



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Law & Public Safety Committee

Chairperson Christopher Smitherman
Vice Chair David Mann
Council Member Betsy Sundermann
Council Member Jan Michele Kearney
Council Member Greg Landsman
Council Member Steven Goodin
Council Member Liz Keating

Tuesday, March 16, 2021

9:00 AM

Council Chambers, Room 300

PRESENTATIONS

Citizen Complaint Authority Update

Gabriel Davis, Executive Director

Animal Task Force Update

Jim Tomaszewski

AGENDA

- [202001354](#) **REPORT**, dated 2/3/2021, submitted by Paula Boggs Muething, City Manager, regarding Report on Use of Non-Lethal Force in Riot Control. (SEE REFERENCE DOCUMENT #202000831)
Sponsors: City Manager
Attachments: [Report](#)
- [202001680](#) **REPORT**, dated 10/14/2020, submitted by Paula Boggs Muething, Interim City Manager, regarding Jurisdiction Agreements.
Sponsors: City Manager
Attachments: [Report](#)
[2019 Mutual Aid Master](#)
[Cincinnati Signed](#)
- [202001725](#) **COMMUNICATION**, submitted by Councilmember Kearney from Gerhardstein & Branch Law Firm, regarding support for proposed ban on no-knock warrants.
Sponsors: Kearney
Attachments: [Letter to Council](#)

4. [202001974](#) **COMMUNICATION**, submitted by Vice Mayor Smitherman, from Andy Wilson, Senior Advisor for Criminal Justice Policy, Office of Ohio Governor Mike DeWine, regarding the Ohio Revised Code Section that governs law enforcement's ability to obtain a "no knock" warrant.
- Sponsors:** Smitherman
- Attachments:** [Communication](#)
5. [202002015](#) **MEMO**, submitted by Andrew Garth, Interim City Solicitor and Kate Burroughs, Sr. Assistant City Solicitor, from Paula Boggs Muething, City Manager, on October 12, 2020, regarding Solicitor's opinion concerning No Knock Warrants.
- Attachments:** [202002015](#)
6. [202002091](#) **REPORT**, dated 1/6/2021, submitted by Paula Boggs Muething, City Manager, regarding Citizen Complaint Authority Recommendations and CPD Improvement, Report 1. (SEE REFERENCE DOC #202001079)
- Sponsors:** City Manager
- Attachments:** [Report](#)
7. [202002155](#) **REPORT**, dated 2/3/2021, submitted by Paula Boggs Muething, City Manager, regarding Motion to Implement Cincinnati Black United Front and Ohio Justice and Policy Center Recommendations. (SEE REFERENCE DOC #202000774)
- Sponsors:** City Manager
- Attachments:** [Report](#)
[Attachment](#)
8. [202002158](#) **REPORT**, dated 2/3/2021, submitted by Paula Boggs Muething, City Manager, regarding CPD Response to Report on Police Reform and Racial Justice. (SEE REFERENCE DOC #202001895)
- Sponsors:** City Manager
- Attachments:** [Report](#)
9. [202100223](#) **COMMUNICATION**, submitted by Vice Mayor Smitherman to Paula Boggs Muething, City Manager, from Andrew Garth, City Solicitor, Kate Burroughs, Sr. Asst City Solicitor and Mark Manning, Sr. Asst City Solicitor, concerning the Legality of Motion Directing Amendments to Administrative Procedures.
- Sponsors:** Smitherman
- Attachments:** [Communication 202100223](#)

10. [202100646](#) **REPORT**, dated 2/18/2021, submitted by Paula Boggs Muething, City Manager, regarding Special Event Permit Application for HYDE PARK FARMERS MARKET.

Sponsors: City Manager

Attachments: [Permit](#)

11. [202100943](#) **MOTION**, submitted by Councilmember Keating, Goodin and Mann, Police officers experience multiple traumatic events throughout their entire career. A study in 2015 showed that the average law enforcement officers experience 188 critical incidents over the extent of their career. In response to the trauma they see in their everyday lives, law enforcement officers can turn to negative coping mechanisms, experience symptoms of and/or develop PTSD, as well as other mental health disorders adding unneeded and additional stress to their already stressful profession. Accordingly, **WE MOVE** that the Administration provide a full report regarding the mental health services available to law enforcement officers, including but not limited to counseling services, mental health training, and emotional health training. Moreover, **WE MOVE** that the Administration provide an additional report on the number of officers who are currently utilizing the mental health support services available to them.

Recommendation LAW AND PUBLIC SAFETY COMMITTEE

Sponsors: Keating, Goodin and Mann

Attachments: [Motion](#)

12. [202100909](#) **REPORT**, submitted by Andrew W. Garth, City Solicitor, regarding Motion #202100592 submitted by Councilmember Wendell Young, which states as follows: Under the City Charter, does the Mayor have legal authority to negotiate or direct any development contracts with Developers who want to do business with the City.

Recommendation LAW AND PUBLIC SAFETY COMMITTEE

Sponsors: City Manager

Attachments: [202100909](#)

ADJOURNMENT

February 3, 2021

To: Mayor and Members of City Council **202001354**
From: Paula Boggs Muething, City Manager
Subject: Report on Use of Non-Lethal Force in Riot Control

REFERENCE DOCUMENT #202000831

On June 24, 2020, the following item was referred for a report:

MOTION, submitted by Councilmembers Seelbach, Sittenfeld, Young, Landsman and Kearney, WE MOVE that the Administration implement a complete review of CPD non-lethal and less than lethal use of force techniques with the stated goal of learning about the use of OC gas or CS smoke in various forms including in the use of pepperballs as a means of crowd or riot control. WE FURTHER MOVE that the report be returned to Council in by the August meeting for referral to a committee.

Response

The responsibility of the Cincinnati Police Department (CPD) during demonstrations is to ensure the safety of the public and to enable persons to exercise their First Amendment rights of free expression and assembly. Ensuring the safety of the public includes the safety of persons engaging in demonstrations. However, when demonstrations become riots and pose an immediate threat to persons as well as property, CPD strives to abate the public safety threat utilizing tools that pose the least harm while enabling officers to control the individuals involved in disorder, violence, or property destruction.

