

City of Cincinnati



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David S. Mann
Councilmember

August 24, 2021

We move that the City Administration prepare a report to lay out a roadmap to implement the recommendations of the Economic Development Reform Panel. Report Attached.

David S. Mann DT
Councilmember David Mann

Statement:

Some months ago, as the city was hit by a series of federal indictments involving corruption by members of Cincinnati city council, I authored legislation creating a so-called "Corruption" Reform Panel (Economic Development Panel) to study a range of issues and propose meaningful local reform. The Panel has completed its work.

We were blessed to have the leadership of retired Judge Ann Marie Tracey, former Chair of the Ohio Ethics Commission. Panel members included UC College of Law Dean Verna Williams and Guy C. Guckenberger, retired Judge and form Hamilton County Commissioner and former longtime member of Cincinnati City Council.

It is now time to take the next step and create a roadmap to implement the recommendations of the report.

**ECONOMIC DEVELOPMENT
REFORM PANEL
RECOMMENDATIONS AND
REPORT**

July 29, 2021

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EXECUTIVE SUMMARY

The Economic Development Reform Panel (“EDRP” or “Panel”) submits this Report pursuant to City Council Ordinance No. 384-2020. This ordinance provides the Panel’s mission: to study “the City’s development process” and “mak[e] recommendations. . . regarding best practices and ways to . . . better insulate it from political influence and cronyism.” Referring to the indictments and conviction that spurred creation of the EDRP, the ordinance observed that “citizens of Cincinnati have lost trust and confidence in City Council.”

With these goals in mind, the Panel examined the City’s existing development process, the attendant rules and myriad agencies governing it, as well as applicable local, state, and federal laws. It also reviewed best practices from other jurisdictions. As a result, the Panel formulated recommendations designed to improve transparency and accountability throughout City government—not merely those aspects addressing development. Guided by the philosophy that creating and maintaining an ethical culture throughout is the best preventive against graft, cronyism, and other forms of corruption and misconduct, the Panel recommends that follow take a broad approach, treating all those who work in and with City Hall as essential to protecting the public trust.

The impetus for this report has been the allegations of corruption levied at elected officials in connection to the development process. It is important in restoring the public trust to emphasize that the Panel is aware of no allegations of inappropriate behavior by the City administration, its employees or by developers. Nor have there been any concerns about improper behavior by City employees brought to the attention of the Panel. Rather, the Panel has taken this opportunity to review development practices, ethics rules, and conduct of public officials from a holistic perspective. Accordingly, the Panel’s recommendations include proposals for building a culture of good government and ethics not only for City elected officials, but across the City government as a whole.

The Panel’s recommendations fall into the following general categories: requiring conformity to certain standards of behavior; better informing stakeholders, including the public, of those requirements; training with respect to obligations and rights; and restricting behaviors that may or do undermine confidence in the fairness of the development process.

In this regard, the following summarizes the Panel’s recommendations:

1. Enactment of an ordinance prohibiting elected officials from soliciting or accepting, and developers from making, contributions while a matter involving the developer is before City Council;
2. Enforcement of new rules prohibiting elected officials from interacting with developers relating to contract negotiations, as well as measures to streamline the existing process;
3. Establishment of codes of conduct and training about expected behaviors for elected officials, their staffs, and developers, among others;

4. Strengthen and enhance ongoing education of City employees about their duties and those with whom they interact under the City's codes of conduct and ethics, personnel policies, and administrative regulations;
5. Enhancement of the City's confidential whistleblower hotline;
6. Review of the ongoing forensic audit upon completion and action to determine possible links between campaign contributions and development contracts;
7. Explore measures to simplify the development process and make it more accessible;
8. Expand requirements to report misconduct to appropriate officials; and
9. Council should appropriate funding sufficient to prioritize and implement the above recommendations.

This Report is divided into the following sections: Executive Summary, Background, Development Process, Training, Confidential Whistleblower Hotline, Campaign Contribution Regulations and Increasing Transparency & Disclosure, Code of Conduct, and Conclusion.

I. BACKGROUND

On December 16, 2020, City Council passed Ordinance No. 384-2020 ("the ordinance") establishing the Economic Development Reform Panel to make recommendations to address the loss of public trust and confidence in City Council after the indictment of several members of City Council on corruption or misconduct charges. Three of the indictments related to allegations of soliciting or accepting payments from developers in exchange for votes supporting certain economic development projects. The Panel's mission was to study the City's development process and make recommendations regarding best practices and ways to improve the process to better insulate it from political influence and cronyism. Council charged it to present recommendations to the citizens of Cincinnati, the Mayor, and City Council by August 1, 2021.¹

The Mayor proposed, and Council approved on February 3, 2021, the appointment of the nine Panel members. As Council prescribed, the Panel members include academic and business leaders as well as members with expertise in managing ethics issues. They are:

1. Ann Marie Tracey (Chair): Retired Hamilton County Court of Common Pleas judge; professor emeritus, Xavier University; former Assistant U.S. Attorney for the Southern District of Ohio; former Chair, Ohio Ethics Commission;
2. Alicia Bond-Lewis: Partner, Dinsmore & Shohl LLP;
3. Tim Burke: Principal, Manley Burke LPA; Former Chair of the Hamilton County Board of Elections and of the Hamilton County Democratic Party;
4. Bobbi Dillon: Senior Manager, State Government Relations, Procter & Gamble Company;

¹ Ordinance No. 384-2020 initially set a due date of May 1, 2021; however, Ordinance No. 31-2021 revised the due date to August 1, 2021.

5. Guy C. Guckenberger: Retired judge having served on the Hamilton County Municipal Court, First District Court of Appeals and (as a visiting judge) the Common Pleas Court; former Hamilton County Commissioner; former Cincinnati City Councilmember;
6. Dan Schimberg: President, Uptown Rental Properties, LLC;
7. KZ Smith: Senior Pastor, Corinthian Baptist Church;
8. Bernadette Watson: Retired City of Cincinnati Public Information Officer, Cincinnati Health Department; former Chief of Staff for Mayor Charlie Luken; and
9. Verna Williams: Dean and Nippert Professor of Law, University of Cincinnati College of Law.

The ordinance directs that the Panel engage in the following:

- a. consult municipal finance, development, and campaign contribution experts;
- b. review and evaluate the City's use of public incentives for development, including direct award, loans, and tax abatements;
- c. determine how well and with what clarity the City establishes and then achieves its goals in providing public incentives to development projects without allowing developers to benefit at a higher level than justified by the public benefit to the City;
- d. review best practices in other cities across the country;
- e. study possible links between campaign contributions and the award of development contracts and/or significant changes in the final form of a development contract;
- f. propose ways in which the City could track connections between campaign contributions and the award of public incentives to development projects;
- g. propose a Code of Conduct for the City's elected officials and developers, which Code should require developers to report inappropriate requests from the City's elected officials;
- h. recommend whether contract awards should be prohibited to developers who made campaign contributions to Council candidates within the prior twenty-four months; and
- i. recommend whether the City should establish a hotline by which any citizen, including developers, can report in confidence any inappropriate request or demand from any public servant, elected or otherwise.

The Panel began meeting bi-weekly on February 12, 2021, and met weekly from mid-June through July. All the meetings were broadcast live on CitiCable. The panel heard from various speakers on a range of topics,² and several key players in the City provided important background information to the panel.

