

**ORDINANCE NO. 364**

**AN ORDINANCE TO AMEND THE SHELBY COUNTY CHARTER BY ADDING A NEW ARTICLE VIII SO AS TO CREATE THE OFFICES OF, AND ASSIGN THE DUTIES AND FUNCTIONS TO, THE SHELBY COUNTY SHERIFF, SHELBY COUNTY TRUSTEE, SHELBY COUNTY REGISTER, SHELBY COUNTY CLERK, AND SHELBY COUNTY ASSESSOR; BY PROVIDING FOR THE STATE LAW REQUIREMENTS NECESSARY FOR CREATING A CHARTER FORM OF COUNTY GOVERNMENT; BY REPEALING SECTION 4.06 OF ARTICLE IV; AND BY AMENDING THE TITLE OF ARTICLE IV. SPONSORED BY CHAIRMAN DAVID LILLARD.**

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**WHEREAS**, by opinion issued January 12, 2007, the Tennessee Supreme Court held the Knox County Charter was invalid because Knox County, Tennessee failed to comply with the enabling legislation for instituting a charter form of government by not expressly establishing the offices of the constitutional county officers, being the sheriff, trustee, register, county clerk, and assessor; and by not otherwise expressly assigning the duties and functions traditionally performed by those officers to any other administrative or executive officers; and

**WHEREAS**, by opinion issued January 26, 2007, the Shelby County Attorney's Office opined that an amendment to the Shelby County Charter should be proposed that either specifically creates the offices of, and assigns the duties and functions to, the sheriff, trustee, register, county clerk, and assessor; or creates administrative or executive offices to carry out the duties and functions of said constitutional county officers; or creates a combination of these two options; and

**WHEREAS**, the state law that authorizes the establishment of a charter form of county government requires the charter document retain the rights, powers, duties, obligations or functions of any officer, agency or office of the county in order for them to be continued in the charter form of county government; assign administrative and executive functions to the officers of county government; and provide for the titles, qualifications, compensation, method of selection, tenure, removal and replacement of the administrative and executive officers of county government; and

**WHEREAS**, for the purpose of evaluating the amendment options and receiving information relative to proposing Charter amendments for voter referendum, the Shelby County

Board of Commissioners held a retreat, created the Ad Hoc Committee on Shelby County Charter Amendments, held thirteen public hearings throughout Shelby County, published notice of the hearings with a list of potential amendments in four newspapers in the County, provided three methods for receiving citizen comments, and conducted multiple committee meetings; and

**WHEREAS**, the Shelby County Board of Commissioners adopted Ordinance No. 360 and Ordinance No. 361 on June 2, 2008, proposing amendments to the Shelby County Charter which were published and submitted to the voters of Shelby County during the August 7, 2008 countywide election; and

**WHEREAS**, Ordinance No. 361 passed, but Ordinance No. 360 failed and, therefore, the Shelby County Board of Commissioners desires to submit another referendum to the voters of Shelby County that, if approved, will create officers to carry out the duties and functions of the former constitutional county officers and meet the state law requirements for establishing a charter form of county government in an effort to cure any potential deficiencies that may exist in the Shelby County Charter similar to those identified in the Knox County Charter by the Tennessee Supreme Court; and

**WHEREAS**, the Shelby County Board of Commissioners has proposed the amendments to the Shelby County Charter contained herein and same should be published and submitted to the voters of Shelby County in accordance with the state election laws during the next countywide election; and

**WHEREAS**, state law requires the County Attorney prepare a summary not to exceed two hundred (200) words in length when the full statement of the proposed amendments exceeds three hundred (300) words in length.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, that, pursuant to Article V, Section 5.05D of the Shelby County Charter, the following proposed amendments to the Shelby County Charter shall be submitted to the qualified voters of Shelby County at the next countywide election allowed by law and the Shelby County Election Commission, in accordance with the state election laws, is hereby directed to publish the proposed amendments which read as follows:

**PROPOSED AMENDMENTS:**

**The Shelby County Charter shall be amended by repealing Section 4.06 of Article IV, which reads as follows:**

“The sheriff shall be the chief law enforcement officer of the county and is charged with the enforcement of ordinances of the County of Shelby. The sheriff shall be elected by the qualified voters of Shelby County according to law and all duties, conferred or implied by law, shall expressly continue as they existed prior to the enactment of this charter.”

