

ATTACHMENT A

Section 2-2(d) of the Town Charter

- (d) In the general municipal election the candidate receiving the highest number of votes for mayor shall be elected. The three candidates in such election receiving the highest number of votes for the office of alderman shall be elected for full four-year terms. If it is also necessary to elect one or more aldermen to fill the unexpired terms of one or more aldermen whose offices were vacated, the person receiving the fourth highest number of votes for aldermen (and, if necessary, the fifth and the sixth highest number of votes) shall be elected for the unexpired term or terms.

DISCUSSION OF AMENDING THE TOWN CHARTER

At the retreat, the Board asked the town attorney to investigate whether other municipalities had adopted charter amendments requiring that vacancies on governing bodies be filled by appointing the person who had received the highest number of votes among the unsuccessful candidates at the last election. In response, the attorney provided the Board with the memo attached as Attachment A. The purpose of this item was to provide an opportunity for the Board to consider the information contained in that memo and to decide whether it wants to pursue an amendment to the town charter that would require that vacancies that occur on the Board of Aldermen be filled by appointing the person who received the fourth highest number of votes in the last prior election.

Alderman Coleman stated that his understanding was that the Board's primary interest was in clarifying existing language so that what happened in the 2005 election would not occur again in the future.

Mayor Chilton asked how much interest there was about making changes to the process re: clarifying language.

Alderman Gist said she wanted clarity.

Alderman Zaffron said he wants an ordinance that binds the Board to appoint the candidate with the next highest number of votes.

Alderman Haven-O'Donnell said she understood that we would look at clarifying the language. She did not get the feeling that we indicated interest in moving to change the charter. The campaign extended because the language was confusing and folks took their position based on how they interpreted the language.

Alderman Broun said it is necessary to clarify the language whether or not we modify the process. She has to give it a lot more thought before saying she wants the 4th person elected. We have not had a discussion to that effect

Mayor Chilton stated that the majority of the Board was leaning toward clarifying language vs. changes in the charter. He asked staff to look at ways that language would be clarified.

Mike Brough said he could clarify the language. If it is confusing, it is not serving the purpose. He said he could bring it back for the Board's consideration.

Alderman Zaffron said the process is the problem, not the language and that the voters deserve whom they choose.

CHARTER AMENDMENT CLARIFYING THE FILLING OF BOARD VACANCIES

At its meeting on April 11th, the Board asked the town attorney to draft an amendment to the town charter clarifying the language of Section 2-2(d), which provides that, when a vacancy on the board is filled at a general election, the person receiving the fourth highest number of votes at the general election is elected for the two years remaining on the term of the vacant seat. A charter amendment that clarifies the intent of the current provision, but does not change its meaning, was presented.

Bob Kirschner suggested that a provision be added to the charter so that if a vacancy was anticipated to occur as a result of an election, that the additional votee would fill the position. Citizens would be able to make appropriate choices during the election.

Glynis Gore spoke against the process used by the Board following the 2005 election.

Katrina Ryan stated that it is contradictory to the democratic process to appoint rather than to elect.

Rick Tanner stated that appointing someone that is not accountable to the voters is not democracy. He urged the Board to vote for democracy.

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Dan Coleman.

A RESOLUTION DIRECTING THE TOWN ATTORNEY
TO SUBMIT TO THE TOWN'S LEGISLATIVE DELEGATION
THE DRAFT BILL TO AMEND THE CARRBORO TOWN CHARTER
TO CLARIFY THE PROCESS FOR FILLING VACANT SEATS
ON THE BOARD OF ALDERMEN
Resolution No. 114/2005-06

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO:

Section 1. The Board of Aldermen hereby directs the town attorney to submit the draft amendment to the town charter clarifying the language of Section 2-2(d) of the Town Charter to the town's legislative delegation for introduction in the 2006 session of the General Assembly.

Section 2. That section headings (d) Conduct of Elections and (e) Filling Vacancies be inserted in the draft bill.

Section 3. That the Board discuss this matter further in the fall of 2006.

Section 4. This resolution shall become effective upon adoption.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 3rd day of May, 2006:

Ayes: Joal Hall Broun, Dan Coleman, Jacquelyn Gist, John Herrera, Randee Haven-O'Donnell, Alex Zaffron

Noes: Joal Hall Broun, Mark Chilton, Alex Zaffron

Absent or Excused: None

A worksession of the Carrboro Board of Aldermen was held on Tuesday, May 9, 2006 at 7:30 p.m. in the Town Hall Board Room.