² The presentations from the various speakers can be found in the meeting packets posted on the [panel's webpage](https://www.cincinnati-oh.gov/council/economic-development-reform-panel/). <https://www.cincinnati-oh.gov/council/economic-development-reform-panel/>

City Manager Paula Boggs Muething spoke to the Panel on the charter roles of the Mayor, City Manager, and Council. She also discussed the new initiatives of her office including the creation of an Office of Constituent Affairs (“OCA”) and the restructuring of the Department of Community and Economic Development. Markiea Carter, the City’s Director of the Department of Community and Economic Development, spoke about the breadth of the work done by her department, the City’s Development process, the types of financial incentives available to developers and interactions with both developers and elected officials. Katherine Keough-Jurs, City Planning Director, spoke about zoning and planning issues and how they relate to the development process. The Panel also heard from the interim director of the City’s Office of Data and Performance Analytics, Kelly LaFrankie, regarding the new open data platform being created for the Cincinnati Elections Commission and the ability of the City to provide timely public access to reports of campaign contributions and other data submitted by candidates and elected officials.

Outside experts also assisted the Panel with its work. Phil Richter, Executive Director of the Ohio Elections Commission spoke about Ohio elections law, required campaign filings and campaign contribution limits. Chris Bryant, the Rufus King Professor of Constitutional Law at University of Cincinnati Law School, and Evan Gildenblatt, a third-year law student, spoke about constitutional First Amendment issues related to restrictions on campaign contributions, pay to play laws, and restoring public trust after experiencing corruption. Paul Nick, Executive Director of the Ohio Ethics Commission, spoke to the Panel on Ohio ethics laws, restrictions on the acceptance of gifts by public officials, and required financial disclosures. Mr. Nick gave the panel a national perspective of best practices being adopted by municipalities throughout the country, as well as in Ohio. These efforts included the drafting of codes of conduct, creating ethics officers and commissions, placing requirements on those doing business with a city, such as developers, and approaches with respect to training and whistleblower hotlines.

The Panel created an email address to allow the public to send ideas and comments to the panel. A total of 23 emails were received. Of those six were from the public, four were from news media, and thirteen of the emails related to a decision by the Greater Cincinnati Port Authority to sell property on Reading Road, which the Panel had no jurisdiction to address.

The Panel also held two public meetings, on April 9, 2021, and July 9, 2021, in order to solicit input from the public. Both meetings were advertised on the EDRP webpage as well as on the City’s main webpage and social media sites. The July 9th meeting was also the subject of a Cincinnati Enquirer article³ and was also promoted by Cincinnati Public Radio on WVXU.⁴ Prior to the July 9th public meeting, the Panel released a summary of its proposed recommendations to the public to allow the public

³ <https://www.cincinnati.com/story/news/2021/07/08/cincinnati-corruption-task-force-recommendations/7898928002/>

⁴ <https://www.wvxu.org/post/development-reform-panel-plans-public-hearing-recommendation-deadline-nears#stream/0>

to review and comment on the proposed recommendations. Five people spoke at the April 9, 2021, meeting, and three people spoke at the July 9, 2021, meeting. After considering the information from the speakers, the public, and the panelists, this report details the recommendations from the Panel.

The Panel's recommendations fall into five integrated areas that Council and the Mayor should consider and adopt in order to deter corruption and misconduct. These areas are the Development Process, Training, Confidential Whistleblower Hotline, Campaign Contribution Regulations and Increasing Transparency & Disclosure and Code of Conduct.

II. DEVELOPMENT PROCESS

The efforts of the Economic Development Reform Panel have naturally revolved in large part around the development process. Development in Cincinnati can be an extremely complicated process and, consequently, the Panel has taken time to try to unpack and understand the process. This section provides a summary of key aspects of the development process in order to provide context for the Panel's recommendations.

The larger the project, the likely more complicated the project is, requiring both multiple levels of reviews and approvals and potentially financial assistance from the City. The failure of any of these may make the difference between whether the project happens or dies. The breadth of reviewers and approvals required for a successful development acts as a safeguard against corruption by City employees. No project can move forward without the buy-in of multiple departments, approvals from independent boards and commissions, multiple public hearings, and eventually Council approval for legislative actions.

It should also be recognized, however, that the smaller or first-time developer may need special assistance in navigating the complexities of development in Cincinnati. It is important that this assistance should come from the City administration, not elected officials, except, perhaps, for an elected official to direct the developer to the appropriate administrative office designated by the City Manager capable of providing assistance.

A. FINANCIAL ASSISTANCE

City financial assistance to developers comes in a variety of ways. Some of it is essentially non-discretionary. If a project meets the pre-existing conditions defining the requirements for a particular financial benefit the developer is essentially assured the benefit. The bulk of discretionary City incentives are contingent on analysis of developer and project financial information. Some financial assistance is competitive and discretionary, subject to complicated negotiated contracts that require involvement of legal counsel for developers as well as the City. Such assistance may also include the sale of City property at an incentivizing negotiated price.

B. LAND USE AND ZONING APPROVALS

Projects may also require several administrative, quasi-judicial and/or legislative approvals from multiple boards and commissions (for example, the Planning Commission, the Zoning Hearing Examiner, the Historic Conservation Board, the Zoning Board of Appeals, the Building Board of Appeals) and City Council. The rules and procedures for each are different. Appropriate interaction between elected officials and those bodies varies and should be defined in an ethics policy for elected public officials and their staffs. Appropriate enforcement mechanisms must be a part of that policy.

C. CITY COUNCIL IS A LEGISLATIVE BODY

Cincinnati has a City Manager form of government.⁵ Authority over day-to-day operations and administrative authority is vested with the City Manager as chief administrative officer of the City.⁶ The legislative powers of the City are vested in the Council.⁷ City Council and the Mayor make policy affecting development. They do so by adopting legislation establishing the criteria which must be met to be eligible for financial assistance.

They also do so by adopting ordinances authorizing the City Manager to execute contracts awarding such benefits. The role of Council under the City Charter, however, is limited to the legislative approval of such contracts. Councilmembers are not permitted to play a role in directing the administration, or a developer, in the negotiation of such contracts. Council may as a part of the legislative process adopt, amend, and adopt, or defeat such ordinances. The Mayor may sign and approve ordinances adopted by Council or exercise the Mayor's veto power.

D. RECOGNIZING LIMITS

Council should adopt a provision as a part of its Code of Conduct⁸ recognizing that Council's role under the Charter is legislative and that both Council and its members and the Mayor "[e]xcept for the purpose of inquiry...shall deal with that part of the administrative service for which the City Manager is responsible, solely through the City Manager."⁹ Under the City Charter, Council's authority is purely legislative, which in the development realm means:

⁵ See City Solicitor Opinion re Charter Roles, Generally and in Economic Development (January 26, 2021).

⁶ Charter, Article IV.

⁷ Charter Article II Section 1.

⁸ Throughout these recommendations the Panel refers to codes of conduct. The Panel is not tied to this nomenclature. By this is meant a set of the ethical rules and good government practices necessary to ensure the stakeholders subject to them understand their obligations as public servants and those doing business with the City.

⁹ Charter Article IV Section 2.

