

Bill No. _____

No. _____

AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania amending Part 12, Government Review, of the Administrative Code of Allegheny County to add Article 1205, Voting Process Review Commission.

Whereas, Allegheny County voters have the right to know exactly how votes are processed, to have transparent elections, and to have computer scientists and cybersecurity experts analyze election software source code for malicious code which could manipulate elections; and

Whereas, the use of computer software that is proprietary can prevent concerned citizens who may have adequate expertise from checking the inner workings of the electronic vote counting hardware, denying them an ability to audit and verify the accuracy of the system; and

Whereas, Allegheny County's current voting system uses proprietary software which is not available for an independent security audit by outside computer and cybersecurity experts, making any assessment of the security of the system totally reliant upon the presentations of the vendor's representatives who have a vested interest in portraying the system as secure; and

Whereas, the Commonwealth of Pennsylvania has the authority to audit the proprietary source code of election systems which are approved and certified for use within the state, but after a decade of such systems being used by Pennsylvania's counties, it has yet to do so; and

Whereas, the consensus of cybersecurity experts is that it is possible to hack into an electronic voting system and alter the vote, substantially changing vote totals in subtle ways that are difficult to detect; and

Whereas, studies and reports have demonstrated that these systems suffer from a number of security problems including a susceptibility to viruses and deliberately inserted back-doors; and

Whereas, the iVotronic voting machines used by Allegheny County have an infrared (IR) port that can be accessed by various devices that have an IR interface and are capable of connecting to transmit data and software; and

Whereas, in 2007, ES&S, the vendor that supplied Allegheny County's current voting system, identified a security hole in its software which enables access into the iVotronic system software without a password and said it would fix the problem within a year, which now, a decade later, has yet to be corrected; and

Whereas, a majority of Pennsylvania counties use touch screen or push-button voting systems (DRE's) such as the ES&S iVotronic used in Allegheny County, which systems do not provide voter-verifiable paper ballots or other independent record that allows the voter to verify a correctly

cast vote, nor do they provide for meaningful audits or recounts to take place, and they lack adequate accessibility features for individuals with motor disabilities, which is particularly problematic for Pennsylvania's aging population; and

Whereas, analysis of data reported from each of the sixty-seven counties across the Commonwealth of Pennsylvania is inconsistent with regard to the number of registered voters, taken from three sources for the same time point – county website reports, the PA Department of State website, and its SURE database – with each of these sources reporting different values for what should be the exact same value at the same point in time; and

Whereas, the process used by Allegheny County to verify the integrity of the voting system operating software, while being the only county in the state to even perform such test, nonetheless has noteworthy limitations – the procedure prevents any machines that are tested from being used in the upcoming election; being constrained by the number of machines that can be taken out of service, the County checks a minimal, weakly random sample of machines, providing a cursory assurance that the code in the entire system has not been changed; and the method used in the verification to detect whether the software has been altered is the SHA-1 process, considered obsolete by Microsoft, Google, Apple, and Mozilla (all have announced SHA-1 will no longer be accepted by their browsers and as of January 1, 2017, they display red warnings for sites using it); and

Whereas, the hardware used by the County's firmware integrity verification relies upon Windows XP which is no longer supported by Microsoft; the tabulation system relies on obsolete Windows Software, and the consultant doing the verification has had to resort to using an old laptop in order to conduct it; and

Whereas, the separate parallel testing process which is used to test the system on election day as a verification of the county-wide system's integrity has characteristics which could enable an invasive software alteration to identify that it is being tested and therefore not perform its manipulation during the test, a feature well demonstrated by Volkswagen as being able to be undetected for a number of years; and

Whereas, the County's reliance upon its voting system not being connected to the Internet as rendering it completely safe from contamination or breach can provide a false sense of security as shown by Stuxnet, a malicious computer worm used to sabotage the Iranian nuclear program even though the affected Iranian computer control systems were not connected to the Internet or other network; and

Whereas, aging voting technology is vulnerable to manipulation and decreased integrity of the election system; the voting system equipment and software now being used by Allegheny County is thirteen years old; and other Pennsylvania Counties have reported increasing breakdowns and problems, among which is that the aging touch screens are increasingly prone to calibration errors even after having been checked, re-calibrated, and delivered to the polling place – with the result of potentially casting a vote for a candidate other than the one intended by the voter and relying solely upon a voter recognizing the error and reporting it, which may not be noticed by the first voter for whom the switch has occurred; and

Whereas, 310 registered voters in Allegheny County filed notarized affidavits with the Division of Elections on Monday November 28, 2016 – based on Pennsylvania Election Code, Title 25 P.S. Elections & Electoral Districts Chapter 14. Election Code Article XVII. Recounts and

