

ORDINANCE NO.

FILE OF CITY COUNCIL

BILL NO. 72 - 2020

OCTOBER 7, 2020

AN ORDINANCE

Amending the Ethics Code with the following provision: No compensated appointed official or employee of the City, excluding those in elected offices of the city, shall be a candidate for nomination or election to a city public office unless the employee shall have first resigned from employment with the city. The City employee must resign prior to the candidate's filing of the nominating petitions.

WHEREAS, the proper operation of our city's government requires that its public officials and employees act as fiduciaries entrusted with and responsible for the property and resources of the community; that they make governmental decisions and policies in the proper channels of the government structure, free of coercive or other improper influence; that they use their position in the best interests of the city rather than for personal interests, whether their own interests or those of their family, friends, or business associates; and that they do not, directly or indirectly, in a positive or negative sense, treat anyone preferentially, that is, other than in a manner generally accorded to city residents;

WHEREAS, it is central to gaining and retaining the public's trust in our city's government that public servants seek to avoid even the appearance of impropriety. Fulfilling one's role as public servant sometimes means sacrificing rather than gaining opportunities;

WHEREAS, when public servants make decisions that are not or do not appear to be impartial, this seriously undermines public confidence in government;

WHEREAS, the vast majority of municipal officials are well-meaning, being well-meaning is not enough. It is important that officials understand the conflicts they confront every day, appreciate their fiduciary obligations to city residents, and recognize the importance of preventing conflicts from occurring, disclosing conflicts when they arise, and withdrawing from any involvement in a matter where they have a conflict;

WHEREAS, nothing is more important to public trust than having public servants err on the side of disclosing every possible conflict and withdrawing from participation even where they feel certain they can act impartially;

WHEREAS, all of these concerns are of particular important given the recent history of the City where several of its officials, including the mayor and controller, were federally indicted and plead guilty or were found guilty of numerous criminal counts relating to illegal "pay to play" activities;

WHEREAS the Pennsylvania Supreme Court (“Court”) has held that a municipality “has a compelling interest which requires City officer and employees to resign before becoming a candidate for nomination or election for any public office....” Commonwealth ex rel. Specter v. Moak, 452 Pa. 482, 490, 307 A.2d 884, 889 (1973); see generally, Ricci v. Matthews, 2 A.3d 1297 (Pa. Cmwlth. 2010)(en banc)(noting that home rule jurisdictions have authority to enact ethics provision as those adopted in Moak because “A home rule jurisdiction may ‘exercise any power and perform any function not denied by [the Pennsylvania] Constitution, by its home rule charter or by the General Assembly.’”) (quoting Pa. Const. art. 9, §2) affirmed sub nominee Behr v. Matthews, 610 Pa. 455, 21 A.3d 1187 (2011);

WHEREAS the Court agreed with the rationale for this limitation, specifically that “an officer or employee who is a candidate for elective office is in a position to influence unduly and to intimidate employees under his supervision and because he may neglect his official duties in the interests of his candidacy.” Id.

WHEREAS, the City of Allentown is a Third Class Home Rule City organized and existing under the laws of the Commonwealth of Pennsylvania;

WHEREAS, pursuant to Article XI of the City of Allentown Home Rule Charter, Allentown City Council has maintained a Code of Ethics to guard against conflicts of interest; and

WHEREAS, in accordance with Article XI of the Home Rule Charter, Allentown City Council makes the following modifications to its Code of Ethics to further guard against conflicts of interest and ethical violations,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

SECTION ONE: That the following be added to Article 171.07, of the Ethics code and read as follows:

171.07 POLITICAL ACTIVITY

No appointed official or employee of the City shall use the prestige, power or influence of his position on behalf of any political party. (11821 9/1/70)

No appointed official or employee, other than temporary summer employees, shall orally, by letter or otherwise solicit or be in any manner concerned in soliciting any assessment, subscription or contribution to any political party. Such appointed officials and employees, or those seeking office on their own behalf, excluding temporary summer employees and elected officials, shall not take an active part in political campaigns for candidates for City office. No official or employee, whether elected or appointed, shall promise an appointment to any municipal position as a reward for any political activity nor remove or threaten the removal of another official or employee for failure to participate in political activity. (11821 9/1/70; 12192 7/7/76; 13137 7/1/92)

No compensated appointed official or employee of the City, excluding those in elected offices of the city, shall be a candidate for nomination or election to a city public office unless the employee shall have first resigned from employment with the city. The City employee must resign prior to the candidate's filing of the nominating petitions.

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SECTION TWO: That this Ordinance will take effect ten (10) days after final passage.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

