

NO. _____

ORDINANCE

An ordinance amending and supplementing the Allegheny County Code of Ordinances through the creation of a new Chapter 900, entitled "County Law Enforcement," in order to establish penalties for improper search warrant execution by Allegheny County law enforcement personnel.

Whereas, it is well-established by the courts of the Commonwealth of Pennsylvania that police agencies executing search warrants must adhere to the "knock and announce" rule, absent clear and identifiable exigent circumstances at the time that execution is attempted; and

Whereas, as noted in Pennsylvania Rule of Criminal Procedure 207, "[a] law enforcement officer executing a search warrant shall, before entry, give or make reasonable effort to give, notice of the officer's identity, authority, and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require the officer's immediate forcible entry....Such officer shall await a response for a reasonable period of time after this announcement of identity, authority, and purpose, unless exigent circumstances require the officer's immediate forcible entry....If the officer is not admitted after such reasonable period, the officer may forcibly enter the premises and may use as much physical force to effect entry therein as is necessary to execute the search."; and

Whereas, when interpreting the "knock and announce" rule, the Superior Court of Pennsylvania has noted that "[n]on-compliance with the requirement police officers give notice of their identity and purpose before attempting to enter private premises may be justified if the occupant is fleeing or attempting to destroy evidence or if the police are virtually certain the occupant is already aware of their purpose. However, the mere fact that the evidence being sought is easily destroyed does not suspend the requirement. There must be some affirmative indication to support a belief the evidence is being destroyed....Under limited circumstances, the knock and announce rule has been disregarded where police had reason to believe announcement prior to entry would imperil their safety....Vague allegations in a probable cause affidavit to a magistrate do little to protect the arresting officer and weaken the safeguards provided to the citizenry by the Constitution. The right, on the scene, under exigent circumstances, to break in unannounced recognizes that the peril to an officer serving a warrant is ever present and he must be able to protect himself. This usually can be done only at the time the warrant is being executed." *Commonwealth v. Grubb*, 407 Pa.Super. 79, 83-84 (1991) (citations omitted); and

Whereas, six years later, the Superior Court elaborated upon its holding in *Grubb*: "[t]he knock and announce rule protects the occupant's privacy expectation against unauthorized entry of unknown persons as well as prevents violence and physical injury to both the police and the occupants of the premises to be searched." *Commonwealth v. Dean*, 693 A.2d 1360, 1363 (Pa. Super. 1997) (citing *Commonwealth v. McDonnell*, 516 A.2d 329 (Pa. 1986); and

Whereas, as determined by the Superior Court in *Dean*, departure from the knock and announce rule was permissible in that case because the officers "...had specific and articulable reason to believe that they were in peril..." after having been notified by informants that the homeowner kept a gun ready for protection and that he had the weapon in his possession less than 48 hours before the warrant was served; and

Whereas, pursuant to the plain language of Pennsylvania Rule of Criminal Procedure 207, and the holdings of the Commonwealth's courts, including *Grubb*, *Dean*, and *McDonnell*, supra, it is the understanding of Council that the knock and announce rule may only be abrogated within the Commonwealth of Pennsylvania when (1) the occupants of a dwelling remain silent after repeated knocking and announcing, (2) the officers are virtually certain that the occupants of the premises already know their purpose, (3) the officers have a reasonable belief that a clear and articulable danger to their safety would result from knocking and announcing, or (5) the officers have a reasonable belief that the destruction of evidence is imminent; and

Whereas, it is the judgment of Council that the logic employed by the Superior Court in *Commonwealth v. Dean* and by the Pennsylvania Supreme Court in *Commonwealth v. McDonnell* is sound, and the knock and announce rule functions to prevent violence and physical injury to both private citizens and to the police; and

Whereas, this conclusion is bolstered by evidence that, from 2010 through 2016, at least 31 civilians and eight officers were killed during execution of no-knock warrants by SWAT teams, and in that same time period, at least seven federal lawsuits against officers executing no-knock warrants were settled for over \$1 million. *Kevin Sack (19 March 2017). "Door-Busting Raids Leave Trail of Blood - The Heavy Toll of Using SWAT Teams for Search Warrants". The New York Times. p. A1.; and*