Contests (a) Recounts – in order to force a recount in their respective election districts and precincts because they mistrusted the voting machines; and

Whereas, available proven technology in the form of a voter-verifiable paper ballot for accurate post-election audits would allow voters to be sure their vote was properly entered; and

Whereas, the Commission on Federal Election Reform issued the following recommendation regarding voting machines: “Congress should pass a law requiring that all voting machines be equipped with a voter-verifiable paper audit trail and, consistent with HAVA, be fully accessible to voters with disabilities. This is especially important for direct recording electronic (DRE) machines for four reasons: (a) to increase citizens’ confidence that their vote will be counted accurately, (b) to allow for a recount, (c) to provide a backup in cases of loss of votes due to computer malfunction, and (d) to test - through a random selection of machines - whether the paper result is the same as the electronic result”; and

Whereas, the Report of the Commission on Federal Election Reform, issued in September of 2005, notes that as of August 2005, 25 states had already mandated voter-verifiable paper ballots for each voter before they confirm their selections, and another 14 had introduced legislation to do so; and

Whereas, in 2005, Council Member William Russell Robinson introduced Bill No. 2246-05, a motion urging the Chief Executive to select voting machines in accordance with the requirements of HAVA and which would allow for the creation of a voter-verifiable paper record for each voter, and supporting HB 2000 and SB 977; this bill passed on 12/6/2005 by a voice vote; and

Whereas, in 2006, Council President Rich Fitzgerald introduced Bill No. 2432-06, a resolution which contains the same language found in Mr. Robinson’s Bill No. 2246-05, but it added that ballots should be randomly audited after each election to verify machine accuracy and performance; this bill passed 11-0 on 2/21/2006, and the Chief Executive signed this bill on March 2, 2006; and

Whereas, also in 2006, Council Member John DeFazio introduced Bill No. 2813-06, a resolution that also mirrors the language found in Mr. Robinson’s Bill No. 2246-05; this bill passed 15-0 on 10/10/2006, and was signed by the Chief Executive on October 17; and

Whereas, the capital budget amendment outlined in Bill No. 2463-06, introduced by Councilman Gastgeb, which was enacted March 27, 2006, to transfer bond proceed appropriations from the HAVA Compliant Voting Machines project and established a new project entitled HAVA Compliant Voting Machines Paper Verification System Upgrade, with an appropriation in the amount of \$3,000,000; Councilman Gastgeb’s amendment was intended to utilize county bond funds to establish a new project to provide for a system upgrade to the HAVA Voting Machines project to allow for paper ballots that leave an audit trail for voting verification, the \$3 million to remain in the capital budget until the money is spent or transferred and which remains unspent; and

Whereas, on 3/6/2007, Council Member DeFazio introduced Bill No. 3083-07, a resolution urging Congress to approve HR 811 to amend HAVA, to require the creation of voter-verifiable paper records for each voter using an electronic voting machine, which passed 12-0 on 3/6/2007, and was signed by the Chief Executive, March 15, 2007; and

Whereas, in 2006 and 2007, County Council passed, and the Chief Executive signed, Bills No. 2432-06 and 2813-06 which urged the selection of voting machines with a voter-verifiable paper record for each voter, the former bill adding that it be randomly audited after each election to verify machine accuracy and performance, and Bill No. 3083-07 which urged Congress to require the creation of voter-verifiable paper records for each voter using an electronic voting machine; and

Whereas, having allocated the funds that would be necessary for retrofitting the County's system with such a capability, Allegheny County Council has also repeatedly urged the Commonwealth of Pennsylvania to adopt legislation that would require a voter-verifiable paper record for all electronic voting machines; and

Whereas, voter-verifiable paper ballots are more cost-effective – according to a study conducted in Miami-Dade County, Florida, they could provide an estimated savings of \$13 million over five years, in addition to the potential for using local labor to produce the paper ballots; and

Whereas, cybersecurity is a highly specialized field of which even most computer scientists are not well versed and which learned experts in other fields frequently underestimate, failing to appreciate its concerns with disastrous results, as numerous instances of major breaches have demonstrated in recent years; and

Whereas, neither the Commonwealth of Pennsylvania's certification of the voting machines approved for use within the state from 2005 to date, nor the selection of Allegheny County's current voting system in 2006, has occurred with qualified cybersecurity experts among those making the decisions, and of those now insisting, asserting, and assuring the public that votes in Allegheny County are absolutely secure from any possible tampering or interference – remonstrating with all who are concerned and expostulating that there's nothing about which anybody should be concerned – none has been qualified as a certified cybersecurity expert; and

