

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 308

Final Reading

Introduced by Urban Affairs Committee: McGill, 26, Chairperson;
Coash, 27; Cook, 13; Krist, 10; Schumacher, 22; Smith,
14.

Read first time January 12, 2011

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to municipalities; to amend sections 17-107 and
2 17-208, Revised Statutes Cumulative Supplement, 2010; to
3 provide for terms of office for certain officers; and to
4 repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 17-107, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 17-107 (1) A mayor of a city of the second class shall be
4 elected in the manner provided in the Election Act. The mayor shall
5 take office on the date of the first regular meeting of the city
6 council held in December following the statewide general election.
7 The mayor shall be a resident and registered voter of the city. If
8 the president of the council assumes the office of mayor for the
9 unexpired term, there shall be a vacancy on the council which vacancy
10 shall be filled as provided in section 32-568.

11 (2) The mayor, with the consent of the council, may
12 appoint such officers as shall be required by ordinance or otherwise
13 required by law. Such officers may be removed from office by the
14 mayor. The terms of office for all officers, except regular police
15 officers, appointed by the mayor and confirmed by the council shall
16 be established by the city council by ordinance. The ordinance shall
17 provide that either (a) the officers hold the office to which they
18 have been appointed until the end of the mayor's term of office and
19 until their successors are appointed and qualified unless sooner
20 removed or (b) the officers hold office for one year unless sooner
21 removed.

22 (3)(a) The mayor, by and with the consent of the council,
23 shall appoint such a number of regular police officers as may be
24 necessary. All police officers appointed by the mayor and council may
25 be removed, demoted, or suspended at any time by the mayor as

1 provided in ~~subsection (2) of this section.~~ subdivision (b) of this
2 subsection. A police officer, including the chief of police, may
3 appeal to the city council such removal, demotion, or suspension with
4 or without pay. After a hearing, the city council may uphold,
5 reverse, or modify the action.

6 ~~(2)-(b)~~ The city council shall by ordinance adopt rules
7 and regulations governing the removal, demotion, or suspension with
8 or without pay of any police officer, including the chief of police.
9 The ordinance shall include a procedure for such removal, demotion,
10 or suspension with or without pay of any police officer, including
11 the chief of police, upon the written accusation of the police chief,
12 the mayor, or any citizen or taxpayer. The city council shall
13 establish by ordinance procedures for acting upon such written
14 accusation, including: ~~(a)-(i)~~ (i) Provisions for giving notice and a
15 copy of the written accusation to the police officer; ~~(b)-(ii)~~ (ii) the
16 police officer's right to have an attorney or representative retained
17 by the police officer present with him or her at all hearings or
18 proceedings regarding the written accusation; ~~(c)-(iii)~~ (iii) the right of
19 the police officer or his or her attorney or representative retained
20 by the police officer to be heard and present evidence; and ~~(d)-(iv)~~ (iv)
21 the right of the police officer as well as the individual imposing
22 the action or their respective attorneys or representatives to record
23 all hearings or proceedings regarding the written accusation. The
24 ordinance shall also include a procedure for making application for
25 an appeal, specifications on the period of time within which such

1 application shall be made, and provisions on the manner in which the
2 appeals hearing shall be conducted. Both the police officer and the
3 individual imposing the action or their respective attorneys or
4 representatives shall have the right at the hearing to be heard and
5 to present evidence to the city council for its consideration. Not
6 later than thirty days following the adjournment of the meeting at
7 which the hearing was held, the city council shall vote to uphold,
8 reverse, or modify the action. The failure of the city council to act
9 within thirty days or the failure of a majority of the elected
10 council members to vote to reverse or modify the action shall be
11 construed as a vote to uphold the action. The decision of the city
12 council shall be based upon its determination that, under the facts
13 and evidence presented at the hearing, the action was necessary for
14 the proper management and the effective operation of the police
15 department in the performance of its duties under the statutes of the
16 State of Nebraska. Nothing in this section shall be construed to
17 prevent the preemptory suspension or immediate removal from duty of
18 an officer by the appropriate authority, pending the hearing
19 authorized by this section, in cases of gross misconduct, neglect of
20 duty, or disobedience of orders.

21 ~~(3)-(c)~~ This ~~section~~subsection does not apply to a
22 police officer during his or her probationary period.

23 Sec. 2. Section 17-208, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 17-208 ~~(1)(a)~~(1) The village board of trustees may

1 appoint a village clerk, treasurer, attorney, overseer of the
2 streets, and marshal or chief of police and other such officers as
3 shall be required by ordinance or otherwise required by law.

4 ~~(2)(a) The Pursuant to subsection (2) of this section,~~
5 ~~the~~ village marshal or chief of police or any other police officer
6 may appeal to the village board his or her removal, demotion, or
7 suspension with or without pay. After a hearing, the village board
8 may uphold, reverse, or modify the action.

9 (b) The village board of trustees shall by ordinance
10 adopt rules and regulations governing the removal, demotion, or
11 suspension with or without pay of any police officer, including the
12 village marshal or chief of police. The ordinance shall include a
13 procedure for such removal, demotion, or suspension with or without
14 pay of any police officer, including the village marshal or chief of
15 police, upon the written accusation of the village marshal or chief
16 of police, the chairperson, or any citizen or taxpayer. The village
17 board of trustees shall establish by ordinance procedures for acting
18 upon such written accusation, including: (i) Provisions for giving
19 notice and a copy of the written accusation to the police officer;
20 (ii) the police officer's right to have an attorney or representative
21 retained by the police officer present with him or her at all
22 hearings or proceedings regarding the written accusation; (iii) the
23 right of the police officer or his or her attorney or representative
24 retained by the police officer to be heard and present evidence; and
25 (iv) the right of the police officer as well as the individual

1 imposing the action or their respective attorneys or representatives
2 to record all hearings or proceedings regarding the written
3 accusation. The ordinance shall also include a procedure for making
4 application for an appeal, specifications on the period of time
5 within which such application shall be made, and provisions on the
6 manner in which the appeals hearing shall be conducted. Both the
7 police officer and the individual imposing the action or their
8 respective attorneys or representatives shall have the right at the
9 hearing to be heard and to present evidence to the village board for
10 its consideration. Not later than thirty days following the
11 adjournment of the meeting at which the hearing was held, the village
12 board shall vote to uphold, reverse, or modify the action. The
13 failure of the village board to act within thirty days or the failure
14 of a majority of the elected board members to vote to reverse or
15 modify the action shall be construed as a vote to uphold the action.
16 The decision of the village board shall be based upon its
17 determination that, under the facts and evidence presented at the
18 hearing, the action was necessary for the proper management and the
19 effective operation of the police department in the performance of
20 its duties under the statutes of the State of Nebraska. Nothing in
21 this section shall be construed to prevent the preemptory suspension
22 or immediate removal from duty of an officer by the appropriate
23 authority, pending the hearing authorized by this section, in cases
24 of gross misconduct, neglect of duty, or disobedience of orders.

25 (c) This subsection does not apply to a police officer

1 during his or her probationary period.

2 ~~(2)~~(3) The village board of trustees shall also appoint
3 a board of health consisting of three members: The chairperson of the
4 village board, who shall be chairperson, and two other members. One
5 member shall be a physician or health care provider, if one can be
6 found who is willing to serve. Such physician or health care
7 provider, if appointed, shall be the board's medical advisor. If the
8 village board of trustees has appointed a marshal or chief of police,
9 the marshal or chief of police may be appointed to the board and
10 serve as secretary and quarantine officer. A majority of the board of
11 health shall constitute a quorum and shall enact rules and
12 regulations, which shall have the force and effect of law, to
13 safeguard the health of the people of such village and prevent
14 nuisances and unsanitary conditions. The board of health shall
15 enforce the same and provide fines and punishments for violations.

16 (4) The village clerk, treasurer, attorney, overseer of
17 the streets, members of the board of health, and other appointed
18 officers, except regular police officers, ~~The appointees~~ shall hold
19 office for one year unless removed by the chairperson of the village
20 board with the advice and consent of the trustees.

21 Sec. 3. Original sections 17-107 and 17-208, Revised
22 Statutes Cumulative Supplement, 2010, are repealed.