

**2015 HOUSE POLITICAL SUBDIVISIONS**

**HB 1245**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

HB 1245  
1/29/2015  
22811

- Subcommittee  
 Conference Committee

*Ammonda Muscha*

### Explanation or reason for introduction of bill/resolution:

Relating to the power of a city council to override the veto of a mayor.

### Minutes:

Representative Dockter Testimony #1  
Chairman Klemin Testimony #2

**Chairman Klemin:** Opened the hearing on HB 1245.

**Representative Dockter:** Testimony #1

**Representative Koppelman:** Does this affect city commissions as well?

**Representative Dockter:** I don't think so.

**Representative Koppelman:** There are many forms of government; can a commission override a veto?

**Representative Dockter:** I am not sure, I will check that out for you.

**Representative Beadle:** Do resolutions carry the same effect or as the code of law?

**Representative Dockter:** That was part of the attorney why I brought forth this bill.

**Nicole Pullman:** We heard about this situation and when it came about that this was a situation for a city council to face. Congress can override president, we can override governor, and commissioners should be able to override the mayor.

**Lance Hagen:** I attended a city council meeting in Lincoln and the resolutions reflect the motions so I am not sure if the bill went in far enough on a motion. There are a lot of motions made and not ordinances. I spent 30 years at the legislature and I spent time at a council and they had a motion pass then the mayor vetoed in and they just moved on. Perhaps we should have it state that ordinances can be vetoed by the mayor.

**Representative Koppelman:** Was it an ordinance being passed?

**Lance Hagen:** No it was a motion.

**Representative Koppelman:** City governing bodies do a great deal of things and passing ordinances, while very important, city councils might resolve to do this or that and those are motions or resolutions not ordinances. Ordinances would be laws governing the city. Isn't a great deal of their business represented by things other than ordinances being passes?

**Lance Hagen:** There would be no need for the council, I don't know if a resolution is a motion, resolutions are rah rah so maybe I would like use to amend the bill and I don't know if amending motion is the right thing because every time a motion is voted down then you have to wait for the next meeting. I would think that the attorney general on possibly limiting it to vetoing ordinances because as Representative Beadle says resolutions are rah rah.

**Tone Zaunhofsky:** I am a Lincoln city council member and this impacted a situation we recently had during our city council meeting. The mayor vetoed our motion and we looked at the attorney and said can he do that and he looked at us like I don't know he just did. We are trying to move forward and everything is getting vetoed.

**Representative Beadle:** After the veto happened, has the attorney looked into the logistics there? This chapter of the city century code deals with ordinances so I don't know if that effects with what you're dealing with?

**Tone Zaunhofsky:** We have asked and he sent that letter to the attorney general and we got the answer back and that is what he gave us.

**Representative Anderson:** This is multiple motions?

**Tone Zaunhofsky:** Yes, and he said if we got an ordinance that we could override his veto with a majority of the city council and he said yes I will not veto that motion if you write the ordinance. I got an ordinance from the league of cities and he vetoed it.

**Representative Anderson:** When are they up for reelection?

**Tone Zaunhofsky:** Three years.

**Representative Koppelman:** Did your city attorney, and I see the the deputy attorney general agreed that the mayor has the authority to veto a motion, but I am looking at the statute we are seeking to amend here and it strictly speaks about ordinances, so do you know where they found the authority to veto a motion?

**Tone Zaunhofsky:** I don't our attorney said he could do it.

**Chairman Klemin:** I am going to have our attorney get information on this (testimony #2)

**Blake Crosby:** Executive Director of the league of cities. We believe it was a statutory oversight back in the 60's. It allowed for a veto of an ordinance but it didn't pass over for the veto of a resolution. Get a firm idea about the difference between an ordinance and a motion. This only applies to council not commissions.

**Representative Koppelman:** Where is the authority for a mayor to veto a motion or resolution?

**Blake Crosby:** Unfortunately, I don't know what section it is in but there is a section for mayoral duties that is different than ordinances.

**Representative Koppelman:** I never saw mayor veto an ordinance let alone a motion. Is this common?

**Blake Crosby:** No it is not, it has just arisen. The mayor was within his rights.

**Representative Maragos:** Are you aware under the commission form of government that a mayor can veto a commission action?

**Blake Crosby:** Remember that under the commission form all votes are equal. In order to veto anything it would take a majority of the commission. One person could not make that decision.

**Representative Oversen:** The power of the mayor is found in chapter 40-08-24.

**Representative Beadle:** As I am reading through the ordinance chapter of 40-11 nowhere does it reference resolutions it only references ordinances as it goes through and deals with the fines, fees, etc.... Would we be putting this in the right area for adding in resolutions?