Whereas, to date there has not been a formal security assessment conducted with the inclusion of cybersecurity experts to evaluate Allegheny County's voting system equipment and software or of the policies, practices, processes and procedures followed by the County Board of Elections in conducting and administering elections; and

Whereas, cybersecurity is not a static field but rather it is a highly dynamic arena wherein the landscape of threats is constantly changing, making it ever more challenging to protect any information system from being attacked and breached and rendering yesterday's and today's safe practices increasingly null and void as new avenues for entry are found that may be used by vandals determined to cause havoc or criminals out to steal data or, worse, oppositional state actors seeking to tip the outcome in the selection of our country's leaders; and

Whereas, Allegheny County is home to Carnegie Mellon University with its Software Engineering Institute that has the world's first CERT (originally standing for Computer Emergency Response Team) which is still considered the best and most respected cybersecurity agency in the world and, in part by its presence, the County has also gained status in the eyes of the majority of Pennsylvania's 67 counties which rely either partly or in whole upon Allegheny County as setting the standard for voting system security considerations when making their own voting system selection and election security decisions; and

Whereas, in a representative democracy it is essential that the public have the greatest possible confidence and trust that their election process is open, above board, and not subject to undue influence, manipulation, or vote tampering, and it is especially important for maintaining a commitment among both the candidates and voters on the losing side of elections that they proceed within the democratic process, in order that we avoid disgruntled individuals and masses of dissenting crowds who disregard the rule of law, who may seek to take matters into their own hands through their own brand of vigilantism, or, worse, who could resort to armed insurrection, as we have seen happen in other countries with younger, less mature democracies; and

Whereas, there being a greater polarization across the population that is exacerbated by social media and Internet technologies which coalesce like minded individuals in isolation from differing analyses and points of view, and there being increasingly entrenched partisanship among their elected representatives with a decrease in reasoned discourse as more and more money floods into campaigns bankrolled by those who would further their own interests to the detriment of the public good, these undermining the effectiveness of our mode of governance and, with that, the confidence and trust of the citizenry; and

Whereas, the presidential elections of 2000 and 2016 have pointedly illustrated for broad public consumption that there have been and remain major issues of concern about the integrity of some of the voting operations within our country – the former election having led to federal legislation that required replacement of voting systems across the nation and the latter election having raised public consciousness that not all of those that were installed provide a voter-verifiable, auditable, and re-countable means capable of confirming that the vote of each voter has been duly identified and tabulated into the vote total as that voter intended – in specific, the most recent experience in Pennsylvania has exposed the general public to the fact that the electronic recording votes without a paper record makes it impossible to either audit or recount the ballots that were actually cast during an election; and

Whereas, it devolves to the states and their individual counties to take whatever measures they can to instill greater confidence and trust in our electoral democracy by at all times maintaining the integrity and credibility of the entire voting process – hardware, software, policies, practices, processes, and procedures – and ensuring it meets the highest possible standards; that it is fully assessed for equitable access and usability by all qualifiable voters; that it is unbiased and doesn't influence a voter's choices and that it passes the most rigorous physical, operating, and cybersecurity scrutiny; and

Whereas, the Pennsylvania Constitution and Pennsylvania Election Code both provide for the ability of the electorate of any Pennsylvania county to approve through referendum the acquisition of a new voting system, and, under Allegheny County's Home Rule Charter provisions, it is possible for its registered voters to place an ordinance before County Council using Agenda Initiative and also for them to enact ordinances by referendum; now

Therefore,

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

SECTION 1. Incorporation of the Preamble

The clauses of the preamble to this Ordinance are incorporated by reference herein in their entirety.

SECTION 2. Amendment to the Administrative Code

The Administrative Code shall be amended and supplemented by the creation within Part 12, Government Review, of a new Article 1205, Voting Process Review Commission, comprised as follows:

Article 1205, Voting Process Review Commission

§5-1205.1. Intent.

The intent of this article is to establish a Voting Process Review Commission having technical expertise, election operating experience, and an awareness of the requirements for voters with special needs that will conduct regular periodic reviews of the equipment and software utilized by the County for its voting system and related administrative support and of the policy, practices, processes, and procedures that may involve or affect the conducting of elections, the purpose of such reviews being in order to assess and determine whether all are secure, that they are up-to-date and not obsolete, and that they meet accepted standards. If in the process of the Commission's review it is found that any or all of the hardware and/or software needs to be upgraded or replaced, it is the intent of this article for the Commission to designate the upgrades to be made; the particular equipment and software that shall be obtained; or the specifics of a new voting system which the County shall acquire upon approval by the County electorate at a special referendum election. It is further the intent that the Commission's recommendations, as they may pertain to that which is under the purview of the Board of Elections, shall be provided for the Board's consideration and that nothing herein should be construed to constrain or direct the Board in conducting elections as provided under the Pennsylvania Election Code.

