

# Allegheny County Council

119 Courthouse  
436 Grant Street  
Pittsburgh, PA 15219  
Phone: 412-350-6490



## Meeting Minutes

Tuesday, October 15, 2019

4:15 PM

Conference Room 1

## Committee on Government Reform

*Nick Futules, Chair; Patrick Catena, Cindy Kirk, Bob Macey, Sue Means, DeWitt Walton  
and Paul Zavarella, Members*

## I. Call to Order

*The meeting was called to order at 4:15.*

### Invited Guests:

**William D. McKain, CPA, Allegheny County Manager or designee(s)**  
**Andy Szefi, Allegheny County Solicitor**  
**Douglas Shields**

*Mr. McKain was present from the Office of the County Manager.*

*Mr. Szefi was present from the Law Department.*

*Mr. Tyskiewicz was present from the Department of Administrative Services.*

*Mr. Brodeur was present from the Real Estate Division.*

*Mr. Barker was present from the Office of County Council.*

## II. Roll Call

**Members Present:** 4 - Patrick Catena, Bob Macey, Sue Means and Nick Futules

**Members Absent:** 2 - Cindy Kirk and DeWitt Walton

**Members Phone:** 1 - Paul Zavarella

**Members** 3 - Sam DeMarco, Anita Prizio and Paul Klein

**Non-Members:**

## III. Approval of Minutes

## IV. Agenda Items

### Ordinances

#### [10781-18](#)

An ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending and supplementing the Allegheny County Code of Ordinances, Division 2 (entitled "County Government Operations") through the creation of a new Chapter 272 in order to provide for public access to oil and gas lease information relating to property located within Allegheny County.

**Sponsors:** Council Member Prizio, Council Member Klein, Council Member Catena and Council Member Macey

*At the request of the Chair, the clerk read the title of the bill.*

*The Chair indicated that additional meetings will be held on this bill, with operational discussions to take place at the current session, and other viewpoints to be discussed in approximately two weeks.*

*Ms. Prizio described the intent behind the bill, noting that it was introduced roughly a year ago in order to allow the public to see what properties were subject to oil and gas*

leases, as it had prior to 2010. Ms. Prizio indicated that the primary benefit of restoring this data would be done in order to aid the municipalities located in the county in their municipal planning, and that the administrative overhead for leaseholders would be minimal.

At the Chair's request, Mr. McKain, Mr. Szefi, Mr. Tyskiewicz and Mr. Brodeur came to the table, and Mr. Szefi discussed the mechanics of the ordinance, noting that he would be discussing the bill as introduced. Mr. Szefi indicated that oil and gas lessees almost never record lease documents but, rather, memoranda summarizing the leases, and indicated that Commonwealth law does not require that they be recorded. Mr. Szefi noted that, if a memorandum is recorded, Commonwealth law does say what must appear within it, and those requirements are not the same as the data fields that the ordinance would require, and that several of the fields mentioned in the ordinance are never recorded in any fashion. Mr. Szefi noted that he would anticipate the potential for legal challenges resulting from the differing data recording requirements, and that he does not view the County's position as terribly strong because the County has no zoning power, and it would therefore the most obvious police power justification would not be available.

Mr. Szefi indicated that he would strongly recommend that Council thoroughly understand the administrative overhead involved in implementing a program like this, and carefully evaluate how enforceable the ordinance would be if it were to pass. Mr. Szefi noted that the County will not immediately know for certain how big the universe of registrants is - although there are approximately 600,000 parcels in the County with the first oil and gas leases being executed in 1859 - so it will be impossible to determine who did not register without doing title searches on all 600,000 parcels, which would incur a time and financial expense. Mr. Szefi noted that a ballpark figure for a basic title search is approximately \$1,000, and that this figure could begin to add up rapidly, and those title searches would likely take an extended period of time. Mr Szefi also noted that it will often be difficult to determine when a lease is in effect, because they often last for as long as wells are producing economically viable quantities of resources, and it will also be difficult to tell at a glance whether a given lease is for oil and gas rights without extensive review.

In response to questions from Ms. Means, Mr. Szefi noted that he believes it is unlikely that the County would face liability for inaccurate information being reflected on the County website, but the County would have to issue a disclaimer that essentially says that there are no guarantees that the information will be accurate.

In response to questions from Mr. Macey, Mr. Szefi noted that the DEP website will show all permitted and existing wells, but that it may be more difficult to tell where exactly lateral well lines extend. Mr. Szefi also indicated that he would recommend separating the leasing transaction from the operational process of drilling, because the latter is much more easily seen, while leasing transactions take place much less obviously.

Mr. DeMarco expressed concerns relating to the potential cost of determining the universe of leaseholders, together with the uncertainty in the final results, and while in theory it sounds like a good idea, but the return on the significant investment may not be sufficient to justify it.

In response to a question from Mr. DeMarco, Mr. Szefi noted that the Law Department had not located any other jurisdictions that have created a registry exactly like this one is conceived.

In response to a question from Ms. Means, Mr. Szefi discussed separability of surface and subsurface rights, depth severance, and other means by which partial interests can

be conveyed.