**Blake Crosby:** We asked other city attorneys, we were in the process of drafting some language of our own and the opinion of at least one of the other city attorneys does a lot of work for a variety of communities sizes liked this language better so I would defer to his legal expertise that this does fit.

**Chairman Klemin:** Closed the hearing on HB 1245

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

HB 1245  
2/5/2015  
23323

- Subcommittee  
 Conference Committee

*Amanda Muscha*

### Explanation or reason for introduction of bill/resolution:

Relating to the power of a city council to override the veto of a mayor

### Minutes:

Testimony 1, 2

Chairman Klemin: Opened hearing on HB 1245

Representative Koppelman: Testimony 1 (amendments) they clarify the intent of the bill sponsor. Moved the amendments.

Representative Maragos: Seconded

Representative Kretschmar: My recollection of the testimony one person vetoed everything even minutes. Will this cover those circumstances also?

Representative Koppelman: I tried to cover that in the amendments and it is a motion passed by the committee was being veto. This means an ordinance or resolution may be vetoed but this adds so that either can be overridden.

Chairman Klemin: Note that 40824 don't say the mayor can veto any motion.

Representative Koppelman: It doesn't, it says ordinances or resolution and they didn't feel getting into motions was a good idea. In the language that we are adding we say that any action and we thought that would help that out. Motions can't be vetoed now under the law, the authority probably isn't there but this clarifies.

Representative Maragos: 7.30 If this mayor ruled a motion out of order what could the council do to remedy that? We may fix the veto of the council or commission but if the mayor is unreasonable and uses parliamentary procedure to effect the agenda how do we fix that?

Representative Kretschmar: If the presiding officer like a mayor or speaker does something the body doesn't like they can challenge the authority of the chair and then they vote on that and I suppose override it that way.

Voice Vote was Taken: All in favor

Motion carries

Representative Strinden: Testimony 2 This would change the statute. Moved to adopt the amendments.

Representative Zubke: Seconded

A Voice Vote Was Taken: All in favor

Motion carries

Representative Maragos: Moved a do pass as amended

Representative Toman: Seconded

A Roll Call Vote Was Taken: Yes 14, No 0, Absent 0

Motion carries as amended

Representative Koppelman will carry the bill

Proposed Amendments to HB 1245

Page 1, line 1, replace "section" with "sections 40-08-24 and"

Page 1, after line 3, insert :

**"SECTION 1. AMENDMENT.** Section 40-08-24 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-24. Ordinance or resolution signed or vetoed by mayor.**

The mayor shall sign or veto each ordinance or resolution passed by the council. Any action vetoed by the mayor may be overridden by the city council as provided in section 40-11-05.

Renumber accordingly

Page 1, line 21, after "Any" insert "veto of an"

Page 1, line 22, overstrike "which has been vetoed in whole or in part"

Page 1, line 22, replace "reconsidered" with "overridden"

Page 1, line 23, overstrike the ", and"

Page 1, line 23, replace "the ordinance or resolution," with "a motion to override the veto."

Page 1, line 24, after "~~be~~" insert "Upon such action,"

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1245

Page 1, line 1, replace "section" with "sections 40-08-26 and"

Page 1, line 2, after the first "the" insert "enforcement of city ordinances and the"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Section 40-08-26 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-26. Mayor may call on ~~male-inhabitants~~individuals to aid in enforcing ordinances.**

When necessary, the mayor may call on each ~~male-inhabitant~~individual of the city over the age of eighteen years to aid in enforcing the laws and ordinances of the city."

Renumber accordingly

February 5, 2015

2-5-15

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**SECTION 2. AMENDMENT.** Section 40-08-26 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-26. Mayor may call on ~~male inhabitants~~ residents to aid in enforcing ordinances.**

When necessary, the mayor may call on each ~~male inhabitant~~ resident of the city over the age of eighteen years to aid in enforcing the laws and ordinances of the city."

