



COUNTY OF ALLEGHENY

OFFICE OF THE COUNTY COUNCIL

119 COURTHOUSE · 436 GRANT STREET

PITTSBURGH, PA 15219

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TO: PRESIDENT AND MEMBERS OF COUNCIL

FROM: JENNIFER M. LIPTAK

DATE: NOVEMBER 6, 2009

SUBJECT: /CHIEF EXECUTIVE DAN ONORATO'S VETO OF COUNCIL BILL 3819-08, ENTITLED, AN ORDINANCE OF THE COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, AMENDING AND SUPPLEMENTING THE ALLEGHENY COUNTY CODE OF ORDINANCES, DIVISION 4, ENTITLED "FINANCES," THROUGH THE CREATION OF A NEW CHAPTER 480, ENTITLED "ESSENTIAL SERVICES AND TAX EXEMPT VERIFICATION CERTIFICATION," IN ORDER TO PROVIDE FOR A TAX EXEMPT CERTIFICATION AND ESSENTIAL SERVICES FEE FOR CERTAIN PROPERTIES WITHIN THE COUNTY FOR WHICH AN EXEMPTION FROM THE REAL PROPERTY TAX IS CLAIMED.

This memorandum is to inform you that on Friday, November 6, 2009, Chief Executive Dan Onorato returned to me, with his veto, Council Bill 3819-08 referenced above.

Attached is a copy of the bill and Chief Executive Onorato's written objection to the bill.

Article IV, Section 5(b) of the Home Rule Charter provides that County Council may override a Chief Executive veto by an affirmative vote of at least two-thirds of the Seated Members of Council and that the override vote must occur within 30 days of the veto, which means that Sunday, December 6, 2009, is the last day you could consider a vote to override the veto, otherwise the veto would be sustained.

A hardcopy of this information will be placed in your mailbox.



E-MAILED
11-6-09



DAN ONORATO
COUNTY EXECUTIVE

COUNTY OF ALLEGHENY

OFFICE OF THE COUNTY EXECUTIVE

101 COURTHOUSE • 436 GRANT STREET
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November 6, 2009

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

I hereby return, with my veto, Council Bill 3819-08. I have vetoed this legislation because it violates several provisions of Commonwealth law and would expose the County to litigation, for which the County would have no plausible defense.

Specifically, this bill provides for the creation and imposition of a “Tax Exempt Certification and County Essential Services Fee” (the “Fee”). The Fee would be levied against certain improvements to real property that is exempt from taxation under applicable state law.

This bill violates 72 P.S. Section 5020-204, which provides that certain real property shall be absolutely exempt from all county taxes, and it also violates the uniformity clause of the Pennsylvania Constitution. While the bill ostensibly imposes a “fee” for general County services, it appears to be an attempt to circumvent Commonwealth law and impose real estate taxes on otherwise exempt real property in a non-uniform manner.

In addition, this bill violates the Home Rule Charter and Optional Plans Law (the “Charter Law”), specifically, 53 Pa.C.S.A., Section 2962(a). This section of the Charter Law prohibits a home rule county from expanding the powers granted to it by the General Assembly with respect to, among other things, the fixing of subjects of taxation. This bill attempts to fix a new subject of taxation that the General Assembly has not authorized, namely, improved, otherwise tax-exempt property larger than 1,000 square feet.

As a result, this bill, if enacted, would be successfully challenged by an aggrieved property owner in a court of competent jurisdiction. For these reasons, I have vetoed Council Bill 3819-08.

As I stated during my budget address to you on September 22, I have been working with Harrisburg on the issue of non-profit contributions, and we are making headway. I believe we will be able to arrive at an amicable solution with non-profits during 2010 that will result in voluntary contributions beginning in 2011.

*Letter to the Honorable President & Members
Allegheny County Council
November 6, 2009
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I respectfully request that you allow my veto to stand and that we create a working group that includes members of my administration and County Council to further analyze this issue and work toward a cooperative solution.

Sincerely,



Dan Onorato
Allegheny County Executive

cc: Mr. James M. Flynn Jr., County Manager
Mr. Michael H. Wojcik, Esq., County Solicitor

Bill No. 3819-08

NO. _____

ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending and supplementing the Allegheny County Code of Ordinances, Division 4, entitled "Finances," through the creation of a new Chapter 480, entitled "Essential Services and Tax Exempt Verification Certification," in order to provide for a tax exempt certification and essential services fee for certain properties within the County for which an exemption from the real property tax is claimed.

WHEREAS, there are approximately 25,000 properties within Allegheny County, which are presently classified as exempt from the Real Property Tax; and

WHEREAS, while these properties are exempt from the Real Property Tax, these properties nonetheless are consumers of essential County government services and utilize County facilities; and

WHEREAS, the exemption from the Real Property Tax in many instances provides substantial savings to the owners of tax exempt properties; and

WHEREAS, the County needs to initiate a regular annual reporting process to verify the claimed tax exempt status of these properties; and

WHEREAS, County Council finds that it is necessary and proper for the continued viability of certain essential services it provides or causes to be provided, including, but not limited to, public transportation, public safety and public works, which benefit the owners and occupiers of tax-exempt properties as the same do all County residents and property owners, that there be a requisite partial contribution from the County tax exempt properties toward the cost of said services;

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. Amendment of the Code

The Allegheny County Code of Ordinances, Division 4, is hereby amended by the creation of a new Chapter 480 as follows:

Chapter 480 Essential Services and Tax Exempt Certification

§480-01. Tax Exempt Certification and Essential Services Fee.

