

No. _____

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 §5-1009.08, entitled "Non-salaried Employee Pay," in order to establish a uniform policy governing the payment of non-salaried 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 \$10.11 in 2021; 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

WHEREAS, individuals incarcerated at the Allegheny County Jail are often employed to perform work within the Jail, and in doing so alleviate the need for regular County employees to perform these tasks; and

WHEREAS, pursuant to the terms of 61 Pa.C.S.A. §3104(d), "[t]he authorities in charge of a county correctional institution shall fix the wages of each inmate to be employed and shall keep an account of all such wages and the amount due each inmate," and requires that at least three-fourths of the amount paid to each inmate must be provided for the support of any person

or persons dependent upon that inmate, with any remaining amount to be distributed to the inmate at and after their release; and

WHEREAS, while the amount paid to individuals incarcerated at the Allegheny County Jail has historically been significantly lower than the minimum wage established by the Commonwealth's Minimum Wage Act, it does not appear that this result is required by any provision of Commonwealth Law; and

WHEREAS, the Minimum Wage Act (at 43 P.S. §333.103) defines "employ" as "to suffer or permit to work," and "employee" as "any individual employed by an employer"; and

WHEREAS, to the extent that incarcerated individuals are paid less than the Commonwealth's mandated minimum wage for work performed for the County within the Allegheny County Jail, it is the judgment of Council that this practice runs contrary to the intent of the Minimum Wage Act, as its definitions of "employ" and "employee" appear to encompass the performance of work for the County by incarcerated individuals within the Jail; and

WHEREAS, it is further the judgment of Council that the payment of substantially lower wages to incarcerated individuals constitutes forced subsidization of the County's budget by these individuals, insofar as inmate pay rates are non-negotiable and serve to reduce the County's labor costs; and

WHEREAS, it is additionally the judgment of Council that the payment of significantly reduced wages to incarcerated individuals serves to perpetuate a cycle of economic disadvantage for many of those who are dependent upon incarcerated individuals for support by minimizing the payments made to those dependents under the provisions of §3104(d), and also tends to force these dependents into participating in the subsidization of the County's budget for labor within the Jail;

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:

§5-1009.08. 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 incarceration status, 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 on anything other than 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 Employees as defined herein shall be paid no less than fifteen dollars (\$15) for each hour worked.

D. All 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, 2022.

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 and PRIZIO

Enacted in Council, this _____ day of _____, 2021.

Council Agenda No. _____

Patrick Catena
President of Council

Attest: _____
Jared Barker
Chief Clerk of Council

Chief Executive Office _____, 2021

Approved: _____
Rich Fitzgerald
County Executive

Attest: _____
Sonya Dietz
Executive's Secretary