Present and presiding:

- | | |
|---------------|------------------------|
| Mayor | Mark Chilton |
| Aldermen | Joal Hall Broun |
| | Dan Coleman |
| | Jacquelyn Gist |
| | John Herrera |
| | Randee Haven-O'Donnell |
| | Alex Zaffron |
| Town Manager | Steven E. Stewart |
| Town Attorney | Michael B. Brough |
| Town Clerk | Sarah C. Williamson |

CHARTER AMENDMENT CLARIFYING THE FILLING OF BOARD VACANCIES

MOTION WAS MADE BY JACQUELYN GIST AND SECONDED BY DAN COLEMAN TO RECONSIDER THE MOTION MADE AT THE MAY 3, 2006 MEETING OF THE BOARD OF ALDERMEN REGARDING A CHATER AMENDMENT CLARIFYING THE FILLING OF BOARD VACANCIES; THAT THE PROPOSED CHARTER AMENDMENT NOT BE SENT TO THE LEGISLATIVE DELEGATION FOR CONSIDERATION IN THE 2006 SESSION OF GENERAL ASSEMBLY, AND THAT THE BOARD RECONSIDER THIS MATTER IN THE FALL OF 2006. VOTE: AFFIRMATIVE ALL

MEMORANDUM

Memorandum to: Carrboro Mayor and Board of Aldermen
From: Mike Brough
Subject: Filling Vacancy
Date: November 4, 2005

At its meeting on November 1, 2005, the Board requested that I prepare this memorandum dealing with the procedures to be followed in filling the vacancy on the Board that will occur following the election on November 8th.

As a preliminary matter, it should be noted that Subsection 2-2(d) of the Town Charter is *not* relevant to this issue. That subsection states:

In the general municipal election the candidate receiving the highest number of votes for mayor shall be elected. The three candidates in such election receiving the highest number of votes for the office of alderman shall be elected for full four-year terms. If it is also necessary to elect one or more aldermen to fill the unexpired terms of one or more aldermen whose offices were vacated, the person receiving the fourth highest number of votes for aldermen (and, if necessary, the fifth and the sixth highest number of votes) shall be elected for the unexpired term or terms.

As the text plainly indicates, this subsection applies only to filling seats on the board at general municipal elections. It has nothing to do with filling vacancies by appointment of the Board.

The statute that covers filling vacancies is G.S. 160A-63. It states simply that “[a] vacancy that occurs in an elective office of a city shall be filled by appointment of the city council.” It then goes on to provide, in essence, that if a vacancy occurs during the first two years of a Board member’s four year term (and at least 90 days prior to the municipal election that occurs during the mid-point of that four year term), then the person appointed by the Board to fill that vacant seat “shall serve only until the elected successor takes office.” In other words, under those circumstances, at the municipal election that occurs after a vacancy that occurs in the first two years of a term, the electorate chooses a person to serve for the remaining two years of that term. On the other hand, if the vacancy occurs during the second half of a four year term (or less than 90 days before the municipal election that occurs during the middle of that term), then the person appointed by the Board to fill that vacant seat serves for the remainder of the term of that seat. The above cited charter provision fills in a gap in state law by clarifying that, if four seats are up for elections under the circumstances described above (i.e. three 4-year terms and one 2-year term), the candidate receiving the fourth highest number of votes is elected to the 2-year term.

Neither the General Statutes nor the Town Charter establishes any procedure for the Board to follow in filling a vacancy. And the Board's recent history in filling vacancies is mixed in terms of the procedures followed. In 1998, the Board established a formal process whereby the vacancy was published, written applications were accepted, and the Board interviewed the candidates before making an appointment. In 1997, the Board simply voted to appoint a former member of the Board to fill the vacancy. And in 1995, the Board appointed the person who had received the fourth highest number of votes for aldermen in the preceding municipal election. In short, the Board has broad discretion in deciding how to fill any vacancy that occurs.

However, the Board has no authority to call a special election to fill a vacancy. G.S. 163-287 provides the procedure for calling a special election, but this statute authorizes the Board to call such elections only "as permitted by law." Thus, other authority to hold such an election must be found, such as the authority to hold an election on a proposed bond issue. But there is no such authority to call a special election, advisory or otherwise, for the purpose of selecting a person to fill a vacancy.

MEMORANDUM

Memorandum to: Mayor and Board of Aldermen

From: Mike Brough

Subject: Charter amendment on filling vacancies

Date: March 7, 2006

At the retreat, the Board asked me to investigate whether other municipalities had adopted charter amendments requiring that vacancies on governing bodies be filled by appointing the person who had received the highest number of votes among the unsuccessful candidates at the last election. We have checked with both the School of Government and the League of Municipalities. The attorneys we spoke with at both places said that they were unaware of any charter provisions mandating such an approach, but they believed some municipalities have on occasion followed this method of filling vacancies. We also sent out an inquiry on the municipal attorneys listserv. We only received two responses. One attorney stated that it was his impression that various locally elected boards sometimes filled vacancies this way, but none had formalized this into a requirement. The High Point City Attorney stated that his city once had a charter amendment that required that the highest vote getter among the at large council candidates be appointed mayor pro tem, but that they have repealed this provision because it was too inflexible. He advised against the adoption of such a charter amendment.