The use of non-lethal tools, such as OC spray, CS gas, or Pepperball, are essential in a riot. Non-lethal tools allow officers to control violence and property destruction by a crowd. For individuals in unlawful crowds who are subjected to these uses of force, permanent or long-lasting health consequences are rare in healthy persons.

Moreover, the alternatives to non-lethal force would result in a greater number of injuries, as well as more serious injuries, both to officers and members of the public. Assuming officers are not directed to acquiesce to violence and property destruction from crowds, some action must be taken to restore order. Eliminating non-lethal tools commits CPD to a path of increasing injuries to the public, instead of decreasing injuries.

CPD has specific policies and procedures to address both lawful demonstrations and illegal gatherings that present a risk of injury to persons and/or property. At times, the safety of the public becomes jeopardized due to the unlawful actions of the individuals assembled and CPD must react to restore the peace. CPD performs strictly guided actions to restore order.

A. Use of Force in Riot Control

A rioting crowd poses a significant and immediate threat to public safety. Engaging in a riot or a disorderly crowd is an offense that is defined by the Ohio Revised Code. Attached as an appendix are the relevant statutes but in short, a riot is four or more individuals engaged in disorderly conduct with the purpose of facilitating a misdemeanor or intimidating a public official. R.C. 2917.03. Similarly, police may order individuals to disperse when five or more persons engaged in a course of disorderly conduct in the vicinity of other persons' creates a likelihood of harm to person or property. R.C. 2917.04.

The risk that is associated with these offenses can be great – to the public, to the rioters, and to police officers – because of the numbers of individuals involved. As the 2020 summer unrest demonstrated, disorderly crowds can quickly escalate into a riot and cause hundreds of thousands of dollars in damage in a few hours as well as threaten the lives of officers. As was widely reported, an officer was shot in the head during the riots of May 2020 and only escaped death or serious injury because of the ballistic helmet he was wearing.

Moreover, the individuals engaging in rioting or disorderly crowds are often actively resisting officers' efforts to disperse the crowd or apprehend offenders. During riot conditions, the number of rioters gives confidence and a sense of anonymity to offenders, who rarely submit to arrest without some other kind of active resistance, from verbal aggression to assaulting the officer.

Under these conditions, the use of non-lethal force is necessary to apprehend offenders or to defend members of the public or police officers from death or physical injury. CPD acknowledges that non-lethal use of force in riot scenarios are not insignificant intrusions. However, for that very reason, the appropriateness of the use of force is highly dependent on the circumstances and is reserved for when there is active resistance to officers. As detailed below, significant training and supervision is employed by CPD to ensure that any significant use of force is reserved for offenders who are aggressive or otherwise constituting a threat to the public or officers. These tools are necessary given the reality that confronts police officers in riot control situations.

B. Non-Lethal Uses of Force for Riot Control

CPD could utilize the following during a riot or crowd control situation: OC Spray (also known as pepper spray), CS gas (also known as tear gas), or Pepperball.

1. OC Spray

OC is the abbreviation of Oleoresin Capsicum, which contains the active ingredient capsaicin that is derived from peppers. OC is available in either a spray or powder form and is intended to be deployed to the face and upper chest. It is an inflammatory agent which affects the mucus membranes, including eyes and skin. The duration of its effects is directly related to the amount of exposure but can range from less than five minutes to more than thirty minutes.

Treatment includes blinking excessively and the use of water to flush eyes and other soft tissue. The Journal of Investigative Ophthalmology and Visual Science published a study in July of 2000 which found that OC led to intense but relatively short-lasting pain and any structural or functional effects are mild and temporary.

OC can be deployed from the small canister carried as a force option on an officer's belt, via a large hand-held spray system, or from a hand-throwable ball which delivers three stimuli for psychological and physiological effects: light, sound, and OC.

2. CS Gas

Chlorobenzylidene Malononitrile, commonly known as CS, causes tearing and closing of the eyes, as well as burning irritation of the nose, mouth, and throat. The effects of CS are more intense than OC. CPD escalates to the use of CS when the original application/deployment of OC is found to be ineffective or insufficient. For crowd and riot control, CS is primarily deployed from a throwable ball configuration or the Pepperball delivery system.

3. Pepperball

Pepperball launchers are a non-lethal device which dispense projectiles via compressed air. The actual Pepperball is a .68 caliber projectile consisting of a plastic outer shell and a payload of either OC or CS agent. Pepperballs are designed for both direct impact deployments as well as area saturation. When utilized for direct impact deployments, the platform utilizes both the impact and the dispersal of the agent to gain compliance. For area saturation, the projectiles are directed at hard surfaces, causing the payload to disperse and saturate the target area.

C. Alternatives to Non-Lethal Uses of Force

In addition to non-lethal uses of force, officers have other options to gain control of a disorderly crowd. Those options range from physically subduing individuals, use of a baton, beanbag shotgun or 40mm foam rounds. But unlike non-lethal uses of force previously described, the following options have limitations for use in a crowd control situation. Manual compliance, for example, would likely be impossible under most riot control scenarios. The most significant difference between non-lethal and less-lethal is that the following less-lethal options could produce death in certain situations. Officers are prohibited from using the following tools in a manner that would intentionally produce the death of a person unless use of deadly force would otherwise be authorized; however, in a rapidly developing and chaotic situation, inadvertent injuries are possible. For that reason, non-lethal uses of force are necessary options where there is active resistance from a disorderly crowd.

1. Manual Compliance (Hardhands or Balance Displacement)

Hardhands is the term to describe an officer utilizing physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage or balance displacement, joint manipulation, pain compliance, and pressure point control tactics. It requires an officer to grapple with the subject the officer intends to detain. More often than not, multiple officers are required to safely gain compliance over a single subject. For that reason, officers cannot physically subdue large numbers involved in a disorderly crowd. The crowd usually outnumbers the number of officers, making these options impossible. Moreover, entering a rioting crowd exposes the officers and crowd to injury, making manual compliance also impractical in crowd control situations.