Page 1, line 21, after "Any" insert "veto of an"

Page 1, line 22, remove "or resolution"

Page 1, line 22, overstrike "which has been vetoed in whole or in part" and insert immediately thereafter "or resolution"

Page 1, line 22, overstrike "reconsidered" and insert immediately thereafter "overridden"

Page 1, line 23, overstrike "and"

Page 1, line 23, remove "the"

Page 1, line 23, overstrike "ordinance"

Page 1, line 23, remove "or resolution"

Page 1, line 23, overstrike the second comma

Page 1, line 24, after "be" insert "a motion to override the veto. Upon such action,"

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1245**

House Political Subdivisions Committee

- Subcommittee  Conference Committee

Amendment LC# or Description: 15.6333.01004

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Koppelman Seconded By Maragos

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*voice vote passed*

Date: 2/5/2015  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1245

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: Strinden amendments

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider

Motion Made By Strinden Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Motion carries voice vote

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1245**

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Maragos Seconded By Toman

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Koppelman

If the vote is on an amendment, briefly indicate intent:

*Motion carries*

**REPORT OF STANDING COMMITTEE**

**HB 1245: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1245 was placed on the Sixth order on the calendar.

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Page 1, after line 3, insert:

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Renumber accordingly

**2015 SENATE POLITICAL SUBDIVISIONS**

**HB 1245**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

HB1245  
3/19/2015  
Job Number 25125

- Subcommittee  
 Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the enforcement of city ordinances and the power of a city council to override the veto of a mayor

### Minutes:

Written testimony # 1 Blake Crosby

**Chairman Burckhard** opened the committee for a hearing on HB 1245. All senators were present.

**Rep. Jason Dockter** District 7 part of Bismarck and also the city of Lincoln. Basically they've been some issues and the city of Lincoln and what was happening was that the mayor was vetoing any motions or anything that had to do with the city council and several constituent's came to me and said that there's no recourse for our City Council to override a veto. Basically this bill with a 2/3rds majority a city council can override a mayor. That is the bill in a nutshell.

**Senator Anderson** How many people are on the City Council in Lincoln, do you know?

**Rep. Dockter** 5 people. **Senator Anderson** Then you take 4 out of the 5 to have a 2/3rds majority right? **Rep. Dockter** It would be 3, it would be 60%; no it would be 4.

**Rep. Dockter** Isn't there a recall policy that the city could recall the mayor? **Rep. Dockter** They are currently going through the process and I think there talking to my constituent. They might not be able to because of deadlines with the Secretary of State. We are trying to recall the mayor.

**Senator Bekkedahl** We have a commission form of government in Williston so I am not familiar with the council form of government. But, it just amazes me that we have in statute, that there was never an override opportunity for the council to consider an override with a mayoral veto, is that what you're saying, is that what this really deals with?

**Rep. Dockter** That is correct and Mr. Crosby from the League of Cities can give more of a history on that, but yes we actually, the city attorney from Lincoln got an opinion from the Attorney General's office and he does have the right to veto. Why he was currently doing that he does have the power to do that. Mr. Crosby mentioned in his testimony on the

House side, it's never happened before and so they looked at it. It is very bizarre and this came to light so I just don't like putting bills, but I just thought this is America and I believe that if you have a 2/3 rds vote you should be able to override someone.

**Senator Bekkedahl** I am happy to see that you're also cleaning up the language about changing male and having it to resident. That is got to be some kind of an outdated statute language there. I don't even know why it is in there.

**Senator Grabinger** How come they came up with a 2/3rds instead of just a majority?

**Rep. Dockter** I don't know if that's in statute that in other areas of the code where it is a 2/3<sup>rd</sup> and they just use that. I know when you have a council of 5 you just need 3. I can't answer that question but it does make sense after Senator Anderson said if there is 5 you will only need 3, how this bill is presented it would be 4/5.

**Senator Judy Lee** I apologize for the delay. I didn't realize that the city government has veto power. I am not saying that they shouldn't have, but I wondered if it's only the council form of governance or the commissions do, as well? **Rep. Dockter** hesitated and then Senator Lee said, perhaps Mr. Crosby may know, and if not maybe Femi can check. I am just curious. It seems to me that there is more than one form of city government and if governance and then we are going to be talking about this one we might want to talk it with whatever city governments are appropriate.

**Senator Bekkedahl** The 20 years I've been on the commission it's never been used and I don't think it's allowed in the commission for of government. Technically we don't have a mayor we have a 5 member commission and the President of the commission sides. It is totally different for commissions but if it's there I have never seen it used. We need to get that clarified.

**Senator Judy Lee** We have a commission form of governance as well but we also elect a mayor, so that is my point. There is more than one way to do this. But I think we need to clarify, just because it wasn't used doesn't mean it isn't in there. It also doesn't mean that it ought to be in there I guess. But anyway maybe our intern can help us find out if all forms of government have a veto and if we were going, the committee decides to do that if we want to look at all of them.

**Chairman Burckhard** Femi can you do a little research on do all forms of government have veto power? **Senator Judy Lee**, city governments.

