

NORTH CAROLINA LEAGUE OF MUNICIPALITIES PUBLICATION

CHARTER AMENDMENT BY ORDINANCE PROCEDURES AND FORMS

The governing body of a city, town or village has a limited authority to amend the municipal charter by ordinance in order to implement certain types of charter changes. Charter amendments by ordinance are restricted to the options set out in G.S. 160A-101: the name of the municipality, the style of the corporation, the style of the governing body, the term of office of governing body members, the number of governing body members, the mode of election, the type of election, the selection of the mayor and the form of government. Any Charter amendment not authorized by G.S. 160A-101 must be accomplished by local act of the General Assembly.

Charter amendments by ordinance may be initiated either by the governing body or by citizen petition. The procedure to be followed in each of these situations is outlined below. The full text of the statutes should be consulted prior to implementing these procedures.

I. INITIATION OF CHARTER AMENDMENT BY GOVERNING BODY

A. RESOLUTION AND HEARING

G.S. 160A-102

1. The governing body first adopts a resolution of intent to consider an ordinance amending the charter. The resolution must briefly but completely describe the proposed amendments and refer to the pertinent provisions of G.S. 160A-102. See Form #1.
2. At the time the resolution of intent is adopted, the governing body calls a public hearing on the proposed charter amendments. The hearing must be set for some date between 10 and 45 days after adoption of the resolution. See Form #1.
3. Notice of the public hearing is published at least once in a newspaper having general circulation within the municipality. The notice must contain a summary of the proposed amendments and it must be published at least 10 days prior to the date set for the hearing. See Form #2.
4. The public hearing is held and interested persons are afforded the opportunity to be heard if they so desire.
5. No earlier than the next regular meeting of the governing body and no later than 60 days after the date of the hearing, the governing body may adopt an ordinance amending the charter to implement the proposed amendments. See Form #3.

6. The governing body has two options:

A. It may make the ordinance effective only upon approval by a vote of the people. If this option is chosen, Steps 7 through 9 below should be followed in addition to the preceding Steps 1 through 5.

B. If the governing body chooses not to make the ordinance subject to an approving vote of the people, the ordinance is still subject to a referendum petition, and Steps 10 through 14 below should be followed in addition to the preceding Steps 1 through 5.

B. SPECIAL ELECTION ORDERED BY GOVERNING BODY

G.S. 160A-102; 163A-1592

7. If the governing body chooses to make the ordinance subject to a vote of the people, it must pass a resolution at the same time it adopts the ordinance. The resolution calls a special election for the purpose of submitting the ordinance to a vote and sets the date of the election. The date selected for the election must be the next date permitted under G.S. 163A-1592(a) that is more than 70 days after adoption of the ordinance. For more information on permitted election dates, see item 3 of Part IV. See Form #5. A copy of the resolution should be forwarded without delay to the appropriate Board of Elections.

8. The governing body is required by G.S. 160A-102 to publish a notice of the special election in accordance with G.S. 163A-1592 at least 45 days before the election. See Form #6. Note that G.S. 163A-1592 requires the Board of Elections to publish the notice as well.

9. If the ordinance is approved in the special election, follow the steps in Part III below.

C. REFERENDUM BY PETITION G.S. 160A-102, -103

10. If the governing body chooses not to make the ordinance subject to an approving vote, it must publish a notice within 10 days after adoption of the ordinance stating that the ordinance has been adopted and summarizing its contents. See Form #4. If no referendum petition is filed pursuant to G.S. 160A-103 within 30 days after the publishing of the notice, the ordinance becomes effective at that time and the steps in Part III below should be followed. However, if a petition is filed, follow Steps 11 through 14 below.

11. In order to be valid, a referendum petition must be filed with the municipal clerk no later than 30 days after publication of the notice of adoption of the ordinance. The petition must contain the signatures and residence addresses of 10% of the total number of registered municipal voters (according to the most recent figures certified by the Bipartisan State Board of Elections and Ethics Enforcement) or 5,000 voters, whichever is less. The petition must be addressed to the governing body and must identify the ordinance to be submitted to a vote.

