

ORDINANCE NO. 5292

**AN ORDINANCE TO PROVIDE FOR MINIMUM
ENERGY EFFICIENCY IN RENTAL PROPERTY**

WHEREAS, the State of Tennessee has the nation's highest average electricity use per household, with the City of Memphis mirroring state data. This status can be attributed to several factors, including: substandard housing stock, outdated residential energy codes, limited inspection/enforcement of existing energy codes, historically low cost energy, a relatively stable supply of electricity, lack of consumer education and few incentives to encourage energy efficiency; and

WHEREAS, the City of Memphis has a comparatively high level of residents living at or below the poverty level. Many of these residents live in rental housing. With recent increases in energy costs across the nation, residents are struggling to pay for utilities that now take a much larger portion of their limited incomes; and

WHEREAS, some of these residents have found themselves in the difficult situation of having unnecessarily high utility bills due to the condition of the housing or heating and cooling equipment. In many instances, utility customers residing in large but well insulated and sealed homes with efficient equipment have lower utility bills than much smaller rental property with deficiencies in building envelope or equipment efficiency; and

WHEREAS, these residents are, in many cases, unable to move to better housing stock, are also unable to get their landlords to improve their living environment and are unaware of other available remedies. While extremely high utility usage can come during very cold or very hot weather, it is most important to consider heating equipment which, when not up-to-date or properly maintained, is not only a high energy user, but potentially a threat to safety and health; and

WHEREAS, it is neither intended nor is the City of Memphis empowered to modify the respective obligations placed upon landlords and tenants under the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. Section 66-28-101, *et seq.*; and

WHEREAS, it is expected that inspections will be conducted primarily on a complaint basis and excessive utility consumption will be a factor in identifying other units for inspection. Excessive utility consumption is defined as a unit consuming the highest ten percent of utilities per square foot for units of similar vintage, construction and size. Occupancy of units is a factor to be taken into consideration to determine if the utility consumption is excessive. In all cases inspectors should have an objective basis for initiating the inspection, which reason should be documented.

WHEREAS, MLGW's programs to assist customers in using less energy focus on educating and demonstrating responsible behavior to conserve energy in conjunction with facilitating home energy-related repairs and improvements. While the education and demonstration aspects serve renters well, improvements and repairs are

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mostly applicable to owner occupied units.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That Chapter 48, Section 48-2 of the Memphis Housing Code is hereby amended by adding the definition of "residential rental unit" as follows:

"Residential rental unit" means a rented or leased single-family residential building or a rented or leased residential dwelling unit within a single-family or multiresidential building.

SECTION 2. BE IT FURTHER ORDAINED, That Chapter 48 of the Memphis Housing Code is amended by adding a new Section 48-133 as follows:

Sec. 48-133 Energy Efficiency in Residential Rental Units

Each residential rental unit shall have:

- (a) Envelope: Windows properly glazed, no holes in outside walls, all building penetrations with pipes or wires sealed from the outside, a serviceable roof, insulation in good condition completely filling the area between the ceiling joists of the topmost floor in areas without attic flooring, and all exterior windows, exterior doors, and attic access properly sealed with weather stripping to form an air tight barrier between conditioned and un-conditioned spaces. Confined spaces such as areas under attic flooring or enclosed ceiling vaults will not be subject to this insulation standard. This section shall not apply when the landlord pays the electric or natural gas bills.
- (b) Heating and Cooling: A heating and cooling (if applicable and Landlord provided the equipment) unit that is properly installed, vented, and functional as originally designed. If there are ducts in unconditioned accessible space, the ducts must be connected at all junctions, must not be crushed, must have no significant leaks, and must be insulated. There must be a working thermostat. If there are room air conditioners, the units must be properly installed and, during heating periods, should either be removed or properly covered and sealed to prevent heat loss. This section shall not apply when the landlord pays the electric or natural gas bills.
- (c) Plumbing: A plumbing system free from material leaks in piping, water closets, hose bibs, faucets, water heaters and all other fixtures, except when landlord pays the water and hot water bills.
- (d) Existing equipment shall function according to the manufactured standards at the time of production. However, as worn out equipment is replaced, equipment with the prevailing minimum energy efficiency level as defined by federally mandated manufacturing standards shall be installed. As deficiencies in envelope, heating and cooling, and plumbing are corrected, those corrections shall meet the minimum standards of prevailing energy code (i.e. duct sealing, insulation levels, etc.).

SECTION 3. BE IT FURTHER ORDAINED, That Chapter 48, Section 48-7 of the Memphis Housing Code is hereby amended by adding a new subsection 48-7 D. as follows:

- D. The Board of Memphis Light, Gas and Water may designate certain employees of Memphis Light, Gas and Water to make or cause to be

made inspections to determine the conditions of residential rental units to safeguard the safety, health and welfare of the public under the provisions of Sections 48-1 through 48-23 of the housing code. Pursuant to TCA 7-63-101 et seq., the Board of Memphis Light, Gas and Water, may designate these employees to become special officers, for the purpose of issuance of citations in lieu of arrest of offenders in cases where they have jurisdiction. The designated Memphis Light, Gas and Water employees are authorized to enter any residential rental unit at any reasonable time for the purpose of performing his or her duties under Sections 48-1 through 48-23 of the housing code. The designated Memphis Light Gas and Water employees shall have all powers conferred by Sec. 48-23 of the housing code.

The Board of Memphis Light, Gas and Water shall establish a schedule of fees that Memphis Light, Gas and Water shall charge and receive from the owner of any property which is inspected by Memphis Light, Gas and Water employees pursuant to this chapter. The fee shall not exceed \$25 per unit actually inspected nor shall any single unit be charged more than one fee per calendar year. No fee shall be assessed against the owner of the unit unless the owner is found to be in violation of this section.

When an inspection is to be conducted due to suspected excessive utility consumption the owner of record will be notified of the inspection at least five (5) calendar days in advance via U.S. Mail. Excessive utility consumption is defined as a unit consuming the highest ten percent of utilities per square foot for units of similar vintage, construction and size.

SECTION 4. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby declared severable, and if any of the provisions shall be unconstitutional or invalid, the remainder shall continue in full force and effect, it being the Council's intent now hereby declared that this Ordinance should have been adopted even if such unconstitutional or invalid matter had not been included therein.

SECTION 5. 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 Chairmen of the Council, certified and delivered to the Office of the Mayor of Memphis in writing by the Comptroller, and become effective as otherwise provided by law.

THE FOREGOING ORDINANCE
5292 PASSED

1st Reading 1-6-09

2nd Reading 1-27-09

3rd Reading 2-3-09

Approved

Myron Rowley
Chairman of Council

Date Signed: 2/17/09

Approved: [Signature]

Mayor, City of Memphis

Date Signed: 2/19/09

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. Grapes
Comptroller