- 1) Setting general policies applicable to economic development (e.g., tax incentive policy),
- 2) Helping to communicate constituent concerns (including developer and community) to the City Manager for report and possible action,
- 3) Voting whether to approve the economic development projects brought to Council by the City administration; and
- 4) Voting on legislative approvals where required by law.

If the Mayor or Council has concerns about a project before Council, then the option available, under the Charter, is for the Mayor and Council to work through the City Manager. The Mayor and Councilmembers are not to direct City employees on matters of administration except for the purpose of inquiry related to making laws. While the Mayor has the authority to negotiate with external parties in conjunction with the City Manager, City Council does not.

To reinforce the role of Council as the Charter mandates the Panel endorses the following measures already taken by the City Manager:

- 1) The establishment of a Constituent Affairs function in the City Manager's office. (Constituent inquiries from Councilmembers and the public are directed by all city staff to an assistant City Manager for tracking and response).
- 2) Directing the city administration and solicitor's office to provide all inquiries from Councilmembers or the Mayor on development deals directly to the City Manager for coordinated response, including requests for substitute versions of development legislation.
- 3) The City administration's provision of consistent, coordinated, and comprehensive onboarding and ongoing training for Councilmembers regarding Council's role under the Charter, as well as the functions and operations of City departments. The City Manager, likewise, should ensure that City employees are aware of City Council's appropriate role under the Charter.

E. LIMITS REGARDING NONFINANCIAL LAND USE APPROVALS.

With regard to the approvals or denials of various non-financial matters related to development, the roles of the Mayor and Council also need to be emphasized and defined. The Mayor has the right, subject to the advice and consent of Council, to appoint the members of most boards and commissions dealing with development. The City Charter or ordinances define some membership requirements.

When the Planning Commission is dealing with a legislative matter, elected officials have the same right as any citizen, for example, to urge the Planning Commission to recommend the approval or denial of a zone change or amendment to the Zoning Code. Elected officials are free to appear before the Planning Commission or send written materials to the Commission just as are citizens, community Councils, or

developers. However, the situation is different when the Planning Commission is acting in a quasi-judicial capacity. Similarly, the Zoning Hearing Examiner, the Historic Conservation Board, the Zoning Board of Appeals, or the Building Board of Appeals almost always act in a quasi-judicial capacity. In those circumstances the role of elected officials is limited, as is that of any citizen. Quasi-judicial proceedings are essentially trials. The body hearing the matter is expected to make decisions solely on the record before them and not be influenced by private communications with anyone. Elected officials or their staffs may testify before such bodies, but as with any other witness, they would do so under oath and subject to cross-examination. It is improper for them to communicate privately with the decision-makers in such proceedings.

Council should adopt an ordinance requiring that the Zoning Hearing Examiner or any member of a board or commission conducting quasi-judicial proceedings who is contacted privately by an elected official or the staff member of an elected official regarding a matter coming before them report such contact to the City Solicitor and include a recognition of this limitation in the Code of Conduct.

F. FORENSIC AUDIT TRANSPARENCY

Following the creation of the Economic Development Reform Panel the City adopted Ordinance No. 216-2021 approving funding for a forensic audit of City Council ordinances related to economic development between January 1, 2018, and December 31, 2020. The results of that audit should be publicly released. City Council should consider those results and determine if additional work is necessary to study possible links between campaign contributions and development agreements.

G. TAKE ADVANTAGE OF 2020 CENSUS

Detailed 2020 census data will soon be available. The City Planning staff should analyze that data and report to Council on the impacts that development incentives have had on the City population and where those impacts have occurred. Attention should be given to noting what neighborhoods have and have not benefitted. It may be necessary to seek assistance in that analysis from appropriately skilled experts which may well be found at one or more of our local universities.

H. TRAINING

In other sections of this Report, ethics training is discussed in detail. In addition to training for public officials and city employees, the City should also offer such training to developers. It may be done in a variety of ways, and an applicant for City assistance should be advised of that training and acknowledge in writing it has been made available.

I. SUMMARY OF SPECIFIC RECOMMENDATIONS

- 1) City Council should adopt an ordinance approving a Code of Conduct for elected officials, and elected officials should acknowledge in writing receipt of the Code of Conduct, and newly elected officials should do so at or before the first meeting of Council at which they are seated, the original of which shall be filed with the Clerk of Council.
- 2) The Code of Conduct should include recognition that the role of Council is legislative and that members of Council and the Mayor and their staffs may not, except for the purpose of inquiry, attempt to direct the administrative service for which the City Manager is responsible.
- 3) The Code of Conduct should include recognition that developers seeking financial assistance or land use approvals from the City should be directed to the City Manager's office.
- 4) The Code of Conduct should specifically include a recognition of the obligation of elected officials and staff to not attempt to privately interfere with quasi-judicial proceedings of boards and commission or the Zoning Hearing Officer.
- 5) Council should adopt and the Mayor should sign an ordinance requiring the Zoning Hearing Officer and members of boards and commissions considering quasi-judicial matters to report any private contacts from elected officials or their staffs attempting to influence the outcome of such matters to the City Solicitor.
- 6) Council and the Mayor should ensure that the results of the forensic audit funded by Ordinance No. 216-2021 are publicly released without delay and publicly determine if additional steps are necessary.
- 7) The Mayor, Council, and the City administration should utilize the 2020 census to assist in evaluating the impact of the City's financial development incentives, where they have been utilized, the impact they have had on population, and identifying the communities that have and have not been benefited. Planning staff may be able to conduct such evaluation, but City Council and the Mayor should be prepared to fund independent experts who may be found at a local university to complete such a study.
- 8) The Development, Building, and Planning Departments should be required to notify applicants for City financial assistance, City land, building permits, or zoning relief of the training available to guide the ethical processing of such applications. The applicants should acknowledge receipt of such information in writing.

III. TRAINING

The Panel recommends ethics/good government training for elected officials and their staff, City employees, and developers. After reviewing materials regarding best practices in government, consulting with experts, and engaging with the public in hearings, the Panel has determined that such training will help create an ethical culture by providing the necessary knowledge to avoid running afoul of rules, to identify breaches of them, and to enforce clear lines of authority and appropriate behavior. In this connection, as discussed below, the Panel recommends mandatory, job-specific training at regular intervals for elected officials and their staffs, as well as City

employees. With regard to elected officials and their staff, the Panel recommends that Council and the Mayor work together to develop and adopt rules requiring attendance at such training. The Panel also recommends voluntary training for developers on the development process and conduct expectations. Globally, the City should develop and make accessible materials explaining expectations for conduct, as well as the ethical rules and good government practices to ensure all elected officials and City workers understand their obligations as public servants. In addition, information about ethics, the code of conduct, and other important rules should be easily accessible to employees so they can get assistance whenever they need it.

Pursuant to a May 2021 Charter Amendment, Councilmembers must complete a course approved by the Ohio Ethics Commission covering Ohio ethics law within the first 60 days after taking office. Thereafter, the City Manager's office provides voluntary training on ethics and charter responsibilities four to six times a year. As the following details, the Panel recommends mandatory, regular training in ethics and expected behavior for elected officials, their staff, and City employees and that training is offered for developers.