**Chairman Burckhard** Minot has a city manager form of government and we have a mayor and 14 city council members.

**Rep. Jason Dockter** In our hearing in the house no one really had any answers in they had to do a lot of research so the committee did a really good job by putting these amendments on and did further research to make sure that we have a good bill going forward. That's all I am asking of the committee and ask for a favorable recommendation.

**Blake Crosby** (8:27- ) Executive Director of the North Dakota League of Cities. League is in support of this bill as amended. It was Rep. Klemm that caught the language about the males in the statute that hadn't be corrected for who knows how many year. (Mr. Crosby is referencing his testimony).

If I may try to answer some of the other questions that were asked; in a city commission form of government even though you elect a mayor, the mayor sits on the city commission but they don't have the title of Mayor on the City Commission. They are an equal member of the city commission board, so they vote all the time, where on City Council, the mayor would typically only vote because there is 5 of them, and in the case of a tie. So, I think that's the distinguishing factor. Do both City Commissions and if this passes City Councils have the ability to override, yes. One of the questions that came up here and it was kind of legal parceling of words is a resolution the same as a motion? I think legal opinion is yes, but resolutions are indeed the same as a motion. So they would apply across the board. You'll see language in here that puts in the word "resolution". You have to a resolution in order to have a motion and it kind of works its' way through the parliamentary procedure process. We have had input from some of unaffected city attorney's on this and they are perfectly comfortable with language in it even though they didn't know that there was going to be language in there that had to do with males being responsible for whatever happens in their city. So, some city attorneys weighed in on it and said there fine with this change. Again, we all have the same opinion that it was just a statutory oversight from the early 1940's. They corrected one and forgot to correct the other.

**Senator Bekkedahl** Two things I would say is resolutions are motions because when we pass resolutions we pass them by motion, so that to me is you move the resolution. So, I think that I would agree with what the attorneys say. The second issue is that in a commission form of government technically the public votes on the president of the commission, as a seat and it's an equal member of the commission, you're correct. We just in effect most communities still call that the mayor. It is not a mayoral form of government it's just the title that you give them because they are president of the commission. Wouldn't you agree with that? I think that is what happens. My question is does 1245 before us, puts the same language that is under 40-11:05 up into 48-08-24 so that they congruent with each other again? Is that what this is doing?

**Blake Crosby** Yes, and again in those statutes it only applies to the city council form of government. So that is the statutory heading that they are under.

**Senator Bekkedahl** Commission forms of government. The President of the Commission technically I don't think has a veto power as in a council with a mayor. Can you answer that question?

**Blake Crosby** That is correct because they have an equal vote. One person in a city commission form of government does not have the absolute veto power.

**Senator Grabinger** I will kind of tag on as to what Senator Bekkedahl is talking about. Over in Jamestown, our mayor votes on all the issues on everything. We have a 5 member council form of government, does that mayor, our we opening the doors for the mayor over there would also have veto power beyond their vote?

**Blake Crosby** No because on a city commission, it's a majority. The city commission form of government as I understand the mayor does not have or whatever they designate the President of the Commission to be, they do not have absolute veto authority. In order for a veto to take place, 4 out of the 5, would have to vote.

**Senator Grabinger** We are a city council form of government, not commission. We're a 5 member council and the mayor votes on everything. If we do this, are we allowing that mayor to also under state law, be able to have veto power on top of their vote?

**Blake Crosby** Depending on what statute you're looking at, whether you're looking at 48-08-24, or 40-11-5. In 40-8-24 the City Council can already override a vetoed ordinance, so to answer your question, could your mayor veto an ordinance, yes they could. Nothing is going to change in current law, nothing is going to change that. What this does is it allows city council then to override, a veto of a motion or a resolution, so if your mayor vetoed a resolution motion currently city council is stuck and there is nothing they can do about it. This is going to change it so that city council could override that, so they get to override a vetoed ordinance, they do not have override ability for the veto of a resolution or motion. This makes them both equal. This really brings the power back to the elected persons on the city council.

**Chairman Burckhard** So, imagine you're a town of 105 miles north of here, and you've got a city manager form of government and 14 city councilmen. I haven't heard of the mayor vetoing anything there. The mayor only votes when there is a tie. How does this apply to that form of government or does it?

**Blake Crosby** This particular statute under that section only applies to city councils. Is all a city manager form of government, I can't answer that for you.