**by amending the title of Article IV from “Judicial Branch, Law Enforcement and Corrections” to “Judicial Branch;”**

**and by adding a new Article VIII as set forth below:**

**“Article VIII. County Charter Officers.**

**Section 8.01. Replacement of constitutional county officers.**

In addition to the legislative and executive branches created herein, the officers listed in this article shall be officers of the county who shall be known as the “county charter officers” and are hereby created and established to perform the duties and functions of the former constitutional county officers that existed as part of Shelby County government prior to Shelby County adopting a charter form of county government. This article shall become effective September 1, 2010; provided, however, this article shall become effective September 1, 2012 as to the office of the Shelby County Assessor.

**Section 8.02. Qualifications.**

- A. The qualifications for the Shelby County Sheriff, Shelby County Trustee, Shelby County Register, Shelby County Clerk, and Shelby County Assessor shall be the same as those required of the former constitutional Sheriff, Trustee, Register, County Clerk, and Assessor, respectively, by state law as of the date this section becomes effective.
- B. The Shelby County Sheriff shall also be qualified as a Certified Corrections Executive by the American Corrections Association within one year from the date the Shelby County Sheriff takes office or, in the alternative, have at least three (3) years experience as a chief executive officer of a jail or prison. If the Shelby County Sheriff fails to become certified in accordance with this section, the compensation of the Shelby County Sheriff shall be reduced in accordance with the compensation section herein.

**Section 8.03. Election; term.**

- A. The county charter officers, with the exception of the Shelby County Assessor, shall be elected each four years by the voters of Shelby County in accordance with the Tennessee Constitution, the general laws of the State of Tennessee and the Charter of Shelby County, commencing with the August 2010 general election.
- B. Effective September 1, 2012, the Shelby County Assessor shall be elected to a term of two years by the voters of Shelby County in accordance with the Tennessee Constitution, the general laws of the State of Tennessee and the Charter of Shelby County. Effective September 1, 2014, and each four years thereafter, the Shelby County Assessor shall be elected to a term of four years.
- C. The county charter officers shall not be subject to term limitations unless provided for in Article V herein.

**Section 8.04. Vacancy.**

When a vacancy occurs in the office of the county charter officers, the chief deputy, as designated from time to time in writing to the County Attorney, shall serve until the board of county commissioners elects an interim county charter officer. The interim county charter officer shall serve until a successor is elected and qualified in accordance with the Tennessee Constitution, the general laws of the State of Tennessee, and the Charter of Shelby County.

**Section 8.05. Removal; recall.**

- A. The county charter officers shall be removed from office in accordance with the state law provisions providing for the removal of public officials.
- B. The county charter officers shall be recalled in accordance with the provisions of Article V herein, but only if such provisions are provided for therein.

**Section 8.06. Sheriff – duties, functions, and obligations; rights, power and authority.**

- A. Unless specifically provided for herein to the contrary, the duties of the former constitutional Sheriff are vested in and shall be exercised by the Shelby County Sheriff, who shall be the chief law enforcement officer of Shelby County. The duties shall be governed by the Tennessee Constitution, the general laws of the State of Tennessee, and the Charter of Shelby County. The general duties of the Shelby County Sheriff shall include, but not be limited to, maintaining the jails of the County, providing courthouse and courtroom security, patrolling and providing civil and criminal warrants service as well as those duties traditionally performed by the former constitutional Sheriff in accordance with common law and assigned to the former constitutional office of Sheriff by state law.
- B. The Shelby County Sheriff shall carry out all duties, functions and obligations, and have all rights, power and authority granted to the office of the former constitutional Sheriff under state law, unless specifically excluded by the Charter of Shelby County. All private acts of the General Assembly of Tennessee and ordinances of Shelby County which affect the office of the former constitutional Sheriff, and which are in effect on September 1, 2010, to the extent not inconsistent with this charter, shall remain in effect and applicable to the Shelby County Sheriff until repealed or amended.