- A. Except as set forth in §480-03 of this Article, each property for which an exemption is claimed in whole or in part from the Real Estate Property Tax shall be required, on an annual basis, to obtain exemption from the real property tax and pay a Tax Exempt Certification and Essential County Services Fee (the "Fee") as set forth in §480-02. The County Treasurer shall prescribe the appropriate regulations for payment of the Fee and the enforcement of this Article, and shall also prescribe a form, to be known as the "Tax Exempt Certification and Essential County Services Fee Application and Payment Form" (the "Form") for application for the real property tax exemption and payment of the Fee. Said regulations and the Form shall be subject to approval of County Council. The applicant shall recite on the Form the property(ies) claimed to be exempt and the bases therefore, together with a description thereof, including the total gross square footage of all structures thereon. The applicant shall also calculate the Fee and submit payment thereof along with the Form and return the same to the County Treasurer.
- B. Annually, the County Treasurer shall mail the forms to the record owners of all tax exempt properties within the County. The completed application form shall be returned to the Treasurer, along with the fee set forth in §480-02, no later than October 31 of each year.

§480-02. Determination of Fee.

The Fee shall be determined as follows:

- A. The sum of \$200 for every 1,000 square feet of any and all structures on a parcel claimed to be exempt in excess of the first 1,000 square feet of all structures, in the aggregate, on such a parcel.
- B. In the event that the fee calculated as due and payable by any entity for any individual property under the terms of this Section is less than \$25, that entity shall not be required to pay such fee.
- C. In the event that an entity that is subject to the fee(s) prescribed by this Chapter donates real or personal property to Allegheny County or provides services to the County, including but not limited to leasing office space, at

a discount or free of charge pursuant to an executed contract, that entity shall be entitled to a credit against the Allegheny County Essential Services Fee(s) equal to the full market value of the donated real or personal property or the discounted service rendered, as determined by the Office of Property Assessment in the case of real leasehold property, or the County Manager in the case of personal property or discounted services. The credit established by this Subsection shall be deemed to exist as of the date of final approval of the required Ordinance accepting the donation(s). In the event that the credit exceeds the amount of the Allegheny County Essential Services Fee(s) due and payable to the County in the tax year in which the donation is accepted, the credit may be carried forward and applied to Essential Services Fee(s) due and payable to the County by the donating entity for a maximum of five (5) years. Credits established by this Subsection shall not be transferrable, and may only be claimed by the entity listed as the donor in the Ordinance accepting the donation in the case of property or the entity signing a contract with the County for the provision of services at a discounted rate. Any credits allowable under the terms of this Subsection as a result of offering services to the County at a discounted rate shall expire when the contract under which the services are provided expires.

§480-03. Exemption from Payment of Fees.

Notwithstanding the foregoing, nothing contained herein shall require any structure or portion thereof owned: by any governmental entity or taxing body; authority; or used solely as a church or other place of religious worship; as a pre-school, elementary, high school or special education, trade or training school not beyond the 12th grade; or used solely for police, fire (including volunteer fire and relief), public works or emergency services; or used solely to provide, free of charge, food, clothing, temporary shelter or medical services for the poor, the disabled, the unemployed or the homeless; or free libraries open to the public to make the payment set forth in §480-02.A. of this Article.

§480-04. Application of Payments.

All payments of the Fee shall be applied to the cost of providing essential County services including, but not limited to, public transportation, public safety and public works, as well as for the costs incurred by the County relative to the implementation, administration and enforcement of this Ordinance.

§480-05. Appeals.

Any individual or entity subject to the fee payment provisions of this Chapter shall have the right to appeal the applicability of this Chapter or the levy of any fee relating to parcels owned by that individual or entity. All such appeals shall be heard by the Board of Property Assessment Appeals and Review.

§480-06. Noncompliance.

In the event that any individual or entity subject to the terms of this Chapter does not fully comply with the requirements as set forth herein, such individual or entity shall be required to pay a fine of \$500 for each day of noncompliance.

SECTION 3. Effective Date

The provisions of this Ordinance shall become effective on January 1, 2010.

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 Ordinance.

PRIMARY SPONSOR: COUNCIL MEMBER McCULLOUGH

CO-SPONSORS: COUNCIL MEMBERS FUTULES, MACEY & ROBINSON

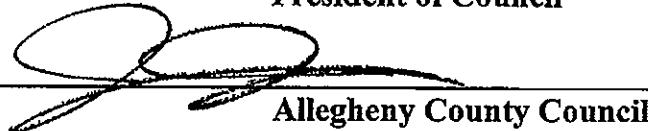
Enacted in Council, this 4th day of November, 2009,

Council Agenda No. 3819-08.



Rich Fitzgerald
President of Council

Attest:



Allegheny County Council

Chief Executive Office _____, 2009

Approved: _____

Dan Onorato
Chief Executive

Attest: _____

Donna Fodi
Executive's Secretary