To Permanent Rules of Order of the Board of County Commissioners of Shelby County, Tennessee

SHELBY COUNTY BOARD OF COMMISSIONERS
AGENDA ROUTE SHEET

Referred to Commission Committee (name) General Government

For Commission Action on (date) 02-09-09

DESCRIPTION OF ITEM:

RESOLUTION OF THE SHELBY COUNTY PUBLIC RECORDS COMMISSION ADOPTING THE SCHEDULE OF REASONABLE CHARGES FOR COPIES OF PUBLIC RECORDS PREPARED BY THE STATE OF TENNESSEE OFFICE OF OPEN RECORDS COUNSEL.

CHECK ALL THAT APPLY BELOW:

__X__ This Action does NOT require expenditure of funds.

_____ This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: $_____ ; County CIP Funds- $_____

State Grant Funds: $_____; State Gas Tax Funds: $_____

Federal Grant Funds: $ _____

Other funds (Specify source and amount):_____

Other pass-thru funds (Specify source and amount): $ _____

Originating Department: Shelby County Register/Archives

APPROVAL:

	(Type your name & phone #.)	(Initials)	(Date)
Dept. Head:	Derrick Mink 379.4499	DM	1-28-09
Elected Official:	Tom Leatherwood 379-7500	TL	1-28-09
Division Director:			
CIP – A&F Director:			
Finance Dept.			
County Attorney:	Christy Kinard 545-4233	CK	01-28-09
CAO/Mayor:	**James F. Huntzicker 545-4514**	JFH	1-29-2009

SUMMARY SHEET

I. Description of Item

This Resolution receives and files Resolution No. 2008-067 adopted by the Shelby County Public Records Commission on October 28, 2008 so as to assist in putting all County elected officials, division directors, and departments on notice of the change in charges applicable to public records requests. Other than the County Clerk and court clerks, whose copy fees are established by state law, County offices currently charge a fee of no more than $.50 per page. The Public Records Commission adopted the "Schedule of Reasonable Charges for Copies of Public Records," established by the State of Tennessee Office of Open Records Counsel, which sets copy charges at no more than $.15 per page unless custodians actual cost are higher.

II. Source and Amount of Funding

Not Applicable

III. Contract Items

Not Applicable

IV. Additional Information Relevant to Approval of this Item

The Shelby County Public Record Commission recommends approval of this item.

Item # _____

Prepared by Christy L. Kinard
Assistant County Attorney

Approved by Christy L. Kinard CK
Assistant County Attorney

RESOLUTION RECEIVING AND FILING A RESOLUTION ENTITLED "RESOLUTION OF THE SHELBY COUNTY PUBLIC RECORDS COMMISSION ADOPTING THE SCHEDULE OF REASONABLE CHARGES FOR COPIES OF PUBLIC RECORDS PREPARED BY THE STATE OF TENNESSEE OFFICE OF OPEN RECORDS COUNSEL" ADOPTED ON OCTOBER 28, 2008. SPONSORED BY COMMISSIONER JOE FORD.

WHEREAS, the Shelby County Public Records Commission is authorized by Tenn. Code Ann. § 10-7-409 to establish a uniform fee for copying paper documents in response to public records requests; and

WHEREAS, the Shelby County Public Records Commission established a standardized $1.00 per page copy fee and a $2.00 per page copy fee for certifying copies by adoption of Resolution No. 8 on June 13, 1995, same having been received and filed by the County Commission through its adoption of Resolution No. 27 on August 28, 1995; and

WHEREAS, the Shelby County Public Records Commission authorized all County offices, other than the County Clerk and court clerks, to establish a per page copy fee of no more than $.50 per page and to charge for certifying copies as allowed by law by adoption of Resolution No. 2007-055 on October 30, 2007, same having been received and filed by the County Commission through its adoption of Resolution No. 4 on December 3, 2007; and

WHEREAS, effective July 1, 2008, Tenn. Code Ann. §§ 8-4-601 to 604 was enacted to create the Office of Open Records Counsel for the purpose of answering questions and providing information to public officials regarding public records; and