**Blake Crosby** We hope you move on a do pass on this bill to clean up the two statutes.

**Lance Hagen** City of Lincoln (18:00-19:48) constituent from the City of Lincoln. The reason why this bill got brought forward was I asked Rep. Dockter, when I was at the council meeting when a vote took place that was 3-0 with one member absent at the council meeting and the mayor didn't like the bill so he vetoed it. For those who don't know me, I spent 30 years here at the Legislature working back when Senator Dotzenrod was Rep. Dotzenrod. The Mayor went past me and I thought well that can't be and all the time I spent here I thought that just doesn't represent government. So, he looked at me and said look it up in statute, I can do that. So, I got on my phone and found and sure enough. We've had about 3 different attorney general's opinions that address different areas of this because this is a little bit more complicated as you dig into it. So that is how the bill got brought forward was upon my request to change it. Since then in Lincoln, because at that point the mayor could actually veto the ordinance that allowed the council to override his veto. We've since fixed that at the last meeting. The mayor didn't vote on that issue. But it is my understanding affecting us out there is I know the mayor only votes to break a tie in Lincoln so when it comes back to the 2/3 majority, if we have 3 council members to vote in favor of overriding the mayor's veto, we'll be fine. But some of the other questions do add some curiosity to the bill.

**Chairman Burckhard** asked if there was anyone else to testify in favor of the bill, opposed to the bill or neutral to the bill.

**Chairman Burckhard** closed the hearing on HB 1245.

### **Committee Discussion**

**Senator Judy Lee** Did you get the questions answered about all forms of government covered. **Chairman Burckhard** yes, all forms of city government.

**Senator Judy Lee** If the commission form of government has no veto, the mayor has no veto power. **Femi**, the form of government would not have veto power in which case there would not be need for a veto. **Senator Judy Lee** But the mayor vetoed there. Do we not want to have the same criteria for both kinds of city government? **Chairman Burckhard** that what I think this is going to accomplish.

Senator Anderson moved a do pass on HB 1245.

2<sup>nd</sup> Senator Bekkedahl

### **More discussion**

**Senator Bekkedahl** for Senator Lee's benefit, what Mr. Crosby stated in his testimony was and I don't know how this rates to Home Rule Charter cities. I am going to be ignorant there because we have a limited Home Rule Charter only for sales taxing authority in Williston and I know West Fargo must have full Home Rule, don't they? The statute says you either have a commission form of government where you have a President of the Commission who is called the Mayor but he really is not, he or she is the President of the Commission. In that case he/she has an equal vote with all of the other members of the commission. So there is no veto authority empowered to anybody in that. But I don't know if West Fargo has a commission with a President and a Mayor. I can't answer that. **Senator Judy Lee** We only just have a mayor.

**Senator Judy Lee** Ok, I just wanted to know what I was voting on.

Roll call vote

6-0-0

Carrier Senator Anderson



**REPORT OF STANDING COMMITTEE**

**HB 1245, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1245 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1245**

HB 1245 11/29/2015 1.1

STATE OF NORTH DAKOTA

OFFICE OF ATTORNEY GENERAL

STATE CAPITOL

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BISMARCK, ND 58505-0040

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www.ag.nd.gov



Wayne Stenehjem

ATTORNEY GENERAL

November 21, 2014

Mr. James M. Cailao  
City Attorney  
City of Lincoln  
PO Box 2097  
Bismarck, ND 58502-2097

Dear Mr. Cailao:

Thank you for your letter requesting an Attorney General's opinion of whether the mayor of Lincoln, North Dakota, has the authority to veto a motion passed by the Lincoln City Council, and if so, what authority, if any, the city council has to override such a veto.

I have reviewed your memorandum to the mayor and city council of the City of Lincoln, and I agree with your conclusions that a mayor may veto a motion passed by a city council and that a city council lacks statutory authority to override a vetoed motion. Because you, as the Lincoln city attorney, have a statutory duty to advise the local government officials, the Attorney General declines to issue an opinion on such matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Trenbeath".

Thomas L. Trenbeath  
Chief Deputy Attorney General

nrm/vkk

**Brockner, Liz**

---

**From:** Trenbeath, Thomas L.  
**Sent:** Thursday, January 29, 2015 10:42 AM  
**To:** Brockner, Liz  
**Subject:** FW: HB 1245

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**From:** NDLA, Intern 08 - Vaagen, Tessa  
**Sent:** Thursday, January 29, 2015 10:36 AM  
**To:** Trenbeath, Thomas L.  
**Subject:** HB 1245

Mr. Chief Deputy Attorney General,

My committee has requested that I retrieve a memorandum that was prepared by Mr. James Cailao and reviewed by you regarding whether a mayor may veto a motion passed by city council and whether the city council lacks statutory authority to override a vetoed motion. You responded to him in a letter dated November 21, 2014. Do you have a copy of that memorandum?