Whereas, in the wake of the recent shooting death of Amir Locke in the course of a no-knock search warrant being executed by Minneapolis SWAT personnel, it appears that the current trend is a well-considered departure from no-knock search warrants, as a means of protecting the safety of both officers and private citizens (see, e.g., Nickeas, *There's a growing consensus in law enforcement over no-knock warrants: The risks outweigh the rewards*; CNN, February 12, 2022); and

Whereas, according to the above-referenced article, "[t]here's growing consensus among policing leaders that the risks of the tactic, which came into vogue during the height of the drug wars in the 1990s and into the 2000s, far outweigh any potential rewards."; and

Whereas, also according to the CNN article, “‘You have to go back years to understand why we have no knocks,’ said Thor Eells, executive director of the National Tactical Officers Association. ‘They were developed as a tool, through courts, for the preservation of evidence ... primarily crack cocaine. That’s no longer the case, and hasn’t been for at least ten years. (We)’ve been strongly teaching, advocating, for other alternatives.’”; and

Whereas, as also noted, “‘Peter Kraska, a researcher at Eastern Kentucky University who’s studied warrants and policing, said that no-knock warrants should be as difficult to obtain as they are dangerous to carry out...’ This (practice) has devolved into a mess once, it will again. Just stop. Just quit doing it,’ Kraska said. ‘Put legislation in place that brings back the original intent of the Fourth Amendment -- you’ve got to get a warrant, have to knock and announce, have to give proper notice, have to give time to answer the door, and if you need to engage in a risky arrest situation or volatile, dangerous arrest situation, figure out a different way to do it than to bust down a private resident’s door and manufacture a really dangerous situation.’”; and

Whereas, while it is the judgment of Council that the County cannot eliminate existing law (e.g. Pennsylvania Rule of Criminal Procedure 207 and the holdings of the Commonwealth’s courts) that allows for the execution of no-knock warrants under certain circumstances, it is also the judgment of Council that County law enforcement personnel must remain scrupulously adherent to existing guidelines during the execution of no knock search warrants in order to protect the safety of the public, and should be subject to sanctions if they depart from those guidelines; and

Whereas, on May 4 and November 4, 2021, Council’s Committee on Public Safety met to discuss another ordinance (Bill No. 11545-20) containing substantive language identical to this one, and was informed that the bill was unnecessary because County law enforcement personnel do not serve no-knock search warrants currently; and

Whereas, while it is the desire of Council to commend County law enforcement for following procedures that do not involve no-knock search warrants at this time, it is also the desire of Council to establish statutory guidance that will also apply to future administrations and law enforcement personnel, should they be inclined to reverse the current procedures; and

Whereas, it is the judgment of Council that the perfect time to establish such statutory guidance is now, insofar as it will require no alteration whatsoever to the policies and procedures of County law enforcement agencies that do not serve no-knock warrants, and the administrative burden of compliance therefore will be limited solely to providing training, rather than altering current practice as well;

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 is hereby amended through the creation of a new Division 9, entitled "Conduct," Chapter 900, entitled "County Law Enforcement," and comprised as follows:

**Chapter 900
County Law Enforcement**

§900.01. No Knock Search Warrants.

- A. Beginning no later than July 1, 2022, the Allegheny County Police and Office of the Allegheny County Sheriff shall, at least once annually and in additional sessions as necessitated by changes to the law of the Commonwealth or its interpretation by the courts, train and refresh all Officers and Deputies in their respective services on the current state of Pennsylvania law regarding the execution of search warrants and the knock and announce rule.
- B. Officers of the Allegheny County Police and Deputy County Sheriffs shall, at all times, remain strictly adherent to the provisions of Pennsylvania Rule of Criminal Procedure 207, or such successor rule, regulation, or statute as shall be in force, while executing any search warrant.
- C. Violation of the Commonwealth's standards regarding the execution of a search warrant by any Allegheny County Police Officer or Deputy Sheriff shall constitute a summary offense and, upon conviction, shall be punishable by a fine of not more than \$300, and/or a maximum of 30 days of imprisonment.

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 BENNETT

CO-SPONSORS: COUNCIL MEMBER PRIZIO

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