

No. 13-23-OR

ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending and supplementing the Administrative Code of Allegheny County, Article 1009, entitled “Personnel Policies,” through the creation of a new §5-1009.09, entitled “Non-salaried Employee Pay,” in order to establish a uniform policy governing the payment of County employees.

WHEREAS, existing Commonwealth of Pennsylvania law, specifically the Minimum Wage Act of 1968 (43 P.S. §333.101, *et. seq.*) governs the minimum wages to be paid to individuals employed throughout the Commonwealth; and

WHEREAS, although 43 P.S. §333.114a(a) indicates that “...this act shall preempt and supersede any local ordinance or rule concerning the subject matter of this act,” nothing contained within the Minimum Wage Act prohibits any individual employer from paying more than the Act’s mandated minimum wages to their own employees; and

WHEREAS, it is accordingly the judgment of Council that Allegheny County retains the authority to establish a minimum pay rate for its own employees via ordinance; and

WHEREAS, the Commonwealth’s minimum wage has not been increased since 2009, and has only been increased four times in the past 40 years (in 1981, 1992, 1998, and 2009); and

WHEREAS, adjusted only for inflation, the Commonwealth’s \$3.35 minimum wage after the 1981 increase would equate to \$10.65 in 2022; and

WHEREAS, according to U.S. Bureau of Labor Statistics, the rate of U.S. non-farm productivity increased at an annual average of approximately 1.86% from third quarter 1981 through third quarter 2016 (an aggregate increase of just over 64% for that timespan); had the Commonwealth’s minimum wage merely followed this pattern and accounted for inflation, it would have been set at \$14.52 in 2016; and

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 as set forth in their entirety herein.

SECTION 2. Amendment of the Code.

The Administrative Code of Allegheny County, Article 1009, entitled "Personnel Policies," is hereby amended as follows:

§5-1009.09. Non-salaried employee pay.

A. For the purposes of this Section:

1. "Employ" shall mean to suffer or permit to work; and
2. "Employee" shall mean any individual, regardless of number of hours worked or classification as a full time, part time, or seasonal employee, who is both employed by Allegheny County and paid by Allegheny County.
3. "Non-salaried Employee" shall mean any Employee who is not paid on a salary basis.
4. "Salaried Employee" shall mean any Employee who is paid on a salary basis.

B. For the purposes of this Section, in order for an Employee to be deemed to be paid on a salary basis, each of the following conditions must apply to that Employee:

1. The Employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis; and
2. The predetermined salary amount is not reduced because of variations in the quality or quantity of the Employee's work; and
3. The Employee receives their full salary for any week in which the Employee performs any work, regardless of the number of days or hours worked; provided, however, that Employees paid on a salary basis do not need to be paid for any work week in which they perform no work, except to the extent that they utilize paid leave offered by Allegheny County or pursuant to other applicable law during such work week.

Notwithstanding any other provision of this Subsection, in the event that the County makes deductions from an Employee's predetermined salary without such Employee's prior consent and/or not pursuant to any provision of applicable law rendering such deduction mandatory, that Employee shall not be deemed to be paid on a salary basis for the pay period(s) in which such deductions are made. If an Employee is ready, willing and able to work, such Employee shall not be deemed to be paid on a salary basis during any pay period in which any such deductions are made for time when work is not available.

C. All Salaried and Non-salaried Employees as defined herein shall be paid according to the following schedule:

1. Beginning January 1, 2024, no less than eighteen dollars (\$18) for each hour worked. All full time Salaried Employees as defined herein shall be paid no less than \$37,440 per year.

2. Beginning January 1, 2025, no less than nineteen dollars (\$19) for each hour worked. All full time Salaried Employees as defined herein shall be paid no less than \$39,520 per year.

3. Beginning January 1, 2026, no less than twenty dollars (\$20) for each hour worked. All full time Salaried Employees as defined herein shall be paid no less than \$41,600 per year.

D. All Non-salaried Employees as defined herein shall be eligible for overtime pay at a rate not less than 1.5 times their base pay rate for any hours worked in excess of eight (8) hours in any single calendar day and/or any hours worked in excess of forty (40) hours in any single calendar week.