§5-1205.2. Voting Process Review Commission established.

An Allegheny County Voting Process Review Commission shall be created and empowered as provided herein to conduct evaluation reviews to assess the viability, efficiency, and effectiveness of the County's hardware and accompanying software used for its voting system and administrative support, and, of policies, practices, processes, and procedures that pertain to or may affect the conducting of elections; to designate whether the voting system's equipment and/or software shall be updated, upgraded or replaced, in part or in total, along with associated arrangements that may be involved and the funding that the County shall allocate; and to offer the Commission's recommendations pertaining to the elections process to the Board of Elections for its consideration.

§5-1205.3. Voting Process Review Commission members.

- A. The Commission shall be composed of ten (10) members and three (3) alternates who shall serve terms ending on January 1st of the year following each presidential election.
- B. The members and alternates shall be voters of the County, a majority of the members having experience in conducting elections, at a minimum serving as Judge of Election for at least two elections or one election as Judge and two as either Inspector or Clerk or, if not, then having at least two years experience conducting elections at a higher administrative level, the latter being usable for qualifying up to 2 of the Commission's 10 seated voting members, and while actively serving on the Commission every member and alternate shall take the County's election worker training at least once per year.
- C. The Commission members shall be chosen as follows:

- (1) One (1) member shall be designated by the Allegheny County Chief Executive to serve at will;
- (2) Two (2) members shall be appointed by County Council, one each representing different political affiliations on Council, who may be Council members or be their designee;
- (3) Three (3) members and one alternate shall be selected from applicants who are computer and/or cybersecurity professionals, either teaching or actively practicing in those fields, with at least two of the voting members being duly qualified cybersecurity experts who have obtained certification from an accredited, professional cybersecurity entity;
- (4) Two (2) members and one alternate shall be selected from nominations made by advocacy organizations which have among their purposes detecting, investigating, and preventing election fraud, and prosecuting it where necessary; and
- (5) Two (2) members and one alternate who represent the disabilities community shall be selected from nominations by organizations which have as their primary purpose representing, serving, and/or providing direct assistance to the disabled.

§5-1205.4. Nominations, applications, and appointment of initial members.

- A. Nominations and applications for the County's Voting Process Review Commission shall, for the initial creation and seating of the Commission, be accepted for 10 calendar days following passage by ordinance of this Article, from which County Council shall at its next subsequent regularly scheduled meeting approve the members and the alternates who shall fill vacancies should a vacancy occur in positions for which they qualify, with such process to again be initiated following each presidential election and concluded in such time that the new Commission can be sworn in upon the end of the preceding Commission's term of office.
- B. At the same regularly scheduled meeting of Council where the above appointments are made, the Council shall select and appoint its two representatives to serve on the Voting Process Review Commission, except that if a vacancy among them should occur before their term has ended, Council shall at its next subsequent regular meeting call for nominations to be made by its members prior to its next following regular meeting at which it shall select and approve a replacement.
- C. On or before the day after Council's appointments, the County Chief Executive shall appoint a designee to serve at-will and, if the position is vacated, shall name a replacement within 10 days.

§5-1205.5. Oath or affirmation.

Within 10 days of the final appointment of all the Commission members, the members of the Voting Process Review Commission shall make oath or affirmation to support the Constitution of the United States and the Constitution of the Commonwealth and to perform the duties of the office with fidelity.

§5-1205.6. Vacancies.

- A. In the event that a Member or Alternate of the Voting Process Review Commission is unwilling or unable to perform their duties, the Commission may declare the position vacant and notify Council and the Chief Executive. At such time the Alternate for that position, if

there is one, shall assume the status of full voting Member. The County Chief Executive and County Council, as applicable, shall then re-initiate the nomination, application and appointment process to fill the remaining open position either of the Alternate or of the regular voting Member where there was no Alternate.

- B. Should any vacancy occur due to expiration of the position's term and there is not yet an appointment made to fill the position, the incumbent may continue serving until a new member is appointed, and, if a replacement appointment has not been made within 90 days of the expiration, the incumbent shall be automatically seated to serve the full additional term.
- C. In the event that there is a vacancy for which there is no Alternate or if due to the expiration of the position's term, the incumbent is unable or unwilling to continue serving, and, if in either case a new appointment has not been made by Council after three (3) consecutive regular Council meetings following notification to Council of the vacancy, then the Commission may convene for the purposes of taking nominations to fill each such vacancy and of choosing an appropriately qualified person from the nominees to fill the position for the remainder of its term.

