

**A RESOLUTION DIRECTING THE TOWN ATTORNEY
TO SUBMIT TO THE TOWN'S LEGISLATIVE DELEGATION
THE DRAFT BILL TO AMEND THE CARRBORO TOWN CHARTER
TO CHANGE THE PROCESS FOR FILLING VACANT SEATS
ON THE BOARD OF ALDERMEN
Resolution No. 66/2006-07**

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 changing the language of Section 2-2(d) of the Town Charter to the town's legislative delegation for introduction in the 2007 session of the General Assembly.

Section 2. This resolution shall become effective upon adoption.

A BILL TO BE ENTITLED
AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO TO
PROVIDE THAT VACANCIES IN THE OFFICE OF MAYOR OR ALDERMEN MAY
BE FILLED THROUGH THE SPECIAL ELECTION PROCESS UNDER SOME
CIRCUMSTANCES

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," by repealing existing subsection (d) and adding new subsections (d) and (e) to read as follows:

(d) Notwithstanding the provisions of G.S. §160A-63, vacancies that occur in the office of mayor at a time when one year or more of the mayor's term of office remains unexpired shall be filled by a special election. Such special election shall be called by the board of aldermen by the adoption of a resolution pursuant to G.S. §163-287 at the next regular or special meeting of the board held after the vacancy occurs. Vacancies that occur in the office of mayor at a time when less than one year of the mayor's term of office remains unexpired shall be filled by appointment of the board of aldermen in accordance with G.S. §160A-63.

(e) Notwithstanding the provisions of G.S. §160A-63, whenever a seat on the board of aldermen (other than that of the mayor) becomes vacant at a time when one year or more of the term of office of that seat remains unexpired, such seat shall be filled by a special election. Such special election shall be called by the board of aldermen by the adoption of a resolution pursuant to G.S. §163-287 at the next regular or special meeting of the board held after the vacancy occurs. Vacancies that occur in the office of alderman at a time when less than one year of that alderman's term of office remains unexpired shall be filled by appointment of the board of aldermen in accordance with G.S. §160A-63.

Section 2. This act is effective when it becomes law.

MEMORANDUM

Memorandum to: Carrboro Mayor and Board of Aldermen

From: Mike Brough

Subject: Charter amendment dealing with vacancies

Date: October 9, 2006

Pursuant to the Board's direction at the September 19, 2006 meeting, I have prepared a charter amendment to deal with vacancies on the Board. The amendment repeals existing subsection 2-2(d) of the charter (the one that caused the confusion) and replaces it with two new subsections. New subsections (d) and (e), respectively, provide that vacancies in the office of mayor or aldermen will be filled by appointment of the Board if less than one year remains in the term of the respective offices at the time a vacancy occurs. Otherwise, such a vacancy shall be filled by holding a special election pursuant to G.S. §163-287. This statute provides that a special election may be held at any time, including on the date of another state, county, or municipal election, but may not be held within 30 days on either side of another "primary, election, special election or referendum held for that city...."

Drew Cummings has checked with the Orange County Board of Elections and has been informed that the Board of Elections would like to have 70 days from the time it receives a special election request to organize and conduct the election, but that 50 days is the minimum. He was also told that the Board would require seven days to confirm the results. Thus, from the date a vacancy occurs, filling the vacancy through a special election would require between 57 and 77 days, not counting the days that may occur between the date the vacancy occurs and the date the Board calls for the special election, and the days between the time the Board of Elections certifies the results of the election and the date a new member is sworn in.

I would be happy to address any questions the Board may have about the proposed amendment.

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.

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.

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

CONTINUED DISCUSSION OF AMENDING THE TOWN CHARTER TO CLARIFY THE FILLING OF BOARD VACANCIES

The Board has had a number of discussions regarding the possibility of seeking a charter amendment from the General Assembly. A charter amendment could do one of two things – it could either clarify the existing process for filling vacancies that occur at different times in the election cycle or it could change the process entirely. The purpose of this agenda item is for the Board of Aldermen to again consider requesting an amendment to the Carrboro town charter.

Katrina Ryan addressed the Board. She said that she was troubled by Alderman Coleman's proposal and the process by which we fill vacancies on the Board caused by an election. The voters should have the right to choose every member of the Board of Aldermen when there is an election. When a sitting Alderman runs for Mayor, there should be a provision for a fourth vote for alderman.

