



Text File

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Bill No: 2020-0405, **Version:** 2

Committee: Committee on Public Safety
Services

Status: Passed Finally

Ordinance supplementing the Pittsburgh Code of Ordinances, Title One -- Administrative, Article III - Organization, Chapter 116: Department of Public Safety, to add a new subsection, § 116.02A - "Duty to Intervene", by requiring sworn and unsworn police employees and officers to stop or attempt to stop another employee or officer from applying inappropriate force or knowingly depriving any person of any constitutionally or statutorily-guaranteed right.

(Cablecast Public Hearing held 7/15/20 & Cablecast Post Agenda held 7/16/20)

Whereas, on December 23, 2019, the Honorable William M. Peduto, Mayor of the City of Pittsburgh, signed into law Resolution Number 843 of 2019, declaring racism a "public health crisis" in the City of Pittsburgh, a Home Rule municipality and political subdivision of the Commonwealth of Pennsylvania; and,

Whereas, the City of Pittsburgh recognizes the history of racism in Pittsburgh and the country, and how it has led to many current-day disparities in education, health and safety, job attainment, income and wealth, housing and healthcare, harmful, injurious and at times, deadly interactions with police officers, disproportionate rates of incarceration for people of color and other pernicious systems of injustice; 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."

Whereas, Article I, § 8 of the Pennsylvania Constitution states, "The 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, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,..."; and,

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Whereas, the above-referenced constitutional provisions impose upon City Council and the Mayor a legal mandate to enact laws and impose regulations upon the agencies, departments and other units of the City's government; and,

Whereas, the Pittsburgh Home Rule Charter, Section 201, vests the executive, administrative and law enforcement powers in the mayor, Section 301 vests the legislative power in the City Council; and,

Whereas, the Pennsylvania Second Class City Code ("SCCC"), Section 53 P.S. § 23158 empowers the City, "To make all such ordinances, by-laws, rules and regulations, not inconsistent with the Constitution and laws of this Commonwealth, as may be expedient or necessary,... for the proper management, care and control of the city and its finances, and the maintenance of the peace, good government and welfare of the city... and the same to alter, modify and repeal at pleasure..."; and,

Whereas, 53 P.S. § 23119 of the SCCC states that the City shall have the power "To establish and maintain night watch and police, and define the duties of the same"; and,

Whereas, 53 P.S. § 23120 of the SCCC states that the City shall have the power to "To regulate the police of the city and to impose fines, forfeitures and penalties for the violation of any ordinance..."; and,

Whereas, the Supreme Court of Pennsylvania cited, in its ruling in favor the City's Paid Sick Days Ordinance last year, *Ziegler v. City of Reading*, 142 A.3d 119, 134 (Pa. Cmwlth. 2016), which stated, "[A]lthough home rule cities may not be limited or restrained by their former municipal codes, there is no law preventing a home rule charter from exercising powers bestowed by its former code."; and,

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

Whereas, the City has both the constitutional and statutory obligation to safeguard the rights of its residents and visitors and the statutory authority to require the same of its own employees; and,

Whereas, the public's right to and demand for equitable, lawful treatment under the law by police officers and the above-mentioned state and federal constitutional obligations in addition to the City's legal authority to act are grounded in both its Home Rule Charter and the Second Class City Code and impose upon the City a heightened obligation to regulate and supervise its Police Bureau irrespective of the Act of June 24, 1968, P.L. 237; and,

Whereas, such Ordinances and regulations are clearly in the public interest and Council expressly declare the same a public purpose.

NOW, THEREFORE, BE IT RESOLVED, THAT THE COUNCIL OF THE CITY OF PITTSBURGH HEREBY ENACTS AS FOLLOWS:

Section 1. The Pittsburgh Code, Title One -- Administrative, Article III - Organization, Chapter 116:

Department of Public Safety, is hereby supplemented to add a new subsection, § 116.02A - “Duty to Intervene”

§ 116.02A: Duty to Intervene.

- a) While within the City of Pittsburgh, it shall be the duty of a sworn Bureau of Pittsburgh police officer who has notice of and a realistic and reasonable opportunity to intervene where another City officer or employee is acting in a manner to knowingly deprive any person of any civil or constitutional right, including where the use of unreasonable force is being applied, to stop or attempt to stop that officer or employee from the actions depriving the individual of a known right and from the use of unreasonable force. The term “unreasonable force” shall include the use of unreasonable force in circumstance where reasonable force is otherwise constitutionally permissible and/or where force is no longer required. However, where such intervention could be physically dangerous to either the individual being deprived of a right, the intervening party, or other member of the public there is no duty to intervene. Nothing in this exception shall affect the duties required in subsections (b) and (c) of this subsection.

- b) It shall additionally be the duty of all employees and sworn police officers and recruits of the Bureau to immediately report all such incidents they have witnessed in subsection (a) directly to the Chief of Police, the Office of Municipal Investigations or its successor and the Director of Public Safety, and when urgently necessary, the Mayor. No employee or sworn police officer or recruit of the Bureau shall be subject to discipline by the Bureau for compliance with this subsection.

- c) It shall be the duty of the Public Safety Director and the Chief of the Bureau of Police to ensure that all sworn police officers and recruits of the Bureau of Police receive proper and ongoing training regarding the civil and constitutional rights of the public and to discipline Bureau sworn police officers and recruits for all such violations of this subsection.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate this Chapter consistent with applicable law and collective bargaining agreements.

Section 3. This Ordinance shall take effect immediately upon passage.