*In response to questions from Mr. Catena, Mr. Szefi indicated that there are memoranda of leases that have been recorded, and that they are digitized back to 1986, but that while this may be a valid starting point, you would still have to sift through them to see which ones relate to oil and gas rights, which are in force, and the like. Mr. Brodeur described the format in which the data is stored, noting that the digitized documents are not set up to be full text searchable, and that they are only indexed by a limited number of data points. Mr. Brodeur also noted that the database as of 1986 - even if it can be made searchable - will not reflect leases executed before 1986, and that there is a fairly large population of older leases which were executed for mineral rights generally, rather than for fracking specifically.*

*Mr. DeMarco suggested that converting scanned documents to be full text searchable is not an exact science, and typographical errors in translation could result in significant inaccuracies, and that based on his experience, he would potentially expect millions of translation errors in a project of this size.*

*In response to a question from Ms. Prizio, Mr. Szefi and Mr. Brodeur noted that the County stopped tagging lot and block numbers for leases because the administrative overhead became prohibitive, and that reverting to a retroactive lot and block index might be possible, but it would require additional research to determine how feasible and/or expensive this may or may not be.*

*Mr. Tyskiewicz noted that prospectively capturing filed lease data would be comparatively easily done, but that going so retroactively would be difficult and expensive, with the Department's estimates of 4 employees making \$50,000 and completing one fully retroactive title search in one day, 100,000 title searches would take roughly 96 years, and would cost about \$19.6 million, assuming no cost of living or other pay adjustments for the employees doing the searches.*

*Mr. Tyskiewicz noted that some of the memoranda of leases cover hundreds of parcels, and the thought process was to not capture detailed information when no ownership interest is being transferred in order to make the recording process as efficient as possible.*

*In response to questions from Mr. Macey, Mr. Tyskiewicz and Mr. Brodeur noted that all deeds likely are recorded because, while there is no legal requirement to record, it's generally advisable to do so in order to protect property interests. Mr. Szefi noted that once a deed is recorded, it is never reviewed unless/until another transaction takes place and the new transaction is recorded. Mr. Szefi stressed that it will be impossible to determine whether lessees are 100% compliant or 50% compliant without establishing your own knowledge of what leases exist.*

*In response to a question from Mr. Catena, Mr. Szefi noted that the process of merely propagating old data forward would not be a simple process, because the recorded memoranda are not uniform enough to ensure accuracy.*

*In response to questions from Mr. DeMarco, Mr. Szefi noted that state law controls what information must be recorded in a memorandum, if one is recorded at all, and expressed a concern regarding potential legal challenges should County law require things that Commonwealth law does not. Ms. Prizio noted that the amendment she is contemplating would address the data field preemption issue.*

*In response to a question from Mr. DeMarco, Mr. Brodeur noted that handwritten documents are generally older than 1986, but he's not entirely sure without looking at them again.*

## Motions

### [11232-19](#)

Motion of the Council of Allegheny County supporting the passage of a referendum question amending Article I of the Constitution of the Commonwealth to incorporate a victim's bill of rights, colloquially known as Marsy's Law.

**Sponsors:** Council Member DeMarco and Council Member Macey

*At the request of the Chair, the clerk read the title of the bill and Mr. DeMarco described his intent, noting that he believes that victim's rights is an issue with which everyone should be concerned, and indicated that the Office of the District Attorney has asserted that the passage of the amendment would merely codify the law as it already exists. Mr. DeMarco summarized the votes by which the bill passed the General Assembly and noted that several entities expressed support for the proposition, including the Allegheny County District Attorney and - to his recollection - the Chief Executive.*

*Mr. Catena noted that his concern that, while the motion on its face sounds like a good idea, but the more he considers the underlying concept, he does not necessarily feel that amending the Constitution is something that should be done lightly, and expressed a desire to amend the motion to change it to urge the voters to thoroughly consider the impacts of and vote on the referendum question, rather than supporting the passage of the question.*

*Mr. Catena moved to amend the motion, and Ms. Means seconded the motion.*

*Mr. DeMarco noted that he has no problem with the proposed amendment, but also indicated that the process for amending the Constitution is more difficult than merely enacting legislative items, so from his perspective, adequate procedural steps have been taken.*

*The Chair noted that he had concerns to the extent that he does not want to be perceived as endorsing a particular outcome, because that decision rests with the voters.*

*Mr. Macey noted that he believes that the legislature likely thoroughly vetted the concept prior to passing it, and expressed his willingness to support the measure.*

*Mr. Klein noted that victims' rights are already codified, and have been since 2007, by state law treating victims' notice, ability to present victim impact statements, and virtually the same concepts embodied in the proposed amendment. Mr. Klein also noted that enforcement of the amendment would be done by exactly the same people who would currently enforce the existing statute.*

*Mr. DeMarco suggested that the enforcement of the existing statute is not consistent from county to county according to the Office of the District Attorney, and that various counties may have different resources available. Mr. DeMarco noted that he assumes the Assembly would have contemplated all of the competing interests before passing the bills placing the question on the ballot, but again indicated that he does not oppose the amendment as offered.*

*Ms. Means noted that she had some reservations about the bill as it was initially*

*constructed, but that the proposed amendment increased her comfort level.*

*Ms. Prizio noted that she has reservations, and feels that the amendment does the right thing in leaving the question with the voters.*

*Mr. Zavarella noted the existence of the crime victims' legislation, but expressed his opinion that the existing law could do with some updates.*

*Mr. Catena's motion to amend passed unanimously.*

**A motion was made by Macey, seconded by Catena, that this matter be Affirmatively Recommended. The motion carried by a unanimous vote.**

## **V. Adjournment**

*The meeting was adjourned at 5:38.*