



Text File

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Committee: Committee on Finance and Law

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Ordinance Directing the Allegheny County Board of Elections to place before the qualified voters of the City of Pittsburgh at the 2020 November General Election a referendum question, "Shall the Pittsburgh Home Rule Charter, Article Two, Executive, be amended and supplemented by amending and adding new language to Sections 229 and 230 and adding a new Section, 231, expanding the powers of the Independent Citizen Police Review Board to allow the Board to require police officers to participate in investigations, conducting performance audits of the Police Bureau and preventing the removal of Board members except for just cause and with City Council approval?"

(Cablecast Public Hearing held 7/8/20)

Whereas, in 1968, the electors of the Commonwealth of Pennsylvania approved various amendments to the Constitution of the Commonwealth of Pennsylvania ("Pennsylvania Constitution of 1968", "state Constitution"), among which were amendments which granted to municipalities for the first time the right and power to frame and adopt home rule charters and enjoined municipalities from the deprivation or discrimination against the exercise and enjoyment of the civil rights of any person; and,

Whereas, in 1972, pursuant to Article IX, Section 2 of the Pennsylvania Constitution of 1968, the General Assembly enacted the Home Rule Charter and Optional Plans Law, which established the process by which municipalities could frame and adopt a home rule charter; and,

Whereas, in 1974, the qualified voters of the City of Pittsburgh approved the adoption of the Pittsburgh Home Rule Charter (the "Charter") and thus the City became a home-rule municipality; and,

Whereas, the Home Rule Charter and Optional Plans Law, 53 Pa.C.S.A. § 2961, et seq., is a broad grant of municipal authority to the City of Pittsburgh; and,

Whereas, the City of Pittsburgh is a home rule municipality, a city of the second class and a political subdivision of the Commonwealth of Pennsylvania; and,

Whereas, the Constitution of the Commonwealth of Pennsylvania ("Pennsylvania Constitution"), Article I, § 26, states as follows: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right"; and,

Whereas, the Fifth Amendment to the Constitution of the United States mandates that, "*No person shall be ... deprived of life, liberty, or property, without due process of law...*"; and,

Whereas, the Fourteenth Amendment to the Constitution of the United States enjoins the states from taking any

actions which, “*deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws*”; and

Whereas, Article I, Section 8 of the Pennsylvania Constitution states, “[*t*]he people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, ...” and the Fourth Amendment to the Constitution of the United States similarly mandates that, “[*t*]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ...”; and,

Whereas, no government, federal, state or local, can function without the consent of the governed; and,

Whereas, the City has the constitutional obligation to safeguard the rights of its residents and visitors by requiring the same of its own employees; and,

Whereas, a number of citizens have impressed upon City Council the inviolability of the rights reserved to them in the Declaration of Rights in Article I, Sections 2, 8, and 26 of the state Constitution by operation of Article I, Section 25 of the same;

Whereas, after several years of increased deadly interactions between the African-American residents of this City and police, in 1996, the citizens demanded the establishment of an independent citizen police review board; and,

Whereas, the citizens pleaded with City Council in 1996 to help them but this request was met with deaf ears, as Council failed to take action on legislation which would place before the voters an amendment to the Home Rule Charter to establish an independent review panel; and,

Whereas, a number of Councilmembers and hundreds of citizens collected the necessary number of signatures to force a referendum to amend the Home Rule Charter by way of voter initiative, which, after legal action by the Fraternal Order of Police to defeat the petition, was allowed to proceed by the Courts, and 57% of the citizens voting gave their approval; and,

Whereas, in the almost 23 years since its establishment, the Citizen Police Review Board (“CPRB”) has worked tirelessly to achieve its mission to bring transparency and accountability to policing in this City and improve police-community relations; and,

Whereas, changes in the law, binding arbitration decisions and unfavorable Court rulings have worked to frustrate the purposes for which the electors successfully amended their Charter; and,

Whereas, the citizens of this City are again asking City Council to help them in protecting their constitutional rights; and,

Whereas, the public demands equitable, lawful treatment under the law by police officers and the above-mentioned state and federal constitutional obligations in addition to the constitutional right of the electors to alter or reform their government to ensure that the City’s constitutional obligations are met and the right of the

residents of the City to initiate the process of amending their Charter either by petition of the City's electors or by a successful demand to their representatives on City Council to initiate the process by enacting an ordinance calling for the same is the genesis of this action; and,

Whereas, City Council has received precisely such a demand to enact an ordinance to place this question on the ballot in the November 2020 General Election, and City Council has resolved not to fail its friends, neighbors, loved ones and employers again.