E. The provisions of this Section shall not supersede the provisions governing pay contained within any collective bargaining agreement, contract, or other agreement lawfully in force as of the effective date. The County shall, however, abide by the provisions of this Section for all such agreements executed after the effective date.

SECTION 3. Effective Date.

The provisions of this Ordinance shall become effective on January 1, 2024.

SECTION 4. 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.

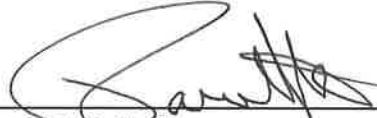
SECTION 5. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Resolution.

Primary Sponsor: COUNCIL MEMBER HALLAM

Co-Sponsor(s): COUNCIL MEMBERS BENNETT, BETKOWSKI and PRIZIO

Enacted in Council, this 6th day of June, 2023.

Council Agenda No. 12345-22



Patrick Catena
President of Council

Attest: 

Jared Barker
Chief Clerk of Council

Chief Executive Office _____, 2023

Approved: _____
Rich Fitzgerald
County Executive

Attest: _____
Sonya Dietz
Executive's Secretary

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

June 13, 2023

RECEIVED
ALLEGHENY COUNTY COUNCIL
2023 JUN 13 PM 3:31

The Honorable Patrick Catena, President and
Members, Allegheny County Council
119 County Courthouse
436 Grant Street
Pittsburgh, PA 15219

President Catena and Members of Council:

In accordance with Section 5 (h) of Article IV (Section 405 h) of the Allegheny County Home Rule Charter (the Home Rule Charter), I am hereby returning Council Bill No. 12345, as amended, with my veto. Council Bill No. 12345 was delivered to me for consideration on June 9, 2023.

Before I turn to the reasons for this veto, I want to stress that this veto does NOT represent a disagreement with the need to pay our employees a living wage. Since I was first elected to public office 24 years ago, I have consistently advocated for an increase to the minimum wage. One of my first actions as a council member was to advocate for a living wage for social workers who, in my opinion, were underpaid. I have also supported increases at the state and federal levels numerous times during my career and have stood at public events with former Governors Ed Rendell and Tom Wolf, Senator Bob Casey, Congressman Mike Doyle, and many others, making my stance part of the public record.

I've not just talked about what others should do. I'm proud of the fact that, as county executive, I was one of the first to institute a \$15 an hour minimum wage for our full-time county workers. And a few years later, I announced our commitment to increase that full-time wage to \$18 an hour, a wage that will take effect in 2024. These steps have been taken while the federal and state minimum wage remains at \$7.25 an hour.

In addition to this pay rate, the vast majority of full-time employees work 35 hours a week, have 11 paid holidays in addition to paid time off, are provided health care for themselves and their families with an approximately \$100 monthly contribution, and are also provided a pension for their work and effort on behalf of county residents.

OFFICE OF THE COUNTY EXECUTIVE

101 COURTHOUSE • 436 GRANT STREET • PITTSBURGH, PA 15219 • PHONE (412) 350-6500 • FAX (412) 350-6512
WWW.ALLEGHENYCOUNTY.US • EXECUTIVE@ALLEGHENYCOUNTY.US

We have also consistently given cost of living raises to all employees as well. Additionally, we have bargained in faith with over two dozen bargaining units through numerous contract negotiations without one strike or work stoppage in my 12 years as county executive. We have sustained these improved wages without any layoffs of county workers, even during the COVID pandemic and the longest state budget shutdown in decades.

I do differ with council on the pay rate of \$18 an hour for seasonal workers. These employees, many in high school or college, who work the snack bar at our pools and golf courses are paid \$12 to \$15 an hour and are a different category of worker. These positions encourage hard work, but also provide life skills that will benefit these employees in their career development, but they are not full-time positions.

Raising the pay of part-time employees by 50 percent, or \$6 an hour, will also cause a ripple effect. The increase will require substantial raises for full-time employees. The person now making \$18 an hour will expect to get a raise to \$24 an hour while a person now making \$22 an hour will expect to make \$28 an hour and so on. The “compression” effect on the rest of the payroll is estimated to cost \$30 million, leading to a significant property tax increase on our residents.