§5-1205.7. Organization.

- A. Within 15 days of appointment, the Voting Process Review Commission shall organize and hold its first meeting to elect one of its members as Chair and another member as Vice Chair, to agree on rules and regulations governing their operation, to establish a work plan and schedule for their review, and to establish a preliminary schedule of meetings which shall be published on the County website in addition to other required notice.
- B. The rules and regulations governing the operation of the Review and Advisory Commission shall provide for those who are serving as alternates to be able to participate in all matters with voice but not vote; for the keeping of records pertaining to its duties, the conduct of meetings, and public hearings; and for a periodic reporting to the County Council, Chief Executive, and voters of the County.
- C. A majority of the voting members of the Voting Process Review Commission present at a meeting duly noticed, called, and held shall constitute a quorum for the transaction of business.
- D. Adoption of the Commission's Initial, Intermediate, and Final Reports shall require approval by a majority of the total members of the Voting Process Review Commission, excluding alternates.
- E. Robert's Rules of Order, Newly Revised shall be the parliamentary authority for all matters not otherwise addressed by the County Code or the Commission's rules and regulations.

§5-1205.8. Meetings.

- A. All Commission meetings and hearings shall be held in accordance with the state "Sunshine Act," except as its requirements may be exceeded either herein or by the Commission's rules and regulations, with all meetings other than executive sessions being open to attendance by the public and webcast as are County Council meetings and with open public comment being possible at the beginning and again at the end of each such meeting.

- B. The Commission shall post its agenda and minutes in a timely fashion. Agendas shall be posted no later than 48 hours prior to the meeting. Minutes shall be approved at the next subsequent meeting except under extenuating circumstances and shall be posted within 24 hours after their approval.

§5-1205.9. Expenses.

- A. The members of the Voting Process Review Commission shall serve without compensation, but shall be reimbursed by the County for their necessary travel and other expenses incurred in the performance of their duties. The Chief Executive shall request and the County Council shall approve appropriations necessary for such purpose in the balanced annual operating budget.
- B. Members of the Commission shall be entitled to reimbursement for actual and necessary travel expenses incurred; provided, however, that the expenditure is incurred for attendance at a regularly scheduled Commission meeting or was authorized for the purposes of the Commission by majority vote of a quorum at a meeting in which its business is conducted. The reimbursable travel expense, in accordance with the County's travel policy, shall be governed by the following:
 - (1) Reimbursable travel expenses include the use of a privately owned vehicle and shall include parking, mileage, and tolls;
 - (2) Reimbursable travel expense requests must be documented with an original itemized receipt, excluding mileage;
 - (3) Mileage reimbursable requests must include the travel date, origination, destination, number of round trip miles, and purpose,
 - (4) Reimbursements for mileage will be made at the prevailing Internal Revenue Service (IRS) rate; and
 - (5) Reimbursements of expenses for attendance shall not exceed \$1000 per member or alternate per year, prorated to the period of active service, and for other authorized purposes in an amount not to exceed that budgeted and approved by the Commission.

§5-1205.10. Staff.

The Administration, with the concurrence of the Voting Process Review Commission, shall arrange for and contract to provide the Commission with an independent, professional staff whose roles and responsibilities shall be explicitly provided within the contract which shall be reviewed by the Professional Services Review Committee before being let. In the event a legal opinion is required by the Commission, the members shall, to the extent possible, utilize the County Law Department. If the Commission deems it necessary to solicit an independent legal opinion, any resulting expense shall be subject to the availability of funds from the appropriation made for the Commission.

§5-1205.11. Logistical Support.

- A. The County shall provide meeting space, preparation of materials, a website presence with interactive capabilities for the public, assistance from County staff that may be beyond that of the Commission's independent staff, including appearing before the Commission at its request to explain and discuss matters pertaining to the election process, and such other support as may be necessary for the Voting Process Review Commission to complete its tasks.

- B. Upon the request of the Voting Process Review Commission, the County Administration shall arrange and conduct a vendor forum to be open to all citizens to attend and to be open to the participation of all vendors of voting systems, at such time(s) and place(s) as is convenient to the general public, including those with accessibility needs and working persons.
- C. Upon the Voting Process Review Commission providing the County Administration with its drafts of RFIs and/or RFPs relevant for its research, information gathering and final designation of that which the County shall acquire, the Administration shall release such as appropriate and return the results to the Commission.
- D. Upon the completion and release of the Voting Process Review Commission's Intermediate Report, the County Administration shall make arrangements for and schedule a minimum of five (5) combined public presentations and hearings to address the County's demographically diverse populations, with such presentation-hearings to be located at convenient locations spread throughout the County; with provisions being made for members of the public to ask questions and provide comment about the Commission's findings and other matters related to its purposes; and as per such other specifications as may be required by the Commission.