2. Baton (PR-24/Auto-Lock Baton)

CPD has two kinds of metal batons in its inventory. The Auto-Lock baton is a 16 inch metal telescoping tube that locks into place. The PR-24 is a 24 inch aluminum baton with a handle at a 90 degree angle. The PR-24 use is limited exclusively to crowd control (officers do not carry it on a day to day basis). Both batons can be worn on officer's duty belts.

Either baton has limited usefulness in crowd control. They are relatively short, which requires officers to be within arm's reach of the disorderly crowd. Having distance between officers and

offenders is useful to allow for de-escalation and reduce injuries to officers by reducing the kind of weapons that can threaten their safety as well as provide officers time to react to the danger. As a result, officers could easily be injured by relying solely upon batons. In addition, even the inadvertent strike to the head of a person could cause death or serious injury. As a result, the baton has limited utility in crowd control.

3. Beanbag & 40mm Foam Rounds

The beanbag shotgun is an impact projectile device which offers a less-lethal method for subduing or incapacitating a subject and preventing physical harm to officers and bystanders. The beanbag shotgun deploys a drag stabilized, beanbag round which contains small lead pellets housed within a cloth sock or bag. The bag is designed with a tail portion to prevent it from flattening out during flight to reduce the chances of the round causing penetrating injuries.

The 40mm launcher is a dedicated platform which propels a projectile consisting of a plastic body and a crushable foam nose. The foam round can be either inert or contain a payload of marking, OC, or CS powder. The 40mm is a “point-of-aim, point-of-impact” direct fire round commonly used in situations where greater accuracy and energy is desired for the incapacitation of aggressive, non-compliant, subjects at longer distances. The 40mm has been extensively tested by the manufacturer to ensure the round is less-lethal when fired within the optimal energy range and at the large muscle groups of the buttocks, thigh, and knees. These areas provide sufficient pain stimulus, while greatly reducing serious or life-threatening injuries.

While both beanbag and 40mm foam rounds are available for crowd control, their utility is limited to circumstances where there is an imminent risk of injury or death to a member of the public or an officer.

D. CPD Use of Non-Lethal Force in Crowd Control

CPD’s current response protocol and procedures meet or exceed current best practices across the country. CPD constrains the use of non-lethal and less than lethal force in riot and crowd control scenarios through policy as well as extensive training of select officers.

CPD Procedure 12.545, Use of Force, governs the force response during crowd control and riot situations. There are a number of restrictions placed upon the use of force in crowd control that are designed to ensure that force is being used against persons who are actively resisting being dispersed or detained. In particular, the following procedural prohibitions are applicable to use of force in crowd control situations:

- Officers are prohibited from utilizing ANY force on a crowd except in three situations:
 - (i) to protect a member of the public or the offender from death or harm;
 - (ii) to apprehend a fleeing offender who has committed a crime; or
 - (iii) when necessary for self-defense.
- Absent exigent circumstances, a command officer (captain or above) must be present and authorize the use of tools such as the beanbag shotgun, 40mm foam round, OC spray, CS gas, or Pepperball rounds.
- Officers are prohibited from targeting a person with a beanbag shotgun, 40mm foam round, or Pepperball rounds unless attempting to apprehend that individual or the individual poses an immediate risk of injury.
- Before any chemical irritant (OC spray or CS gas) is used against a disorderly crowd, a verbal warning must be issued unless the warning would endanger members of the public or officers.

In addition to these specific rules, officers are trained to de-escalate tensions within the crowd. The first “force” that is utilized against a disorderly crowd or rioters are the officer’s presence and verbal commands to leave the area. But if verbal commands are not successful in dispersing a rioting crowd, the use of **non-lethal** force is the preferred response. **Non-lethal** force includes OC spray, CS gas, and Pepperballs. Such devices encourage a disorderly crowd to disperse through minimum physical contact with officers, thus reducing the likelihood of injury to either officers or citizens. Use of these responses typically have short term effects requiring minimal medical care, if any, and are incapable of causing death according to the manufacturers.

Less than lethal force (less-lethal) includes the use of the beanbag shotgun, 40mm foam round, and the baton. These are considered impact weapons and have the propensity to cause injury, but are less likely to cause death. However, death can still be caused through the use of less-lethal force and for that reason, non-lethal force is the preferred response to a rioting crowd.

In 2015, the CPD established the Civil Disturbance Response Team (CDRT) as the Department’s primary response to crowd control. This specialized unit consists of selected officers who have shown the required traits and skills necessary in facilitating protests and demonstrations. These officers are frequently trained in the latest crowd control best practices and are proficient in the techniques of de-escalation, as well as non-lethal and less-lethal responses when required.

Until the most recent unrest, CDRT was able to manage all previous events without the need to resort to either non-lethal or less-lethal responses. No serious injuries have been reported in connection with any crowd control situations. CDRT has been deployed dozens of times since its inception, including during past demonstrations associated with the two trials of former University of Cincinnati Police Officer Ray Tensing.

E. Consequences of Eliminating the Use of Non-Lethal Force in Riot Control

Non-lethal tools are preferable options to uses of force that might cause the death of a person in a rioting crowd. There are a variety of reasons why non-lethal uses of force are necessary. The life and safety of the members of the public participating in or near riots is first, as is officer safety. It is indisputable that other forms of force would result in greater numbers of and more significant injuries to both citizens and officers. Moreover, an unintended serious injury to a member of the public might produce a reaction that would further exacerbate the underlying public safety situation. Finally, with more numerous and more serious injuries, the City could expect an increase in civil claims.

Increased Injuries to Officers and the Public

In the years between 2001 and 2020, the City did not experience any serious injuries among officers or members of the public in crowd control. During the recent civil unrest, CDRT and other CPD units utilized the above non-lethal responses. Members of the public did not report any serious injuries to CPD. The use of non-lethal force reduced the potential for injury to rioters. Without the availability of non-lethal force options, there would certainly be an increase in the utilization of less-lethal responses, as well as associated injuries.

