



City of South Bend Common Council

441 County-City Building • 227 W. Jefferson Blvd
South Bend, Indiana 46601

(574) 235-9321
Fax (574) 235-9173
TDD (574) 235-5567
<http://www.southbendin.gov>

Tim Scott
President

Oliver Davis
Vice-President

Gavin Ferlic
Chairperson, Committee
of the Whole

Tim Scott
First District

Regina Williams-Preston
Second District

Sharon L. McBride
Third District

Jo M. Broden
Fourth District

Dr. David Varner
Fifth District

Oliver Davis
Sixth District

Gavin Ferlic
At Large

John Voorde
At Large

Karen White
At Large

FOR IMMEDIATE RELEASE:

Subject: Bill 05-18 Regarding Amendment of the Zoning Ordinance for the Property Located at 3527 Lincoln Way West
Date: Thursday, May 10, 2018
From: Council President, Tim Scott
Contact: 574-538-1936

Common Council Members Jo Broden (4th District) and John Voorde (At-large) requested and were granted time, at the May 14th Common Council meeting, to make a motion regarding Mayor Pete Buttigieg’s veto of Bill 05-18 regarding the amendment of the zoning ordinance for the property located at 3527 Lincoln Way West, Councilmanic District No.1 in the City of South Bend.

This motion will be heard under the Common Council agenda item “Special Business” at the beginning of the formal meeting.

In view of transparency and the democratic process, this press release spells out the process for rescinding a veto. This is released for all citizens to understand and know what is expected of their elected officials. It also spells out the public role for this rare process.

The following will be the steps this Common Council will take at the next meeting. Within this procedure there is no public input; which is stated in the process below.

Authority for Veto and Override

Indiana Code 36-4-6-16 provides the authority for both a veto by the Mayor and a vote by the Common Council to override that veto. The statute provides:

“(a) Within ten (10) days after an ordinance, order, or resolution is presented to the City Executive, the City Executive shall:

(1) Approve the ordinance, order or resolution, by entering the executive’s approval on it, signing it, and sending the legislative body a message announcing the executive’s approval; or,

(2) Veto the ordinance, order, or resolution, by returning it to the legislative body with a message announcing the executive’s veto and stating the executive’s reasons for the veto.

The Executive may approve or veto separate items of an ordinance appropriating money or levying a tax.



City of South Bend Common Council

441 County-City Building • 227 W. Jefferson Blvd
South Bend, Indiana 46601

(574) 235-9321
Fax (574) 235-9173
TDD (574) 235-5567
<http://www.southbendin.gov>

(b) If the executive fails to perform the executive's duty under subsection (a), the ordinance, order, or resolution is considered vetoed.

(c) Whenever an ordinance, order, or resolution is vetoed by the executive, it is considered defeated unless the legislative body, at its first regular or special meeting after the ten (10) day period prescribed by (a) passes the ordinance, order, or resolution over the executive's veto by a two-thirds (2/3) vote."

The Indiana Court of Appeals has ruled that the municipal executive's veto power is applicable to zoning ordinances. *Wilson v. Brown*, 461 N.E.2d 1162 (Ind. Ct. App. 1984).

Procedure

While there is no procedure codified or mandated in either the Indiana Code or the South Bend Municipal Code regarding the Council's consideration of overriding the Mayor's veto of legislation; the Council will follow the following process Monday night.

South Bend Municipal Code §2-9(a) states:

"The most recent edition of Robert's Rules of Order shall be the authority on all questions of parliamentary law and procedure not specifically covered by this article. For the purposes of this article, parliamentary law shall mean the enacted rules and recognized uses which govern the procedure of legislative assemblies".

It is clear from Robert's Rules of Order, however, that the only way to initiate action before the Common Council at a meeting is by way of motion. Therefore, any consideration of overriding a veto must be made by a motion of a Council member with a second.

Because the ordinance has already been passed by the Common Council, and any vote to override the veto is limited to the ordinance that was actually passed by the Common Council, it would not be appropriate to make the motion during the Committee of the Whole or in bills receiving Third Reading.

We will allocate time under Special Business to hear any motion to pass Bill 05-18 over the Mayor's veto.

Indiana Code 36-4-6-16(c), which provides that whenever an ordinance is vetoed by the executive, it is considered defeated *unless* the legislative body, at its first regular or special meeting, passes the ordinance over the veto.

Vetoed legislation remains unfinished until either 1) the time for overriding the veto passes; 2) the veto is overridden by a two-thirds (2/3) vote; or, 3) a motion to override the veto does not carry by a two-thirds (2/3) vote.



City of South Bend Common Council

441 County-City Building • 227 W. Jefferson Blvd
South Bend, Indiana 46601

(574) 235-9321
Fax (574) 235-9173
TDD (574) 235-5567
<http://www.southbendin.gov>

Discussion of Motion

Because the ordinance remains unchanged and the public portion for discussing the ordinance has passed, there should be no public input on the motion. Council members, however, should be permitted to express their opinions on the motion prior to a vote. The authority for this position is South Bend Municipal Code §2-8(i), which provides:

“No member shall speak more than twice nor for more than five minutes on the second occasion, upon any one question or issue in debate during the same meeting. A member shall only be granted the right to speak a second time on the same question or issue after each member has had an opportunity to speak on said issue or question.”

Because a motion to override a veto is a separate and distinct motion from the motion for passage of the ordinance, and requires a two-thirds (2/3) vote instead of a majority vote, each Council member should be allowed to express any opinion. Those opinions may include opinions relating to the Mayor’s letter explaining the reasons for the veto because that letter was not previously before the Common Council.

Conclusion

A Mayor’s veto of legislation passed by a City Council is a rare event. Consideration by the Council to overrule the veto is even rarer. Neither the Indiana Code, nor the vast majority of municipal codes, address the procedure to be utilized in such consideration. What is mandatory under Indiana law, however, is that the consideration, if any, be made at the next Council meeting following the veto and any override of the veto be by a two-thirds (2/3) vote.

###