
Coates' Canons Blog: Repealing a City Charter

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Pop quiz time: The General Assembly can *unincorporate* a city in North Carolina by local act, with or without a vote of the citizens of the city. True or False? The answer is “true.” Faculty members here at the School of Government occasionally get questions from residents, and even from city officials, about how their city can be discontinued. They express concerns about limited resources and capacity to provide city services, and a lack of citizen interest in city government, including sometimes, a lack of candidates willing to file for local office. What can be done?

The legislature can unincorporate – that is, discontinue the existence of – a city in North Carolina by simply repealing the city’s charter. (I’m using the word “city” but this includes towns, villages and other municipalities. Although the names differ, they’re all the same type of legal entity under North Carolina law.) The legislature has in fact **repealed city charters**, and has also enacted a **blanket repeal** of charters of inactive cities. In North Carolina, the legislature creates cities, counties and other units of local government, gives them their authority to act and their structure, and can modify this authority and structure in its discretion. While the legislature has given cities powers to change their structure locally, and to expand their boundaries through annexation (go here for more information on that), the legislature retains its authority to make those changes as well, and may do so by local act.

Neither citizens, nor local governments as municipal corporations, have any constitutional or other legal right to the continued existence or current structure of local governments. So the legislature is free to modify or even repeal the charter (which is itself a local act of the legislature), as well as other local acts or statutes that establish local governments and define their powers and structure.

What is the effect of a charter repeal? As of the effective date, the municipality ceases to exist. The citizens remain citizens of the county, but are not subject to municipal taxes or regulations. Unincorporated areas near other existing cities become subject to annexation by other cities (an important consideration, since some small cities have been incorporated primarily to avoid annexation by other cities). Areas near an existing city may also become subject to the city’s extra-territorial jurisdiction for land use regulation.

In some cases, the result will be a diminution in the level of services, depending, of course, on the level of services the city provided. Indeed, some small cities provide few services, or rely on county services. Counties do not have authority to maintain streets, so streets will either become part of the state system, if the state agrees to accept them, or will be left to private owners to maintain.

Assets (including funds) of the city may be disposed of by the city prior to the effective date of the repeal or can be reallocated in the local act. The only complicated issue would be the disposition or transfer of any outstanding debt. While most assets, liabilities, and property can simply be transferred to the county or any other unit of local government, or to the state, under the state Constitution the assumption of debt by another unit of local government would require a vote of the citizens in the unit assuming the debt. **(NC Const., Article V, sec. 4)**

If the city’s main activity involves operating a utility or other enterprise, the legislature and the local officials may want to consider creating an authority or special district that could continue operations without the full set of responsibilities and authority of a municipality. Organizational structures that may serve as alternatives to incorporation are discussed in the School of Government’s publication about incorporation, **available here**.

Another approach for a city struggling to make ends meet is to merge with another city and combine resources and governance. Mergers of cities also require legislative action; an example is an **act to merge the towns of Waynesville and Hazelwood**.



The process of obtaining a local act to repeal a charter is very much like the process for any other local act. For more about that, see my earlier **blog post on local acts**. In the case of a charter repeal, however, the legislators who represent the affected area will want to know whether there is significant support among those voters who will be affected by the repeal. Although there is no requirement for a referendum, the legislature has the option of making any act to repeal a charter subject to approval by the voters. Here's an example of a repeal subject to a referendum for the **Town of Sandyfield**. It's important to note that there is no authority for a local government to call for an official referendum (meaning, a vote administered by the board of elections) on its own. The board of elections requires some legislative authority to conduct an election. A municipality could, however, develop a local survey or poll to determine citizen views on the matter, or the legislature may simply defer to local leaders or citizens in deciding whether and how to proceed with a repeal.

This may be the most important point: *What do the citizens think?* The mechanics and legalities of incorporation and unincorporation are fairly simple. The harder questions are: Do the citizens of the community have the desire and commitment to take responsibility for their local government, and to carry out the duties and realize the opportunities embodied in the city's charter? Are the citizens willing to consider whether alternative structures have the potential to provide services more efficiently? There are no easy "true-false" answers to these questions, but it's reasonable to ask them now and then.

Links

- www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/1969-1970/sl1969-235.html
- www.ncleg.net/enactedlegislation/sessionlaws/html/1971-1972/sl1971-740.html
- www.sog.unc.edu/resources/microsites/annexation
- www.ncleg.gov/Laws/Constitution/Article5
- www.sog.unc.edu/publications/books/incorporation-north-carolina-town-third-edition
- www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/1993-1994/sl1993-353.html
- canons.sog.unc.edu/localgovt/?p=2163
- www.ncleg.net/enactedlegislation/sessionlaws/html/1995-1996/sl1995-119.html