

No. 36-23-OR

AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending the Administrative Code of Allegheny County Code, Part 2, entitled "Organization and Structure of County Government," through the establishment of a new Article 214, entitled "Jail Oversight Board" in order to provide for the codification of operations of the Jail Oversight Board in accordance with Commonwealth law, to establish a statutory authorization for the Allegheny County Jail Oversight Board's retention of a solicitor to assist it in its functions, and to establish the Board's authority to expend future appropriations relating to the Allegheny County Jail's Incarcerated Individuals Welfare Fund.

Whereas, the Allegheny County Jail Oversight Board is established pursuant to the terms of 61 Pa.C.S.A. §1721, *et. seq.* (hereinafter "the JOB statute"); and

Whereas, §1723 of the JOB Statute expressly indicates that the County's Jail Oversight Board is a direct continuation of the County's former Prison Board: "[t]here is hereby established in each county a county jail oversight board which shall be named the (Name of County) County Jail Oversight Board. The board shall be a continuation of the county prison board originally established under the former act of December 10, 1980 (P.L. 1152, No. 208), known as the Second Class County Prison Board Act, and former Article XXX-A of the act of July 28, 1953 (P.L. 723, No. 230), known as the Second Class County Code."; and

Whereas, the Allegheny County Prison Board (and by continuation also the Jail Oversight Board) is specifically enumerated as a "retained County agency" under the terms of §5-215.01.A of the Administrative Code of Allegheny County; and

Whereas, pursuant to §1723(b) of the JOB Statute, the Board consists of the Chief Executive, two judges of the Court of Common Pleas, the County Sheriff, the County Controller, the President of County Council (or his/her designee), and three citizen members; and

Whereas, per §1724 of the JOB Statute, the Jail Oversight Board's powers and duties include "the operation and maintenance of the prison and all alternative housing facilities, the oversight of the health and safekeeping of inmates and the confirmation of the chief executive's selection of a warden," ensuring "that the living conditions within the prison and alternative housing facilities are healthful and otherwise adequate," conducting unannounced inspections of the County Jail and interviews with incarcerated persons to ascertain living conditions at least twice each year, ensuring "that the prison is being operated in accordance with its regulations and the laws and regulations of this Commonwealth and of the United States," and investigating "allegations of inadequate prison conditions and improper practices occurring within the prison and may make such other investigations or reviews of prison operation and maintenance."; and

Whereas, in furtherance of the oversight duties prescribed by §1724, the JOB Statute specifically requires that “[t]he books, papers and records of the prison, including, but not limited to, the papers and records of the warden and those relating to individual inmates, shall at all times be available for inspection by the board.”; and

Whereas, also in furtherance of the oversight powers and duties established by the JOB Statute, the Jail Oversight Board has determined that it is necessary to receive professional legal advice relating to its functions, meeting procedures, authority, and other matters from time to time; and

Whereas, at the time of introduction of this Ordinance, legal advice is provided to the Jail Oversight Board by an assistant County solicitor; and

Whereas, this assistant County solicitor serves as an at-will employee of the Chief Executive in the Law Department, as do all Law Department employees, including the County Solicitor;

Whereas, the Allegheny County Jail is established as a department of Allegheny County on the County’s Organizational Chart, reporting solely to the County Manager and Chief Executive; and

Whereas, the Allegheny County Jail is represented in legal actions and receives legal advice from the Allegheny County Law Department; and

Whereas, at the time of introduction of this Ordinance, the assistant County solicitor who provides advice to the Jail Oversight Board is the same individual assistant County solicitor who represents and provides advice to the County Jail; and

Whereas, pursuant to §1726 of the JOB Statute, the Warden of the County Jail is selected by the Chief Executive, subject to confirmation by the Jail Oversight Board; at all times thereafter, the warden is solely answerable to and is an at-will employee of the Chief Executive: “[t]he chief executive shall appoint a warden subject to confirmation by the board. The warden shall serve at the pleasure of the chief executive, who shall fix an appropriate salary.” and

Whereas, it is the judgment of Council that the role of the Jail Oversight Board will from time to time require the Board to take positions and conduct activities that are not necessarily harmonious with - or that may be diametrically opposed to – the viewpoints of the Chief Executive and/or County Jail Warden; and

Whereas, it is further the judgment of Council that requiring the Oversight Board to rely upon the same Law Department that both advises and represents the County Jail and Chief Executive inevitably presents the appearance of potential conflicts of interest, at a bare minimum; and

Whereas, it is further the judgment of Council that the Jail Oversight Board was specifically established to provide for impartial oversight of the administration and maintenance of the Allegheny County Jail, and that requiring the Board to receive legal advice from a source that is an at-will employee of a single Oversight Board member (who also is directly responsible for the operations of all County departments, including the County Jail) is directly contrary to this impartial oversight function; and

Whereas, these judgments are entirely consistent with the findings of the American Bar Association: *“[i]n order for monitoring assessments and evaluations to be objective and undistorted by inappropriate pressures, the monitoring entity must be wholly independent of the correctional agency that is operating or utilizing the facility being inspected.* The monitoring entity, for example, should not be under the correctional agency’s authority or supervision and should not be dependent on the agency for funding, space, staff support, or the meeting of other operational needs.” *ABA Key Requirements for the Effective Monitoring of Correctional and Detention Facilities*, p. 6, Requirement #1, August 2008 (emphasis added); and

Whereas, the JOB Statute is silent with regard to the provision of legal advice to the Jail Oversight Board; and

Whereas, it is therefore the desire of Council to provide a clear statutory authorization for the Jail Oversight Board to obtain legal advice and services from a qualified attorney with no appearance of or potential for conflicts of interest arising by virtue of being an at-will employee of the Chief Executive; and

Whereas, it is also the desire of Council to codify the provisions of Commonwealth law within the Administrative Code, and to establish the intent of Council with regard to certain budgetary appropriations that may be made from time to time;

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of the Preamble.

