

## MEMORANDUM

TO: Mayor and Town Council  
FROM: Ralph D. Karpinos, Town Attorney  
DATE: January 30, 2020  
SUBJECT: Council Vacancy and Adjusting Size of Council

The purpose of this memorandum is to provide information on filling the current vacancy on the Town Council and, as an alternative, leaving the position open and beginning a process that could lead to a reduction in the size of the Town Council from 8 members to 6 members.

### Summary

#### Vacancy

With the upcoming resignation of Council Member Schaevitz, the Council is responsible for filling the open Council seat for the remainder of her term of office (ending December, 2021).

Town Code sets out in detail the procedures to follow for how this vacancy is to be filled. However, there is no specific deadline set or statutory requirement for when this vacancy must be filled by Council selection.

This process to fill the vacancy should be followed until the vacancy is filled or until action is taken to modify the ordinance requirements to do so.

#### Reduction in Council Size

The current size of the Town Council could be modified by an amendment to the Town Charter.

The Town Charter is a local act of the General Assembly and could be amended by a subsequent act of the General Assembly.

In the alternative, the General Statutes provide a process by which the Town Charter provisions regarding the size of the Town Council can be modified by the Town Council without action by the General Assembly. This could involve a referendum. The referendum would be held at the time of the November 2020 General Election

#### Transitioning to a Smaller Council

Assuming a decision is made to reduce the size of the Council, the first step could be to leave the upcoming vacancy unfilled. Any subsequent vacancy which might occur would affect the steps needed, depending on when it occurs and the length of term remaining in that vacated seat.

## Discussion

### Vacancy

Town Code Chapter 2, Article II (attached) sets out the steps for filling vacancies on the Council.

Key points:

1. Council Member Schaevitz is expected to leave office in a few weeks. The vacancy is to be filled through appointment by the Town's remaining elected officials for the remainder of her term of office, until December 2021.
2. At the first Council meeting after the vacancy occurs, the mayor will announce the vacancy.
3. The Mayor will direct that notice of the vacancy be published within 7 days of the meeting.
4. At that same meeting, the Council will set a deadline for applications, which shall be no less than 7 days and no more than 30 days after the notice is published.
5. Applications shall include the name, address and signature of the applicant and any other supporting material the applicant wishes to include. No specific form is required.
6. Applications are to be distributed to the Council promptly after the deadline. (However, the applications are public records once they are submitted and are available at that time for public review.)
7. At the next meeting after the deadline, the Council shall review the applications and may make nominations from those who applied. (Historically, past Councils filling vacant Council seats have also scheduled an opportunity for applicants to make presentations to the Council and the public.)
8. At the next meeting at least 6 days later, the Council may make further nominations from those who applied and may make the appointment.
9. The Council is to consider the vacancy at each subsequent meeting until the vacancy is filled. There is no strict statutory deadline for the Council to fill the vacancy. However, both the General Statute (Sec. 160A-63) and Town Charter (Sec. 2.3) state that vacancies "shall be filled" by appointment by the Council.

### Reduction in Size of Town Council

There are alternate paths to reduce the membership of the Town Council from 8 to 6.

1. The Town could request the local Legislative Delegation to sponsor a bill in the General Assembly to modify the Town Charter and reduce the Town Council. Sessions of the General Assembly in even-numbered years are usually shorter and opportunities for consideration of local legislation are limited. Local topics which may invite debate are usually not successful in these short sessions. In addition proposals introduced in the General Assembly are subject to being amended

prior to enactment. In other words, a local act request could be adjusted prior to enactment by the General Assembly in ways that the Council is not expecting.

2. Alternatively, General State Law (N.C.G.S. Sec. 160A-102) sets out procedures for the Council to amend the Town's Charter by ordinance with respect to certain aspects of the Town Council structure, including reducing the size of the elected governing body. This can occur without action by the General Assembly.

*A. Options available under this Statute include:*

1. Under N.C.G.S. Sec. 160A-102 the Town Council can enact an ordinance to modify the Charter provision and reduce the size of the Town Council.
2. Under this statute, the ordinance could become effective without further action unless a citizen petition requires a referendum.
3. Under this statute, an opportunity is provided for a citizen petition which if valid, would require a referendum on the proposed change to Council size. If a referendum is held as a result of a sufficient citizen-initiated petition, the Ordinance would not be effective until and unless it were approved in the election.
4. Another option would be for the Council at its own initiative, to propose that the ordinance to reduce the Council size be put before the voters in a referendum. The Ordinance would be effective if approved in the referendum.

*B. The procedural steps to modify the Council size under this Statute include:*

1. Adopt a resolution of intent to consider amending the charter.
2. Call a public hearing on the proposed charter amendment.
3. Publish notice of the public hearing.
4. Conduct the hearing and, consider no sooner than the next regular meeting adoption of the ordinance.
5. Publish notice of adoption of the ordinance within 10 days of its adoption.

*C. Further:*

1. The Council may, but is not required to, make the ordinance effective upon voter approval at a special election.
2. The Council must make the Ordinance effective only if approved by a vote of the people if a sufficient and timely petition calling for a referendum is received pursuant to N.C.G.S. Sec. 160A-103.
  - a. To be sufficient to require a referendum, the petition must be signed by at least 10% of the voters who are registered to vote in the Town's elections. (estimated to be just under 4,000)
  - b. To be timely, the petition must be filed within 30 days of the notice of adoption of the ordinance.
3. In light of the possibility of an effort to have a referendum vote, the Council could choose at the outset to put the proposal to a vote at a special election.