Be it resolved that the Council of the City of Pittsburgh hereby enacts as follows:

Section 1. The Allegheny County Board of Elections is hereby directed to place before the qualified voters of the City of Pittsburgh at the 2020 November General Election a referendum question:

"Shall the Pittsburgh Home Rule Charter, Article Two, Executive, be amended and supplemented by amending and adding new language to Sections 229 and 230 and adding a new Section, 231, expanding the powers of the Independent Citizen Police Review Board to allow the Board to require police officers to participate in investigations, conducting performance audits of the Police Bureau and preventing the removal of Board members except for just cause and with City Council approval?"

§ 228. - INDEPENDENT CITIZEN REVIEW BOARD.

There is established an Independent Citizen Review Board, comprised of seven members reflecting Pittsburgh's diversity, for the purpose of receiving, investigating and recommending appropriate action on complaints regarding police misconduct and for the purpose of improving the relationship between the police department and the community. The members shall serve four year staggered terms and serve until the appointment of their successors. Four of the seven appointments shall be made from a list of nine nominations submitted to the Mayor by City Council. Members shall be residents of the City, shall not be employed by the City or any of its Authorities, and shall serve without compensation.

§ 229. - POWERS OF INDEPENDENT CITIZEN REVIEW BOARD.

The Board shall:

- a. Receive all complaints related to the conduct of any sworn member of the Pittsburgh Bureau of Police and shall investigate selected complaints filed by individuals alleging police misconduct;
- b. Establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation;
- c. Provide advice and recommendations to the Mayor and the Chief of Police on policies and actions of the Police Bureau, including recommendations on police training, hiring and disciplinary policies and specific recommendations of discipline for individual officers; provided, however, the Mayor and the Chief of Police shall retain full and ultimate authority to set disciplinary policies or take other actions deemed appropriate relative to the Police Bureau.
- d. Hold public hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath and in connection therewith require the production of evidence relating to any other matter under investigation or any questions before the board and do all other things necessary to fulfill its purpose.

- e. The Board shall employ and supervise a staff including a solicitor, as necessary. The Board shall adopt procedures and rules necessary to fulfill its purpose.
- f. City Council may by ordinance adopt regulations to effectuate this Charter provision.
- g. With the Controller, jointly conduct performance audits of the Bureau of Police or its successor, notwithstanding any other provision of this Charter, whenever the Board and the Controller decide such joint performance audits are necessary.
- h. Be subject to fiscal audits by the City Controller whenever the Controller decides it is necessary.
- i. The Board and the Commission on Human Relations, its adjuncts or successors, shall develop protocols necessary to assure complaints alleging unlawful discriminatory conduct by sworn police officers are referred to the Commission on Human Relations for evaluation and disposition if the Commission finds probable cause to proceed.

§ 230. - RESPONSE TO RECOMMENDATIONS OF INDEPENDENT CITIZEN REVIEW BOARD.

- a. All officers and employees of the Bureau of Police, the Department of Public Safety, and the Office of Municipal Investigation, adjuncts or successors, shall participate in all investigations conducted by the Independent Citizen Review Board as required by the Board.
 - 1. This participation includes production of all officer statements and witness statements.
 - 2. The failure of any police officer to do so shall constitute just cause for discharge.
- b. Neither the Chief, Director of Public Safety, their successors nor the Mayor shall render a final disciplinary decision regarding an act of police misconduct subject to an active investigation by the Board until the Board submits its findings and recommendations to them. The foregoing shall not apply where the Board is unable to comply with the timing requirements applicable to the City by law or to ensure the public safety. Within thirty (30) days of submission of a recommendation by the Board to the Mayor and the chief of Police, they shall respond in writing as to whether such recommendations are accepted, rejected or will be implemented with modifications.

§ 231. REMOVAL OF INDEPENDENT CITIZEN REVIEW BOARD MEMBERS

Notwithstanding any other provision of this Charter the mayor may remove a Board member only for just cause as provided herein. The Mayor shall notify the Board and City Council, detailing the findings of cause. If the Mayor recommends removal, unless City Council, by a two-thirds (2/3) vote, disapproves this finding within ten (10) days of notification, the recommendation of the Mayor shall be final, and the Mayor shall cause the member's removal.

Section 2. City Council shall, upon completion of the legislative process, shall cause a copy of this ordinance to be filed with the Allegheny County Board of Elections pursuant to the Home Rule Charter and Optional Plans Law, 53 Pa.C.S.A. § 2961, et seq., as amended.

Section 3. The City Clerk is hereby authorized and directed, upon notification by the Allegheny County Board

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of Elections of the acceptance, by the Board, of the referendum question, to cause a copy of this ordinance along with a summary, approved by Council, to be sent by United States Mail to every registered elector in the City within thirty (30) days of the November 3, 2020 General Election, in addition to causing the same to appear on the City's website and sending, by electronic mail ("e-mail"), to any person who shall request a copy.