Another consideration is the public safety consequences of a serious injury to a member of the public during crowd control. If officers are involved in a use of force that causes serious injury to an individual, that event could dramatically escalate tensions, particularly in the context of widespread unrest. Non-lethal use of force reduces the possibility of serious injury and the chances such an event might occur.

1. Increased Legal Liability

The likelihood of increased serious injuries will result in more civil claims being filed against the City as well as police officers. In addition, the more serious the injuries, the more the City may have to pay in damages if found liable. In addition to potential damages for injuries, the City may also have to pay attorney fees and costs for the person who files a claim.

CONCLUSION

The availability of non-lethal tools, such as OC spray, CS gas, and Pepperball, enable CPD to manage large, violent, unlawful crowds in the safest manner possible while using the least amount of force. Alternatives to non-lethal tools would increase the likelihood of injury to both the public and officers. In a situation where some amount of force must be used to subdue a disorderly crowd, eliminating less intrusive options would only increase the risk to all.

cc: Colonel Eliot K. Isaac, Police Chief

APPENDIX

Chapter 2917 of the Ohio Revised Code (ORC) *Offenses Against the Public Peace* codifies several laws in determining if an individual or group's conduct is unlawful, to include:

Aggravated Riot, 2917.02, ORC:

A) No person shall participate with four or more others in a course of disorderly conduct in violation of section 2917.11 of the Revised Code:

- (1) With purpose to commit or facilitate the commission of a felony.
- (2) With purpose to commit or facilitate the commission of any offense of violence.
- (3) When the offender or any participant to the knowledge of the offender has on or about the offender's or participant's person or under the offender's or participant's control, uses, or intends to use a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(B) (1) No person, being an inmate in a detention facility, shall violate division (A)(1) or (3) of this section.

(2) No person, being an inmate in a detention facility, shall violate division (A)(2) of this section or section 2917.03 of the Revised Code.

(C) Whoever violates this section is guilty of aggravated riot. A violation of division (A)(1) or (3) of this section is a felony of the fifth degree. A violation of division (A)(2) or (B)(1) of this section is a felony of the fourth degree. A violation of division (B)(2) of this section is a felony of the third degree.

Riot, 2917.03, Ohio Revised Code:

(A) No person shall participate with four or more others in a course of disorderly conduct in violation of section 2917.11 of the Revised Code:

- (1) With purpose to commit or facilitate the commission of a misdemeanor, other than disorderly conduct.
- (2) With purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede, or obstruct a function of government.
- (3) With purpose to hinder, impede, or obstruct the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at such institution.

(B) No person shall participate with four or more others with purpose to do an act with unlawful force or violence, even though such act might otherwise be lawful.

(C) Whoever violates this section is guilty of riot, a misdemeanor of the first degree.

Failure to Disperse, 2917.04, Ohio Revised Code:

- (A) Where five or more persons are participating in a course of disorderly conduct in violation of section 2917.11 of the Revised Code, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance, or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order.

- (B) Nothing in this section requires persons to disperse who are peaceably assembled for a lawful purpose.

- (C) (1) Whoever violates this section is guilty of failure to disperse.

- (2) Except as otherwise provided in division (C)(3) of this section, failure to disperse is a minor misdemeanor.

- (3) Failure to disperse is a misdemeanor of the fourth degree if the failure to obey the order described in division (A) of this section creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind.

October 14, 2020

To: Mayor and Members of City Council

202001680

From: Paula Boggs Muething, Interim City Manager

Subject: **Jurisdiction Agreements**

Reference Document #202000793

On June 24, 2020, Vice Mayor Smitherman referred the following item for report:

MOTION, submitted by Vice Mayor Smitherman, WE MOVE that the City Administration provide a report on all jurisdiction agreements between the City of Cincinnati and law enforcement agencies in the Greater Cincinnati Region. The report should include surrounding police forces, nearby universities, Sheriff departments and the Ohio State Highway Patrol.

Attached to this report is the Mutual Aid Agreement (MOU) for Law Enforcement between the City of Cincinnati/ Cincinnati Police Department and the following police agencies/townships/parks/colleges:

Hamilton County/ Hamilton County Sheriff's Office	City of Reading
Village of Addyston	City of Sharonville
Village of Amberley Village	Village of St. Bernard
City of Blue Ash	City of Springdale
City of Cheviot	Village of Terrace Park
Village of Cleves	Village of Woodlawn
City of Deer Park	City of Wyoming
Village of Elmwood Place	North Bend PD
Village of Evendale	Anderson Township
Village of Fairfax	Colerain Township
City of Forest Park	Columbia Township
Village of Glendale	Crosby Township
Village of Golf Manor	Delhi Township
Village of Greenhills	Green Township
City of Harrison	Harrison Township
City of the Village of Indian Hill	Miami Township
Village of Lockland	Springfield Township
City of Loveland	Sycamore Township
City of Madeira	Symmes Township
Village of Mariemont	Whitewater Township
City of Milford	Great Parks of Hamilton County
City of Montgomery	Cincinnati State Technical and Community College
City of Mt. Healthy	Mt. St. Joseph University
Village of Newtown	University of Cincinnati
City of North College Hill	Xavier University
City of Norwood	Summit Behavioral Police

cc: Eliot K. Isaac, Police Chief

HAMILTON COUNTY, OHIO
AMENDED AND RESTATED MUTUAL AID AGREEMENT FOR LAW
ENFORCEMENT

This agreement ("Agreement") is made and entered into by the undersigned parties as follows:

WHEREAS, Revised Code Section 737.04 allows the legislative authority of any municipal corporation to enter into contracts with one or more municipal corporations, townships, township police districts, joint police districts, county sheriffs, park districts, port authorities, or contiguous municipal corporations in an adjoining state, for the purpose of obtaining police protection or additional police protection, or to allow its police officers to work in multi-jurisdictional drug, gang, or career criminal task forces, upon any terms that are agreed for services of police departments, the use of police equipment, or the interchange of services of police departments or police equipment within the territories of the political subdivisions; and

