




TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

January 10, 2022

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager 

REF: New Business

1. Town Charter amendment (Attached NB-1)

At the November 8, 2021, BOC meeting, members discussed amending the Town Charter to change the Mayor's term from two to four years. Staff prepared a procedural timeline for amending the Charter through N.C.G.S. §160A-102 and the Town Attorney concurred with the process outline. He reported there were no foreseeable consequences with this proposed modification. Through consensus, the BOC directed Staff to proceed with the process for the amendment.

Changes to a town charter that may be implemented without action by the General Assembly are listed under §160A-101, and include setting a mayor's term between two to four years (§160A-101(8)(a)). Any change to the Town Charter affecting the election of city officers would need to be approved and finalized at least 90 days prior to the next election.

The statute language also notes that a mayor's voting rights, whether voting on all items or only in the event of a tie, may be included. In the Board's longtime adopted rules of procedure, our Mayor votes on all items. If the BOC chooses to proceed with an amendment to the KDH Mayor's term of office, Staff recommends the added clarifying language for our Mayor's voting rights into the Town Charter amendment.

As described in the attached procedural timeline, the first step in this process is the BOC's consideration to the BOC of a Resolution of Intent to change the Town Charter. If the Resolution of Intent is adopted, the BOC must schedule a public hearing on the proposed charter amendment within 45 days of the resolution's adoption, and action may be taken at the subsequent regularly scheduled meeting. Staff recommends scheduling a public hearing for Monday, February 7, 2022, at 6:00 p.m., with the BOC's consideration of the resolution set for the Monday, March 7, 2022, meeting.

A motion would be in order for the Board of Commissioners to adopt the *Resolution of Intent to Consider an Ordinance Amending the Town Charter of Kill Devil Hills to Change the Mayor's Term of Office to Four Years and Setting the Date for a Public Hearing Thereon*, scheduling a public hearing for Monday, February 7, 2022, at 6:00 p.m., with possible action by the Board at its regularly scheduled Monday, March 7, 2022, meeting.



TOWN OF KILL DEVIL HILLS

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**A Resolution of Intent
to Consider an Ordinance Amending the Town Charter of Kill Devil Hills
to Change the Mayor's Term of Office to Four Years
and Setting the Date for a Public Hearing Thereon**

WHEREAS, the Town of Kill Devil Hills operates under a council-manager form of government, with a governing board composed of four commissioners and one mayor; and

WHEREAS, the terms of commissioners are four years, staggered with biennial elections, and the term of the mayor is two years; and

WHEREAS, the Kill Devil Hills Board of Commissioners has expressed interest in changing the term of Kill Devil Hills Mayor to a term of four years; and

WHEREAS, N.C.G.S. §160A-102 lays out a process by which municipalities may amend their town charters by ordinance without General Assembly approval; and

WHEREAS, optional form changes to a town charter available through ordinance adoption are prescribed in N.C.G.S. §160A-101, with the mayoral term listed in N.C.G.S. §160A-101(8)(a) "The mayor shall be elected by all the qualified voters of the city for a term not less than two years nor more than four years"; and

WHEREAS, 160A-101(8) also states that "Under option [(8)(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"; and

WHEREAS, under the Board of Commissioners' longtime adopted rules of procedure, the mayor's eligibility to vote on matters is as follows: "The mayor votes on the same basis as other council members, though in no event may the mayor break a tie on a motion which he or she has already voted."; and

WHEREAS, the process to change the town charter under §160A-102 begins with the Board of Commissioners' consideration of a Resolution of Intent, and if adopted, conducting a public hearing not more than 45 days from the resolution's adoption. Within 60 days following the public hearing at a regularly scheduled Board meeting, the Board of Commissioners may take action on the amendment to the town charter; now, therefore, be it

RESOLVED by the Board of Commissioners of Kill Devil Hills:

1. That it is the intent of the Kill Devil Hills Board of Commissioners to consider an ordinance amending the Town Charter of Kill Devil Hills, pursuant to N.C.G.S. §160A-102 and §160A-101, as follows:

Section 2-3. Mayor; Term of Office; Voting

The Mayor shall be elected by qualified voters of the entire town of a term of four years or until a successor is elected and qualified. The Mayor votes on the same basis as other council members, though in no event may the Mayor break a tie on a motion in which he or she has already voted.

2. That a public hearing on the proposed ordinance is called at the Board of Commissioners Meeting Room at Town Hall at (time) on (day of week), (date).
3. That following the public hearing, the Board of Commissioners shall consider passage of the ordinance at its regular meeting on (day of week), (date).
4. The Office of the Town Clerk is directed to cause to be published in *The Coastland Times* a public hearing notice, containing a summary of the proposed charter amendment, complying with public hearing notice requirements.