When Paul Nick, Executive Director of the Ohio Ethics Commission, addressed the Panel on March 26, 2021, he identified five jurisdictions engaging in model practices regarding ethics. Three required training: Chicago, Illinois; Philadelphia, Pennsylvania; and Cuyahoga County, Ohio. In Chicago, a broad range of persons must complete regular training annually and/or quadrennially: elected officials, City employees, and registered lobbyists. A fine of at least \$200 may follow failure to comply.¹⁰ Philadelphia requires annual training for "all elected City officers, all cabinet members, all City department heads, and all board and commission members, and their respective staff members."¹¹ The substance of the training depends upon the position. The regulation encourages other City employees to attend voluntarily and authorizes supervisors to require certain members of their staffs to participate.¹² Cuyahoga County requires training for all elected officials, employees, and board members within their first 30 days at work, and annually thereafter.¹³ The County Department of Human Resources provides the necessary instruction.

Cincinnati Law third-year student Evan Gildenblatt discussed the importance of ethics training and education in his April 23, 2021, remarks to the Panel. Gildenblatt earned his MPA from Kent State University, where he conducted research regarding political corruption and public sector ethics. According to Gildenblatt in-house, "manager-led training" was important to demonstrate and "emphasize [institutional] support for the program."¹⁴ Discussing best practices for government, Gildenblatt noted that such training presents a "strategic opportunity to aid general decision-making and

¹⁰ Paul Nick, March 20, 2021, memo at 2.

¹¹ Philadelphia Board of Ethics, Regulation No. 7: Annual and Routine Ethics Training (2009), 2.

¹² *Id.*

¹³ Cuyahoga County Code Section 403.01.

¹⁴ Prof. Chris Bryant and Evan Gildenblatt, Combating Corruption: Campaign Finance, the First Amendment, and Restoring the Public Trust, slide 41.

transform organizational culture,” as well as “reestablish[ing] public trust in institutions of government.”¹⁵ He observed that a robust training regime includes materials designed to address the different needs of groups with different responsibilities – in other words, materials meant for employees would cover different issues and rules than those targeting elected officials or board appointees.¹⁶ In addition, he recommended developing supplemental materials employees can reference when confronting ambiguous situations, as well as identifying persons on staff or within the organization who can answer questions.¹⁷ “The more ethics education that public employees receive, the more likely they are to think themselves able to identify unethical behavior and have the courage to report it.”¹⁸ In this regard, regularized training and education are critical to creating an ethical culture and empowering all employees to contribute to its maintenance.

Finally, the Panel heard in public hearings about the complexity of the development process, which was a barrier to new developers, as well as diverse developers the City seeks to encourage. Such concerns reflect a lack of transparency, among other things, which can facilitate unethical behavior. Training developers about the process will help to obviate the need for them to contact Councilmembers, removing one opportunity for unethical conduct to occur. Moreover, educating developers will help level the playing ground for developers who are new to the City or the process.

TRAINING FOR ELECTED OFFICIALS

The Panel recommends that City Council and the Mayor work together to develop and adopt rules requiring them and their staff to attend annual ethics and “good government” training and education.

At present City Councilmembers must receive ethics training within 60 days¹⁹ of taking the oath of office. The Panel recommends building upon that requirement in several key areas. First, relevant training and education materials should be provided to candidates (be included in a candidates’ packet when they take out a petition to run, or when alerted of their requirements to file their campaign finance reports) and candidates should be required to sign an acknowledgement of receipt of these materials. Compliance with the training requirement will be made publicly available and promulgated. Such training shall periodically include, as applicable:

- Ethics
- All legal and administrative requirements with respect to campaign contributions and disclosure
- Interaction with developers and constituents
- Role of Councilmembers and the Mayor in development

¹⁵ *Id.*

¹⁶ *Id.* at slide 42.

¹⁷ *Id.*

¹⁸ *Id.* at slide 41.

¹⁹ The Charter, as amended in May 2021, requires the ethics course to be approved by the OEC, or if no such course is available within the 60 days, an alternative course may be provided by the City Solicitor.

The Panel further recommends that, consistent with the recent Charter amendment, elected officials who fail to get trained will lose their legislative privileges.

A. TRAINING FOR CITY EMPLOYEES

At present, the City administration provides training with respect to ethics requirements and its personnel policies regarding conduct that apply to all employees in the administrative service.²⁰ The City administration's ethics, conduct, and reporting requirements apply to the City Manager and all employees in the administrative service, including Community and Economic Development, Department of Public Services, and Contract Compliance staff.

The Panel recommends that all City employees continue to receive training and have refresher courses at least annually in these policies and ethics and "good government" practices provided by the City Manager's Office. Employees failing to complete this training will be subject to applicable disciplinary procedures. Training should include, as applicable:

- All relevant requirements, laws, regulations, and expectations
- Address job-specific issues
- Best practices
- Ethics and benefits of ethical behavior
- Contact information for questions

B. TRAINING FOR DEVELOPERS

The Panel recommends that the City Manager's office maintain conduct expectations for developers, as well as those who act on their behalf, consistent with the Code of Conduct discussed above.²¹ The City Manager should also provide regular training and information about those expectations. Developers should acknowledge in writing the availability of this optional training.

The training should be available for both new and experienced developers who are local or out-of-City/state as well as their staff and the City's legislative staff, marketed by the City, and be available online to maximize accessibility. Training shall include such topics as:

- Applicable/relevant legal, regulatory, and administrative requirements

²⁰ Per the Charter, City employees in the mayoral and legislative service (e.g., City Council) are not supervised by the City Manager and have therefore not been required to participate in the Administration's onboarding training process. As part of new employee onboarding and training held by the Department of Human Resources, all employees in the administrative service receive training on the ethics rules as part of the onboarding process.

²¹ Lobbyists are regulated at the City, State, and Federal levels and thus are not included here.

- Behavioral expectations
- Appropriate/inappropriate contact with legislators and the importance of understanding Cincinnati's City Manager form of government
- Development processes including planning and zoning.
- Updates

IV. CONFIDENTIAL WHISTLEBLOWER HOTLINE

The City currently maintains a "Fraud, Waste and Abuse Hotline" through its Internal Audit Department. It is available both telephonically and online.²² According to its website, the hotline "allows employees and citizens to safely and anonymously alert the City to this sort of behavior. Employees calling the hotline are protected under Ordinance No. 468-1987, which prohibits retaliation against employees for whistleblower actions." The hotline is used infrequently, and even then, the subjects of the calls tend to be about matters other than fraud waste and abuse, including issues that do not relate to the City or fall under the jurisdiction of the City. The Panel does not see a need to add a new hotline. However, the Panel does recommend that additional measures be taken to ensure the hotline is better utilized, covers a wider range of concerns, is well publicized and its existence well known.

The Panel recommends that the City reformulate its existing confidential whistleblower hotline to allow and encourage a wider scope of topics reported. The City Manager's office should operate the hotline and invite any person to use the hotline to report unethical, illegal conduct, or inappropriate conduct, conflicts of interest, violations of City or Council behavioral or administrative codes and any inappropriate request or demand from any public servant, elected or otherwise. The name of the hotline should be changed from "Fraud, Waste and Abuse" to one that reflects the broader scope of the reports it is available to receive and so as to further encourage reporting.