WHEREAS, further authority for the participation of townships is set forth in Revised Code Sections 505.43 and 505.431, further authority for the participation of park districts is set forth in Revised Code Sections 511.235 and 1545.131, and further authority for the participation of universities is set forth in Revised Code Section 3345.041 and 1713.50; and

WHEREAS, the undersigned parties intend to provide reciprocal police services across jurisdictional lines, consistent with the foregoing statutes, to enhance the capabilities of law enforcement for the protection of citizens and property throughout Hamilton County; and

WHEREAS, the undersigned parties intend to provide and exchange the full array of police services with any or all other parties without limitation, but generally in accord with the following guidelines; and

WHEREAS, the undersigned parties (individually, "Agency" and collectively, "Agencies") include the following participating jurisdictions: Hamilton County, Ohio; the City of Cincinnati; the Village of Addyston; the Village of Amberley Village; the City of Blue Ash; the City of Cheviot; the Village of Cleves; the City of Deer Park; the Village of Elmwood Place; the Village of Evendale; the Village of Fairfax; the City of Forest Park; the Village of Glendale; the Village of Golf Manor; the Village of Greenhills; the City of Harrison; the City of the Village of Indian Hill; the Village of Lockland; the City of Loveland; the City of Madeira; the Village of Mariemont; the City of Milford; the City of Montgomery; the City of Mt. Healthy; the Village of Newtown; the City of North College Hill; the City of Norwood; the City of Reading; the City of Sharonville; the Village of St. Bernard; the City of Springdale; the Village of Terrace Park; the Village of Woodlawn; the City of Wyoming; Anderson Township; Colerain Township; Columbia Township; Crosby Township; Delhi Township; Green Township; Harrison Township; Miami Township; Springfield Township; Sycamore Township; Symmes Township; Whitewater Township; Great Parks of Hamilton County; Cincinnati State Technical and Community College; Mt. St. Joseph University; the University of Cincinnati; Xavier University; and Summit Behavioral Police.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. COOPERATIVE LAW ENFORCEMENT WITHOUT REQUEST

The Agencies recognize that criminal activities routinely occur across jurisdictional lines, and that cooperation between Agencies can increase the effectiveness of law enforcement

throughout Hamilton County. Any Agency may proceed without request from a cooperating Agency generally according to the following guidelines:

A. In-Progress Crime Assistance Without Request

1. Whenever an on-duty law enforcement officer from one jurisdiction views or otherwise has probable cause to believe a criminal offense has occurred outside the officer's home jurisdiction but within the jurisdiction of a cooperating Agency, the officer may make arrests according to law and take any measures necessary to preserve the crime scene. Control of any arrested persons, evidence and the crime scene shall be relinquished to the first available officer from the jurisdiction within which the crime took place. The arresting officer may transport or relocate any arrested persons or evidence if the officer determines that remaining at the crime scene could endanger the officer or others or threaten the preservation of evidence.

2. Whenever an on-duty law enforcement officer from one jurisdiction views or otherwise has probable cause to believe that a "serious traffic offense" has occurred within the jurisdiction of another cooperating Agency, the law enforcement officer may stop, arrest or cite the suspected violator according to law. Under this Agreement, a "serious traffic offense" is one that jeopardizes public safety and/or constitutes a misdemeanor of the fourth degree or a higher offense. The traffic violator shall be turned over to the first available officer from the cooperating Agency for completion of all necessary processing. The initiating officer shall provide any further assistance to the extent necessary for subsequent court proceedings.

B. Investigations Outside Original Jurisdiction

On-duty officers from one Agency may, without request or prior notice, continue to conduct investigations that originate within their home jurisdiction into the jurisdiction of any cooperating Agency. If enforcement action is anticipated, the location and nature of the

investigation shall be reported to the appropriate cooperating Agency as soon as practicable. Subsequent arrests, search warrant service or similar police actions shall be coordinated between affected Agencies.

C. Independent Police Action

The police department of any cooperating Agency may provide temporary police service to any cooperating Agency without request.

II. COOPERATIVE LAW ENFORCEMENT UPON REQUEST

The Agencies recognize that special public safety incidents occasionally require the services of additional law enforcement personnel. Such additional services may be provided by or to any cooperating Agency generally according to the following guidelines:

A. Dangerous Criminal Activity

Whenever one Agency reports criminal activity, and that Agency is unable to provide the immediate response necessary to prevent death, serious physical harm or substantial property loss as a result of such criminal activity, the Agency may request police services of any nature from any other Agency.

B. Searches for Fugitive or Wanted Person

Whenever one Agency conducts a search for a fugitive person whose presence is reasonably believed to be within the Agency jurisdiction, and immediate police assistance is reasonably necessary to apprehend or prevent the escape of the fugitive or to protect the safety of persons and property from imminent danger related to the fugitive, the Agency may request police services from any other Agency.

C. Traffic Control Assistance

1. Whenever a traffic accident involving suspected injuries, operating a vehicle while impaired (“OVI”) or other serious traffic offense is reported to the jurisdiction in which the accident occurred, and the Agency is unable to provide the immediate response necessary to render aid to the injured, prevent further injury, prevent serious property loss, or arrest a suspected OVI violator, the Agency may request assistance from any other Agency. The cooperative effort may include necessary first aid, traffic control, accident scene protection, property protection, and detention of any suspected OVI or serious traffic violator.

2. Hazardous Traffic Conditions Assistance

- a. Whenever automated traffic control devices located within the jurisdictional boundaries of one Agency have malfunctioned and there is substantial or other serious risk of a traffic accident unless control is re-established, assistance from another cooperating Agency may be provided upon request of the affected jurisdiction.
- b. Whenever an incident occurs on or near a roadway creating substantial or other serious risk of a traffic accident, assistance from a cooperating Agency may be provided upon request of the affected jurisdiction.