Thanks,  
Tessa  
Intern 8

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FILE



STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

Wayne Stenehjem  
ATTORNEY GENERAL

COPY

November 21, 2014

Mr. James M. Cailao  
City Attorney  
City of Lincoln  
PO Box 2097  
Bismarck, ND 58502-2097

Dear Mr. Cailao:

Thank you for your letter requesting an Attorney General's opinion of whether the mayor of Lincoln, North Dakota, has the authority to veto a motion passed by the Lincoln City Council, and if so, what authority, if any, the city council has to override such a veto.

I have reviewed your memorandum to the mayor and city council of the City of Lincoln, and I agree with your conclusions that a mayor may veto a motion passed by a city council and that a city council lacks statutory authority to override a vetoed motion. Because you, as the Lincoln city attorney, have a statutory duty to advise the local government officials, the Attorney General declines to issue an opinion on such matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Trenbeath".

Thomas L. Trenbeath  
Chief Deputy Attorney General

nrm/vkk

033427

November 12, 2014

Assistant Attorney General Mary Kae Kelsch  
Office of Attorney General  
600 E. Boulevard Ave., Dept. 125  
Bismarck, ND 58505-0040

**Re: City of Lincoln**  
**Our File No.: 046197.13000**

Dear Mary:

I have been directed by the City Council for the City of Lincoln, North Dakota, to seek an Attorney General's Opinion regarding the veto power of the Mayor of Lincoln. Specifically, the Council would like to know if the Mayor has the authority to veto a motion passed by the City Council, and if so, what authority, if any, the City Council has to pass a motion vetoed by the Mayor.

At the October 9, 2014 City Council meeting, the Lincoln City Council passed a motion to clean a drainage easement from the old Tyler Road approach to the Apple Creek tributary area (located north of Lincoln and Road and east of Lincoln's Cenex station). For your reference, I have attached a news clipping from the Bismarck Tribune's website dated November 7, 2014, which addresses the Council's request for an Attorney General's Opinion.

Prior to the November 6, 2014 City Council meeting, I prepared a memorandum addressing my analysis of the veto power of the Mayor. That memorandum was distributed to Council members at the meeting, at which time my findings were addressed. It is my conclusion that section 40-08-24 of the North Dakota Century Code ("NDCC") provides the authority for the mayor of a council system of government (such as Lincoln) to sign or veto each ordinance or resolution passed by the council. Accordingly, Mayor Johnston's veto of the motion in question was a proper exercise of his authority. Although section 40-11-05 of the NDCC provides for a council's ability to pass an ordinance over the mayor's veto, that section is silent on the authority of a council to pass a motion/resolution over a mayor's veto. The City of Lincoln's Code of Ordinances does not separately provide for the Council's ability to pass a motion/resolution over the Mayor's veto.

A related inquiry is whether the City Council may pass an ordinance which provides a mechanism for the Council to override a veto of both an ordinance as well as a resolution, despite the fact that Lincoln is not a home rule city.

November 12, 2014

Page 2

Because the issue of the veto power of the Mayor, as well as the Council's authority to override such a veto, could very well occur in the future, resolution of this inquiry appears to be within the City's best interests.

I have attached for your review the memorandum I drafted addressing this issue. I have also attached copies of NDCC sections 40-08-24, 40-11-05 and Grand Forks Code of Ordinances section 2-0104(34), as well as Chapters 1-04 and 1-05 of the Code of Ordinances of Lincoln, North Dakota.

Please do not hesitate to contact me if you have any questions or concerns, or if you are in need of additional information.

Regards,



James M. Cailao

JMC/mlk

Enclosures

cc: Robert Johnston, Mayor  
Roberta Unterseher, Interim City Auditor



# MEMO

To: Robert Johnston, Mayor; City Council  
Members, City of Lincoln, ND

**Attorney-Client Work Product**

From: James M. Cailao, City Attorney, City of Lincoln, ND

Date: November 6, 2014

Re: Veto Power of Mayor  
Our File No. 046197.13000

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## **FACTS:**

During city council discussion and consideration of a motion regarding potential flood clean-up, inquiry has arisen concerning the mayor's veto power.

## **ISSUE:**

1. Does the Mayor of the City of Lincoln have the authority to veto a motion properly made and seconded, and passed by the City Council?

## **CONCLUSION:**

The Mayor of the City of Lincoln has the authority to veto a motion properly made and seconded, and passed by the City Council.

