

# PROPOSED AMENDMENT OF THE SHELBY COUNTY CHARTER

## PROPOSED AMENDMENT

*Summary: Shall Shelby County Charter be amended by deleting sections: 6.05 Municipalities, 6.07 Annexation, and 6.08 incorporation from Article VI and add a new Article IX entitled "Annexation, Deannexation, Municipal Boundaries, Incorporation of Unincorporated territories, and Municipalities: to provide for the governing of how municipalities in Shelby County can change their boundaries by annexation and deannexation, and how unincorporated areas can incorporate. This amendment shall take effect September 30<sup>th</sup> 2010.*

## THE PROPOSED AMENDMENT

Shall the Shelby County Charter be amended by creating a new Article IX, entitled "Annexation, Deannexation of Municipal Boundaries, Incorporation of Unincorporated territories, and Municipalities" as set forth below.

### **Article IX. Annexation, Deannexation of Municipal Boundaries, Incorporation of Unincorporated territories, and Municipalities**

#### **Section 9.01 Annexation**

**(A)(1)** Any incorporated city or town in Shelby County, when petitioned by a majority of the residents and property owners of an adjoining territory that wishes to be annexed, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries provided, that the ordinance shall not become operative until thirty (30) days after final passage thereof. During this thirty-day period, the municipality shall notify the county mayor that the territory located in the unincorporated part of the county is being annexed by the municipality. The notification shall include a copy of the annexation ordinance and a map of the area being annexed.

**(2)** The provisions of subdivision (a) (1) applies only when a city or town is petitioned by the residents and property owners of the affected territory and does not apply to annexation by a city or town upon its own initiative.

**(B)** Any incorporated city or town in Shelby County, may extend its limits by the annexation of territory adjoining the existing boundaries of a municipality is proposed by the municipality upon its own initiative, after notice and public hearing, by ordinance. The ordinance shall not become operative until an election is held at the expense of the proposing municipality for approval or disapproval of such annexation by the qualified voters who reside in the territory proposed for annexation. The operation of the ordinance shall be subject to approval of the voters who reside in such territory. The county election commission shall hold an election thereon, providing options to vote "For" or "Against" the ordinance, not less than forty-five (45) days nor more than sixty (60) days after the receipt of a certified copy of such ordinance, and a majority vote of those voting in the election shall determine whether the ordinance is to be operative. A vote "For" the ordinance shall be a vote "For Annexation" and a vote "Against" the ordinance shall be a vote "Against Annexation." If a majority of all the qualified voters voting thereon in the territory proposed to be annexed, votes for the ordinance annexation as provided therein shall become effective thirty (30) days after the certification of the county election commission makes its official canvass of

the election returns; such ordinance shall not become operative before the expiration of one hundred twenty (120) days following the final passage of the annexation ordinance.

(C) No municipality having a population greater than ten thousand (10,000), according to the 1970 federal census or any subsequent federal census shall, by means of annexation by ordinance upon its own initiative required by subsection (B), increase the land area contained within its boundaries by more than fifteen percent (15%) during any twenty-four-month period.

(D) Any incorporated city or town in Shelby County may attempt to extend its corporate limits by annexation of the unincorporated territory adjoining its existing boundaries and are not guaranteed reserve annexation areas.

(E) All private acts of the General Assembly of Tennessee under state law and the constitution which affect how municipalities annex shall apply, with the exception of any law that is to the contrary of this charter, shall remain in effect until repealed or amended.

## Section 9.02 Deannexation

(A) (1) Any incorporated city or town in Shelby County, may contract its limits within the territory's that were expanded after 1970; provided, that three fourths ( $\frac{3}{4}$ ) of the qualified voters voting in an election thereon assent thereto.

(2) (a) Any incorporated city or town in Shelby County, may after filing a referendum petition by the qualified voters who resides within the territory's that were expanded after 1970; may contract its limits within the specified territory.

(b) Before a petition may be circulated, at least one (1) registered voter of the incorporated city or town who resides within the territory's that were expanded after 1970 shall file with the county election commission:

(1) The proper form of the petition; and

(2) The text of the question posed in the petition for deannexation. In the text shall include the description of the Northern, Eastern, Southern, and Western boundaries of the territory to be contracted by use of official road names or numbers, or both, names of lakes and waterways, or other identifiable landmarks, as appropriate. An inclusion of a map that includes a general delineation of the area or areas will be included with the petition and may be circulated by the petitioner when obtaining signatures.

(c) The county election commission shall certify whether the petition is in proper form within thirty (30) days after the filing of the documentation required by subsection (2)(b). The individual or individuals filing the petition shall have fifteen (15) days to cure any defects in the documentation required by subsection (2)(b) by filing revised documentation in proper form with the county election commission. The county election commission shall determine within five (5) days whether or not the revised documentation shall be certified for final approval.