The City Manager's office should promote the existence and availability of the hotline, urge its use, and publicize it widely. It should take action on the information provided by hotline callers, and, where appropriate, report back to the caller on action taken. The City should address how to allow confidentiality for those who want it subject to the requirements of Ohio Open Records laws and make clear to callers the applicability of City and state whistleblower protections afforded callers.

Whistleblower hotlines serve a number of functions.²³ They are a valuable means by which an organization can learn of concerns and then investigate them. They are a means by which the caller can raise issues, ask questions, and seek guidance from the appropriate office. As Paul Nick advised the panel, whistle blower hotlines help build an

²² <https://www.cincinnati-oh.gov/manager/internal-audit/internal-audit-fraud-hotline/>.

²³ Sources used for this section include Timothy J. Kloppenborg and Laurence J. Laning, *Achieving Success in Non-Profit Organizations*, Ann Marie Tracey, Chapter 4 – Walking the Talk: Serving Stakeholders with Ethics, Values and Good Governance Business Expert Press (2014).

ethical culture and have a deterrent effect. They can also increase trust in the organization and its leaders. For instance, in one local non-profit organization, the first call to the new hotline was a complaint against the CEO: a charge that the organization was overbilling on a contract. The organization investigated the charge and reported back to the caller that as the contract involved was a cost for services contract, no overbilling would result. Such processes reinforce trust in the organization and its leaders. They support morale and assure employees that they are heard without fearing or facing repercussions and in so doing can reduce turnover. Changes to the City's current hotline can better achieve these benefits.

The nomenclature of the present hotline, "Fraud Waste and Abuse," and its home in the Internal Audit Department suggest its scope is limited to those topics and management. In order to encourage callers to report matters beyond fraud, waste, and abuse, such as concepts like unethical or inappropriate conduct and conflicts of interest, the Panel recommends that the name of the hotline be changed to one that reflects the scope of the reports it is available to receive and so as to encourage reporting. Given this broader purpose, the City Manager's office should operate the hotline and take action on the information provided.

Such action should include reporting back to the original caller/ informer. Management and Ethics experts advise that such "closing the loop" supports good employee morale. While disclosing personnel actions typically would be off limits, the City Manager's designee can relate the organization's response. This could be as simple as saying that the appropriate party investigated the complaint made findings and then took appropriate action. This approach reinforces for the employee that reporting the conduct or concern was the right thing to do, and that misconduct is unacceptable. Consequently, where appropriate, the City Manager's office should report back to the caller on action taken.

Confidentiality for callers is key to encouraging their use of a hotline. Because of the sensitive nature of reporting illegal, unethical, or inappropriate conduct, callers, especially employees, fear reprisal. Therefore, it is important for the City to continue to address how to allow confidentiality for those who want it and making it available to them. One such way the Panel recommends for doing this is for the City to continue to notify those providing information by phone or online that Ohio Open Records laws may preclude their identity remaining confidential if they provide their name.²⁴ While the current hotline does allow callers to choose not to disclose their identity, an anonymous report is harder to investigate. The City should also make clear to callers the applicability of City and state whistleblower protections afforded callers.

²⁴ The City currently advises: "If the caller wishes to remain completely anonymous, Internal Audit will collect no data that could be tied to the caller." The City also so advises on its hotline website: "Employees calling the hotline are protected under Ordinance No. 468-1987, which prohibits retaliation against employees for whistle blower actions." <https://www.cincinnati-oh.gov/manager/internal-audit/internal-audit-fraud-hotline/>.

Given the paltry number of calls to the existing City hotline, the Panel recommends that the City Manager should regularly promote the existence and availability of the hotline, encourage its use, and publicize it. One way the Panel recommends that this occur is by the City including it, together with the attendant protections, in the training of City employees with respect to behavior expectations.

Another way for the City Manager to promote the hotline is to provide training with respect to whistle blower protections against retaliation that are afforded hotline callers under Ohio and Cincinnati laws. Ohio Revised Code 4113.52 provides such protections.²⁵ The state provisions extend to the report of wrongdoing related to development and related activities in the City of Cincinnati. Additionally, the City of Cincinnati's Municipal Code Section 308-79 provides anti-retaliation protections for City employees who report suspected wrongdoing. There are also numerous whistleblower programs at the federal level, including through the Department of Justice's Office of the Inspector General.²⁶ These programs typically protect federal employees and federal contractors that report wrongdoing and protect against retaliation.

The Panel also recommends that the existence of the hotline and the prohibition against retaliating against those who use it be included in the Codes of Conduct, and further recommends that elected officials recognize in their code the right of employees to report misconduct without retaliation and sign the Code of Conduct at their first meeting.

V. CAMPAIGN CONTRIBUTION REGULATIONS AND INCREASING TRANSPARENCY & DISCLOSURE

Reforming the City's regulations on campaign solicitations, contributions, and disclosures is an important component in a broad program of reforms covered in the Panel's recommendations. As courts and experts have noted, campaign contributions present a unique risk for unethical behavior through pay-to-play, which is why it is crucially important to have well-regulated campaign contribution rules and restrictions that prioritize disclosure and transparency to the public. Campaign contribution regulation alone cannot eliminate corrupt behavior, as past incidents have demonstrated, but targeted, restricted regulation as part of a broader package of ethics reform can have significant impact.

Therefore, the Panel recommends:

- City Council adopt an ordinance that prohibits the Mayor and Councilmembers from soliciting or accepting, and a developer from making, any contributions from the time a matter involving the developer is transmitted to the Clerk of Council until the matter is disposed of by final action of Council and the Mayor;
- City Council create a specific definition for "developer" for the purposes of this section;

²⁵ See <https://codes.ohio.gov/ohio-revised-code/section-4113.52>.

²⁶ See <https://oig.justice.gov/hotline/whistleblower-protection>

- City Council adopt an ordinance that requires the Mayor, Councilmembers, and candidates for those offices to file with the Cincinnati Elections Commission copies of all campaign finance reports of other campaign accounts or committees over which they have control, and that the City administration makes those available on the City website and searchable where possible; and
- the City create and maintain an “active developer” list that is published on the City’s website.

A. CAMPAIGN CONTRIBUTION RESTRICTIONS

As part of the Panel’s charge, the Panel has examined campaign contributions, their potential effects on the economic development process, and what regulations should be put in place to create an environment that encourages ethical behavior in this space. In doing so, the Panel has prioritized situations most at risk for pay-to-play schemes and illegal behavior based on the development process and the roles of various parties, including developers, the City administration, and elected officials.

In researching, the panel heard from experts Chris Bryant, Rufus King Professor of Constitutional Law, and Evan Gildenblatt, a Law student, from UC Law School who earned his master’s degree in public administration from Kent State University, regarding Constitutional issues related to restrictions on campaign contributions, pay-to-play laws, and methods to restore public trust after corruption issues. Professor Bryant provided a brief history of court decisions on campaign contributions and efforts to limit pay-to-play in government contracting and decision-making. Ultimately, while there are some constitutional limitations on the restrictions that can be implemented,²⁷ federal circuit courts have upheld certain types of restrictions, such as those that are limited in scope, meant to address demonstrated past incidents of corruption, and that are part of a broader package of reforms to restore the public trust.

Elected officials soliciting for or receiving campaign contributions from a developer while that developer has business on the City Council calendar pose great risk for corruption and undue influence.

