
Coates' Canons Blog: Counting the Mayor in Quorum Calculations

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Scenario 1: A city council has six members and no vacant seats. Three of the members fail to show up for this month's regular meeting, leaving only the mayor and the other three members in attendance.

Scenario 2: The same council, but four of the six members attend the meeting, and the mayor is absent.

Is a quorum present in either scenario?

My colleague Frayda Bluestein has written a very helpful blog post that addresses quorum calculations for city councils. This post goes into greater detail about how the mayor factors into quorum determinations.

The term quorum refers, of course, to the minimum number of members who must be present for an assembly to conduct business. As I've explained in a previous blog post, the default rule is that a simple majority – that is, more than half – of an assembly's members constitute a quorum. When the assembly in question is a city council, however, the rules for calculating a quorum come from one of two sources: the city charter or G.S. 160A-74 ("the quorum statute").

It is not unusual for a charter to specify the method for determining the quorum for a city council. Accordingly, city elected officials, as well as city attorneys and clerks, should examine their respective charters for quorum provisions. Ordinarily, if the charter differs from G.S. 160A-74, the council should follow its charter. See G.S. 160A-82.

When a charter does not address the method of quorum calculation, the quorum statute governs. According to the statute, the quorum for a city council consists of "[a] majority of the actual membership of the council plus the mayor, excluding vacant seats." Viewing this statement in isolation, some might read it quite literally to require the presence of *both* a majority of a council's members *and* the mayor for a quorum to exist. If this were an accurate interpretation of the statutory language, neither of the two scenarios set out above would involve a quorum as defined by G.S. 160A-74. There wouldn't be a quorum in Scenario 1 because only three of the council's six members are present. A quorum would be lacking in Scenario 2 because the mayor didn't make it to the meeting.

It is clear, however, that the General Assembly did not intend for the quorum statute to be interpreted in this way. How do we know this? Because such a literal reading of G.S. 160A-74 would effectively invalidate G.S. 160A-70, the statute which requires every city council to select a mayor pro tempore. Pursuant to G.S. 160A-70, a council may confer any of the mayor's powers and duties on the mayor pro tem "[d]uring the absence of the mayor." Similarly, the statute authorizes a council to "elect from its members a temporary chairman to preside" when "both the mayor and the mayor pro tempore are absent from a meeting." If no quorum could exist without the mayor, these provisions would be pointless because the mayor's absence would leave the council powerless to conduct business.

How then should G.S. 160A-74 be interpreted? As Frayda has explained in her blog post linked to above, the quorum statute is best viewed as a math formula. The quorum for a city council consists of a majority of X. The statute tells us to calculate X by adding the mayor to the council's total membership and subtracting vacant seats. In other words, it directs us to view the mayor as part of the council for quorum purposes. See David M. Lawrence, *Handbook for North Carolina Mayors and Council Members*, p. 44 (2013) ("If a city is governed by a five-member council plus the mayor, the actual membership of the group is six, and thus the quorum is any four of the six."). The rule is the same regardless of whether the mayor may vote on all questions or only to break a tie vote.

Here's one way of representing the quorum statute as a formula:

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- (Total Number of Council Seats + Mayor) – Vacant Seats = X
 - Quorum = More than ½ of X

With this formula in mind, let's return to the two scenarios described at the outset of this post. To say definitively whether a quorum exists in either, we first have to know whether the city charter contains a quorum provision. If it does, then the specifics of that provision must be applied to determine the presence or absence of a quorum.

If the charter lacks a quorum provision, G.S. 160A-74 tells us to calculate the quorum as follows:

- (6 (Total Number of Council Seats) + 1 (Mayor)) – 0 (Vacant Seats) = 7
- Quorum = 4 (More than ½ of 7)

Accordingly, either four members or three members plus the mayor will establish a quorum of our hypothetical council. In Scenario 1, the mayor and three council members have shown up, so a quorum of the council is present. In Scenario 2, the mayor is absent, but a quorum still exists because four council members are in attendance.

It should be noted that the quorum statute tells us only how to calculate the minimum number needed for a council to conduct business. That's not necessarily the same thing as the number of votes necessary to take a particular action. In general all that is required to adopt a motion is a simple majority of votes cast, provided a quorum is present. Suppose, for example, that in Scenario 1 our hypothetical council considers whether to adopt a resolution honoring a former mayor and that the vote is two-to-one in favor of the resolution. No special voting rules apply to the action, so the resolution is adopted.

Some actions, though, trigger voting requirements that differ from the general rule. For example, absent a charter provision to the contrary, no city council may approve a contract except by "[a]n affirmative vote equal to a majority of all members of the council not excused from voting on the [matter], including the mayor's vote in case of an equal division." G.S. 160A-75. If we go back to Scenario 1 and suppose that all three council members in attendance vote in favor of a proposed contract, the motion to approve the contract still fails for lack of a sufficient majority. The reason is that the three votes cast in support of the motion do not equal a majority of the council's six members. Put differently, unless one or more members have been excused from voting, the motion must receive at least four votes to pass.

Contracts aren't the only matters subject to special voting requirements. Voting rules for the adoption of ordinances are set out in G.S. 160A-75 (cities) and G.S. 153A-45 (counties). (Please click here for a blog post that explains those rules in detail.) I hope to catalog the various local government actions that can trigger special voting requirements in a future blog post.

Links

- canons.sog.unc.edu/calculating-majorities/
- canons.sog.unc.edu/quorum-calculations-the-impact-of-vacancies-and-members-who-dont-vote/
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-74
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-82
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-70
- www.sog.unc.edu/publications/books/handbook-north-carolina-mayors-and-council-members
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-75
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-45
- canons.sog.unc.edu/voting-rules-for-adopting-ordinances/