

CITY OF DURHAM, NORTH CAROLINA

MEMORANDUM

To: Mayor Bill Bell

From: Patrick W. Baker, City Attorney

Date: February 5, 2016

Re: Mayor's Appointee to the DPAC Oversight Committee

Facts: Pursuant to Section 12 of the City Council procedures for appointing citizens to boards, committees and commissions (City Council Procedures), you would like to appoint an individual to serve as a Mayor's appointee to the DPAC Oversight Committee. This would be a newly created position on this committee. The individual you would like to appoint has served two consecutive terms on the DPAC Oversight Committee as a City Council appointee and is currently sitting out a term pursuant to Section 13 of the City Council Procedures. A term on this Committee is three years and the preferred candidate has not been off the committee for a full term.

Issue: Can the Mayor create a new Mayor's appointee position on a committee and fill the position with a former City Council appointee who has not been off the committee for a full term?

Opinion: The Council procedures are silent to this specific question. Without a clear prohibition, I believe there is some flexibility to the interpretation of your procedures to provide guidance on this matter. There are two competing interests at play in this matter. The first is the discretion afforded to the Mayor to create a designated Mayor's appointee position to boards or commissions. The second is the requirement that citizens are limited to serving two consecutive terms and are required to sit out a full term before reapplying to a board or commission. It is clear that this individual could not reapply and serve as a City Council appointee until she was off the committee for a full term. Because this Mayor's appointment is a newly created position on the Committee, I believe a strong argument can be made that the prospective candidate's prior service on this committee as a City Council appointee should not impact her ability to immediately serve on this committee as a Mayor's appointee. As such, the rule requiring a citizen to sit out for a full term three years should not apply in this situation. Assuming she is ultimately installed as the Mayor's appointee, she will be subject to all of the terms and conditions of a Mayor's appointee as set forth in Section 12 of the City Council Procedures.