Many economic development projects take several months or even several years to come to fruition. Much of that time is spent working with the City administration, the community, and other external parties to put all of the pieces together. Some projects never make it through the initial process and Council is never asked to take action on them. Ultimately, however, whether a certain project moves forward usually depends on official action taken by the City’s elected officials, which is an approval vote of City Council.²⁸ By allowing elected officials to solicit or receive contributions from developers during the time period that the developer’s project is officially before them increases the risk that the developer may be asked or offer to make a campaign contribution in exchange for the elected official taking that official action.

²⁷ For full summary, please see appendix outlining Constitutional Issues Surrounding Campaign Contributions and Expenditures.

²⁸The Mayor has legislative veto power, also, which can be overridden by a supermajority of City Council.

The Panel recommends that City Council adopt an ordinance that prohibits the Mayor and Councilmembers from soliciting or accepting, and a developer from making, any contributions from the time a matter involving the developer is transmitted to the Clerk of Council until the matter is disposed of by final action of Council and the Mayor. Final action will vary with the circumstances, but generally occurs upon the end of the exercise of Council and Mayoral authority over the legislative matter (e.g., upon passage of legislation by Council signed by the Mayor, upon conclusion of the veto process, or upon failure of an item in Council).

The Panel also recommends that the City define what constitutes a “developer” for the purposes of this section. The term “developer” is incredibly broad and is defined in very different ways; therefore, it is important for City Council to establish a definition of what constitutes a developer for this purpose in order to set clear expectations for those working in and around economic development, including the City administration who will need to oversee the regulations.

For purposes of this section, the Panel recommends that the definition of developer include, at minimum, the following criteria:

1. An entity who is pursuing a “qualifying matter” that falls into the following criteria:
 - a. Seeking tax or other economic development incentives valued at more than \$100,000;
 - b. Seeking to purchase City property valued at more than \$200,000; and/or
 - c. Applying for zoning changes that require City Council approval.

2. And pursuant to section 1:
 - a. If the entity pursuing the qualifying matter is an individual, it means the individual and the spouse of the individual.
 - b. If the entity pursuing the qualifying matter is a corporation, limited liability company, partnership, trust, or unincorporated association, it means (i) the corporation, partnership, trust, or unincorporated association itself, (ii) the owners, members, partners, directors, and principal officers of such corporation, partnership, trust, or unincorporated association, and the spouses of each.

One key consideration the Panel has taken into account in this definition is the size and scope of the project, which is outlined in section (1) of the definition. It is crucial to include economic development projects that have substantial levels of incentives or significant zoning changes. However, many incentives and regulations that could be considered “economic development” under a broad definition sometimes apply to someone’s single family residence or a routine zoning change for a small business. It is important to the Panel that the City not create barriers to entry or unintended legal consequences for individuals who are developing their own homes or a single small project. It is also important to avoid hindering small but impactful neighborhood

development projects. Not only could the inclusion of these have negative unintended consequences, but given their low risk of corruption, it would create an unfair administrative burden.

Section (2) of the definition outlines who specifically qualifies as a developer via their status as an individual or a person within an organization that is receiving the benefit from the City. This definition is meant to ensure that those who have the most to gain from the approval of the project, and therefore would be most susceptible to potential pay-to-play schemes, are subjected to the restriction. It also creates a bright line for the administration of the regulation.

In response to the City Council's direction, the Panel considered, and does not recommend, that developers who contribute to elected officials be barred from receiving contracts with the City for 24 months. This proposal has the possibility of negatively impacting the city's ability to support desirable growth, whether intentionally or unintentionally. Many developers, individuals, or businesses often do not anticipate at least two years in advance if they are going to take on a particular project or especially in the case of small businesses, need incentives to grow. Additionally, this proposal could essentially bar certain people from making any contributions ever to councilmembers, even if those individuals are city residents who have an interest as citizens and community members in the election of the mayor and council. The panel preferred to take a more targeted approach.

The Panel reviewed various documents outlining the current laws and regulations for campaign contributions in the City of Cincinnati and State of Ohio. This included the 2018 Charter Amendment that closed the "LLC Loophole" by requiring any contribution to a candidate from an LLC be attributed to an individual owner so that an individual could not contribute through multiple LLCs. This ensures they are held to the \$1100 individual contribution limit. The Panel commends this notable step in reducing the risk for those who own multiple LLCs to have an outsized influence and possibly be more susceptible to pay-to-play solicitations.

The Panel also considered imposing a lower contribution limit for developers. A reduction of the campaign contribution limit, generally or for a specific group of people, would require a Charter amendment compared to restricting the period during which a developer may contribute to elected officials, which can likely be done by ordinance alone. It is also worth noting that the City of Cincinnati campaign contribution limit for individuals, which is \$1100, is among the lowest compared to many jurisdictions. The State of Ohio limits contributions by an individual to state legislative candidates to \$13,292.35 per election cycle. Many other cities in Ohio have adopted the state's limits and several have no contribution limits at all. Choosing to further limit the amount an individual can give, particularly after the closure of the so-called LLC Loophole would likely have minimal effect on the risk for pay-to-play.

As noted above, the Panel has prioritized situations most at risk for pay-to-play schemes and illegal behavior based on the development process and the roles of various parties, including developers, the City administration, and elected officials. Following the creation of the Economic Development Reform Panel, the City adopted Ordinance No. 216-2021 approving funding for a forensic audit of City Council ordinances related to economic development between January 1, 2018 and December 31, 2020. The results of that audit should be publicly released. City Council should consider those results and determine if additional work is necessary to study possible links between campaign contributions and development agreements.

B. DISCLOSURE AND TRANSPARENCY

Every expert on ethics who spoke to the Panel noted that disclosure and transparency were two of the best ways to deter unethical and corrupt behavior and to ensure public trust. As noted above, Evan Gildenblatt presented methods to restore public trust after corruption issues, and he emphasized that not only were disclosure and transparency important, but that those efforts also needed to include communicating disclosures in an accessible way to the public.

To that end, the Panel had a presentation by Kelly LaFrankie, Interim Director, Office of Data and Performance Analytics, regarding the capabilities of OPDA and specifically, its ability to place information on the City's website in an accessible, searchable manner.

The Panel reviewed various documents outlining the current laws and regulations for campaign disclosures in the City of Cincinnati and State of Ohio and found that reporting frequency is consistent with other states and municipalities. However, the City of Cincinnati does not currently publish on its website all campaign finance reports of other campaign accounts or committees over which the Mayor or individual Councilmembers have control. If an elected official making decisions on behalf of the City has another political account, the public should be given access through the City to see who is making contributions to that account.

