

NO. _____

ORDINANCE

An ordinance amending and supplementing the Allegheny County Code of Ordinances, Division 6, entitled “Parks and Recreation,” Chapter 650, Entitled “Rules and Regulations,” through the creation of a new Section 650-4, entitled “Enforcement,” in order to establish clear parameters for activities undertaken by County law enforcement personnel in the County parks.

Whereas, the Home Rule Charter of Allegheny County, Article IV, §2(k) vests Allegheny County Council with the power and duty to, “[b]y ordinance, lease, convey, vacate or abandon, or permit the use of County land, buildings or other real or personal property;” and

Whereas, the Allegheny County Code of Ordinances, Chapter 650 establishes rules and regulations governing behavior and activities within the County parks; and

Whereas, pursuant to the terms of §650-3, any individual violating the provisions of Chapter 650 is, upon conviction, guilty of a summary offense punishable by a fine of \$100 to \$300; and

Whereas, on March 3, 2022, the Allegheny County Police, in the absence of any advance notice or consultation with Allegheny County Council, announced the creation of a program in which the County Police would begin issuing “vehicle report cards” to motor vehicles within the County parks; and

Whereas, as noted in the press release announcing the program, “...officers on patrol in county parks will be looking at vehicles and giving feedback to drivers on whether they vehicle is an easy target for thefts. The report card may note that the vehicle had valuables in plain view, doors unlocked, keys left in the vehicle, a window open, or other characteristic that makes it an easy target for theft. Drivers can also receive a report card that they’ve made their vehicle less desirable and a harder target for would-be burglars.”; and

Whereas, this description of the program clearly and unambiguously indicates that, although it is presumed by Council that the program likely is well-intentioned, by participating in it, County Police officers will necessarily be investigating vehicles that are within the County parks – even to the point of looking for keys and valuable items and testing whether the doors are unlocked – in the absence of any articulable suspicion to believe that the vehicle owner or passenger(s) have undertaken any potentially criminal activity or have committed any violation(s) of the Commonwealth’s Motor Vehicle Code or County park rules or regulations; and

Whereas, in addition, the program description also contains essentially no limitations on what vehicle characteristics may be investigated and/or searched by County Police officers, as it specifically notes that officers will be looking for undefined “other characteristics” that arguably render vehicles attractive targets for theft; and

Whereas, the Fourth Amendment to the United States Constitution guarantees 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 no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”; and

Whereas, the mobility and configuration of motor vehicles has given rise to certain exceptions to the general Fourth Amendment warrant requirements; for example, the United States Supreme Court has noted that “[o]ne has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one’s residence or as the repository of personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view.” Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality opinion), *quoted in* United States v. Chadwick, 433 U.S. 1, 12 (1977). *See also* United States v. Ortiz, 422 U.S. 891, 896 (1975); United States v. Martinez-Fuerte, 428 U.S. 543, 561 (1976); South Dakota v. Opperman, 428 U.S. 364, 367–68 (1976); Robbins v. California, 453 U.S. 420, 424–25 (1981); United States v. Ross, 456 U.S. 798, 807 n.9 (1982); and

Whereas, while exceptions to the warrant requirement clearly do exist within the context of motor vehicles, the U.S. Supreme Court has also very clearly indicated that a stop and warrantless search of a vehicle must be based on probable cause to believe that criminal activity has taken place; random vehicular stops and searches are not permissible absent at least some articulable suspicion that a traffic or safety violation or some criminal violation has occurred. *See, e.g.,* Whren v. United States, 517 U.S. 806 (1996) (holding that the existence of probable cause to believe that a traffic violation has occurred establishes the constitutional reasonableness of traffic stops regardless of the actual motivation of the officers involved, and regardless of whether it is customary police practice to stop motorists for the violation observed) and Arkansas v. Sullivan, 532 U.S. 769 (2001) (*per curiam*) (upholding search of the motorist’s car for a crime not related to the traffic offense); and