D. General Police Service

- 1. Any incident may form the basis for the request of police services from one or more cooperating Agencies when police assistance is reasonably necessary to protect the safety of persons and/or property.
- 2. Police services, including but not limited to routine patrol services, may be requested and supplied by cooperating Agencies for limited-time special events or for extended time periods based on need. Such services may

include the facilitation of personnel by their employing Agency for the provision of police protection to a requesting Agency for voluntary, special event details performed while such personnel are not on duty for the employing Agency ("Off-Duty Details"). No Agency is required to facilitate or otherwise provide volunteer personnel for Off-Duty Details. Moreover, any Agency may prohibit its personnel from engaging in such Off-Duty Details to the extent allowed by law.

III. GENERAL TERMS AND PROCEDURES

A. A request for police services may be made by the commander of the law enforcement Agency, or his designee. The designee must be of supervisory rank or the senior shift officer when no supervisor is present.

B. A cooperating Agency will respond to the extent the requested personnel and equipment are not required for the adequate protection of that Agency's jurisdiction. The commander of the law enforcement Agency, or his designee, shall have the sole authority to determine the amount of personnel and equipment, if any, available for assistance.

C. Whenever employees of one cooperating Agency provide police services in or to another cooperating Agency pursuant to the authority set forth in this Agreement, other legislative authority, or state law, such employees shall have the same powers, duties, rights and immunities as if taking action within the territory of their employing Agency. Revised Code Chapter 2744 shall apply to the extent specified in Revised Code Section 737.04 or as otherwise provided by law. Moreover, participation in any indemnity fund established by the employer, and all rights under Revised Code Chapter 4123, shall apply to the extent set forth in Revised Code Sections

505.431 and 737.04, or as otherwise provided by law. Revised Code Chapter 2743 shall apply as provided by law.

D. Whenever employees of one cooperating Agency provide police services to another cooperating Agency, they shall be under the lawful direction and authority of the commanding law enforcement officer of the Agency to which they are rendering assistance, provided, however, that Officers shall be subject to the code of ethics, policies, and rules and regulations of their employing Agency at all times.

E. Police services may be initiated by any on-duty officer who has probable cause to believe a crime is in progress. Such police services may also be initiated by any on-duty officer who becomes aware of a traffic accident, the need for traffic control, a suspected OVI, a serious traffic violator or other circumstance requiring law enforcement intervention in another cooperating Agency jurisdiction. The officer must, as soon as practicable, contact his immediate supervisor to enable that supervisor to authorize and direct actions taken by the employee.

F. An on-duty officer initiating police services shall notify a law enforcement officer from the affected cooperating Agency as soon as possible. As appropriate, the assisted cooperating Agency shall relieve the officer as soon as possible.

G. All wage and disability payments, pension, worker's compensation claims, medical expenses or other employment benefits for employees performing pursuant to this Agreement shall be the responsibility of the employing Agency to the same extent as if the employee were providing service for the employing agency. Additionally, unless otherwise provided in this Agreement, each Agency shall be responsible for the negligence or wrongdoing of its employees to the extent provided by law. Unless otherwise specifically provided herein, nothing in this Agreement shall

impose any greater duty or obligation on an employing agency than provided by law, including as to Off-Duty Details.

H. Each cooperating Agency shall be responsible for any of its own costs arising from or out of its response to a call for assistance, unless the requesting Agency is reimbursed for such costs by a third-party source. Further, in the event of loss of or damage to the Agency's equipment or property while providing police assistance services within the jurisdiction of any other cooperating Agency, the assisting Agency shall not seek to hold the requesting Agency accountable for such loss or damage solely on the basis of the request for services having been made, but may do so if any other actions of the requesting Agency or its employees caused the loss or damage.

IV. SPECIALIZED LAW ENFORCEMENT OPERATIONS

A. In addition to the law enforcement services described above, parties to this Agreement may request Specialized Law Enforcement Operations, defined as a Special Weapons and Tactics Team ("SWAT"), Underwater Search and Recovery operations, Mobile Field Force Team, or any other operation involving a task force, multi-jurisdictional team, or substantially similar operation of a specialized or unique nature.

B. As used in this Section IV, "Initiating Agency" means the political subdivision requesting Specialized Law Enforcement Operations, and "Assisting Agency" means any political subdivision furnishing Specialized Law Enforcement Operations (including participating personnel) at the request of an Initiating Agency.

C. An Assisting Agency will respond to the extent the requested Specialized Law Enforcement Operations as appropriate under the circumstances, and to the extent the requested Specialized Law Enforcement Operations are available and not required for other use.

D. The Initiating Agency shall be in control of the scene, but, as to tactical or operational execution, all Specialized Law Enforcement Operations personnel shall be directed by their operational commander according to the procedures set forth by the responding Specialized Law Enforcement Operation.

E. Notwithstanding any other provision of this Agreement, and only as to Specialized Law Enforcement Operations, to the extent that any third party asserts a claim of any kind against any Assisting Agency or its participating personnel, whether under Ohio Revised Code Chapter 2744, common law, or any other state or federal statute, the following shall apply:

1. The Initiating Agency shall, to the extent of its liability insurance (including but not limited to any self-insurance or risk pool participation), defend and indemnify any Assisting Agency and its personnel against any claim, loss, damage, expense, cost, attorney fees, or other liability asserted by any third party arising out of the conduct, acts or omissions of personnel engaged in Specialized Law Enforcement Operations. The minimum amount of indemnification provided pursuant to this Paragraph shall be three million dollars (\$3,000,000), regardless of the actual liability insurance limits of the Initiating Agency. The Initiating Agency, however, shall not have any obligation to defend or indemnify the Assisting Agency or its personnel to the extent they act outside the scope of lawful orders issued by the Initiating Agency or its designee, or to the extent that the Assisting Agency or its personnel willfully and maliciously cause injury or damage to person or property.