Therefore, with respect to the disclosure of campaign contributions, the Panel recommends that City Council adopt an ordinance that requires the Mayor, Councilmembers, and candidates²⁹ for those offices to file with the Cincinnati Elections Commission copies of all campaign finance reports of other campaign accounts or committees over which they have control. This is in addition to the requirements of Article XIII of the City Charter. They should provide such reports to the Commission

²⁹ The Charter incorporates the definitions of "candidate" contained in R.C. 3517.01 and R.C. 3501.01(H). A candidate, generally, is someone that has been approved by the Hamilton County Board of Elections for placement on the official ballot as a candidate for Mayor or member of Council. It also includes anyone who at any time before or after an election, receives contributions or makes expenditures or appoints a campaign treasurer for the purpose of election to office.

within 48 hours of their filing with whatever body with which they were otherwise required to be filed. Compliance with this requirement may be satisfied by the officer holder or candidate providing a statement to the Commission that identifies all other campaign accounts or committees which they control in addition to their Mayoral or Council Campaign Committee by providing the name of any such account or committee, the name of its treasurer, the location where the original reports of such account or committee are filed, and an internet link to those reports on a searchable data base. If no such internet link is available, the candidate or office holder shall file a complete copy of such filings with the Commission. The City shall post such information on its website along with the filings of each office holder or candidates required by Article XIII of the City Charter.

In addition to furthering public availability of campaign contributions, the Panel also recommends that the City create and maintain an "active developer" list that is published on the City's website. Developers should be placed on the "active developer list" from the time a "qualifying matter" involving the developer is transmitted to the Clerk of Council until the matter is disposed of by final action of Council and the Mayor. Final action will vary with the circumstances, but generally occurs upon the end of the exercise of Council and Mayoral authority over the legislative matter (e.g., upon passage of legislation by Council signed by the Mayor, upon conclusion the veto process, or upon failure of an item in Council). During the period in which a developer is on the "active developer" list, City Councilmembers and the Mayor should be prohibited from soliciting or accepting any contributions to any of their campaign or political accounts. (See details above in campaign contribution section).

The Panel recommends that prior to or immediately upon entering the "active developer" list, developers should acknowledge in writing these restrictions and their obligation to report a violation by an elected official. This would serve as both an awareness tool and a deterrent for illegal behavior and pay-to-play schemes. This list should be maintained by the City administration and publicly available on the City's website. When an entity rolls off the "active" developer list, the developer should be placed in a separate "archive" section. Given the number of transactions that occur on a daily basis at the City, maintenance of an active developer list would be a significant undertaking. The Panel recommends that Council appropriate sufficient funding to set up and operate this function.

Adding the public disclosure of active developers paired with a searchable database of political contributions to all City elected officials' campaign accounts should provide the public with a significant increase in disclosure and transparency. This will allow the public to hold accountable the elected officials making decisions on their behalf.

VI. CODE OF CONDUCT

The Panel recommends that as further discussed below, Codes of Conduct be established and maintained for elected officials and their staff, the City administration and its employees, appointees, and developers. These codes should address their legal and administrative requirements as well as those with whom they interact, and requirements and protections for reporting impropriety. Receipt of these Codes should be acknowledged in writing and kept on file.

Unethical behavior, as has been seen and alleged recently in Cincinnati and nationally, erodes public trust in institutions of government. Public trust is hard to build, but easy to lose.³⁰ One step in building an ethical organization is clearly stating policies and expectations. It is for this reason the Panel recommends maintaining and establishing codes of conduct for elected officials, city employees, and developers. For purposes of these recommendations, the Panel uses the term “Code of Conduct,” and intends that a code embrace a wide spectrum of behavior ranging from reiterating legal requirements to expected ethical behavior and aspirations.

A code of conduct sets out requirements and makes public officials and employees aware of possible conflicts of interest. At the same time, these rules can alert the public, including those who have contact with City officials, employees, and appointees, what behavior they should be able to expect and when that line is crossed. These behavioral expectations can be included in a “Code of Conduct” that sets the tone for the organization. Cincinnati does so for City administrative employees in its Administrative Regulation 68, Conflicts of Interest and Contracting Ethics, as well as in the City employee handbook, Personnel Policies and Procedures.

Expectations concerning behavior should be agency specific. Instructive expectations “should include what constitutes misconduct, how to report it, and firm non-retaliation policies when employees communicate concerns.”³¹ Along this line, Mr. Gildenblatt advises that “materials distributed to all public employees and made accessible online should reinforce established ethical boundaries and encourage seeking an expert opinion when faced with a grey area.”³²

Cincinnati City Council and the Mayor agreed with the need for their own conduct guidelines as indicated by the charge to the Panel to “Propose a Code of Conduct for the City’s elected officials and developers, which Code should require developers to report inappropriate requests from the City’s elected officials.”³³ Given the events that led to the formation of the Panel, a more comprehensive approach should be taken: the

³⁰ April 23, 2021, presentation by Chris Bryant and Evan Gildenblatt, slide 39.

³¹ Timothy J. Kloppenborg and Laurence J. Laning, *Achieving Success in Non-Profit Organizations*, Ann Marie Tracey, Chapter 4 – Walking the Talk: Serving Stakeholders with Ethics, Values and Good Governance Business Expert Press (2014).

³² April 23, 2021, presentation by Chris Bryant and Evan Gildenblatt, slide 42.

³³ Ordinance No. 384-2020.

development of behavioral requirements for key stakeholders including elected officials and developers as is discussed here. Consequently, it is the recommendation of the Panel that ethical and behavioral requirements should govern the actions of elected City officials and their staffs, City employees and appointees, as well as those who do business with the City. In so doing, it is important to note that the Panel is aware of no allegations of inappropriate behavior by the City administration, its employees or by developers.³⁴

The Panel familiarized itself with approaches different municipalities have taken to address ethics and governance challenges. Many have codes of conduct, and the Executive Director of the Ohio Ethics Commission Paul Nick advised that that Chicago has a code of conduct that has been “modeled.” The Windy City’s code contains extensive guidelines, such as ones with respect to conflicts of interest that pertain to participating in decision-making. Expectations and requirements concerning behavior should be agency specific. Instructive expectations “should include what constitutes misconduct, how to report it, and firm non-retaliation policies when employees communicate concerns.”³⁵

Crafting a code of conduct for each of the stakeholder groups is best left to those solely charged with this duty and with the necessary expertise and familiarity with best practices and policies. The Panel therefore is not in a position to write a Code or recommend comprehensively what components necessarily should be included in each of the three sets of guidelines it is proffering. Based on our research and review, however, the Panel is in position to recommend topics that should be included in codes of conduct for elected officials and their staffs, City employees and appointees, and developers.

A. CODE OF CONDUCT FOR ELECTED OFFICIALS AND STAFF

City Council and the Mayor should, through an ordinance, collaborate to adopt and reflect requirements governing their behavior in a Code of Conduct for elected officials and staff. This should govern the interaction between elected officials and their staff, with City administration, City employees, and with developers and those who act on their behalf, as well as with each other. Elected officials should hold themselves and their staffs to the same high standards as those governing those with whom they interact. Elected officials should pledge in writing that they will follow this Code of Conduct at or before the first meeting of Council at which they are seated, the original of which shall be filed with the Clerk of Council.

³⁴ As noted in the Training section, the City Administration currently has codes of conduct, ethics, and reporting requirements in place for the administrative service. The Panel recommends regular training on these requirements and provision of resources to educate employees on how to identify and report potential issues.

³⁵ Timothy J. Kloppenborg and Laurence J. Laning, *Achieving Success in Non-Profit Organizations*, Ann Marie Tracey, Chapter 4 – Walking the Talk: Serving Stakeholders with Ethics, Values and Good Governance Business Expert Press (2014).