Whereas, fixed checkpoint stops in the absence of any articulable suspicion are permissible, provided that they can promote highway safety (e.g. DUI checkpoints), but not when performed merely for general law enforcement purposes. *See, e.g.,* Michigan Dep’t of State Police v. Sitz, 496 U.S. 444 (1990) (upholding a sobriety checkpoint at which all motorists are briefly stopped for preliminary questioning and observation for signs of intoxication) and City of Indianapolis v. Edmond, 531 U.S. 32 (2000) (vehicle checkpoint set up for the “primary purpose [of] detect[ing] evidence of ordinary criminal wrongdoing” (here interdicting illegal narcotics) does not fall within the highway safety or border patrol exception to the individualized suspicion requirement, and hence violates

the Fourth Amendment). Edmond was later clarified in Illinois v. Lidster, 540 U.S. 419 (2004), in which the Court upheld the use of a checkpoint to ask motorists for help in solving a recent hit-and-run accident that had resulted in death, as the public interest in solving the crime was deemed “grave,” while the interference with personal liberty was deemed minimal; and

Whereas, the U.S. Supreme Court has also held that officers who have stopped a car to issue a routine traffic citation may conduct a *Terry*-type search - even to the point of conducting a pat-down of driver and passengers if there is reasonable suspicion that they are armed and dangerous – those officers cannot conduct a full-blown search of the vehicle unless they exercise their discretion to arrest the driver instead of issuing a citation. *See, e.g., Knowles v. Iowa*, 525 U.S. 113 (1998) (invalidating an Iowa statute permitting a full-blown search incident to a traffic citation) and Atwater v. City of Lago Vista, 532 U.S. 318 (2001) (police officers, in their discretion, may arrest a motorist for a minor traffic offense rather than issuing a citation); New York v. Belton, 453 U.S. 454 (1981) (officers who arrest an occupant of a vehicle may make a contemporaneous search of the entire passenger compartment, including closed containers); Thornton v. United States, 541 U.S. 615 (2004) (the *Belton* rule applies regardless of whether the arrestee exited the car at the officer’s direction, or whether he did so prior to confrontation); and

Whereas, it is the judgment of Council that, although the law governing motor vehicle searches under the Fourth Amendment continues to evolve, the caselaw cited herein indicates that, while warrants are not always required for police to conduct a vehicular search, such searches cannot generally be conducted in the complete absence of any probable cause or articulable suspicion that some type of criminal activity relevant to the search has actually taken place; and

Whereas, it is further the judgment of Council that the “vehicle report card” program recently announced by the Allegheny County Police necessarily and by definition involves searching the contents and/or condition of motor vehicles in a fashion that far exceeds ordinary observation, and is most analogous to a non-consensual, warrantless search of a vehicle’s passenger compartment at a stationary vehicle checkpoint for general law enforcement purposes unrelated to highway safety and in the absence of probable cause or any reasonable suspicion that any violation has occurred, which appears to run entirely contrary to current law regarding such searches; and

Whereas, it is further the judgment of Council that the “vehicle report card” program, as described, may also have a chilling effect on the public’s use and enjoyment of the County parks, insofar as law-abiding citizens may have no desire to implicitly grant permission to County Police officers to engage in a systematic program of poring over their vehicles and personal belongings merely because they happen to be parked in a County park; and

Whereas, it is accordingly the desire of Council to clearly delineate the responsibilities of County Police officers and other County personnel within the County parks;

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 6, entitled "Parks and Recreation," Chapter 650, Entitled "Rules and Regulations," is hereby amended through the creation of a new Section 650-4, entitled "Enforcement," and comprised as follows:

**Chapter 650
Parks and Recreation**

§650-4. Enforcement.

- A. The provisions of this Section shall apply to any Allegheny County employee, including but not limited to employees of the Allegheny County Police and Allegheny County Sheriff.
- B. No County employee shall, under any circumstances, undertake any stop, search, inspection, review, or seizure of any individual or personal property owned by an individual within the boundaries of any County park in the absence of a search warrant or probable cause to believe that:
 - 1. A violation of any Federal, Commonwealth, or local criminal statute by the has occurred to which the individual or personal property is related; or
 - 2. A violation of any Allegheny County park rule or regulation, as delineated in §§650-1 and 650-2 of this Chapter, has occurred and to which the individual or property is related; or
 - 3. The individual or personal property to be stopped and/or searched constitutes a clear, present, immediate, and articulable danger to the safety of any person or animal.
- C. Nothing contained within this Section shall be read or otherwise interpreted to alter the jurisdiction of any non-County law enforcement agency or personnel.

SECTION 3. 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 4. 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 HALLAM

CO-SPONSORS:

Enacted in Council, this _____ day of _____, 2022,

Council Agenda No. _____

Patrick Catena
President of Council

Attest: _____
Jared E. Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2022

Approved: _____
Rich Fitzgerald
Chief Executive

Attest: _____
Sonya Dietz
Executive's Secretary