

ORDINANCE NO.

ORDINANCE TRANSFERRING THE DIVISION OF TRAFFIC VIOLATIONS BUREAU FROM THE CITY COURT CLERK'S OFFICE AND REINSTATING THE DIVISION OF TRAFFIC VIOLATIONS BUREAU AS A SEPARATE DIVISION WITHIN THE DIVISION OF FINANCE AND ADMINISTRATION TO BE SUPERVISED BY A DEPUTY DIRECTOR APPOINTED BY THE MAYOR AND APPROVED BY THE MEMPHIS CITY COUNCIL AND ELIMINATING THE OFFICE OF CITY COURT CLERK AS AN ELECTED OFFICE OF THE CITY

WHEREAS, by Ordinance No. 926 adopted April 27, 1971 the Memphis City Council ratified the creation of a traffic violations bureau, which was then under the budget and finance department of the City and transferred supervision of and operation thereof as a division within the city court clerk's office separate from the functions of the City Courts;

WHEREAS, the Council adopted Ordinance No. 2246 on April 29, 1975 providing, *inter alia*, for the election of a City Court Clerk and for the selection of separate deputy clerks to supervise (1) the Traffic Violations Bureau and (2) the clerical functions of the City Court's per se;

WHEREAS, the City's attorneys have advised the Council that as a part of their review of the City's charter and ordinances in connection with the 2021 Codification project that Ordinance No. 2246 was not properly adopted as a charter amendment pursuant to Article XI, section 9 of the Tennessee Constitution and therefore may be invalid and void in whole or in part;

WHEREAS, Ordinance No. 2246, however, may still be valid and effective as an ordinary ordinance of the City to the extent that it is not in conflict with the City's charter in effect on April 29, 1975 or thereafter and to the extent the provisions thereof are not subsequently amended or repealed by the Council;

WHEREAS, Ordinance No. 2246 purported to repeal Article 35, section 260 of the City's Charter in effect on April 29, 1975; however, under Article XI, section 9 of the Tennessee Constitution the City's Home Rule Charter may only be amended by a charter amending ordinance of equal dignity and not by an ordinary ordinance that has not been approved as a charter amendment pursuant to Article XI, section 9 of the Tennessee Constitution;

WHEREAS, Ordinance No. 2246, as a non-charter amending ordinance, is in conflict with Ordinance No. 770 adopted by the City Council on August 25, 1970 and properly approved at a referendum election on November 3, 1970 all in accordance with Article XI, section 9 of the Tennessee Constitution;

WHEREAS, Ordinance No. 770 amended the pre-home rule charter Article 35 pertaining to the operations of the City Court to create the position of an Administrative Judge, to establish the duties of the Administrative Judge, to establish salaries for City Court Judges and for the appointment by the Judges of a City Court Clerk to administer the functions of the City Courts per se;

WHEREAS, prior to the approval of Ordinance No. 770 as amendment to the City's charter, the charter provided that the City Court Clerk would be elected by the Legislative Council of the City following the election of said council;

WHEREAS, there is no lawfully effective provision in Article 35 of the City's Charter or otherwise for the popular election of a City Court Clerk by qualified voters of Memphis to administer the functions of the City Courts per se or to supervise a separate Traffic Violations Bureau as a division of the City;

WHEREAS, the Council desires, subject to approval of the Mayor, to exercise its authority under Referendum Ordinance No. 1300, approved as amendment to the City's Home Rule Charter on August 3, 1972, to transfer the Traffic Violations Bureau from the City Court Clerk to the Division of Finance and Administration as hereinafter set forth;

WHEREAS, Council desires to direct the Mayor and the City Attorney not to certify to the Shelby County Election Commission the office of Memphis City Court Clerk as an elected office of the City in any municipal or special election occurring after the adoption of this Ordinance and to prohibit the use of any city funds to reimburse the Shelby County Election Commission for the cost of including the office of Memphis City Court Clerk on any approved ballot for a Memphis municipal or special election occurring after the adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MEMPHIS CITY COUNCIL AS FOLLOWS:

Section 1. Ordinance No. 2246, adopted April 29, 1975 is hereby repealed in its entirety and the elected office of City Court Clerk is hereby abolished.

Section 2. Subject to approval of the Mayor, the functions and personnel of the City's Traffic Violations Bureau are hereby transferred on or after January 1, 2024 from the City Court Clerk to the Division of Finance and Administration to be administered and supervised by a deputy director appointed by the Mayor and approved by the Memphis City Council. The Division of Finance and Administration and the City Attorney are authorized to determine the procedures and process for completing the transfer.

Section 3. After the transfer of the City's Traffic Violations Bureau from the City Court Clerk to the Division of Finance and Administration, the City Court Clerk's

duties shall be limited to administering all clerical functions of the City Court, which shall include, unless modified by the Administrative Judge, the following:

- a. All functions described in Referendum Ordinance No 770, adopted August 25, 1970 and approved by Memphis voters on November 3, 1970;
- b. All functions described in Section 11-16 of the 1985 City Code, including maintenance, custody and control of the docket and minute books of the City Court. Assignment of cases to the divisions of City Court, subject to Judges' authority to transfer cases among divisions.
- c. Selection of personnel to perform the functions assigned to the City Court Clerk's Office hereunder based on their qualifications for this type work.
- d. Preparation of an annual budget for the City Court Clerk's office to be included with the budget of the City Court required to be submitted to the Mayor by the Administrative Judge each year.
- e. Any and all other functions and duties determined by the Administrative Judge of the City Courts.

Section 4. Notwithstanding Section 1 of Referendum Ordinance No 770 to the contrary, the Administrative Judge is authorized to allow the City Court Clerk to choose special judges from a list of all Tennessee licensed attorneys who volunteer for said service and to assign cases to the divisions of City Court, subject to Judges' authority to transfer cases among divisions.

Section 5. The Mayor and the City Attorney are hereby requested not to certify to the Shelby County Election Commission the office of Memphis City Court Clerk as an elected office of the City in any municipal or special election occurring after the adoption of this Ordinance and are hereby prohibited from expending any city funds to reimburse the Shelby County Election Commission for the cost of including the office of Memphis City Court Clerk on any approved ballot for a Memphis municipal or special election occurring after the adoption of this Ordinance.

Section 6. 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 7. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 8. 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.

SPONSOR

J. FORD CANALE

CHASE CARLISLE

JB SMILEY, JR.

CHAIRMAN

MARTAVIUS JONES