As a result of the recent appointment process, the Board is well aware of the arguments for and against appointing the fourth highest vote getter to fill a vacancy. However, the question of whether to amend the charter to *require* this presents a different issue. That issue is not whether the fourth highest vote getter should be appointed in a particular case, but whether such person must *always* be appointed. The advantage of such a requirement is that it makes the selection automatic (assuming there were at least four candidates in the last election), thus avoiding the possibility of a Board deadlock. The disadvantage is that it removes the Board's flexibility to choose the person that in the judgment of the Board is the most qualified person.

The Board inquired about unintended or unexpected consequences of such a charter amendment. The only one I can think of is the possibility that the fourth highest vote getter could conceivably be someone that is demonstrably not qualified. Carrboro has been fortunate in recent years to have had many highly qualified and competent individuals willing to run for open seats on the Board. But it is not impossible to imagine a situation where all three incumbents are seeking reelection, other serious candidates are unwilling to oppose them, and a marginally qualified candidate files at the last minute on a lark. The marginal candidate does not campaign and receives only a handful of votes, but following the election, a vacancy occurs. Under the charter amendment that has been proposed, the Board would have no choice but to appoint the marginally qualified

candidate. An argument can be made that this would still be appropriate since such person did in fact receive more votes than any other person who might be considered to fill the vacancy. However, I point out this scenario to suggest that the context in which the issue arises might not be the same in the future.

A BILL TO BE ENTITLED
AN ACT TO AMEND THE CARRBORO TOWN CHARTER TO CLARIFY THE
PROCESS FOR FILLING VACANT SEATS ON THE BOARD OF ALDERMEN

The General Assembly of North Carolina enacts:

Section 1. Section 2-2 of the Consolidated Charter of the Town of Carrboro (as set forth in Section 1 of Chapter 476 of the 1987 Session Laws) is amended by changing the title thereof from "Election of Mayor and Aldermen" to "Election of Mayor and Aldermen; Filling Vacancies," and by amending subsection (d) and adding a new subsection (e) to read as follows:

(d) In the general municipal election the candidate receiving the highest number of votes for mayor shall be elected. The three candidates in such election receiving the highest number of votes for the office of alderman shall be elected for full four-year terms. If, under the circumstances specified in subsection (e) of this section, it becomes also necessary to elect at a general election one or more aldermen to fill the unexpired terms of one or more aldermen whose seats became vacant prior to that general election offices were vacated, then the person receiving the fourth highest number of votes for aldermen (and, if necessary, the fifth and the sixth highest number of votes) shall be elected for the remaining two years of the unexpired term or terms of the vacant seat or seats.

(e) Vacancies that occur in the office of mayor or alderman shall be filled by appointment of the board of aldermen in accordance with G.S. 160A-63. As provided in that statute, the person appointed to fill a vacancy on the board of aldermen shall serve for the remainder of the term of the vacant seat, unless the vacancy occurs more than 90 days prior to the general election that takes place during the middle of the term of office for that seat. In that case, at the next general election that takes place more than 90 days after the vacancy occurs, a successor shall be elected to serve for the second half of the term of the vacant seat, and the person appointed by the board to fill the vacancy pending the mid-term election for that seat shall serve only until his or her elected successor takes office.

Proposal for filling board vacancies

Background: Several municipalities in North Carolina have been granted authority for special elections to fill vacancies. These include Durham, Elizabeth City, Lumberton, and Rowland (that I am aware of). I have the charter provisions for each of these (thanks to Gerry Cohen) and have included Durham's.

Recommendation: that we set up a system similar to Durham's as follows:

- specify a period of time when the board can either make an appointment or call for a special election;
- at the end of that time period, if no action has been taken, a special election would be required to be performed;
- a time frame for a filing period and until the election date would be specified
- reasonable procedures for folding the special election in with a regular election would be specified

The Durham ordinance provides a starting point for these discussions.

Example:

The BoA has 60 days to make an appointment or call a special election. In no action were taken, a 14 day filing period would be opened with the election to take place approximately 60 days after the end of filing. If the vacancy occurs within 60 days before the opening of filing for a regularly scheduled general or primary election, the filing period and election would coincide with those of the regular election.