**Section 8.07. Trustee – duties, functions, and obligations; rights, power and authority.**

- A. Unless specifically provided for herein to the contrary, the duties of the former constitutional Trustee are vested in and shall be exercised by the Shelby County Trustee and shall be governed by the Tennessee Constitution, the general laws of the State of Tennessee, and the Charter of Shelby County. The general duties of the Shelby County Trustee shall include, but not be limited to, the responsibility for the collection of property taxes, the collection and disbursement of County funds, the management of the County's cash flow, and the investment of idle County funds.
- B. The Shelby County Trustee shall carry out all duties, functions, and obligations of, and have all rights, power and authority granted to, the office of the former constitutional Trustee under state law, unless specifically excluded by the Charter of Shelby County. All private acts of the General Assembly of Tennessee and ordinances of Shelby County which affect the office of the former constitutional Trustee, and which are in effect on September 1, 2010, to the extent not inconsistent with this charter, shall remain in effect and applicable to the Shelby County Trustee until repealed or amended.

**Section 8.08. Register – duties, functions, and obligations; rights, power and authority.**

- A. Unless specifically provided for herein to the contrary, the duties of the former constitutional Register are vested in and shall be exercised by the Shelby County Register and shall be governed by the Tennessee Constitution, the general laws of the State of Tennessee, and the Charter of Shelby County. The general duties of the Shelby County Register shall include, but not be limited to, the responsibility for filing or recordation of documents that affect the legal status of real or personal property.
- B. The Shelby County Register shall carry out all duties, functions and obligations of, and have all rights, power and authority granted to, the office of the former constitutional Register under state law, unless specifically excluded by the Charter of Shelby County. All private acts of the General Assembly of Tennessee and ordinances of Shelby County which affect the

office of the former constitutional Register, and which are in effect on September 1, 2010, to the extent not inconsistent with this charter, shall remain in effect and applicable to the Shelby County Register until repealed or amended.

**Section 8.09. County Clerk– duties, functions, and obligations; rights, power and authority.**

- A. Unless specifically provided for herein to the contrary, the duties of the former constitutional County Clerk are vested in and shall be exercised by the Shelby County Clerk and shall be governed by the Tennessee Constitution, the general laws of the State of Tennessee, and the Charter of Shelby County. The general duties of the Shelby County Clerk shall include, but not be limited to, the responsibility for the collection of business taxes and wheel taxes, motor vehicle registration and licensing, issuance of marriage licenses, and keeping of records of the County’s notaries public.
- B. The Shelby County Clerk shall carry out all duties, functions, and obligations of, and have all rights, power and authority granted to, the office of the former constitutional County Clerk under state law, unless specifically excluded by the Charter of Shelby County. All private acts of the General Assembly of Tennessee and ordinances of Shelby County which affect the office of the former constitutional County Clerk, and which are in effect on September 1, 2010, to the extent not inconsistent with this charter, shall remain in effect and applicable to the Shelby County Clerk until repealed or amended.

**Section 8.10. Assessor – duties, functions, and obligations; rights, power and authority.**

- A. Unless specifically provided for herein to the contrary, the duties of the former constitutional Assessor are vested in and shall be exercised by the Shelby County Assessor and shall be governed by the Tennessee Constitution, the general laws of the State of Tennessee, and the Charter of Shelby County. The general duties of the Shelby County Assessor shall include, but not be limited to, the responsibility of appraisal, classification, and assessment of all property within the County, whether real, personal or mixed, except for property valued by the State of Tennessee.
- B. The Shelby County Assessor shall carry out all duties, functions, and obligations of, and have all rights, power and authority granted to, the office of the former constitutional Assessor under state law, unless specifically excluded by the Charter of Shelby County. All private acts of the General Assembly of Tennessee and ordinances of Shelby County which affect the office of the former constitutional Assessor, and which are in effect on September 1, 2012, to the extent not inconsistent with this charter, shall remain in effect and applicable to the Shelby County Assessor until repealed or amended.

**Section 8.11. Compensation.**

- A. The compensation of the Shelby County Trustee, Shelby County Register and Shelby County Clerk shall be equal to the amount set for the offices of the former constitutional Trustee, Register, and County Clerk, respectively, by state law as of September 1, 2010.
- B. The compensation of the Shelby County Sheriff shall be set by the board of county commissioners at the same time it sets the compensation of the County Mayor; provided, however, that the Shelby County Sheriff’s compensation shall be equal to at least eighty percent (80%), but no more than ninety-five percent (95%), of the County Mayor’s compensation. Notwithstanding any provision to the contrary herein, if the Shelby County Sheriff fails to meet the qualifications set forth herein, the compensation shall be reduced in the same manner and by the same amount as that prescribed by state law for the reduction in salary of the former constitutional Sheriff for failure to possess a current and valid peace officer certification.
- C. The compensation of the Shelby County Assessor shall be equal to the amount set for the office of the former constitutional Assessor by state law as of September 1, 2012.

