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## Coates' Canons Blog: Answers to Questions About the Mayor Pro Tem.

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North Carolina law, GS 160A-70 requires city governing boards to elect from among its members a mayor pro tem. What powers does the mayor pro tem have? Does the mayor pro tem vote on all matters even in cities where the mayor votes only to break a tie? Does the mayor pro tem automatically become mayor if the mayor resigns? What does “pro tem” mean, anyway? Read on to learn the answers to these and other questions about mayors pro tem.

**“Pro tem.” sounds like some fancy Latin term. What does it mean?** Pro tem. is an abbreviation of the Latin phrase *pro tempore*, which means “for the time being” or “temporary.” So that’s the first thing to know about the mayor pro tem. The mayor pro tem serves temporarily in place of the mayor when the mayor is absent. For efficiency, I’ll substitute MPT for mayor pro tem. and I’ll call GS 160A-70, the MPT statute.

### How is the MPT chosen?

The MPT statute requires the council to elect the MPT from among its members. There is no statutory guidance about how to structure the election. There are two choices – motion and vote, and nominations and ballot. You can learn more about these methods in a blog post here.

### Does the MPT serve in that role for the duration of his or her term of office on the council?

Not necessarily. The MPT statute says that the MPT must be elected at the organization meeting, and that the MPT serves at the pleasure of the council. This means that the council has to choose a MPT at each organizational meeting, and that the council has the choice of reelecting the current MPT, or electing a new one. It also means that the council can, with or without cause, vote to remove the MPT at any time, and appoint a new one.

### What powers does the MPT have?

The general rule nationally is that, unless state law provides otherwise, the MPT “exercises all of the functions of the mayor, including discretionary, ministerial, executive and administrative, legislative and judicial or quasi-judicial powers,” when acting in place of the mayor. *3 McQuillin Mun. Corp. § 12:72 (3d ed.)*. See *State v. Thomas, 141 N.C. 791 (1906)* (upholding a warrant issued by the mayor pro tem. Issuing warrants was one of the powers of mayors at that time.)

The North Carolina MPT statute departs from the national rule and allows the council to confer upon the MPT “any of the powers and duties of the mayor.” In the School of Government’s Suggested Rules of Procedure for a City Council, 4<sup>th</sup> Ed., recommended Rule 18 delegates to the MPT the power to preside in the Mayor’s absence, including all of the powers of the presiding officer as specified in Rule 17(d). As noted in my blog post here, North Carolina mayors have few statutory powers. When electing a MPT, the council should consider whether to delegate powers beyond simply presiding at meetings. It’s common, for example, for mayors to have delegated authority to sign contracts, participate in agenda preparation, sign ordinances, and conduct various ceremonial functions. Should the council delegate all of those powers to the MPT? The extent of a delegation to the MPT will likely depend upon the anticipated duration of the mayor’s absence. More on that below.

### Are there any statutory powers that a MPT can exercise any time, even when the mayor is not absent?

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Yes, at least one. GS 160A-71(b)(1) gives the MPT authority to call a special meeting. Other powers might exist in individual city charters.

**Does a council member serving as mayor pro tem vote on all matters, even if the mayor only votes in a tie?**

Yes. The MPT statute says, "A councilman serving as mayor pro tempore shall be entitled to vote on all matters and shall be considered a councilman for all purposes, including the determination of whether a quorum is present." This is true even when even when the MPT is presiding in the mayor's absence.

**What happens if both the mayor and the MPT are both absent?**

The MPT statute says that if they're both absent, the council can elect from the members present, a temporary chair to preside.

**What if the mayor is absent for an extended period of time? Is there a time limit after which the board can declare the mayor's seat vacant?**

There are multiple scenarios that can occur so let's look at them separately.

**What if the mayor becomes physically or mentally incapable of the performing the duties of the office?**

The MPT statute allows the council, by unanimous vote, to declare that the mayor is incapacitated and confer any of the mayor's powers and duties on the MPT. If the mayor subsequently declares that he or she is no longer incapacitated, and a majority of the council concurs, the mayor resumes his or her powers and duties. The statute doesn't set any limit on how long this situation can persist if the mayor continues to be incapacitated.

**What if the mayor continues to be incapacitated and it appears that he or she will not be able to return to the office?**

One option is for the mayor to resign. Sometimes, however, the mayor is unable or unwilling to make that decision. There are no statutory provisions that allow a board to remove member of the board. Amotion is a common law mechanism for removing a member of an elected board when the member is unable or unwilling to properly carry out the duties of the office. The standard for removal of an elected board member by amotion are very high, and the process requires a hearing and presentation of evidence in support of the action. For more on amotion, see my blog post here.

**What if the mayor wants to take a leave of absence?**

Although it's rarely used, state law allows any elected or appointed official of a city or county to obtain a leave of absence for protracted illness or "other reason satisfactory to the governing body" of the city or county. See **GS 128-40 (counties)** and **GS 128-41 (cities)**. The process must be initiated by the official seeking the leave of absence and must be approved by the governing body. While on leave the official does not receive a salary but retains any sick leave to which he or she is entitled. The leave does not extend the term of office.

If the mayor takes a leave of absence, it seems likely that the council would delegate to the MPT some or all of the mayor's duties during the leave period. The statute, however, provides an alternative option:

If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as a temporary replacement for the period of the official's leave of absence. This appointee shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed. *GS 128-41*.

**What if the Mayor moves out of the city, or does something else that renders her ineligible for the office? Can the governing board remove the mayor?**

Not exactly, but they may be able to declare the office vacant. If there is documented evidence that the mayor ceases to be qualified for the office, state law provides that the office is "ipso facto" (Latin for "by the fact itself"), vacant. As

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described in a blog post here, in this circumstance, the board can declare the office vacant and fill the vacancy.

**If there is a vacancy in the mayor's seat, does the MPT automatically become the mayor?**

No. As indicated earlier, the council has authority to delegate the mayor's duties to the MPT. But when it comes to filling a vacancy in the mayor's seat, the council fills the seat as provided in GS 160A-63. Under that statute the council can appoint the MPT, or any other council member, or any other person who is eligible to serve. If they appoint the MPT or any other council member, that creates a new vacancy and the council fills it.

**What if the council wishes to leave the mayor's seat vacant and have the MPT carry out the mayor's duties until the next election?**

It's not entirely clear whether the council has the discretion to do this. The statute doesn't provide any time frame within in which a vacancy on the council must be filled, but on the other hand the, the law says that the council "shall" fill the vacancy. For more on this issue see my blog post here.

**Do you have questions about the mayor pro tem?**

Send them to me in a comment and I'll try to answer them.

## Links

- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-70.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-70.html)
- [www.sog.unc.edu/publications/books/suggested-rules-procedure-city-council-fourth-edition-2017](http://www.sog.unc.edu/publications/books/suggested-rules-procedure-city-council-fourth-edition-2017)
- [www4.ncleg.net/enactedlegislation/statutes/html/bysection/chapter\\_160a/ga\\_160a-71.html](http://www4.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/ga_160a-71.html)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=128-40](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=128-40)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=128-41](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=128-41)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-63.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-63.html)