2. For purposes of Paragraph IV.E.1, the conduct, acts, or omissions for which the Initiating Agency assumes the obligation to defend and indemnify the Assisting Agency or its personnel are the conduct, acts, or omissions that occur from the time the applicable Specialized Law Enforcement Operations personnel arrive at the requested location and report to the Initiating Agency's Chief of Police or other Officer-in-Charge (collectively, "OIC"), until the time the personnel are dismissed by the Initiating Agency's OIC.
3. Before requesting Specialized Law Enforcement Operations, an Initiating Agency must have in full force and effect liability insurance sufficient to defend and indemnify any Assisting Agency and its personnel under this Agreement in an amount no less than three million dollars (\$3,000,000) per occurrence, regardless of any aggregate limit, or self-insurance.
4. As a condition of the obligations set forth in Paragraph IV.B.1 above, the Assisting Agency must provide prompt written notice to the Initiating Agency of any threatened or asserted third-party claim, including any lawsuit served, so that a timely answer may be filed.
5. In the event of any third-party claim against an Assisting Agency or its personnel, the Assisting Agency and its personnel shall, as a condition of receiving defense and indemnification provide their full cooperation to any Initiating Agency or its insurer assuming the defense of such claim or action.

V. ADDITIONAL PROVISIONS

A. This Agreement shall be in continuous effect for each participating Agency from the date of that Agency's execution of the Agreement. Any Agency may terminate its participation in this Agreement upon sixty (60) days written notice sent care of the Reading Police Department. Upon receipt of such notice, the Reading Police Department will notify the remaining participants, or cause them to be notified, of such termination.

B. This Agreement is solely intended to set forth certain arrangements for the provision of mutual aid where practicable. Therefore, the parties do not intend for any third party to rely on the provisions of this Agreement, and specifically disclaim intent to create any third-party beneficiary with rights under the Agreement. Moreover, there shall be no liability whatsoever upon any Agency arising out of this Agreement, whether to other Agencies, third parties, or otherwise, for the Agency's failure to fully or partially respond to a call for assistance, whether due to the Agency's equipment and/or employees being otherwise engaged, exigent circumstances, or for any other reason.

C. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

D. This Agreement contains the entire agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this agreement shall be of no force and effect.

E. This Agreement shall be severable, if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

F. The Reading Police Department shall serve as the depository for this Agreement unless otherwise agreed by the parties in writing or by custom and practice.

G. Parties may be added or deleted from this Agreement, and other terms may be modified, by written addendum without restating the entire Agreement.

H. This Agreement may be executed in counterparts.

I. This Agreement supersedes and replaces all prior versions of the Hamilton County, Ohio Mutual Aid Agreement for Law Enforcement (including as amended and restated), which are hereby terminated; provided, however that as to any incident that occurred during the term of the March 1, 2014 agreement, and that arose out of Specialized Law Enforcement Operations, the provisions of the former Section IV.E.1 through 5 shall apply to that incident only.

Only signatures to follow.

Executing Agency: _____

By: _____

Printed Name: _____

Its: _____

Date: _____

CERTIFICATE OF MAINTENANCE OF INSURANCE IN AMOUNTS SUFFICIENT TO FUND INDEMNIFICATION REQUIRED BY THIS AGREEMENT

I certify that _____, currently holds in full force and effect and will maintain general liability insurance in amounts equal to or exceeding Three Million Dollars (\$3,000,000.00) per occurrence, regardless of any aggregate limit or self-insurance, which amount will fund the indemnification requirements of this Agreement.

Fiscal Officer

Executing Agency: City of Cincinnati

By: 

Printed Name: Patrick Duhaney

Its: City Manager

Date: 2/13/19

CERTIFICATE OF MAINTENANCE OF INSURANCE IN AMOUNTS SUFFICIENT TO FUND INDEMNIFICATION REQUIRED BY THIS AGREEMENT

I certify that N/A, currently holds in full force and effect and will maintain general liability insurance in amounts equal to or exceeding Three Million Dollars (\$3,000,000.00) per occurrence, regardless of any aggregate limit or self-insurance, which amount will fund the indemnification requirements of this Agreement.

N/A
Fiscal Officer

RECOMMENDED BY:


Eliot Isaac, Chief of Police

APPROVED AS TO FORM:


Assistant City Solicitor

Re: City of Cincinnati Self Insurance Program - 2019

To Whom It May Concern:

The City of Cincinnati does not currently purchase commercial liability insurance. As such the City does not issue certificates of insurance as evidence of coverage. This is not expected to change for calendar year 2019. The City's Law Department processes all claims and lawsuits filed against the City and maintains sole authority for the settlement of claims and lawsuits. Each year money is set aside in the Law Department budget for the express purpose of paying claims incurred by the City. If there is a shortfall in the loss fund, additional money can be appropriated from the City's operating budget. In addition, the City has the ability to sell judgment bonds, without taxpayer approval, in order to raise any required funds if a large loss or losses occur. The City has always been able to meet its financial obligations from the operating budget.

If there is a need for additional information please feel free to call me at (513) 352-3337.

Sincerely,

Deborah Allison

Deborah Allison
Risk Manager

GERHARDSTEIN & BRANCH

A LEGAL PROFESSIONAL ASSOCIATION

441 VINE ST., SUITE 3400

CINCINNATI, OHIO 45202

(513) 621-9100

FAX (513) 345-5543

* ALPHONSE A. GERHARDSTEIN
JENNIFER L. BRANCH
REBECCA SALLEY
M. CAROLINE HYATT

**Also admitted in
Minnesota*

Of Counsel
ROBERT F. LAUFMAN

September 28, 2020

Members of City of Cincinnati City Council

RE: Proposed Ban on No Knock Warrants

Dear Members of Council:

I write in support of the proposed ban on no-knock warrants. Al has been litigating police misconduct cases for more than forty years, and Jennifer for over 23 years. Several of our cases have involved citizens shot or seriously injured during the execution of no-knock warrants. One case in particular haunts us. In *Jennings v. City of Lima, Ohio*, USDC, ND OH Case No. 3:08-cv-01868, we represented the five surviving children of Tarika Wilson. The regional drug unit in Lima, Ohio raided her home at night using a no-knock warrant where a suspected drug dealer was located. When members of the SWAT team rushed into the home, they encountered pit bulls who were promptly shot by officers. The discharge of those weapons caused the officer clearing the upstairs to believe he was under fire. He saw movement in a bedroom doorway and fired in that direction striking Tarika in the neck, killing her. She was standing near the doorway holding her baby and trying to shield her other four young children in the bedroom. The baby was struck by high powered ammunition in his shoulder causing severe injuries.