§5-1205.12. Activities of the Voting System Review Commission.

- A. The Voting Process Review Commission shall:
 - (1) establish its guidelines for evaluation, review, and recommendations pertaining to voting systems and election policies, practices, processes, and procedures;
 - (2) expedite and conduct an initial assessment to determine the existing voting system's sufficiency for continued use as provided herein and issue an Initial Report of the assessment findings;
 - (3) if the current voting system should be found insufficient and in need of replacement, notify Council at an appropriate time to pass a resolution as required, placing a question on the ballot for the public to approve or reject such replacement;
 - (4) research available technology, standards and practices, experience elsewhere, etc.;
 - (5) host a vendor forum of voting systems to be considered for use by the citizens of Allegheny County;
 - (6) prepare and draft Requests For Information (RFI) and Requests For Proposal (RFP) for the County administration's release;
 - (7) assess the optimal course of action for the County to pursue;
 - (8) prepare an Intermediate Report as a draft of the Commission's Final Report containing its findings to date to be presented to County Council and the County Chief Executive and released for public comment;
 - (9) oversee, review, and approve materials, literature, Internet presentations, demonstrations, etc. to explain, inform, and educate the public about the Commission, its process, considerations, and findings;
 - (10) hold a minimum of 5 demographically diverse and geographically dispersed public presentations and hearings to explain its preliminary findings and take public comment;

- (11) upon the culmination of the public hearings, prepare and issue its Final Report with a public presentation and news conference; and
 - (12) meet with the Board of Elections to present and discuss the Commission's final recommendations that may pertain to its conduct of elections.
- B. Upon presentation of the Commission's Final Report and completion of follow-up discussions with the Board of Elections, the Administration, and with Council, the Commission shall go on hiatus until it is reconstituted following the next subsequent presidential election, except that, before then, either the Commission as a whole or a committee thereof may be reactivated and reconvened after providing the necessary public notice, if:
- (1) The Board of Elections requests it to reconvene to investigate and/or provide information about matters designated by the Board;
 - (2) The County Chief Executive requests that it reconvene for purposes specified in the request that shall be consistent with its role;
 - (3) A resolution passed by County Council or a letter signed by 4 members of Council is presented to the Review Commission Chair requesting that it reconvene for purposes specified in the request that shall be consistent with its role;
 - (4) A majority of the full Review Commission votes for it or a committee of it to reconvene for a specific purpose that is within its purview; or
 - (5) A petition complying with the requirements for Agenda Initiative is filed with the County Council Clerk except that in place of listing the title of an ordinance for placement on the Council agenda, it instead requests the Voting Process Review Commission reconvene for the specified purpose(s) that shall appear on the petition and must be clearly defined and consistent with its role; which petition upon verification by the Council Clerk of the filing being in order, shall be delivered to the Chair of the Review Commission who shall notify and arrange with the members for the Commission to meet within 15 days.

§5-1205.13. Review and Evaluation Process.

- A. Initial Sufficiency Evaluation of the County's present voting system:
1. As early as practical, the Commission shall conduct a sufficiency analysis of the present equipment and accompanying operating software to assess whether it meets all of the mandatory minimum criteria.
 2. Should the system as presently constituted fail to meet the mandatory minimum criteria, the feasibility of updating, upgrading, or modifying it to comply shall be assessed; should that be determined to be inadequate, unfeasible or imprudent, the Commission shall inform County Council and the Chief Executive of the need for the County to acquire a new voting system.
 3. Should the present system meet the mandatory minimum criteria, or should an update, upgrade, or modification appear feasible that would enable it to do so, the Commission shall consider the continuation of its use among the alternatives under review; should at any point thereafter the Commission determine that continued use of the County's present voting system is unfeasible or imprudent, the Commission shall at such time inform County Council and the Chief Executive of the County's need to acquire a new voting system.

4. The Commission shall issue its evaluation findings in its Initial Sufficiency Report.
- B. A review of potential new voting systems, equipment, software, etc. shall assess whether the mandatory minimum criteria are met, then weigh and compare how each alternative meets the criteria of §5-1205.14-B, investigating and ground-truthing all claims and assertions, and taking into consideration public comment and input.
- C. A review of policies, practices, processes, and procedures ancillary to or affecting the conduct of elections shall apply criteria in §5-1205.14-C for inclusion in the Commission's Interim and Final Reports.

§5-1205.14. Evaluation Criteria.