As further discussed below, the Code of Conduct for Elected Officials and Staff should restrict their involvement in development projects and interactions with developers, including with respect to campaign contributions. It should address how they and their staff interact with boards and commissions and underscore that they must not attempt to interfere privately with quasi-judicial proceedings of boards and commissions or the Zoning Hearing Officer. The Code of Conduct for Elected Officials and Staff should also require reporting wrongdoing on a hotline or otherwise and recognizing the ban on retaliation if others report inappropriate conduct.

While City Council may enact rules governing its behavior, the Panel has inquired, and has not found, any such guidance City elected officials have crafted or adopted for themselves. In order to maintain a level playing field, deter inappropriate behavior, reinforce proper behavior, and re-earn public confidence, City Council and the Mayor should adopt rules for themselves and their staffs that articulate the expectation of certain behaviors and remind of them of others.

While the rules may address a wide span of behaviors, it is essential that some be articulated unambiguously in the area of economic development projects. The rules should address conflicts of interest and maintain proper roles under the City Charter, as is discussed above in the development section. These rules should preclude the involvement of Councilmembers with contract negotiations especially with respect to economic development or interfering in the development process. In order to maintain the impartiality of the development process, the rules should underscore that it is improper for elected officials and their staffs (or anyone else for that matter) to attempt to privately influence the decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings. In this vein the stated expectations should address how an elected official/staff interacts with Boards and Commissions involved in development issues. These self-governing rules should require the Mayor, or a Councilmember or staff to report an offer of something of value in connection with a development project or public contract.

Finally, it is essential that elected officials encourage their employees to hold them to a high standard. One way they can do this, which the Panel recommends, is specifically to recognize by rule the right and obligation of City employees to report any conflicts of interest or violations of the law they have reasonable cause to believe are occurring to City, state, or federal agencies and recognize that in doing so they are protected by Ohio's Whistleblower Protection Act contained in R.C. 4113.52 and the provisions of Cincinnati Municipal Code Section 308-79, Protected Employees Actions.

B. CODE OF CONDUCT FOR CITY EMPLOYEES AND APPOINTEES

The Panel recommends that the City Manager's office should maintain conduct rules and expectations for all City employees and appointees, and regularly provide training and information about these expectations, together with applicable legal and administrative requirements. In addition to stating expected behavior for all City employees and appointees, the Code should articulate job-related requirements. The

Panel also recommends that certain topics be included, as further discussed below. Specifically, this Code should require reporting of inappropriate behavior, emphasize hotline availability and whistleblower protections, and prohibit interfering in or attempting to influence the City's quasi-judicial proceedings.

There have been no concerns brought to the attention of the Panel regarding improper behavior on the part of City employees and appointees. However, as clear guidelines set the tone and inform what behavior is expected, the Panel addresses them here. In so doing the Panel recognizes that there are some guidelines for City employees already in play. Administrative Regulation 68 addresses Conflicts of Interest and Contracting Ethics and the City's Personnel Policies and Procedures handbook also sets out expectations and requirements.

The Code of Conduct provisions the Panel recommends with respect to City employees and appointees goes beyond these provisions and fall into four categories. The first is that the guidelines *be specific* with respect to behavioral expectations, and that they correspond with the position responsibilities of the employee, as discussed earlier. For instance, employees working in the economic development process should be familiarized with guidelines not only with respect to their roles, but also with the conduct expectations for City Councilmembers and developers.

The second category emphasizes the importance of employee's *being knowledgeable* with the guidelines and enabling that to occur. In order to reinforce the guidelines and to assure familiarity, the rules should *require participation in training* with respect to expected behavior. When employees know what conduct is expected, they can more readily identify improper behavior and report it.

Next, the guidelines should *inform and impose responsibility* on employees and appointees with respect to upholding behavioral expectations. They should be required promptly to report violations of the Code of Conduct or unethical or illegal behavior to the City Manager, the Ohio Ethics Commission, law enforcement, a designated hotline, or other appropriate designee. At the same time, to facilitate and encourage such reporting, the guidelines should inform employees of the means of reporting improper behavior (*e.g.*, hotlines, designated City Manager representative), and provide that contact information as employees may be reluctant to provide information about inappropriate conduct. In order to underscore its import and to ease concerns, the Code of Conduct provisions should advise of whistleblower protections.

Finally, it is important to uphold transparency and fairness in the development process. Employees and appointees, and others should be reminded of the prohibition against any attempt to privately influence decision makers who will conduct quasi-judicial hearings and making decisions based on those hearings.

C. CODE OF CONDUCT FOR DEVELOPERS

The Panel recommends that the City Manager's office should establish conduct requirements for developers, as well as those who act on their behalf, and regularly provide training and information about these expectations. Review and enforcement may be by the City Manager or the City Manager's designee. As further discussed below, the Panel recommends that the requirements articulated include applicable legal and administrative requirements, training, campaign contributions, reporting violations of the conduct expectations or illegal behavior, and quasi-judicial processes. The City Manager should require the developer to acknowledge in writing receipt of requirements regarding expected behavior and their agreement to abide by an ethics and/or code of conduct.

The Panel recommends that the City Manager establish a Code of Conduct for developers that contains certain components. The rules should advise them of duties they have and restrictions they face if they choose to do business with the City. These are intended to be informative about the development process and developers' appropriate role in it.

The Code should clearly state applicable legal and administrative requirements and should articulate legal and other requirements with respect to elected officials, as well as campaign contributions to elected officials and candidates. Specifically, the code should reiterate that developers should be prohibited from giving campaign contributions to City elected officials as proscribed by law and as set out elsewhere in this report. Because mutual reporting by the public and private sector is the most effective approach for full disclosure, the Panel recommends that their code require developers to immediately report improper solicitations from elected officials. The guidelines should also underscore the impropriety of any attempt to privately influence decision makers who will be conducting quasi-judicial hearings and making decisions based on those hearings.

The Panel further recommends that a Code for developers should address a duty to report. These standards should require them to promptly report violations of the conduct expectations or illegal behavior to the City Manager, law enforcement, a designated hotline, or other appropriate official. Specifically, developers should be required to report any attempt by an elected City official to solicit a campaign contribution when the same is not permitted.

Finally, the City Manager should require the developer to acknowledge in writing receipt of requirements regarding required behavior and their agreement to abide by City requirements and their code of conduct.

VII. CONCLUSION

City Council and the Mayor have charged the Economic Development Reform Panel with helping rebuild public confidence in City government. Members of the Economic Development Reform Panel have taken this responsibility seriously in recommending needed changes to Cincinnati's governance. Based on its review of the current regulatory regime, best practices, and information provided by the public, the Panel has provided an integrated set of recommendations—that is, each supports one another to provide a foundation for building an ethical culture. For example, imposing standards of behavior requires training and education about them. Similarly, restricting campaign contributions necessitates transparency. Requiring City officials, employees, and developers to report violations means these stakeholders and the public must be educated about expected behaviors. Finally, reporting mechanisms such as whistleblower hotlines require robust communications about their existence and, importantly, available protections against retaliation. The Panel has chosen this approach, guided by the imperative of restoring the public's faith in City government and ensuring that the development process is insulated from political influence and cronyism. For the foregoing reasons, the Panel requests that Council endorse this report and take steps necessary to implement the Panel's recommendations as a whole.