

Ord. #5445

**AN ORDINANCE TO AMEND, CHAPTER 33, ARTICLE III, OF THE CITY OF MEMPHIS CODE OF ORDINANCES TO CREATE THE MEMPHIS WASTEWATER HEARING AUTHORITY AND TO CLARIFY THE ADMINISTRATION AND ENFORCEMENT PROVISIONS INCLUDED THEREIN**

**WHEREAS**, the City of Memphis recognizes that the waters of Tennessee are the property of the State and are held in public trust for the use of the people of the state of Tennessee; and

**WHEREAS**, the City of Memphis recognizes that the citizens of Memphis as residents of the state of Tennessee have a right to unpolluted waters; and

**WHEREAS**, the City of Memphis recognizes that it has an obligation to take all prudent action to ensure that the navigable waters located within the municipal limits of the City of Memphis remain unpolluted to the fullest extent possible; and

**WHEREAS**, the City of Memphis has an approved pretreatment program which provides for the implementation and enforcement of pretreatment program requirements in accordance with applicable State and Federal law; and

**WHEREAS**, the City of Memphis issues permits to industrial users discharging wastewaters to the City's sewer system and/or wastewater treatment plant and otherwise issues permits in accordance with local law as it deems appropriate;

**WHEREAS**, in accordance with the Tennessee Water Quality Control Act as well as the Federal Water Pollution Control Act, the City of Memphis deems it necessary to create the Memphis Wastewater Hearing Authority and to clarify the administration and enforcement provisions currently set forth within Chapter 33 of the Sewer Use Ordinance.

**SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, that Chapter 33, Article III, Division 5, is hereby amended to state as follows:

**DIVISION 5. REVIEW AND ENFORCEMENT**

Section 33-171. Local Hearing Authority.

There is hereby created and established a local hearing authority to be known as the Memphis Wastewater Hearing Authority and referred to hereinafter as the "hearing authority".

#17 Revised

Section 33-172. Purpose.

The hearing authority shall serve as the local hearing authority as prescribed in Tenn. Code Ann. § 69-3-124 and shall be responsible for the review of orders issued or actions undertaken by the Director of Public Works or his designee pursuant to the Sewer Use Ordinance, pretreatment statutes codified at Tennessee Code Annotated §§ 69-3-123 – 69-3-129, and such requirements as set forth in the National Pollutant Discharge Elimination System (“NPDES”) permits issued to the City of Memphis.

Section 33-173. Composition, Length of Term, Officers.

A. The hearing authority shall be composed of the following seven (7) members and two (2) alternates who shall be appointed by the Mayor subject to approval by the Memphis City Council, and shall constitute the voting members of the hearing authority:

<b>Representative Group (# of members)</b>	<b>Length of Term (years)</b>
Industry (2)	1
Private Citizenry (3)	2
Engineering/Science (2)	2
Public Interest Group/University (2)	1

B. Each member and alternate shall serve without compensation and may be reappointed, but do not succeed themselves automatically.

C. One (1) alternate shall be appointed from the “Industry” group and one (1) from the “Public Interest/University” group.

D. A chairperson of the hearing authority shall be elected at the first meeting of each newly appointed hearing authority from among its own membership to serve for a term of one (1) year. Another member shall serve as vice chair for a period of one (1) year upon a majority vote of all members.

E. The hearing authority shall keep complete and accurate records of the proceedings of all meetings and the Director of Public Works or his designee shall serve as the hearing authority’s technical secretary.

F. The hearing authority may issue subpoenas requiring attendance of witnesses and production of such evidence as requested, administer oaths, and take testimony as the hearing authority deems necessary to fulfill its purpose.

G. No member or alternate shall participate in the appeal of any matter in which the member or alternate has a direct personal or financial interest.

Section 33-174. Removal.

Members may be removed from the hearing authority for continued absence from meetings or other just cause in accordance with the procedure for removal of board or commission members set forth within Home Rule Ordinance No. 1852 of the City Charter.

Section 33-175. Powers and Duties.

In addition to any other duty or responsibility otherwise conferred upon the hearing authority by this Chapter, the hearing authority shall have the duty and power as follows:

1. To recommend to the Director of Public Works as the local administrative officer that this Article or any provision included within this Chapter be amended or modified;
2. To establish, modify or amend procedural rules governing hearings, orders, issuance of permits, and all other matters not specifically requiring a hearing, provided that such rules do not conflict with applicable state or federal law or the City Code of Ordinances;
3. To hold meetings and such special meetings as the hearing authority may find necessary;
4. To hold hearings upon appeals from orders or actions of the Director of Public Works as the local administrative officer in accordance with Tennessee Code Annotated §69-3-124;
5. To hold hearings relating to the issuance, reissuance, suspension, revocation or modification of an industrial wastewater discharge permit and issue appropriate orders relating thereto.
6. To hold such other hearings relating to any aspect or matter in the administration of this Chapter and to make such determinations and issue such orders as may be necessary to effectuate the purposes of this Chapter;
7. To obtain assistance upon request from the Director of Public Works or his designee as the hearing authority might need;
8. In addition to any other power granted by this title, the hearing authority is granted the authority to review the assessment of a civil penalty against any person in an amount not to exceed the sum of ten thousand dollars (\$10,000) per day for each day of violation during which the act or omission continues or occurs in accordance with Tennessee Code Annotated §69-3-125;
9. The decision of the hearing authority shall become final and binding on all parties unless appealed to the courts as provided in Section 33-176 which governs appeals.

Section 33-176. Appeal.

Pursuant to Tennessee Code Annotated § 69-3-124(b), an appeal may be taken from any final order or other final determination of the hearing authority by any party who is or may be adversely affected thereby, to the chancery court pursuant to the common writ of

certiorari set out in Tennessee Code Annotated § 27-8-101 within sixty (60) days from the date such order or determination is made.

Section 33-177. Quorum.

A quorum of the hearing authority must be present at any regular or special meeting in order to conduct a hearing. Four (4) members of the authority shall constitute a quorum.

Section 33-178. Members to be Residents of City.

Each member and alternate of the hearing authority must have been a resident of Memphis for not less than one (1) year, and shall continue to maintain such residency throughout such member's term.

Section 33-179. Members Oath.

Each member of the hearing authority shall take an oath to faithfully perform the duties imposed upon him without fear or favor, and in full accordance with the constitution and laws of the state and the ordinances of the city.

Section 33-180. Hearings.

Any hearing or rehearing brought before the Local Hearing Authority shall be conducted in accordance with Tenn. Code Annotated Section 69-3-124.

**SECTION 2. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, 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.

THE FOREGOING ORDINANCE  
# 5445 PASSED  
1st Reading 3-6-12  
2nd Reading 3-20-12  
3rd Reading 4-3-12  
Approved: Bill Moore  
Chairman of Council  
Date Signed: 4-17-12  
Approved: [Signature]  
Mayor, City of Memphis  
Date Signed: 4/24/2012  
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. Sykes  
Comptroller