- A. In order to be determined viable for use by the voters of Allegheny County and to be given further consideration in the Commission's evaluation of alternatives, the County's existing voting system, with or without updates, upgrading, or modification, and each prospective new voting system must meet the following mandatory minimum criteria:
 - (1) it employs a voter-verifiable paper ballot or other voter-verifiable paper record, such paper being the primary official record of the voter's intent;
 - (2) the voter can verify, either by eye or with the aid of suitable devices for those who have impaired vision, that the paper ballot/record accurately reflects his or her intent;
 - (3) such verification takes place while the voter is still in the process of voting;
 - (4) the paper ballot/record is readable and usable for audits and recounts throughout its required life;
 - (5) the vote totals can be verified by an independent hand count of the paper ballot/record; and
 - (6) it is possible for routine audits of the paper ballot/record in randomly selected precincts to be conducted in each election.
- B. Additional evaluation shall take into account and weigh the following, which may be supplemented by additional criteria that the Commission deems pertinent:
 - (1) physical, operating, and cyber security;
 - (2) accessibility and usability for voters and election personnel;
 - (3) bias, in design or operation, having potential influence, obvious or subtle, upon any voter's choices;
 - (4) the manner and means for transparency, use of paper ballots, voter verifiability, recountability, and auditability, including for performance of regular risk-limiting audits;
 - (5) a cost accounting of initial and total capital investment to include potential bonding fees and total public payout upon retirement;
 - (6) possible leasing or other arrangements and their total costs;
 - (7) regular and extended maintenance, expected system service life, and total operating expenses; and

- (8) such other associated or incidental expenditures as may be anticipated.
- C. The evaluation of policies, practices, processes, and procedures that are ancillary to or may affect the conduct of elections shall be based upon:
 - (1) the latest security considerations as they may pertain to elections;
 - (2) best practices with elections and within relevant related fields;
 - (3) prudent precautions and protection measures;
 - (4) the ability for practical application; and
 - (5) such other considerations which the Commission considers pertinent.

§5-1205.15. Reports of the Voting Process Review Commission

- A. The Initial Sufficiency Report shall:
 - (1) identify whether the County's present voting system meets or can be updated, upgraded, or modified to meet the minimum mandatory criteria;
 - (2) explain the process, criteria, considerations, and reasons for the determination; and
 - (3) discuss the next evaluation steps.
- B. The Interim Report shall:
 - (1) identify and explain the process and considerations which the Commission has employed in developing and arriving at its preliminary conclusions;
 - (2) include, as applicable, whether the current voting system hardware and associated software warrant no changes, whether it needs to be updated, upgraded, or modified and in which manner, or whether total replacement of the system is necessary;
 - (3) if the Commission deems replacement of part or all of the voting system to be acceptable or necessary, identify the alternatives considered viable and optimal for the public to review and give comment for the Commission to consider before making its final conclusions and designating that which the County shall acquire;
 - (4) list preliminary recommendations for the Board of Elections' consideration; and
 - (5) inform the public of its various options for reviewing the Commission's process and findings; explain how individuals may make public comment; and give locations, dates, and times of presentations and public hearings where citizens can ask questions, receive answers, and provide their input in person.
- C. The Final Report shall:
 - (1) revise and update the Interim Report;
 - (2) incorporate and answer the public's comments, questions, and concerns;
 - (3) issue the Review Commission's final conclusions, findings, determinations, recommendations, etc.; and
 - (4) designate the actions, with any specific instructions, that the County shall implement.

§5-1205.16. Voter Referendum

- A. If the Commission's preliminary review finds the County's present voting system fails to meet all of the mandatory minimum criteria and that updating, upgrading or modifying it would be insufficient, or, if at a later point in its continuing review the Commission deems full replacement of the existing voting system to be necessary or advisable and the preferred alternative, then upon the Commission's request, County Council shall by resolution cause a referendum question to be placed on the ballot in a special election to be scheduled as per the Commission's request, a yes vote to the question approving and a no vote rejecting replacement as designated by the Commission.
- B. A referendum to approve or reject replacement of the existing voting system shall be scheduled for no later than would enable implementation of the Commission's findings prior to the municipal election cycle preceding the next presidential election.
- C. In the time before the referendum, under the direction of the Commission, the County shall conduct an educational program to adequately notify the public about the Referendum and the considerations involved so voters can make an informed decision.
- D. Should the referendum question receive a majority vote approving the replacement, then the County shall immediately proceed as designated in the Commission's Final Report. Alternatively, should the question receive a majority vote rejecting the designated replacement, the replacement of the voting system shall not proceed; except that the Pennsylvania Secretary of State or a court of competent jurisdiction may require otherwise. In any case, the Final Report's other designated actions and recommendations shall be deemed still effective.