WHEREAS, as required by law, the Office of Open Records Counsel established a schedule of reasonable charges for copies of public records which may be used as a guideline in establishing copy fees and which contains a safe harbor for records custodians to adhere to same; and

WHEREAS, based upon recommendation of the Shelby County Attorney's Office, the Shelby County Public Records Commission adopted the Schedule of Reasonable Charges for Copies of Public Records established by the Office of Open Records Counsel at its meeting of October 28, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISIONERS OF SHELBY COUNTY, TENNESSEE, that Resolution No. 2008-067, adopted by the Public Records Commission on October 28, 2008, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference, be and the same is hereby received and filed.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be provided to all County elected officials, division directors, and departments for distribution, except for those officers whose copy fees are otherwise provided by state law.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, the public welfare requiring the same.

_____
A C Wharton, Jr., County Mayor

Date: _____

ATTEST:

_____
Clerk of the County Commission

ADOPTED: _____

Item # 2008-067

Prepared by: Vincent L. Clark
Shelby County Archivist

Approved by: Christy L. Kinard
Assistant County Attorney

RESOLUTION OF THE SHELBY COUNTY PUBLIC RECORDS COMMISSION ADOPTING THE SCHEDULE OF REASONABLE CHARGES FOR COPIES OF PUBLIC RECORDS PREPARED BY THE STATE OF TENNESSEE OFFICE OF OPEN RECORDS COUNSEL.

WHEREAS, the Shelby County Public Records Commission is authorized by Tenn. Code Ann. § 10-7-409 to establish a uniform fee for copying paper documents in response to public records requests; and

WHEREAS, the Shelby County Public Records Commission established a standardized copy fee by adoption of Resolution No. 8 on June 13, 1995, as amended by Resolution No. 55 on October 30, 2007; and

WHEREAS, the Tennessee General Assembly enacted Chapter 1179 of the 2008 Public Acts, thereby creating the State of Tennessee Office of Open Records Counsel which established guidelines for reasonable charges for copies of public records by the public as required by Tenn. Code Ann. § 8-4-604(a)(1); and

WHEREAS, the Shelby County Attorney's Office recommends the Public Records Commission adopt the Office of Open Records Counsel's Schedule of Reasonable Charges for Copies of Public Records, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY PUBLIC RECORDS COMMISSION OF SHELBY COUNTY, TENNESSEE, that the Schedule of Reasonable Charges for Copies of Public Records, attached hereto as Exhibit "A" and incorporated herein by reference, prepared by the State of Tennessee Office of Open Records Counsel be and the same is hereby adopted.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately and in place of the previously adopted Public Records Commission resolutions regarding copy charges, the public welfare requiring the same.

Edward F. Williams III

Edward F. Williams, III, Chairman

Date: Jan. 22, 2009

Debbie Stamson

Debbie Stamson, Vice-Chairman

Date: 1-26-09

ADOPTED: 10/28/2008

EXHIBIT "1"

SCHEDULE OF REASONABLE CHARGES FOR COPIES OF PUBLIC RECORDS

Section 6 of Public Chapter 1179, Acts of 2008 ("Public Chapter 1179") adds T.C.A. Section 8-4-604(a)(1) which requires the Office of Open Records Counsel ("OORC") to establish a schedule of reasonable charges ("Schedule of Reasonable Charges") which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records under the Tennessee Public Records Act (T.C.A. Sections 10-7-503, et seq.)("TPRA"). The development date of the Schedule of Reasonable Charges is October 1, 2008, and notification of the development will be given to the Tennessee Code Commission on October 31, 2008. This Schedule of Reasonable Charges will be reviewed at least annually by the OORC.

The TPRA grants Tennessee citizens the right to request a copy of a public record to which access is granted under state law. Public Chapter 1179 adds T.C.A. Section 10-7-503(a)(7)(A) which expressly prohibits a records custodian from charging a fee for inspection under the TPRA unless otherwise required by law. However, the TPRA in T.C.A. Section 10-7-506 does permit records custodians to charge for copies or duplication pursuant to properly adopted reasonable rules.