## **LEGAL DISCUSSION:**

The City of Lincoln, North Dakota operates under a council system of government. Chapter 40-08 of the North Dakota Century Code (hereafter the "NDCC") addresses the governing body and executive officer in a council city, such as Lincoln. Pursuant to Section 40-08-24 of the NDCC (Ordinances or resolution signed or vetoed by mayor), "[t]he mayor shall sign or veto each ordinance or resolution passed by the council."

In order to fully understand the veto power of a mayor pursuant to Section 40-08-24, it is important to understand the difference between an ordinance and a resolution.

A *municipal ordinance* is a rule, law or statute adopted by a municipal legislative body. A municipal ordinance generally means that a municipal act is adopted that has the force and effect of a law, the violation of which may be enforced in city municipal court. All ordinances passed by the City Council, except when otherwise specifically provided, take effect from and after the publication, where required, in one issue of the official newspaper of the City.

A *resolution* is a formal expression of the opinion or will of an official municipal body adopted by a vote. Resolutions go into effect immediately upon adoption.

*Black's Law Dictionary* (3<sup>rd</sup> ed.) defines "ordinance" to mean: "An authoritative law or decree; esp., a municipal regulation."

*Black's Law Dictionary* (6<sup>th</sup> ed.) defines "ordinance" to mean:

A rule established by authority; a permanent rule of action; a law or statute. In its most common meaning, the term is used to designate the enactments of the legislative body of a municipal corporation. It designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. Morris v. Town of Newington, 36, Conn.Sup. 74, 411 A.2d 939, 943. An ordinance is the equivalent of a municipal statute, passed by the city council, or equivalent body, and governing matters not already covered by federal or state law. Ordinances commonly govern zoning, building, safety, etc. matters of municipality.

*Black's Law Dictionary* (3<sup>rd</sup> ed.) defines "Municipal Ordinance" as meaning:

A law, rule, or ordinance enacted or adopted by a municipal corporation for the proper conduct of its affairs or the government of its inhabitants; e.g. zoning or traffic ordinances, building codes. Particularly a regulation under a delegation of authority from the state.

*Black's Law Dictionary* (3<sup>rd</sup> ed.) defines "resolution" to mean: "A main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body)."

*Black's Law Dictionary* (6<sup>th</sup> ed.) defines "resolution" to mean:

A formal expression of the opinion or will of an official body or a public assembly, adopted by vote; as a legislative resolution. Such may be either a simple, joint or concurrent resolution.

The term is usually employed to denote the adoption of a motion, the subject-matter of which would not properly constitute a statute, such as a mere expression of opinion; an alteration of the rules; a vote of thanks or of censure, etc. Such is not law

but merely a form in which a legislative body expresses an opinion. Baker v. City of Milwaukee, 271 Or. 500, 533 P.2d 772, 775.

The chief distinction between a “resolution” and a “law” is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a “law” it is intended to permanently direct and control matters applying to persons or things in general.

In consideration of the above analysis, any general motion, unless procedural in nature, constitutes a resolution. Accordingly, Mayor Johnston’s veto of the motion in question was a proper exercise of his powers under section 40-08-24 of the NDCC.

Chapter 40-11 (Ordinances) of the NDCC also discusses a mayor’s veto power, as well as the ability of a council to pass a matter over the mayor’s veto. Pursuant to Section 40-11-05 of the NDCC, “Any ordinance which has been vetoed in whole or in part may be reconsidered by the city council, and if two-thirds of its members shall pass such ordinance, it shall be effective notwithstanding the veto.” This section, however, does not address a council’s ability to override a mayor’s veto of a resolution, and a plain reading of that section would not confer such authority upon a council<sup>1</sup>.

Although some cities (e.g., Grand Forks Code of Ordinances Section 2-0104(34)<sup>2</sup>) expressly provide for a council’s ability to override a mayor’s veto of an ordinance or resolution, the City of Lincoln’s Code of Ordinances is silent on this matter.

### **CONCLUSION:**

Section 40-08-24 of the NDCC provides the authority for the mayor of a council system of government to sign or veto each ordinance or resolution passed by the council. Accordingly, Mayor Johnston’s veto of the motion in question was a proper exercise of his authority. Although Section 40-11-05 provides for a council’s ability to pass an ordinance over the mayor’s veto, that section is silent on the authority of a council to pass a motion over a mayor’s veto. The City of Lincoln’s Code of Ordinances does not separately provide for the Council’s ability to pass a motion over the Mayor’s veto.

