

ELECTION CHANGE

FOR CHANGING #CANDIDATE SEATS, TIME OF TERM #YRS,
DISTRICTED VOTING — NOT FOR USE TO MOVE TO EVEN YEARS

From: Scott Davis [mailto:msd@dhwlegal.com]

Sent: Thursday, August 5, 2021 9:42 AM

To: Diane Miller

Subject: Re: the process by which we change the election cycle

1. 160A-101(4) provides the authority.

2. 160A-102 provides the steps:

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Adopt Resolution of Intent describing the Charter amendment.

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At the same time of adoption of resolution, call for public hearing to be held within 45 days.

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Publish notice of public hearing.

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At the next meeting AFTER the public hearing, Board can adopt an ordinance to amend the charter.

Let me know if/when the Board wants to move forward and we'll get you squared away.

Scott

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SUBCHAPTER IX. MUNICIPAL ELECTIONS.

Article 23.

Municipal Election Procedure.

§ 163-279. Time of municipal primaries and elections.

(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

- (1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.
- (2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the second Tuesday after Labor Day, and the second primary, if required, shall be held on the fourth Tuesday before the election.
- (3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.
- (4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section or in G.S. 130A-50(b1). (1971, c. 835, s. 1; 1973, c. 1115; 1987, c. 22, s. 2; 2006-192, s. 3; 2011-141, s. 1(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-287. Special elections; procedure for calling.

(a) Any county, municipality, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the governing body of the county, municipality, or special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the local board of elections. The resolution shall call on the local board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. In setting the date, counties, municipalities, and special districts are encouraged to set a date that will result in the highest possible voter turnout. However, the special election may be held only as follows:

- (1) At the same time as any other State or county general election.
- (2) At the same time as the primary election in any even-numbered year.
- (3) At the same time as any other election requiring all the precincts in the county to be open.
- (4) At the same time as a municipal general election, if the special election is within the jurisdiction of the municipality only.

(b) Legal notice of the special election shall be published no less than 45 days prior to the special election. The local board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This subsection shall not apply to bond elections.

(c) The last sentence of subsection (a) of this section shall not apply to any special election related to the public health or safety, including a vacancy in the office of sheriff or a bond referendum for financing of health and sanitation systems, if the governing body adopts a resolution stating the need for the special election at a time different from any other State, county, or municipal general election or the primary in any even-numbered year.

(d) The last sentence of subsection (a) of this section shall not apply to municipal incorporation or recall elections pursuant to local act of the General Assembly.

(e) The last sentence of subsection (a) of this section shall not apply to municipal elections to fill vacancies in office pursuant to local act of the General Assembly where more than six months remain in the term of office, and if less than six months remain in the office, the governing board may fill the vacancy for the remainder of the unexpired term notwithstanding any provision of a local act of the General Assembly.

(f) This section shall not impact the authority of the courts or the State Board to order a new election at a time set by the courts or State Board under this Chapter. (1971, c. 835, s. 1; 1973, c. 793, s. 86; 1993 (Reg. Sess., 1994), c. 762, s. 65; 2011-31, s. 7; 2013-381, s. 10.1; 2014-111, s. 17.5(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

Part 4. Modification of Form of Government

§ 160A-101. Optional forms.

Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

- (1) Name of the corporation:
The name of the corporation may be changed to any name not deceptively similar to that of another city in this State.
- (2) Style of the corporation:
The city may be styled a city, town, or village.
- (3) Style of the governing board:
The governing board may be styled the board of commissioners, the board of aldermen, or the council.
- (4) Terms of office of members of the council:
Members of the council shall serve terms of office of either two or four years. All of the terms need not be of the same length, and all of the terms need not expire in the same year.
- (5) Number of members of the council:
The council shall consist of any number of members not less than three nor more than 12.
- (6) Mode of election of the council:
 - a. All candidates shall be nominated and elected by all the qualified voters of the city.
 - b. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.
 - c. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.
 - d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into "ward seats" and "at-large seats," one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the "ward seats"; candidates for the "at-large seats" shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for "at-large" seats shall be nominated and elected by all the qualified voters of the city.
 - e. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible,

except for members apportioned to the city at large, if any; in a nonpartisan primary, the qualified voters of each district shall nominate two candidates who reside in the district, and the qualified voters of the entire city shall nominate two candidates for each seat apportioned to the city at large, if any; and all candidates shall be elected by all the qualified voters of the city.

If either of options b, c, d or e is adopted, the council shall divide the city into the requisite number of single-member electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of single-member electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

(7) Elections:

- a. Partisan. – Municipal primaries and elections shall be conducted on a partisan basis as provided in G.S. 163-291.
- b. Nonpartisan Plurality. – Municipal elections shall be conducted as provided in G.S. 163-292
- c. Nonpartisan Election and Runoff Election. – Municipal elections and runoff elections shall be conducted as provided in G.S. 163-293.
- d. Nonpartisan Primary and Election. – Municipal primaries and elections shall be conducted as provided in G.S. 163-294.

(8) Selection of mayor:

- a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.
- b. The mayor shall be selected by the council from among its membership to serve at its pleasure.

Under option a, the mayor may be given the right to vote on all matters before the council, or he may be limited to voting only to break a tie. Under option b, the mayor has the right to vote on all matters before the council. In both cases the mayor has no right to break a tie vote in which he participated.

(9) Form of government:

- a. The city shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of this Chapter.
- b. The city shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of this Chapter and any charter provisions not in conflict therewith. (1969, c. 629, s. 2; 1971, c. 698, s. 1; c. 1076, s. 1; 1973, c. 426, s. 19; c. 1001, ss. 1, 2; 1975, c. 19, s. 64; c. 664, s. 6; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-102. Amendment by ordinance.

By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be the next date permitted under G.S. 163-287(a) that is more than 70 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election in accordance with G.S. 163-287, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-104 and the date of any election called pursuant to such petition. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 20; 1979, 2nd Sess., c. 1247, s. 11; 2014-111, s. 18; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-103. Referendum on charter amendments by ordinance.

An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures and residence addresses of a number of qualified voters of the city equal to at least 10 percent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed on a date permitted by G.S. 163-287. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the notice of adoption of the ordinance. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 13, 15; 2013-381, s. 10.27; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)