Ultimately, this veto is about the separation of powers set up in the county’s Home Rule Charter. When this government was set up and approved by the voters, it did not give the legislative body the authority to set pay rates. If council now believes that should change, then they must follow the process outlined in the Home Rule Charter and Optional Plans Law to do so.

With that being said, as required by Section 405 (h) of the Home Rule Charter, the following constitutes my formal written objections to this legislation:

Bill No. 12345-22 requires the county to undertake the following:

1. Pay all salaried and non-salaried employees as defined in the legislation in accordance with the following schedule:
 - Beginning January 1, 2024, not less than eighteen dollars (\$18) for each hour worked.
 - Beginning January 1, 2025, not less than nineteen dollars (\$19) for each hour worked.
 - Beginning January 1, 2026, not less than twenty dollars (\$20) for each hour worked.
2. Pay all non-salaried employees as defined in the legislation overtime pay at a rate not less than 1.5 times their base pay rate for any hours worked in excess of eight (8) hours in any single calendar day and/or any hours worked in excess of forty (40) hours in any single calendar week.

3. Require the county to abide by the provisions mentioned above for any collective bargaining agreements executed after the proposed ordinance's effective date.

The legislation clearly and plainly violates several provisions of the Home Rule Charter that place wage decisions and collective bargaining over wages within the purview of the executive branch of county government.

First, Section 2 of Article IV of the Home Rule Charter (Section 402) sets forth a list of fourteen specifically enumerated powers bestowed on County Council by the Charter. Nowhere in this list of enumerated powers is a grant of authority to County Council to set wages for County employees.

In stark contrast to the absence of authority in the legislative branch on this matter, numerous provisions of the Home Rule Charter place the authority to set salaries squarely in the executive branch of county government. Section 502 of the Home Rule Charter states:

The Chief Executive shall have, but shall not be limited to, the following powers and duties:

...

e) *Control and be accountable for the administration of all departments and agencies except those specifically placed under the jurisdiction of any other officer by law or by this Charter.*

...

i) Negotiate, award and sign, or cause to be negotiated, awarded and signed on behalf of the County, all contracts, agreements and other instruments, except as provided in Article IV, § 1.4-402(j) and (k). (emphasis added).

The county's Home Rule Charter further extends the executive branch's authority over personnel decisions with explicit grants of powers and duties to the county manager as a member of the executive branch. These powers and duties include, among other things, the authority to:

b) Supervise all Executive Branch departments and agencies except the Law Department.

c) In consultation with the Chief Executive, *appoint and remove the directors of all Executive Branch departments* except the Law Department.

...

d) Prepare and administer a personnel system as provided in Article IX.

e) In accordance with the Administrative Code, *hire, discipline or discharge*, and delegate the authority to *hire*, discipline or discharge, any employee under the jurisdiction of the Manager.

...

j) At the direction of the Chief Executive, negotiate labor and other contracts on behalf of the County.

Id., Article VI § 1.6-602(d, e, j). (emphasis added).

Additionally, Section 902 of the Home Rule Charter requires the county manager to perform other personnel related duties. Section 902 provides:

Consistent with all applicable contracts and laws, the Manager shall prepare and administer a personnel system based on merit principles for all employees of the County. The personnel system shall be included in the Administrative Code. The personnel system shall include rules and regulations governing such subjects as classification and pay plans, examinations, force reduction, removals, discipline, working conditions, provisional and exempt appointments, employee training and orientation, grievances and civil service systems.

Based upon these specific provisions in the county's Home Rule Charter, the setting of salaries clearly is an exclusively executive function – starting with the authority to hire and manage and supervise employees and directors within the context of the operation of the county's personnel system. Thus, the clear text of the Charter itself supports the conclusion that the setting of wage rates for county employees is a function of the executive, not the legislative branch of government.

Second, Council Bill No. 12345-22 would require the county to abide by the provisions mentioned above for any collective bargaining agreements executed after the proposed ordinance's effective date. This requirement unquestionably violates Home Rule Charter.