This the _____ day of _____, 202__.

SEAL

Benjamin A. Sproul
Mayor

ATTEST:

James Michael O'Dell
Deputy Town Clerk

From: Casey Varnell [<mailto:varnell@ncobxlaw.com>]
Sent: Monday, November 8, 2021 1:06 PM
To: Allen, Charlene <charlene@kdhnc.com>; Terry Gray <tgray@kdhnc.com>
Cc: Diaz, Debbie <debbie@kdhnc.com>
Subject: RE: Process for amending Town Charter, specifically Mayor's term of office

I am in agreement with Charlene's memo. She did a very good job outlining the process for amendment via BOC-initiated action.

Commissioner Gray also asked that I research pitfalls in such a proposal. I have looked into those items and do not find any consequences which would harm the Town. I am attaching a brief memo on the subject matter for your reference, Commissioner.

Casey C. Varnell
Sharp, Graham, Baker & Varnell, LLP



From: Allen, Charlene <charlene@kdhnc.com>
Sent: Friday, November 5, 2021 4:27 PM
To: Terry Gray <tgray@kdhnc.com>
Cc: Casey Varnell <varnell@ncobxlaw.com>; Diaz, Debbie <debbie@kdhnc.com>
Subject: Process for amending Town Charter, specifically Mayor's term of office

Good afternoon Commissioner Gray,

Congratulations again on your re-election!!!!

Based on our earlier conversation, I asked the Town Clerk's office to review the process to amend the Town Charter, specifically Mayor's term of office. The charter can be amended by ordinance for several reasons and the "term of office of governing body members" being one of those reasons. Charter amendments by ordinance may be initiated by Council or by citizen petition. N.C.G.S. 160A-102 defines the process for amending by ordinance. The resolution of intent to consider an ordinance amending the charter is referenced in N.C.G.S. 160A-101(8)(a). Attached is a memorandum listing the steps as well as the reference for the general statutes.

I am also copying Casey Varnell, Town Attorney, as well for his review and input.

Please feel free to reach out if you have any additional questions.

Charlene Allen
Assistant Town Manager
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Kill Devil Hills, NC 27948
252-449-5303 phone
www.kdhnc.com



Term Lengths

According to a 2006 survey of municipal governments by International City/County Management Association (ICMA), the most common mayoral term length is four years. The table below indicates the percentage of cities that apply different term lengths for the position of mayor.

Length Of Term	Percentage Reporting
1 year	14%
2 years	35%
3 years	6%
4 years	45%
Other	1%

Pros and Cons of Term Limits

Shorter term limits may reduce potential abuses of power by incumbents who stay too long in office. Shorter limits may also encourage political participation by newcomers.

****I do not see this as a problem for the Town of Kill Devil Hills.**

Conversely, the election process itself already serves as the antidote for long-serving mayors who are no longer responsive to citizens. Term limits may also be seen as an infringement on the democratic process, as citizens are restricted from selecting a candidate they may see as the most qualified for the position. Furthermore, the election process becomes cheaper, thereby saving taxpayers money, as the costs of administering an election for that seat would be cut in half.



TOWN OF KILL DEVIL HILLS
Land Where Flight Began

TO: Charlene Allen, Assistant Town Manager

FROM: Town Clerk's office

DATE: November 5, 2021

SUBJECT: Process for amending Town Charter, specifically Mayor's term of office

Commissioner Gray inquired of Staff the steps involved to amend the Town's Charter to change the mayor's term from two years to four years. N.C.G.S. §160A-102 defines the process for amending by ordinance. The steps would be as follows:

1. **BOC meeting #1:** Request Staff draft a resolution of intent to consider an ordinance amending the charter.

Resolution of intent must briefly describe the proposed amendment(s), referencing §160A-101. In this instance, §160A-101(8)(a)

2. **BOC meeting #2:** Resolution of intent is presented to the BOC for consideration. If adopted, the BOC must call a public hearing on the proposed charter amendment.

Public hearing must be scheduled not more than 45 days from the resolution of intent's adoption, and notice must be published once not less than 10 days prior to the hearing.

3. **BOC meeting #3:** Public hearing conducted on charter amendment ordinance. No action may be taken on ordinance.
4. **BOC meeting #4:** At next regularly scheduled BOC meeting, but less than 60 days from public hearing, BOC may adopt the charter amendment ordinance.
5. **Recordation:** Staff will record adopted Town charter changes with the N.C. Secretary of State's Office, and file it with other appropriate offices, including the Dare County Board of Elections.

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.

§ 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

§ 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

§ 160A-104. Initiative petitions for charter amendments.

The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least ten percent (10%) 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 petition shall set forth the proposed amendments by describing them 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. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on