

ATTACHMENT A

**A RESOLUTION CLARIFYING THE BOARD OF ALDERMEN'S REQUEST TO
THE NORTH CAROLINA GENERAL ASSEMBLY FOR A
CHARTER AMENDMENT
REGARDING THE FILLING OF BOARD VACANCIES
Resolution No. 121/2006-07**

WHEREAS, the Town Attorney submitted this charter amendment request to the General Assembly, and

WHEREAS, the Director of Bill Drafting has sent back some questions,

NOW THEREFORE LET IT BE RESOLVED that the Carrboro Board of Aldermen make the following clarifications to the original request:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

ATTACHMENT B

From: Gerry Cohen (Bill Drafting, Director)
Sent: Tuesday, January 09, 2007 11:55 AM
To: Sen. Ellie Kinnaird
Cc: Kathie Young (Sen. Kinnaird)
Subject: Carrboro vacancies -- some issues to deal with??

I'm in receipt of your request on behalf of the Town of Carrboro concerning vacancies. The cover letter from Mike Brough says that the bill would "... provide that vacancies on the Board shall be filled by a special election (rather than by appointment by the Board) when such a vacancy occurs at a time that leaves a year or more in the term of the vacant seat". I wanted to first point out that the bill also applies to the office of Mayor.

The bill proposes to repeal Section 2-2(d) of the current Carrboro charter, which states:

"(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."

The proposed bill would add new subsections (d) dealing with Mayoral vacancies, and (e), dealing with town board vacancies. The new provisions deal entirely with filling vacancies, and fail to restate the first two sentences of (d), which really should not have been deleted.

The bill would provide that if more than one year remained in the term of Mayor, there would be a special election to fill the vacancy. There would not even be an appointment of someone to serve until the special election. Our general statutes really do not deal with an extended vacancy in the office of Mayor. G.S. 160A-70 provides that *"during the absence of the mayor, the council may confer upon the Mayor Pro tempore any of the powers and duties of the mayor"*. I guess a vacancy in the office would give the council the same power? (it isn't stated directly).

The proposed bill does not set out any procedures for the election, timetables, etc, relying on 163-287 which states that the council is to set the details of the special election. That statute blocks out 30 days before and after and other primary and election from having the election. Since there needs to be a filing period and an absentee voting period, this will likely require a period of several months from the vacancy occurring until the special election is held. I would also note a policy decision made in the 1993 Carrboro recall charter amendment that *"Notwithstanding the other provisions of this subsection, no recall election shall be scheduled during the time period beginning on the first Monday in July and ending on the last Monday in August in any calendar year."* which was designed to bar summer elections when a lot of people are away. I do not know whether this is still a significant issue you wish to consider.

As far as aldermen are concerned, the bill likewise bars appointments if less than one year remains in the term. The charter currently provides that if the vacancy occurs during the first two years of the term, an appointment is made to serve until the mid-term election when a successor is chosen there (with the last place winner getting the two-year term). This proposed bill gets rid of that, so even if the vacancy election happens to occur to synch up with the mid-term election, it will be a separate seat on the ballot (was this intended? The problem in 2005 was that the vacancy did not occur until after the election, so there was no way to automatically grab the next place finisher. It might be much more). The reason the provision was added to the Carrboro Charter to have the next place finisher get the seat rather than have a separate election on the ballot was because of southern orange reaction to a school board vacancy in 1973 when a short term was a separate seat on the ballot (just a little bit of history for you). Same question again, should the charter provision banning summer recall elections also apply here?

Glad to go over all of this with you at your convenience.

I also note that the title of the bill end *"MAY BE FILLED THROUGH THE SPECIAL ELECTION PROCESS UNDER SOME CIRCUMSTANCES"* when there is no discretion left to the board, it should really say *"SHALL BE FILLED THROUGH THE SPECIAL ELECTION PROCESS UNDER SOME CIRCUMSTANCES"*.

I should note that since the provision states *"notwithstanding the provisions of G.S. 160A-63"*, this would also eliminate the power of the mayor to fill vacancies when there are three or more aldermanic vacancies at the same time, and the power of the Governor to fill aldermanic vacancies when there are three or more board vacancies and a simultaneous mayoral vacancy (both of those provisions are designed both to cover emergencies, mass resignations, etc.).

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.