12. Upon receipt of a valid petition, the governing body calls for a special election on a date permitted by G.S. 163A-1592. See Form #5. A copy of the resolution calling for the election should be forwarded without delay to the appropriate Board of Elections.

13. Notice of the election is published by the Board of Elections no less than 45 days prior to the special election as provided in G.S. 163A-1592. See Form #6.

14. If the ordinance is approved in the special election, follow the steps in Part III below.

II. INITIATION OF CHARTER AMENDMENT BY CITIZEN PETITION

G.S. 160A-104

1. Citizens may on their own accord bring forth proposed charter amendments and may initiate a referendum on the proposals by petition. To be valid, the petition must contain the signatures and residence addresses of 10% of the total number of registered municipal voters (according to the most recent figures certified by the Bipartisan State Board of Elections and Ethics Enforcement) or 5,000 voters, whichever is less. The petition must briefly but completely describe the proposed amendments and refer to the pertinent provisions of G.S. 160A-101. It may not propose changes in the alternative or more than one integrated set of charter amendments.

2. Upon receipt of a valid petition, the governing body must call a special election on the proposed amendments, to be held on a date permitted by G.S. 163A-1592. See Form #7. A copy of the resolution calling for the election should be forwarded without delay to the appropriate Board of Elections.

3. The governing body is required by G.S. 160A-104 to publish a notice of the special election in accordance with G.S. 163A-1592 at least 45 days before the election. See Form #8. Note that G.S. 163A-1592 requires the Board of Elections to publish the notice as well.

4. If the proposed amendments are approved in the election, the governing body must adopt an ordinance amending the charter to put them into effect. See Form #9. The ordinance should be filed in accordance with Part III below.

ORDINANCE FILING REQUIREMENTS

G.S. 160A-111; 120-30.9F

1. Once the ordinance becomes effective, the municipal clerk must file a certified true copy of the Charter amendments with the Secretary of State's office and the Legislative Library.

N.C. Department of the Secretary of State Land Records Management Section

U.S. Postal Service: By Hand or Delivery Service

P.O. Box 29626, 2 South Salisbury Street

Raleigh, N.C. 27626-0626 Raleigh, N.C. 27601

Phone: (919) 807-2207

www.sosnc.gov/divisions/land_records

Legislative Library

300 N. Salisbury Street, Suite 500

Raleigh, N.C. 27603-5925

Phone: (919) 733-9390

www.ncga.state.nc.us/library/index.html

2. Municipalities located in 40 designated counties were previously subject to the preclearance requirements of Section 5 of the federal Voting Rights Act. In June 2013 the United States Supreme Court declared Section 4 of the Voting Rights Act unconstitutional. That ruling made Section 5 unenforceable.

IV RULES ON THE TIMING OF CHARTER AMENDMENT PROCEEDINGS

G.S. 160A-102, -104, -107, -109; 163A-1592

1. The governing body may not commence proceedings to initiate a charter amendment under G.S. 160A-102 between the time of filing of a valid initiative petition under G.S. 160A-104 and the date of any election called pursuant to that petition.

2. Initiative petitions may not be filed

(a) between the time the governing body initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceedings have been carried to a conclusion either through adoption or rejection of the proposal or lapse of time;

(b) within 18 months following the effective date of an ordinance amending the charter; or

(c) within 18 months following the date of any election on charter amendments that were defeated by the voters. These restrictions only apply to petitions concerning the same subject matter.

3. In setting the date for special elections, G.S. 163A-1592(a) encourages counties, municipalities and special districts to set an election date that will result in the highest possible voter turnout. However, it further provides that a special election may be held only (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 precincts in the county to be open; or (4) at the same time as a municipal general election, if the special election is within the jurisdiction of the municipality only.
4. Any amendment affecting the election of municipal officers shall be finally adopted and approved at least 90 days before the first election for mayor or governing body members held thereunder.
5. Charter amendments adopted by ordinance must remain in force for at least two years after the beginning of the term of office of the officers elected thereunder.