as are approved by the City Council.

The Board of Light, Gas & Water Commissioners shall have power to establish different divisions of the Memphis Light, Gas & Water Division for assigning of the separate energy functions or for the efficient operation of the Memphis Light, Gas & Water Division and [to] provide for the keeping of such books and records as it may require to properly account for the equitable distribution of expenses. Each of such energy systems [is] to be financially separate with such joint or common expenses as shall be advisable and economical as determined by the Board of Commissioners.

Notwithstanding any other provision of the Charter, the monies and funds of any division may be loaned to another division in such amounts and upon such terms as the Board of Light, Gas & Water Commissioners may authorize and approve.

The Board of Light, Gas & Water Commissioners shall provide for the organization of its own Board and for such other subordinate officers and employees as the Board deems appropriate. The provisions for naming vice-president and chief engineer are eliminated. The Board of Light, Gas and Water Commissioners shall establish such organization as it deems best and advisable for the efficient operation of the Memphis Light, Gas & Water Division as presently constituted and any future energy systems.

The President of the Board of Light, Gas and Water Commissioners shall no longer be a member of the Board of Commissioners beginning June 1, 1981. The President shall thereafter be appointed for five-year terms by the Mayor, and approved by the Council of the City of Memphis. In the event of a vacancy occurring by death, resignation, or removal of the President, his successor shall be appointed for a five-year term commencing upon his appointment by the Mayor and approval by the City Council. The Chairman of the Board of Light, Gas & Water Commissioners shall perform any necessary acts until the appointment of a President.

The President shall attend the meetings of the Board of Commissioners, but shall have no vote and shall give his entire time and attention to the duties of his office as presently provided in the Charter. The President may be removed in the same manner and subject to the same procedures provided for directors.

The number of required regular meetings may be changed with the approval of the City Council. The Board of Light, Gas and Water Commissioners may enter into such banking contract or contracts as it may determine under the procedures set forth for banking contracts for the City of Memphis with Council approval.

The Board of Light, Gas & Water Commissioners shall provide for the investment and reinvestment of its funds and reserves as determined in the discretion of the Board of Commissioners and the funds of all divisions may be combined for the purpose of obtaining the best investment. The Board shall not be limited as now provided but shall be able to make such investments as authorized by state law and as the Board of Light, Gas & Water Commissioners may deem best with such security as the Board may deem proper. Any profit or loss resulting from any such investment or reinvestment shall be credited or charged to the several divisions in proportion to the respective funds so invested and reinvested.

The present provision providing for a member of the Board of Commissioners of the City of Memphis, now superseded by the City Council, to be designated to attend the meetings is no longer applicable nor is the provision permitting a duly authorized agent or representative of the Board of Commissioners, now City Council, to approve actions of the Board of Light, Gas & Water Commissioners and such provisions are repealed. Any matters requiring Council approval shall be forwarded through the Mayor's designated liaison to the City Council for approval.

The City Council by ordinance may raise the amount of contracts and salaries or compensation for employees or others requiring City Council approval to such amount as it may deem appropriate and may raise by ordinance the amount of equipment, materials or supplies requiring newspaper advertisement for competitive bids.

The present provisions of the Charter for rights of condemnation, establishing of rules and regulations, the use of rights-of-way, and the issuance of bonds, notes or other obligations with the consent of the City Council shall also be applicable to any new energy systems or divisions established. The distribution of any revenue shall be in accordance with the same distribution as is provided for the disposition of revenue of the gas division as presently set forth in the Charter, provided, however, that any surplus funds (Section 7) remaining over and above safe operating margins may be devoted to rate reductions or to capital projects for energy as a means of providing funds for energy systems.

The allotment of funds may be changed in such manner as may be deemed necessary by the Board of Light, Gas & Water Commissioners in contracting with federal agencies or in the issuance and sale of any bonds or notes on behalf of or in conjunction with energy systems in the same manner as is now provided in the Charter for electric, gas or water divisions.

#### **Section 2.**

BE IT FURTHER ORDAINED, that 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 continued in full force and effect, and all laws in conflict therewith are hereby repealed.

#### **Section 3.**

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

#### **Section 4.**

BE IT FURTHER ORDAINED, that the Comptroller be, and he is hereby, directed to cause this proposal (Ordinance) to be published pursuant to the provisions of Article 11, Section 9, of the Constitution of the State of Tennessee.

#### **Section 5.**

BE IT FURTHER ORDAINED, that the Comptroller be, and he 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 an election to be held on the 4th day of November, 1980.

REFERENDUM ON HOME RULE AMENDMENT TO CHARTER OF THE CITY OF MEMPHIS AMENDING PROVISIONS RELATING TO MEMPHIS LIGHT, GAS & WATER DIVISION SO AS TO PROVIDE FOR CHANGES IN THE BOARD ORGANIZATION, ADD PROVISIONS ON NEW ENERGY SYSTEMS AND PROVIDE FOR DETAILS, OF ORGANIZATION OF THE MEMPHIS LIGHT, GAS & WATER DIVISION.

An Ordinance of the City of Memphis adopted on the [2nd] day of September, 1980, providing for a referendum on a Home Rule Amendment to the Charter of the City of Memphis so as to provide for

changes in the Board organization of the Memphis Light, Gas & Water Division, provide for new energy systems and details of organization of the Memphis Light, Gas & Water Division.

FOR	(YES) _____	
AGAINST	(NO) _____	

**Section 6.**

BE IT FURTHER ORDAINED, that this Ordinance shall take effect from and after the date it shall have been passed by the Council of the City of Memphis, 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.

PAT VANDER SCHAAF

Chairman of the Council

ATTEST:

ROBERT J. TAMBOLI, Comptroller

Footnotes:

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Code reference— Authority and duties of board of commissioners, § 2-20-3.

**Cross reference**— Light, gas and water division, art. 65.