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<sup>1</sup> See Section 1-02-05 (Construction of unambiguous statute) (“When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”)

<sup>2</sup> “Council’s power to override veto. All ordinances and resolutions properly vetoed by the mayor shall be presented to the city council by the city auditor at the next regular meeting. Any action on a motion to override the veto must occur at the next regular city council meeting. Should council adopt the ordinance or resolution by an affirmative vote of five (5) of its members, the same shall become law notwithstanding the objections of the mayor. Council shall vote only once upon the vetoed ordinance or resolution and should council fail to adopt such ordinance or resolution, the same is effectively disapproved and shall not be reconsidered.”

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JMC

Proposed Amendments to HB 1245

Page 1, line 1, replace "section" with "sections 40-08-24 and"

Page 1, after line 3, insert :

**"SECTION 1. AMENDMENT.** Section 40-08-24 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-24. Ordinance or resolution signed or vetoed by mayor.**

The mayor shall sign or veto each ordinance or resolution passed by the council. Any action vetoed by the mayor may be overridden by the city council as provided in section 40-11-05.

Renumber accordingly

Page 1, line 21, after "Any" insert "veto of an"

Page 1, line 22, overstrike "which has been vetoed in whole or in part"

Page 1, line 22, replace "reconsidered" with "overridden"

Page 1, line 23, overstrike the ", and"

Page 1, line 23, replace "the ordinance or resolution," with "a motion to override the veto."

Page 1, line 24, after "be" insert "Upon such action,"

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1245

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 40-08-26 of the North Dakota Century Code, relating to the enforcement of ordinances.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 40-08-26 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-26. Mayor may call on ~~male inhabitants~~ individuals to aid in enforcing ordinances.**

When necessary, the mayor may call on each ~~male inhabitant~~ individual of the city over the age of eighteen years to aid in enforcing the laws and ordinances of the city."

Renumber accordingly

2.2

15.0333.01002  
Title.

Prepared by the Legislative Council staff for  
Representative Strinden  
January 30, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1245

Page 1, line 1, replace "section" with "sections 40-08-26 and"

Page 1, line 2, after the first "the" insert "enforcement of city ordinances and the"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Section 40-08-26 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-26. Mayor may call on ~~male inhabitants~~individuals to aid in enforcing ordinances.**

When necessary, the mayor may call on each ~~male inhabitant~~individual of the city over the age of eighteen years to aid in enforcing the laws and ordinances of the city."

Renumber accordingly

N.B. 1245  
3.19.15  
#1

March 19, 2015

SENATE POLITICAL SUBDIVISIONS COMMITTEE  
HB 1245

CHAIRMAN BURCKHARD AND MEMBERS OF THE COMMITTEE:

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing the 357 cities across the State.

The League is in support of this bill as amended. The inconsistency between NDCC 40-08-24 (override of a vetoed ordinance) and NDCC 40-11-05 (authority of the council to pass a motion over a mayor's veto) we believe is just a simple case of statutory oversight. The two are obviously incompatible.

On behalf of the North Dakota League of Cities, I respectfully request a Do-Pass on HB 1245.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

H.B. 1245  
3.19.15  
#1.2

**CHAPTER 40-08  
GOVERNING BODY AND EXECUTIVE OFFICER IN COUNCIL CITIES**

**40-08-24. Ordinance or resolution signed or vetoed by mayor.**

The mayor shall sign or veto each ordinance or resolution passed by the council.

**CHAPTER 40-11  
ORDINANCES**

**40-11-05. Ordinances adopted in council cities - Mayor's veto power -  
Reconsideration after veto.**

An ordinance adopted by the city council of a city operating under the council form of government is not enacted until it is approved by the mayor or passed over the mayor's veto. An ordinance passed by the governing body of a city operating under the council form of government shall be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves such ordinance, the mayor shall sign the same. An ordinance not approved by the mayor shall be returned by the mayor with the mayor's objections in writing to the next regular or special meeting of the council occurring not less than five days after the passage thereof. The veto may extend to an entire ordinance or to any one or more items or appropriations contained in any ordinance making an appropriation. If a veto extends to a part only of an ordinance, the residue shall take effect and be in force. If the mayor fails to return any ordinance with the mayor's objections within the time specified in this section, the mayor shall be deemed to have approved the same. Any ordinance which has been vetoed in whole or in part may be reconsidered by the city council, and if two-thirds of its members shall pass such ordinance, it shall be effective notwithstanding the veto. The vote to pass an ordinance over the mayor's veto shall be taken by yeas and nays and entered in the journal.