§5-1205.17. Action upon Commission Findings and ordinance enactment.

- A. Upon the public release and presentation of the Final Report of the Voting Process Review Commission, its findings shall be presented to the Board of Elections and to County Council. In addition, Commission members shall meet with the Board and Council as needed to provide additional information, answer questions, and assist implementation of the Commission's designated voting system requirements and recommendations.
- B. In order to avoid obstructive issues of timing and to provide ample funding in adequate time for full implementation of the voting system designated by the first Voting Process Review Commission and its recommendations to be available for the 2019 Municipal election cycle:
 - (1) Upon enactment of this ordinance, Council and the Administration shall proceed with the transfer of all remaining bond proceed appropriations from the HAVA Compliant Voting Machines project and all remaining appropriations from those transferred in 2006 to a project entitled HAVA Compliant Voting Machines Paper Verification System Upgrade which shall be moved to a new project established for the purpose of implementing the designated voting system requirements and recommendations of the Voting Process Review Commission;
 - (2) With complete replacement of the entire voting machine inventory likely to necessitate capital expenditures too large to fit into the existing capital budget for a given year merely by amending it, the Administration and Council shall, upon enactment of this ordinance, initiate the necessary budgeting process(es) for appropriation and allocation of an amount sufficient to cover the anticipated need with such being assigned to a project fund that is dedicated to and set aside specifically for implementation of the Review Commission's designated voting system requirements and additional recommendations;

- (3) Upon release of the Commission's Final Report, such appropriation(s) and allocation(s) as necessary shall be amended and adjusted to make available an amount sufficient to fully fund implementation of the Commission's designated voting system requirements and additional recommendations, with such being placed into the project fund designated for such purpose;
 - (4) To ensure there will be enough lead time for a budget cycle to take place and for budget adjustments and/or amendments to be made upon release of the Commission's Final Report, the necessary budgeting process shall be expedited as possible to make the funding available as needed for implementation of the Commission's designated system requirements, which if for a new voting system shall be upon approval of the electorate by referendum, and for any additional recommendations.
 - (5) The project fund for implementation of the Commission's designated system and additional recommendations shall be used by the Administration for the acquisition of voting system equipment, hardware, and software, for related contractual arrangements, and for such other ancillary purposes as designated by the Review Commission in compliance with the provisions of this ordinance and shall be made available to the Board of Elections to implement as it may any recommendations of the Voting Process Review Commission.
- C. Actions upon findings of the Commission's Final Report shall be as specified and in such time as to have its designated voting system requirements and additional recommendations which are being implemented be completed, installed and in place, tested, and operational for conducting the municipal election immediately preceding the next presidential election.
 - D. The upgrade or acquisition of new equipment and/or associated software, if any, may be achieved by purchase, rental, lease, or other appropriate operating arrangements; staged implementation may be utilized as warranted; and, associated contracts shall include surety bonding and insurance to fully indemnify and protect the County.
 - E. At the request of the Board of Elections, one or more members of the Voting Process Review Commission shall attend the Board's meeting(s) to further explain, discuss, and answer questions about the Commission's findings or about matters that may arise later related to hardware and software and/or addressing issues or concerns that involve policy, practices, processes and procedures which may affect its conducting of elections.

§5-1205.18. Inaction and Recourse

- A. Following provision of the Commission's Final Report to Council and the Chief Executive and certification of a referendum vote approving the acquisition of a voting system designated by the Commission, if after 30 days neither the County Chief Executive nor the County Election Board has yet made and executed the contract or contracts providing for the delivery of the designated voting system, then the Secretary of the Commonwealth, on behalf of Allegheny County and upon the approval of the Attorney General as to form, shall thereupon award, make, and execute a contract or contracts for the purchase or procurement of the designated voting system with a sufficient number of voting machines for each election district within the county.
- B. The cost of such voting system, including the delivery thereof, and of making and entering into the said contract or contracts, including the preparation and printing of specifications and all other necessary expense incidental thereto, shall be the debt of the County, and, upon the certificate of the Secretary of the Commonwealth, it shall be the duty of the County

Controller to allow, and of the County Treasurer to pay, the sum out of any appropriation available therefore, or out of the first unappropriated moneys that come into the treasury of the County.

SECTION 3. *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. *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.*

Enacted in Council, this _____ day of _____, 2017

Council Agenda No. _____

John DeFazio
President of Council

Attest: _____
Jared Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2017

Approved: _____
Rich Fitzgerald
Chief Executive

Attest: _____
Sonya Dietz
Executive's Secretary