The recitations contained within the Preamble to this Ordinance are hereby incorporated by reference herein.

SECTION 2. Amendment of the Allegheny County Code of Ordinances.

The Allegheny County Code of Ordinances is hereby amended and supplemented by the addition of a new Article 214 entitled “Jail Oversight Board”, and comprised as follows:

Article 214 Jail Oversight Board

§5-214.01. Allegheny County Jail Oversight Board.

Pursuant to the terms of 61 Pa.C.S.A. §1723, the Allegheny County Jail Oversight Board shall function as a continuation of the former Allegheny County Prison Board, previously established under the terms of the Second Class County Prison Board Act. For all purposes, references to the former Prison Board within this Administrative Code shall be deemed to also refer to the Jail Oversight Board.

§5-214.02. - Jail Oversight Board Membership.

- A. As provided for under the terms of 61 Pa.C.S.A. §1723(b), the Allegheny County Jail Oversight Board shall consist of nine members, as follow:
 - 1. The county chief executive.
 - 2. Two judges of the court of common pleas, one of whom shall be the president judge, or his designee who shall be a judge, and one judge appointed by the president judge.
 - 3. The county sheriff.
 - 4. The county controller.
 - 5. The president of county council or his designee.
 - 6. Three citizen members as provided in Subsection B.
- B. Qualifications of citizen members - The citizen members of the Jail Oversight Board shall not be employees of the county or of the Commonwealth. They shall serve for a term of three years and shall be representative of the broad segments of the county's population and shall include persons whose background and experience indicate that they are qualified to act in the interest of the public. The citizen members shall be appointed by the county chief executive with the consent of county council.

§5-214.03. Powers and Duties of the Jail Oversight Board.

The Allegheny County Jail Oversight Board shall exercise, without limitation, all of the powers and duties established at 61 Pa.C.S.A. §1724, or validly enacted successor statute.

§5-214.04. Jail Oversight Board Solicitor; Retention and Appropriations.

- A. The Board's expenses, arising from the obligations imposed pursuant to Commonwealth law or this Administrative Code, shall be evaluated at the sole discretion of Council during the annual budget process provided by the Home Rule Charter of Allegheny County and this Administrative Code.
- B. The Board shall receive reasonable funding for and shall hire and supervise a solicitor as authorized through the annual budget in order to provide legal advice as needed. Such solicitor's general retainer shall not exceed \$1,500 per month, although billing additional amounts for atypical services rendered, including but not limited to in-court appearances, shall be permissible to the extent authorized by annual budgetary appropriations.
- C. Under no circumstances shall the solicitor hired pursuant to the terms of this Section be a full time or part time County employee at any time during his/her service to the Board. Neither the solicitor hired pursuant to the terms of this Section nor any law firm or other

entity employing such solicitor on a full time, part time, or contract basis shall be a party to any contract with Allegheny County at any time during the course of the solicitor's service to the Board.

- D. The Board shall vote upon hiring a solicitor at a public meeting, and such vote shall be subject solely to the budgetary and other requirements established under the terms of this Section. Any solicitor so approved shall serve at the pleasure of the Board and until such time as the Board votes at a public meeting to discontinue such service, and at all times during his/her service, the Board's solicitor shall be a member in good standing of the Bar of the Supreme Court of Pennsylvania. Under no circumstances shall any individual Board member or any County elected official or employee exercise his or her authority to circumvent, limit, or otherwise alter the Board's selection or retention of a solicitor; the provisions of this Section shall be the sole determinant of a Board solicitor's employment status.
- E. Nothing contained within this Section shall be deemed to empower the Board to establish a binding demand for funding beyond that required herein and appropriated in each annual budget.

§5-214.05. Other Appropriations.

In the event that any annual budget established via resolution validly enacted in accordance with the provisions of Article IV, §2(b) of the Home Rule Charter of Allegheny County and/or Administrative Code of Allegheny County establishes an appropriation to the Allegheny County Jail Incarcerated Individuals Welfare Fund, the Jail Oversight Board shall be empowered to authorize expenditures of such appropriation(s) in any fashion consistent with Federal and Commonwealth law, and subject to any condition(s) governing expenditure of the appropriated funds established in such budget.

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 Ordinance.

PRIMARY SPONSORS: COUNCIL MEMBER HALLAM

CO-SPONSORS:

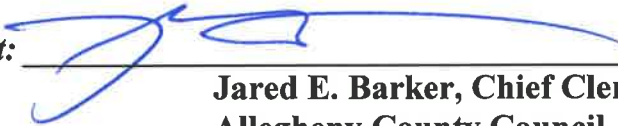
Enacted in Council, this 5th of December, 2023.

Council Agenda No. 12854-23.



Patrick Catena
President of Council

Attest:



Jared E. Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2023.

Approved: _____

Rich Fitzgerald
Chief Executive

Attest: _____

Jennifer Liptak
Chief of Staff