Sharon Cook addressed the Board. She spoke on behalf of her neighbors, Peter and Allison Doyle. She stated that the purpose of elections is to choose people who represent our interests. To appoint someone perverts the process and is based on political affiliations and cronyism. The person appointed is not accountable to the people who elected them and they gain benefits of incumbency without earning them. Ms. Cook agrees and asks that the Board trust its citizens to choose their elected representatives and abolish the "loophole" in the town charter that allows us to abandon our democratic principles.

Alderman Coleman stated that a number of communities across the state have the authority to hold special elections to fill vacancies. Durham allows a window of time during which their city council can make an appointment or call for a special election. Feelings from the annexation and the last election spill into this discussion. In Carrboro, the last four appointments were generally not controversial.

Alderman Zaffron stated that he thought Alderman Coleman's research was thoughtful but that the proposal creates a protracted process that is lengthy and contentious. He proposed the following:

1. Use the proposal previously discussed to amend the Town Charter to automatically allot the vacant seat to the highest finisher behind the full-term seats.
2. A "pick 3 + 1" ballot, in which 4 votes are cast, with it clearly noted that the 4th place finisher fills the vacant seat; or
3. On in which the voter may "pick 3" for the full terms, and in a separate volume, "pick 1" to fill the two-year vacancy.

Mayor Chilton stated that he sees the merits of both proposals. We do not know until the first Friday in August who is running for Mayor so we do not know if the results of a mayoral election would force a vacancy on the Board of Aldermen. A write-in candidate can file as late as September 1st.

Alderman Broun stated that she opposes a system that is directly related to how we vote with a voting machine. Where is the control to fill the vacancy? Will it reside with the voters or the Board? If it is less than a year, let the Board fill it. If it is more than a year, have a special election.

Mayor Chilton stated that it does not happen often and the last time was ten years ago with Alderman McDuffee.

Alderman Gist asked the attorney to craft something in workable language. If a vacancy occurs and it is less than a year, then the Board appoints. If it is more than a year, we have a special election.

Alderman Zaffron stated there should be an automatic trigger mechanism and that the election must take place within a certain number of days.

Mayor Chilton asked the attorney to take a look at the General Statutes to determine how quickly they are allowed to do this.

Alderman Haven – O'Donnell stated that she likes Alderman Coleman's proposal to have a certain amount of time for the Board to do the job that they have been elected to do.

Alderman Herrera stated that this is a non-issue and it insulted his intelligence and democratic rights. The whole electoral system is full of restrictions. Democracy is not pleasant. Twenty percent of the people in Carrboro vote. The system is working fine.

Alderman Coleman stated that the process we have been using is democratic. Everyone agrees that we should appoint sometimes.

Alderman Broun stated the reason there is still contention is because there is a feeling that the playing field was not fair when the decision was made.

Mayor Chilton stated that he took exception to an earlier citizen comment referring to the system we have always used in the past as a loophole. One hundred percent of municipalities and over 75 counties and elected boards all use exactly the method that we do. It is prescribed for us and imposed on us by North Carolina state law. It is the procedure. There is nothing wrong with it. It is good enough. That is Alderman Herrera's point. He stated that he liked Alderman Broun's proposal and just because it is good enough does not mean it is good enough for Carrboro. How will we deal with this in the future? It does not draw a distinction about a vacancy caused by an election or not. It just has to do with the length of term and that is a very practical type of issue that puts the decision in the hands of the voters. It is a tidy and easily understood system.

Alderman Broun asked that the town attorney draft a proposed charter amendment along those lines.

Mayor Chilton said that the Board would have another public hearing on this matter.

MOTION WAS MADE BY JOAL HALL BROUN AND SECONDED BY ALEX ZAFFRON THAT THE TOWN ATTORNEY BE DIRECTED TO DRAFT A CHARTER AMENDMENT TO REFLECT THAT WHEN A VACANCY ON THE BOARD OF ALDERMEN OCCURS, WHEN THERE IS A YEAR OR LESS, THE BOARD CAN APPOINT. IF THERE IS A YEAR OR MORE, THERE WILL BE AN AUTOMATIC SPECIAL ELECTION. VOTE: AFFIRMATIVE SIX, NEGATIVE ONE (HERRERA)