(d) The petition shall be signed by at least fifteen percent (15%) of the total number of the registered voters who voted in the last municipal election, in the territory that wish's to be contracted. The disqualification of one (1) or more signatures shall not render a petition invalid, but shall disqualify such signatures from being counted towards the statutory minimum number of signatures required in this section.

(3) (a) Upon filing, each completed petition shall contain the following: the full text of the question attached to each petition; the genuine signature and address of registered voters only, pursuant to the requirements TCA 2-1-107; the printed name of each signatory; and the date of signature. The completed petitions shall be filed with the county election commission within seventy-five (75) days after final certification by the county election commission as required by subsection (2)(b). In addition the referendum shall be filed at least sixty (60) days before a city or town election may be held on the question contained in such petition. The question contained in a petition filed less than sixty (60) days before an upcoming city or town election will be placed on the ballot of the following city or town election.

(b) The county election commission shall certify whether or not the completed petition meets all applicable requirements within thirty (30) days of filing of the completed petition pursuant to TCA 2-12-111.

(c) Any person may request either in person or in writing that the county election commission remove such person's name from a petition. Such request must be made within eight (8) days of filing of the completed petition and before final certification by the county election commission of the petition.

(4) Such contraction of limits within the territory's that were expanded after 1970 shall not occur by referendum unless three fourths ( $\frac{3}{4}$ ) of the qualified voters residing within the area to be deannexed voting in a city or town election thereon assent thereto. If three fourths ( $\frac{3}{4}$ ) of the qualified voters voting thereon in the territory proposed to be deannexed, votes for the deannexation as provided therein shall become effective one hundred twenty (120) days after the certification of the county election commission makes its official canvass of the election returns.

(B) (1) Any incorporated city or town, may after notice and public hearing, contract its limits within any given territory upon its own initiative by ordinance when it appears in the best interest of the affected territory.

(2) Such contraction of limits within any territory shall not occur by ordinance unless a majority of the total membership of the city legislative body approves such contraction.

(3) Such contraction of limits within any territory shall not occur by ordinance if opposed by a majority of the voters residing within the area to be deannexed. The concurrence of a majority of the voters shall be presumed unless a petition objecting to deannexation signed by ten percent (10%) of the registered voters residing within the area proposed to be deannexed is filed with the city recorder within seventy-five (75) days following the final reading of the contraction ordinance. If such a petition is filed, a referendum shall be held at the next general election to ascertain the will of the voters residing in the area that the city proposes to deannex. The ballot shall provide a place

where voters may vote for or against deannexation by the city. If a majority of those voting in the referendum fail to vote for the deannexation, the contraction ordinance shall be void and the matter may not be considered again for two (2) years. If a majority vote for deannexation, the ordinance shall become effective upon certification of the result of the referendum.

(C) Except for responsibility for any debt contracted prior to the surrender of jurisdiction, all municipal jurisdiction shall cease over the territory excluded from the municipality's corporate limits on the effective date of the ordinance if the contraction is done by ordinance, or one hundred twenty (120) days after the certification of the results of the election if the contraction is done by election. The municipality may continue to levy and collect taxes on property in the excluded territory to pay the excluded territory's proportion of any debt contracted prior to the exclusion.

(D) The chief executive officer of the municipality shall notify the county tax assessor as to contractions in the territorial limits of the municipality and shall provide the county tax assessor with a complete description of all property affected by the contractions.

(E) All private acts of the General Assembly of Tennessee under state law and the constitution which affect how municipalities deannex shall apply, with the exception of any law that is to the contrary of this charter, shall remain in effect until repealed or amended

### **Section 9.03 Incorporation of unincorporated territories**

(A) (1) the residents of any unincorporated territory within Shelby County wanting to incorporate under this charter may adopt the provisions of this section 9.03, subsections A-D in the manner provided in this section. Thereupon, the territory shall be and become incorporated and be governed as set forth in this section. No unincorporated territory shall be incorporated under the provisions of this charter unless such territory contains not fewer than one thousand five hundred (1,500) persons, who shall be actual residents of the territory.

(2) (a) No unincorporated territory shall be allowed to hold a referendum on the question of whether or not to incorporate under this charter until a plan of services is documented, setting forth the identification and projected timing of municipal services proposed to be provided and the revenue from purely local sources to be payable annually. The plan of services shall be attached to the petition to incorporate when such petition is filed with the county election commission. The plan of services shall include, but not be limited to, police protection, fire protection, water service, sanitary sewage system, solid waste disposal, road and street construction and repair, recreational facilities, a proposed five-year operational budget, including projected revenues and expenditures, and the revenue from purely local sources to be payable annually. Municipalities that are first incorporated on or after July 1, 1993, and that produce no local own-source revenues in any fiscal year, shall not receive any state-shared revenues during the next fiscal year.

(b) Any unincorporated territory wanting to incorporate may elect to continue using the Shelby County Sheriff's Office for its police protection, and may elect to continue using the county fire services for its fire protection. The

Shelby County Sheriff can not charge any additional fee's to any municipality that wants to incorporate or has already incorporated that elects to use the Sheriff's Office for its police services outside of what fee's are already being paid through county taxes.