- D. The compensation of all county charter officers may be changed from time to time by resolution of the board of county commissioners, except as provided for in Article II, Section 2.06C(3)(e) herein for increases in salary. No change in compensation shall take place during the term for which the county charter officers were elected, with the exception of any annual general cost of living adjustment or increase for the purpose of maintaining the compensation level herein, and shall not be changed for the next term of office after January 1 of the year in which the county charter officers are to be elected for said next term.

**Section 8.12. Personnel salary and positions – generally.**

The county charter officers shall not have the authority to file salary petitions in accordance with state law or any other authority to challenge the funding of the personnel budget as approved in the County budget by the board of county commissioners. The Shelby County Sheriff shall have authority to file a petition for funding in accordance with Article VIII, Section 8.13 herein.

**Section 8.13. Personnel salary and positions - Sheriff.**

- A. The Shelby County Sheriff shall not have the authority to file salary petitions under state law. However, the Shelby County Sheriff may file a petition with the chairman of the board of county commissioners and the county mayor within twenty (20) days of the approval of the County budget for the purpose of seeking an increase in the funding of the Shelby County Sheriff's personnel budget as to the number of positions and/or the amount of the salaries.
- B. The burden of proof shall be on the Shelby County Sheriff to prove by clear and convincing evidence that absent the requested relief,
- (1) in the case of a petition for law enforcement personnel positions and expenditures, the public safety of the citizens of Shelby County will be in imminent danger of irreparable harm, or
  - (2) in the case of a petition for jail personnel positions or expenditures, the current personnel budget is inadequate to operate the jail in accordance with applicable court orders and federal and state constitutional principles, laws, and regulations.
- C. The petition shall be heard and determined by binding arbitration. The county mayor and Shelby County Sheriff shall mutually appoint a retired judge of a Tennessee state court of record to act as arbitrator, provided, however, if a retired judge is not available or cannot be agreed upon, the county mayor and Shelby County Sheriff shall mutually agree upon an arbitrator. The arbitrator shall conduct the proceedings in accordance with the rules of the American Arbitration Association and the rules set forth in the Tennessee Rules of Civil Procedure applicable to discovery and shall make written findings of fact and conclusions of law. The written award of the arbitrator shall be final and binding and may be entered with, and enforced by, a court of competent jurisdiction in Shelby County. Shelby County shall pay reasonable compensation to, and expenses of, the arbitrator.
- D. If the arbitrator enters an order requiring Shelby County to increase the number of personnel positions and/or personnel funding, each property tax bill shall state as a separate line item the number of cents of the ad valorem tax rate which is necessary to fund such increase, including the cost of employee benefits, and the proportionate tax amount for that taxpayer.
- (1) The statement shall be conspicuously labeled in capitalized bold print of at least 14-point font and shall read "ADDITIONAL TAXES TO FUND EXPENDITURES OBTAINED BY SHERIFF [INSERT NAME] IN EXCESS OF THE APPROVED COUNTY BUDGET AS ORDERED BY ARBITRATOR."
  - (2) The statement shall include the website address where a complete copy of all pleadings, briefs, findings, orders, and all other documents filed in the case may be viewed.
  - (3) The statement shall be included on the property tax bill for all subsequent tax years until either,
    - (a) the positions and increase are relinquished by the Shelby County Sheriff, or

- (b) the Shelby County Sheriff leaves office.
- E. Shelby County shall promptly place all pleadings, briefs, findings, orders, and all other documents on the County website as they are filed in the case or submitted to the arbitrator.”

**BE IT FURTHER ORDAINED**, that the Shelby County Attorney be and is hereby directed to prepare a summary of the proposed Charter amendments in accordance with state law.

**BE IT FURTHER ORDAINED**, that upon receipt of a certified copy of this Ordinance, the Shelby County Election Commission is hereby directed to place the summary prepared by the Shelby County Attorney on the ballot at the next countywide election in accordance with the state laws concerning referendum elections.