4. Whether called by the Council or required by citizen petition, any special election would need to be scheduled as allowed by law.
5. While the cost of the special election would be the Town's responsibility, the Town is prohibited from using public funds to support or oppose the referendum. (N.C.G.S. Sec. 160A-499.3)

#### Scheduling a Special Election and Referendum

State law sets limits on when any referendum could be scheduled on a proposed Ordinance to amend the Charter to reduce the size of the Town Council. See N.C.G.S. Sec. 160A-102 and Sec. 163-287.

1. Election must be at least 71 days after adoption of the ordinance.
2. Legal notice of the special election must be published at least 45 days before the special election.
3. The Election may only be held:
  - a. At the same time as any other state or county general election.
  - b. At the same time as a primary election in an even-numbered year.
  - c. At the same time as any other election requiring all precincts to be open.
  - d. At the same time as a municipal general election.

The North Carolina primary election is March 3. A possible run-off for this primary could occur on April 21 or May 12.<sup>1</sup> However, there would not be a certainty on March 3 that a second primary will be held on May 12.<sup>2</sup> Further, May 12 is 69 days after the proposed adoption of the Ordinance to modify the Charter on March 4, and, therefore, outside the window of an eligible date of a special election. Thus, the first date for the special election more than 70 days after the proposed date for adoption of the Ordinance to modify the Charter (March 4) would be the November 3, 2020 General Election. A referendum, if called by the Council or required by a citizen petition, could be held at that time.

#### Transitioning to Smaller Town Council

Assuming transition to a smaller Town Council of 6 members plus the Mayor is approved by Ordinance to amend the Charter, there are procedural steps to consider which should be addressed in the Ordinance.

1. The upcoming vacancy could remain unfilled. Council could, as part of the Charter-amending ordinance, also modify the current Town Charter and Code on filling vacancies to accommodate the transition (by dispensing with the requirement to consider the vacancy at every meeting).
2. The Council could fill the vacancy but then provide that only three seats would be filled in 2021. Given the decision to reduce the size, it would seem more reasonable to leave the seat open and to adjust the ordinance on filling the vacancies. Then it would not be necessary to consider the vacancy at every meeting until December 2021.

---

<sup>1</sup> A second primary would be held on May 12 if a federal contest (involving Chapel Hill voters) required it. A second primary would be held on April 21 if needed and only if no federal contest required a second primary.

<sup>2</sup> The County Canvass for the March 3 primary is scheduled for March 13. In addition, it could be argued that the run-off second primary election does not qualify under 163-287 as a date on which the special election may be held because it is a run-off second primary and not a primary election.

3. If there were to be any further vacancies prior to December 2021 the situation could be addressed as follows:
  - a. If an additional vacancy occurs for a seat which is up for election in 2021, the seat could be left open. In 2021 there would be two seats to fill. Then, in 2023, there would be four seats to fill. In 2023 the top three candidates could get 4 year terms, lasting from 2023 to 2027. The fourth place candidate would receive a two year term. After that, the seat receiving a two year term would be subject to election in 2025 for a four year term, along with the other two seats filled by election in 2021.
  - b. If a further vacancy occurs, prior to the 2021 election, for a seat which is up for election in 2023, the seat could be left open. Then, in 2021, there would be three seats to fill. In 2023, there would also be three seats to fill.
4. If any further vacancy (beyond a second vacancy) were to occur, it would be filled in accordance with the current ordinance on filling vacancies.
5. There may be other ways to accommodate a transition. The details should be provided in any ordinance proposed to modify the Charter and the current ordinance procedures for filling a vacancy.

#### **Next Steps**

1. The required process to fill the expected vacancy will begin at the first meeting following expected resignation of Council Member Schaevitz.
2. If the Council wishes to further consider adjusting the size of the Council, an agenda item can be prepared for the February 12 or February 19 meeting.

#### **POTENTIAL TIMELINE FOR CONSIDERING ADJUSTING COUNCIL SIZE (COUNCIL DOES NOT CALL FOR REFERENDUM)**

- |                                      |  |
|--------------------------------------|--|
| February 12:                         | Adopt Resolution of Intent to consider an Ordinance amending the Charter and Call a Public Hearing |
| February 16:                         | Publish Notice of Hearing (at least 10 days before the hearing)                                    |
| February 26:                         | Hold Public Hearing  |
| March 4:                             | Adopt Ordinance to Amend Charter (no earlier than next regular meeting after hearing)              |
| No later than March 14:              | Publish notice of adoption of Ordinance amending the Charter                                       |
| 30 days after publication of Notice: | Deadline for filing a referendum petition calling for election on Charter amendment                |

- April 22: If a sufficient petition has been filed, the Council at this meeting can fix the date for the special election for November 3. (Election must be on the day of another scheduled election and more than 70 days after adoption of the ordinance)
- If a sufficient petition is not filed, the Ordinance would become effective on the date set in the ordinance.
- September \_\_: If a sufficient petition has been filed, publish notice of special election on November 3 (no later than 45 days prior to the special election)
- November 3: Referendum

**POTENTIAL TIMELINE FOR CONSIDERING ADJUSTING COUNCIL SIZE  
(IF COUNCIL CALLS FOR REFERENDUM)**

- February 12: Adopt Resolution of Intent to consider an Ordinance amending the Charter and Call a Public Hearing
- February 16: Publish Notice of Hearing
- February 26: Hold Public Hearing
- March 4: Adopt Ordinance to Amend Charter, to be effective if approved in referendum
- March 4: Council adopts resolution calling a special election on proposed Charter amendment on November 3 (Election must be on the day of another scheduled election and more than 70 days after adoption of the ordinance)
- September \_\_: Publish notice of special election on November 3 (must be published at least 45 days before the election)
- November 3: Referendum