Pursuant to Section 502 (i) Home Rule Charter, the executive branch is charged with negotiating labor contracts. Pursuant to Sections 602 and 902, the executive branch is charged with administering a personnel system. Both statutory and case law require the county, as a public employer, to negotiate over mandatory subjects of collective bargaining. This includes wages and benefits. By passing Bill No. 12345-22, council has adopted wage and benefit standards without negotiating with the county's Public Employee Relations Act (PERA) certified bargaining units. This conduct violates not only the PERA requirement that such a change be negotiated, but also the exclusive authority of the executive branch to negotiate that contractual change. Thus, Bill No. 12345-22 not only violates the county's Home Rule Charter but Pennsylvania labor law.

Finally, I have considered the arguments offered by council in support of Bill No. 12345-22. I find these arguments to be without merit.

One argument is that Bill No. 12345-22 is within County Council's authority because council can enact an Administrative Code and include the personnel system within the Code. However, this argument ignores a salient point. While the Home Rule Charter requires council to enact an Administrative Code, the Administrative Code is not part of the Charter. It is simply an ordinance. It is not the legal equivalent of the Home Rule Charter as is implicitly asserted. The Home Rule Charter outranks any ordinance of the county in terms of what legally controls. An ordinance simply cannot override or supersede the commands and requirements set forth in the Home Rule Charter.

A second argument is that the legislation is legal because council has authority over the functionality and existence of county departments. This argument is misleading. Council does have the authority to create or modify county departments. However, that broad authority cannot justify attempting to override a positive requirement in the Home Rule Charter that places decisions about hiring of employees and what wage to pay to employees exclusively in the hands of the executive branch of county government.

Lastly, it is claimed that the enactment of this county wage ordinance is comparable to the residency requirement. This reason also is not persuasive. The county has maintained a residency requirement even before the advent of home rule. Residency simply sets a precondition for even being a county employee. It is outside the realm of wage decisions and personnel determinations exclusively in the bailiwick of the manager as provided for in the Home Rule Charter.

If council believes that the Home Rule Charter's language giving legal authority to the chief executive and the county manager to set wage rates through the hiring process and collective bargaining should be changed, it cannot do so by enacting an ordinance like Bill No. 12345-22. Council simply cannot change the Home Rule Charter by legislative act. It instead must follow applicable law and propose a charter amendment to the voters of Allegheny County for consideration if council wishes to change the structure, nature and operations of the current form of home rule government.

For these reasons, I am returning Bill No. 12345-22 with my veto.

Sincerely,


Rich Fitzgerald

cc: Jennifer M. Liptak, County Manager
George M. Janocko, Esquire, County Solicitor



COUNTY OF ALLEGHENY

OFFICE OF THE COUNTY COUNCIL

119 COURTHOUSE · 436 GRANT STREET
PITTSBURGH, PA 15219

PHONE (412) 350-6490 · FAX (412) 350-6499

COUNCIL@COUNTY.ALLEGHENY.PA.US

WWW.COUNTY.ALLEGHENY.PA.US/COUNCIL

Memorandum

To: File
From: Jared E. Barker, Chief Clerk
Date: June 21, 2023
Re: Override of Chief Executive Veto, Bill No. 12345-22

I hereby certify that, in accordance with the provisions of Article IV, §2(e) of the Home Rule Charter of Allegheny County, §5-311.07.D. of the Administrative Code of Allegheny County, and the Rules of Allegheny County Council, the Chief Executive's veto of Bill No. 12345-22 was overridden on June 20, 2023 via the passage of Bill No. 12729-23 by a vote of 10 to 5, as follows:

Ms. Bennett; Aye
Mr. Betkowski; Aye
Mr. DeMarco; Nay
Mr. Duerr; Aye
Ms. Filiaggi; Nay
Mr. Futules; Nay
Ms. Hallam; Aye
Mr. Klein; Aye
Mr. Macey; Nay
Ms. Naccaratti-Chapkis; Aye
Mr. Palmiere; Aye
Mr. Palmosina; Aye
Ms. Prizio; Aye
Mr. Walton; Nay
Mr. Catena; Aye

The provisions of Bill No. 12345-22 therefore become effective as provided for in Section 3 of that ordinance.

A handwritten signature in black ink, appearing to read 'J. Barker'.

Jared E. Barker, Chief Clerk
Allegheny County Council