This Schedule of Reasonable Charges should not be interpreted as requiring a records custodian to impose charges for copies or duplication of public records. If a records custodian determines to charge for copies or duplication of public records, such determination and schedule of charges must be pursuant to a properly adopted rule and evidenced by a written policy authorized by the governmental entity's governing authority. Application of an adopted schedule of charges shall not be arbitrary. Additionally, excessive fees and other rules shall not be used to hinder access to non-exempt, public records. A records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity's properly adopted written policy. Pursuant to Tennessee case law, a records custodian may also require payment for the requested copies or duplication prior to the production of the copies or duplication.

Copy Charges

- A records custodian may assess a charge of 15 cents per page for each standard 8 ½ x11 or 8 ½ x14 black and white copy produced. A records custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies.

- If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy. If the requestor then requests a color copy, a records custodian may assess a charge of 50 cents per page for each 8 ½ x11 or 8 ½ x14 color copy produced.

- If a records custodian's actual costs are higher than those reflected above or if the requested records are being produced on a medium other than 8 ½ x11 or 8 ½ x14

EXHIBIT "A"

paper, the records custodian may develop its own charges. The records custodian must establish a schedule of charges documenting "actual cost" and state the calculation and reasoning for its charges in a properly adopted policy. A records custodian may charge less than those charges reflected above. Charges greater than 15 cents for black and white, and 50 cents for color, can be assessed or collected only with documented analysis of the fact that the higher charges actually represent such governmental entity's cost of producing such material; unless there exists another basis in law for such charges.

- The TPRA does not distinguish requests for inspection of records based on intended use, be it for research, personal, or commercial purposes. Likewise, this Schedule of Reasonable Charges does not make a distinction in the charges assessed an individual requesting records under the TPRA for various purposes. Other statutory provisions, such as T.C.A. Section 10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use. Any distinctions made, or waiver of charges permitted, must be expressly permitted in the adopted policy.

Additional Production Charges

- A records custodian shall utilize the most cost efficient method of producing the requested records.

- Delivery of copies of records to a requestor is anticipated to be by hand delivery when the requestor returns to the custodian's office to retrieve the requested records. If the requestor chooses not to return to the records custodian's office to retrieve the copies, the records custodian may deliver the copies through means of the United States Postal Service and the cost incurred in delivering the copies may be assessed in addition to any other permitted charge. It is within the discretion of a records custodian to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.

- If a records custodian utilizes an outside vendor to produce copies of requested records because the custodian is legitimately unable to produce the copies in his/her office, the cost assessed by the vendor to the governmental entity may be recovered from the requestor.

- If the records custodian is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the records custodian may assess the requestor the cost assessed the governmental entity for retrieval of the records.

Labor Charges

- "Labor" is defined as the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.

- "Labor threshold" is defined as the labor of the employee(s) reasonably necessary to produce requested material for the **first hour** incurred by the records custodian in producing the material. A records custodian is not required to charge for labor or may adopt a labor threshold higher than the one reflected above.

- A records custodian is permitted to charge the hourly wage of the employee(s) reasonably necessary to produce the requested records above the "labor threshold." The hourly wage is based upon the base salary of the employee(s) and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year. For example, an employee who is expected to work a 37.5 hour work week and receives $39,000 in salary on an annual basis will be deemed to be paid $20 per hour. Again, a records custodian shall utilize the most cost efficient method of producing the requested records.

- In calculating the charge for labor, a records custodian shall determine the number of hours each employee spent producing a request. The records custodian shall then subtract the one (1) hour threshold from the number of hours the highest paid employee(s) spent producing the request. The records custodian will then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. Finally, the records custodian will add together the totals for all the employees involved in the request and that will be the total amount of labor that can be charged.

- Example:
  The hourly wage of Employee #1 is $15.00. The hourly wage of Employee #2 is $20.00. Employee #1 spends 2 hours on a request. Employee #2 spends 2 hours on the same request. Because employee # 2 is the highest paid employee, subtract the one hour threshold from the hours employee #2 spent producing the request. Multiply the number of hours each employee is able to charge for producing the request by that employee's hourly wage and then add the amounts together for the total amount of labor that can be charged (i.e. (2x15)+(1x20)= $50.00). For this request, $50.00 could be assessed for labor.

Questions regarding this Schedule of Reasonable Charges should be addressed to OORC.

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