(c) Prior to filing the petition with the county election commission, a public hearing on the referendum on the question of whether or not to incorporate under this charter and plan of services shall be conducted. The public hearing shall be advertised in a newspaper of general circulation for two (2) consecutive weeks.

**(B) (1)** The county election commission shall hold an election for the purpose of determining whether this charter shall become effective for newly incorporating territory upon the petition in writing of at least thirty-three and one-third percent (33 1/3 %) of the registered voters of the unincorporated territory. The petition shall include a current list of the registered voters who live within the proposed territory. The petition shall state in a sufficient manner the boundaries of the proposed municipal corporation, which may be done by a general reference to the boundaries then existing if there is one. Upon receipt of the petition, the county election commission shall examine the petition to determine the validity of the signatures in accordance with TCA 2-1-107. The county election commission shall have a period of twenty (20) days to certify whether the petition has the sufficient number of signatures of registered voters. If the petition is sufficient to call for an election on the issue of incorporation, the county election commission shall hold an election, providing options to vote "FOR" or "AGAINST" the incorporation of the new charter, not less than forty-five (45) days nor more than sixty (60) days after the petition is certified. The date of the election shall be set in accordance with TCA 2-3-204. The county election commission shall, in addition to all other notices required by law, publish one (1) notice of the election in a newspaper of general circulation within the incorporated territory of the proposed municipality, and post the notice in at least three (3) places in the territory.

**(2)** At any time not less than thirty (30) days prior to the election provided for in this part, the petition may be withdrawn or may be amended to call for a smaller territory for the proposed municipal corporation so long as all of the proposed smaller territory is contained within the boundaries of the territory described in the first petition. The withdrawal or amendment shall be valid if filed with the county election commission in writing, and if signed by not fewer than fifty-one percent (51%) of those who signed the original petition. In the event such an amended petition is filed, all provisions relating to time periods in subsection (A) shall be controlled by the date of the filing of the original petition, notwithstanding the filing of the amended petition, and the county election commission shall publish the notice of election as provided for in subsection (b)(1). A petition to withdraw, when filed with and validated by the county election commission, shall render the original petition null and void.

**(3)** A cash bond equivalent to the costs of the election to incorporate under this charter shall be filed by the petitioners with the county election commission together with the petition for incorporation.

**(C)** The petition filed in accordance with subsection (A) shall be in substantially the form provided in this Charter in Section 9.05 and shall include a description of the boundaries of the proposed municipal corporation and the boundaries of the proposed wards, if there is only one (1) alderman to be elected per ward, the wards that will

carry the initial two-year term, the proposed name of the municipality and whether it is a city or town. The petition shall include a plan of services setting forth the identification and projected timing of municipal services proposed to be provided and the revenue from purely local sources to be payable annually. The plan of services shall include, but not be limited to, police protection, fire protection, water service, sanitary sewage system, solid waste disposal, road and street construction and repair, recreational facilities, a proposed five-year operational budget, including projected revenues and expenditures, and a property tax rate to be annually levied upon all taxable property in the area to be incorporated. Boundary descriptions shall contain references to tax maps kept in the office of the county assessor.

**(D) (1)** all registered voters of the territory of the proposed municipality are eligible to vote in the election.

**(2)** The county election commission shall determine and declare the result of the election and shall certify the result in accordance with TCA 2-8-105(3) within forty-eight (48) hours after the election. It shall publish the results in a newspaper of general circulation in the territory.

**(E)** All private acts of the General Assembly of Tennessee under state law and the constitution which affect how unincorporated territories incorporate shall apply, with the exception of any law that is to the contrary of this charter, shall remain in effect until repealed or amended

#### **Section 9.04 Municipalities**

**(A)** This charter shall not interfere with the rights of municipalities within the county to retain their powers and functions and to provide municipal services in accordance with law, however this charter will govern how municipalities in Shelby County annex and deannex and how new municipalities form, and further, ordinances enacted by the board of county commissioners under this charter shall not interfere with the local affairs of any municipality within the limit of Shelby County.

#### **Section 9.05 Sample Petition for Adoption**

PETITION FOR INCORPORATION ELECTION FOR TOWN (CITY)  
OF \_\_\_\_\_, TENNESSEE

TO: The County Election Commission,  
Shelby County, Tennessee

We the undersigned, being registered voters and residents of the territory herein proposed for incorporation, and being in number in excess of thirty-three and one-third percent (33 1/3%) of the registered voters of the herein described territory, hereby request the county election commission to hold an election on the question of whether or not the herein described territory shall be incorporated under the terms of The Shelby County Charter, Article 9, section 9.03, subsections A-D.

The territory in question, being part of the \_\_\_\_\_, Civil District(s) of Shelby County, Tennessee, is further described as:

(Here insert a description of boundaries with references to tax map)

The wards of the Town (City) shall be as follows:

