

NO. _____

ORDINANCE

An ordinance of the County of Allegheny, Commonwealth of Pennsylvania, establishing workplace protections in relation to certain emergency health orders and regulations, providing protections for employees against retaliatory actions for the disclosure of information related to employer non-compliance with such orders and/or for refusal to work under unsafe conditions caused by non-compliance with such orders.

Whereas, since March 2020, Allegheny County and the Commonwealth of Pennsylvania have established a number of regulatory restrictions specifically designed to slow the spread of COVID-19; and

Whereas, among these restrictions, the Commonwealth of Pennsylvania has imposed a requirement that face masks be worn in all indoor public settings at all times, and outdoors when within six feet of any non-household member; and

Whereas, in addition, the Allegheny County Health Department has issued multiple regulations regulating the conduct of business within Allegheny County pursuant to the Department's authority under the Commonwealth's Local Health Administration Law, 16 P.S. §12001, *et. seq.*, the most recent of which, *inter alia*, prohibits indoor dining, limits alcoholic beverage consumption to three per customer during outdoor on-site service, and requires that dining service end at 11:00 p.m.; and

Whereas, according to data published on June 24, 2020, in its first projections comparing different actions to control COVID-19 transmission, the Institute for Health Metrics and Evaluation (IHME) at the University of Washington is forecasting nearly 180,000 in the United States will die by October 1, but also predicts that this number would drop to 146,047 if at least 95% of people wear facemasks in public; and

Whereas, as noted by IHME Director Dr. Christopher Murray, "There is no doubt that even as states open up, the United States is still grappling with a large epidemic on a course to increase beginning in late August and intensifying in September. People need to know that wearing masks can reduce transmission of the virus by as much as 50 percent, and those who refuse are putting their lives, their families, their friends, and their communities at risk."; and

Whereas, unfortunately, despite clear and credible evidence that wearing face masks does have a material impact upon the COVID-19 transmission rate, recent published reports just as clearly demonstrate a public reluctance to adhere to the practice, *see, e.g.* "Face masks 'touchy subject' for local restaurants, but still required for employees under pandemic rules," Pittsburgh Pose-Gazette, June 24, 2020, and

"Complaints about Allegheny County bars, restaurants flouting face-mask rules skyrocket," Pittsburgh Post-Gazette, July 8, 2020; and

Whereas, according to the latter article, the Allegheny County Health Department received 419 coronavirus-related complaints about local bars and restaurants during the week beginning June 29, alone; and

Whereas, as noted by Health Department Director Dr. Debra Bogen, complaints serve a useful function in gathering data related to COVID-19 transmission: "It is helpful for the department to understand what is happening in the community, and we appreciate those reports."; and

Whereas, it is accordingly the judgment of Council that individuals who work in businesses throughout the County can provide an invaluable service to their fellow residents as well as to local government, hospitals, and other entities, by helping to combat the spread of COVID-19 through diligent reporting of incidents in which currently applicable disease prevention standards are violated; and

Whereas, it is further the judgment of Council that no employee should have to fear detrimental treatment by an employer if they should engage in such reporting, and that any attempt to hinder or prevent an employee from making such a report or retaliating against an employee for doing so constitutes a danger to public health by impeding the Allegheny County Health Department's access to valuable disease transmission data; and

Whereas, as a home rule municipality with its own Board of Health, Allegheny County is expressly empowered to enact ordinances as necessary to aid in controlling the spread of infectious disease under the terms of the Commonwealth's Disease Prevention and Control Law, 35 P.S. §521.1, *et. seq.*, as summarized by the Pennsylvania Supreme Court: "[w]e find in the DPCL a holistic scheme that, for purposes of disease prevention and control, favors local regulation as informed by the expertise of a dedicated local board or department of health over state-level regulation, and correspondingly allows local lawmakers to impose more stringent regulations than state law provides. Thus, in priority order, a municipality with a board or department of health may enact ordinances or promulgate rules and regulations in service of disease prevention and control. Where a municipality lacks its own board or department of health, but lies within the jurisdiction of a county department of health, the municipality may enact such ordinances, while the county board or department of health may issue rules and regulations. Absent a municipal or county board or department of health, a municipality falls within the jurisdiction of the state board." *PRLA, et. al., v. City of Pittsburgh*, 211 A.3d 810, 827 (Pa. 2019) (emphasis added);

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of the Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by reference in their entirety herein.

SECTION 2. Definitions.

For the purposes of this Ordinance, the following terms shall have the definitions provided herein:

Adverse Employment Action. Includes, but is not limited to, reduction in pay, atypical adverse change in working hours, termination, refusal to employ, harassment, or threats pertaining to an individual's perceived immigration status.

Department. The Allegheny County Health Department.

Employee. Any individual who performs work for an Employer.

Employer. Any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

Protected disclosure. A good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence a violation of a COVID-19 public health order that may significantly threaten the health or safety of employees or the public, if the disclosure or intention to disclose was made for the purpose of remedying such violation.

COVID-19 public health order. An order or regulation issued by the Pennsylvania Department of Health or the Allegheny County Health Department related to the 2019 novel coronavirus ("COVID-19").

Unsafe condition. A condition that violates a COVID-19 public health order.

SECTION 3. Compliance with COVID-19 public health orders.

Employers shall comply with all applicable requirements of COVID-19 public health orders addressing safe workplace practices to mitigate the risks associated with the 2019 novel coronavirus ("COVID-19").

SECTION 4. Protection from Unsafe Conditions.

No employer shall take any adverse employment action against an employee for refusing to work in unsafe conditions if the employee reasonably believes that the employer is operating in violation of a COVID-19 public health order in a manner that has created the unsafe condition and the employee has notified the employer of the unsafe condition; provided however, that an employee may not refuse to work if the business provides a reasonable alternative work assignment that does not expose the employee to the unsafe condition or upon inspection by the Allegheny County Health Department or Pennsylvania Department of Health the business proves it is compliant with all public health orders addressing safe workplace practices.

SECTION 5. Protected Disclosures.

No employer shall take any adverse employment action against any employee for making a protected disclosure.

SECTION 6. Presumption of Retaliation.

- A. There shall be a rebuttable presumption of retaliation if an Employer takes an adverse employment action against a person within 90 days of the person's exercise of rights protected in this Ordinance. In the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the Employer fails to rehire a former Employee at the next opportunity for work in the same position. The Employer may rebut the presumption with evidence that the adverse action was taken for a permissible purpose.
- B. This Ordinance shall also apply to any employee who mistakenly, but reasonably and in good faith, alleges noncompliance with any provision of this Ordinance.

SECTION 7. Enforcement and Remedies.

- A. Complaints relating to violations of the terms of this Ordinance shall be presented to any court of competent jurisdiction within Allegheny County.
- B. Upon proving a violation of the terms of this Ordinance by a preponderance of the evidence, a complainant may be awarded reinstatement, backpay and other compensatory damages. An employee may in addition seek civil penalties on behalf of the County for each day in which a violation occurs. If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs to the employee as part of the costs recoverable.
- C. Nothing contained within this Ordinance shall be construed to limit an employee's right to bring any other applicable employment claim, including for wrongful termination, unlawful discrimination or otherwise.

SECTION 8. Departmental Action

Upon written request by an Employee, the Department may, at its sole discretion and pursuant to any investigation, factfinding, or other process that it deems appropriate in a given case and subject to budgetary and/or administrative capacity, seek enforcement of the terms of this Ordinance on behalf of such Employee, and to provide or obtain appropriate relief to the extent authorized by applicable law, including Section 7 of this Ordinance.

SECTION 9. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

SECTION 10. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

PRIMARY SPONSOR: COUNCIL MEMBER HALLAM

CO-SPONSORS: COUNCIL MEMBERS PRIZIO and BENNETT

Enacted in Council, this _____ day of _____, 2020,

Council Agenda No. _____

Patrick Catena
President of Council

Attest: _____
Jared E. Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2020

Approved: _____
Rich Fitzgerald
Chief Executive

Attest: _____
Sonya Dietz
Executive's Secretary