**BE IT FURTHER ORDAINED**, that upon this Ordinance becoming effective, the Clerk of the Shelby County Board of Commissioners shall immediately deliver a certified copy of this Ordinance to the Shelby County Election Commission in accordance with Article V, Section 5.05B of the Shelby County Charter.

**BE IT FURTHER ORDAINED**, that the proposed Charter amendments shall be deemed ratified and adopted if approved by a majority of those voting in the referendum election.

**BE IT FURTHER ORDAINED**, that for the purposes set forth in this Ordinance, the proposed amendments to the Shelby County Charter applicable to the Shelby County Sheriff, Shelby County Trustee, Shelby County Register, and Shelby County Clerk shall take effect on September 1, 2010, so as not to have the effect of removing the incumbent constitutional Sheriff, Trustee, Register, and County Clerk from office, or abridging the term or altering the salary prior to the end of the term for which such incumbent constitutional officers were elected.

**BE IT FURTHER ORDAINED**, that for the purposes set forth in this Ordinance, the proposed amendments to the Shelby County Charter applicable to the Shelby County Sheriff, Shelby County Trustee, Shelby County Register, and Shelby County Clerk shall be effective prior to September 1, 2010 to the extent necessary to permit elections to be held during the year 2010 for the office of the Shelby County Sheriff, Shelby County Trustee, Shelby County Register, and Shelby County Clerk; and the state laws relating to nominations and elections shall apply to the nomination and election of those county charter officers commencing with the primary and general elections of the year 2010.

**BE IT FURTHER ORDAINED**, that for the purposes set forth in this Ordinance, the proposed amendments to the Shelby County Charter applicable to the Shelby County Assessor shall take effect on September 1, 2012, so as not to have the effect of removing the incumbent constitutional Assessor from office, or abridging the term or altering the salary prior to the end of the term for which such incumbent constitutional officer was elected.

**BE IT FURTHER ORDAINED**, that for the purposes set forth in this Ordinance, the proposed amendments to the Shelby County Charter applicable to the Shelby County Assessor shall be effective prior to September 1, 2012 to the extent necessary to permit elections to be held during the year 2012 for the office of the Shelby County Assessor; and the state laws relating to nominations and elections shall apply to the nomination and election of this county charter officer commencing with the primary and general elections of the year 2012.

**BE IT FURTHER ORDAINED**, that, in accordance with state law, the Shelby County Election Commission shall certify the returns of the referendum election to the Shelby County Clerk and the Secretary of State together with a copy of the proposed Charter amendments previously filed with the Shelby County Election Commission by the Shelby County Board of Commissioners.

**BE IT FURTHER ORDAINED**, that upon receipt of the proclamation from the Secretary of State showing the results of such referendum election on the adoption or rejection of the proposed Charter amendments, the Shelby County Election Commission shall (1) attach one copy of the proclamation to the copy of the proposed Charter amendments theretofore certified to the Secretary of State and (2) deliver one copy of the proclamation to the Shelby County Clerk who shall attach the same to the copy of the referendum returns and proposed Charter amendments theretofore certified to, and deposited with, the Shelby County Clerk; the Shelby County Clerk subsequently delivering the proclamation and all attachments thereto to the Clerk of the Shelby County Board of Commissioners who shall make it a part of the minutes.

**BE IT FURTHER ORDAINED**, that all laws constituting the present Shelby County Charter that are not in conflict with the Charter amendments proposed herein be and the same are hereby continued in full force and effect, and all laws in conflict therewith be and the same are hereby repealed.

**BE IT FURTHER ORDAINED**, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not affect the

remaining parts of this Ordinance, it being hereby declared to be the legislative intent of the Shelby County Board of Commissioners to have passed the remainder of this Ordinance notwithstanding the part so held unconstitutional and void, if any.

**BE IT FURTHER ORDAINED**, that this ordinance shall take effect upon adoption pursuant to Article V, Section 5.05B of the Charter of Shelby County.

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Chairman of County Commission

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A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

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Clerk of County Commission

FIRST READING: August 13, 2008

SECOND READING: August 18, 2008

ADOPTED THIRD READING: August 27, 2008