Discussion:

- 1) 60 days allows the board to open up a process similar to the one used last winter. However, perhaps we would only want to make appointments when there was a fairly clear appointee as occurred with Diana or Frances and use the election process otherwise. If so, the 60 days could be shortened to perhaps 30 or 45 (note: given the seasonal changes in our schedule, it might be better to use a number of meetings rather than a number of days).
- 2) The example above gives a total of approximately 10 weeks from the announcement of the vacancy until the election. I believe this is as short as we could go to allow for effective campaigns. A normal campaign cycle has approximately 120 days (@30 for filing followed by @90 until the election). I believe that the special election should operate on a shorter time frame considering that a seat remains open through that period.
- 3) 60 days before filing to fold into a regular election can lead to a total of approx. 6 months of vacancy. This is long but not unreasonable. The Elizabeth City charter stipulates 90 days before but I think this is too long. I expect that, in practice, the Shetley model would tend to be followed in these cases.

Conclusion:

I was pleased to see the Durham model and like the flexibility it gives the board to respond to varying circumstances (I discuss this further in a guest column which is scheduled to appear in Sunday's CH News). I hope we can come to a quick agreement as to whether we want to proceed with this approach and, if so, can then focus on fine-tuning the particulars.

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 852
HOUSE BILL 771

AN ACT TO PROVIDE THE PROCEDURES FOR FILLING VACANCIES ON THE
DURHAM CITY COUNCIL.

Section 1. Section 13 of the Charter of the City of Durham, as it appears in Section 1 of Chapter 671, Session Laws of 1975, is repealed.

Sec. 2. The Charter of the City of Durham, as it appears in Section 1 of Chapter 671, Session Laws of 1975, is amended by adding new sections to read:

"§ 13.1. Council to judge elections.—The City Council shall be the judge of the election and qualifications of its members.

"§ 13.2. Vacancies in office of Mayor or member of City Council.—(a) For the purpose of this section, the word 'vacancy' also includes a refusal or failure to qualify for office.

(b) If a vacancy occurs in the office of Mayor, the City Council shall, except as provided in subsection (d) of this section, within 60 days of the vacancy, choose some qualified person for Mayor for the unexpired portion of the term.

(c) If a vacancy occurs in the office of Council member, the City Council shall, except as provided in subsection (d) of this section, within 60 days of the vacancy, choose some qualified person to fill the place of such Council member for the remainder of the unexpired term.

If the vacancy to be filled occurs in a seat occupied by a Council member elected from a ward, then such person chosen to fill such vacancy shall reside in the ward from which the Council member whose place is to be filled was nominated.

(d) If the Council fails to choose some qualified person within 60 days after the vacancy occurs, it may not fill the vacancy by appointment, but shall call a special election under the provisions of Section 13.3 of this Chapter, provided that if the vacancy occurs after the first day of June in the year in which the term is to expire, the Council need not call a special election.

"§ 13.3. Special election to fill vacancies.—(a) If the City Council is required to call a special election under the provisions of Section 13.2 of this Charter, it shall follow the procedures of this section.

(b) The special election shall be called and conducted in accordance with G.S. 163-287, except as otherwise provided in this section.

(c) The Council shall within seven days of the expiration of the 60 day period provided in Section 13.2(d) of this Charter adopt a resolution calling a special election. Such special election may be held on the same date as any county or State or municipal primary, or general election, referendum or special election, but may not otherwise be

held within the period beginning 30 days before and ending 30 days after the date of any such election, primary, special election, or referendum.

(d) If the City Council calls a special election to be held at the time of the regularly scheduled elections for municipal officials, the special election shall be conducted according to the rules, regulations and procedures established for such regular elections by Subchapter IX of Chapter 163 of the General Statutes of North Carolina. The election shall be conducted according to the nonpartisan primary and election method. If the City Council elects to change the method of determining the results of the regular municipal elections, the special election shall be conducted according to the method chosen by the City Council.

(e) If the City Council calls for a special election to be held at any time other than the time of the regularly scheduled elections for municipal officials, the election shall be conducted according to the rules, regulations and procedures established for special elections by G.S. 163-287 and by the remainder of Chapter 163 of the General Statutes of North Carolina, as modified by the following provisions:

- (1) The election shall be conducted and the results of the election determined in accordance with the nonpartisan plurality method of election set out in G.S. 163-292.
- (2) Candidates may file their notices of candidacy during the time prescribed by G.S. 163-294.2.
- (3) The filing fee in the special election shall be the same as that most recently fixed by the City Council pursuant to G.S. 163-294.2(e) for the regularly scheduled election for municipal officials."

Sec. 3. Section 11 of the Charter of the City of Durham, as it appears in Section 1 of Chapter 671, Session Laws of 1975, is amended in subdivision 3 by deleting the words "Every ordinance, resolution or action having the effect of an ordinance or resolution shall require on its passage seven affirmative votes", and inserting in lieu thereof the words: "Every ordinance, resolution or action having the effect of an ordinance or resolution shall require seven affirmative votes, and no person shall be appointed to fill a vacancy as Mayor or member of the Council except by seven or more votes in favor of that person".

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 8th day of June, 1979.