Tarika was unarmed. The suspected drug dealer was unarmed. The children were unarmed. The officer did not properly assess the risk and needlessly took Tarika's life. The local Black Community was outraged at the reckless use of no-knock warrants. Our case settlement included an independent review of SWAT search warrant policies and practices in an effort to restrict their use.

We have not seen evidence that no knock warrants are utilized in a way that puts innocent people at risk in Cincinnati. But not every Chief may be as careful as Chief Isaac. The fact is that the killing of innocents is likely to happen if the intelligence about the target home is wrong and people in addition to the suspect are present when the warrant is executed. Such errors do

happen. We have litigated these cases in other communities. It is not worth the risk. We urge you to pass the measure and would be happy to provide additional information. Thank you.

Sincerely,

Alphonse A. Gerhardstein

Jennifer L. Branch

Alphonse A. Gerhardstein

Jennifer L. Branch

Allen, Perriann

From: Andy.Wilson@governor.ohio.gov
Sent: Tuesday, October 13, 2020 9:46 AM
To: Smitherman, Christopher
Subject: [External Email]

External Email Communication

Chris,

Here is the Ohio Revised Code Section that governs law enforcement's ability to obtain a "no knock" warrant.

2933.231 Waiving the statutory precondition for nonconsensual entry.

(A) As used in this section:

- (1) "Law enforcement officer" has the same meaning as in section [2901.01](#) of the Revised Code and in Criminal Rule 2.
- (2) "Prosecutor" has the same meaning as in section [2935.01](#) of the Revised Code, and includes any prosecuting attorney as defined in Criminal Rule 2.
- (3) "Statutory precondition for nonconsensual entry" means the precondition specified in section [2935.12](#) of the Revised Code that requires a law enforcement officer or other authorized individual executing a search warrant to give notice of his intention to execute the warrant and then be refused admittance to a dwelling house or other building before he legally may break down a door or window to gain entry to execute the warrant.

(B) A law enforcement officer, prosecutor, or other authorized individual who files an affidavit for the issuance of a search warrant pursuant to this chapter or Criminal Rule 41 may include in the affidavit a request that the statutory precondition for nonconsensual entry be waived in relation to the search warrant. A request for that waiver shall contain all of the following:

- (1) A statement that the affiant has good cause to believe that there is a risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant if they are required to comply with the statutory precondition for nonconsensual entry;
- (2) A statement setting forth the facts upon which the affiant's belief is based, including, but not limited to, the names of all known persons who the affiant believes pose the risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant at the particular dwelling house or other building;
- (3) A statement verifying the address of the dwelling house or other building proposed to be searched as the correct address in relation to the criminal offense or other violation of law underlying the request for the issuance of the search warrant;
- (4) A request that, based on those facts, the judge or magistrate waive the statutory precondition for nonconsensual entry.

(C) If an affidavit for the issuance of a search warrant filed pursuant to this chapter or Criminal Rule 41 includes a request for a waiver of the statutory precondition for nonconsensual entry, if the request conforms with division (B) of this section, if division (E) of this section is satisfied, and if the judge or magistrate issues the warrant, the judge or magistrate shall include in it a provision that waives the statutory precondition for nonconsensual entry for purposes of the search and seizure authorized under the warrant only if he determines there is probable cause to believe that, if the law enforcement officers or other authorized individuals who execute the warrant are required to comply with the statutory precondition for nonconsensual

entry, they will be subjected to a risk of serious physical harm and to believe that the address of the dwelling house or other building to be searched is the correct address in relation to the criminal offense or other violation of law underlying the issuance of the warrant.

(D)

(1) A waiver of the statutory precondition for nonconsensual entry by a judge or magistrate pursuant to division (C) of this section does not authorize, and shall not be construed as authorizing, a law enforcement officer or other authorized individual who executes a search warrant to enter a building other than a building described in the warrant.

(2) The state or any political subdivision associated with a law enforcement officer or other authorized officer who executes a search warrant that contains a provision waiving the statutory precondition for nonconsensual entry is liable in damages in a tort action for any injury, death, or loss to person or property that is proximately caused by the officer's execution of the warrant in accordance with the waiver at an address of a dwelling house or other building that is not described in the warrant.

(E) Any proceeding before a judge or magistrate that involves a request for a waiver of the statutory precondition for nonconsensual entry shall be recorded by shorthand, by stenotype, or by any other mechanical, electronic, or video recording device. The recording of and any transcript of the recording of such a proceeding shall not be a public record for purposes of section [149.43](#) of the Revised Code until the search warrant is returned by the law enforcement officer or other authorized officer who executes it. This division shall not be construed as requiring, authorizing, or permitting, and does not require, authorize, or permit, the making available for inspection, or the copying, under section [149.43](#) of the Revised Code of any confidential law enforcement investigatory record or trial preparation record, as defined in that section.



Andy Wilson
Senior Advisor for Criminal Justice Policy
Office of Ohio Governor Mike DeWine
(614) 644-0385
Andy.wilson@governor.ohio.gov
www.governor.ohio.gov

This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

202002015



CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED DOCUMENT

Date: October 12, 2020
To: Members of the Law & Public Safety Committee
Copy to: Paula Boggs Muething, Interim City Manager
From: Andrew W. Garth, Interim City Solicitor *AWG*
Kate Burroughs, Sr. Assistant City Solicitor
Subject: **Legality of No Knock Search Warrant Ban Ordinance**

This opinion addresses legal issues concerning state law and the City Charter in connection with prohibition of no-knock search warrants by the Cincinnati Police Department (“CPD”).

Summary

In order to prevent state preemption issues and comply with City Charter limitations, Council efforts to ban or limit the use of no-knock search warrants by CPD officers must be undertaken through the exercise of the City Manager’s authority over the oversight and operation of the Police Department.

The Ohio Revised Code (“O.R.C.”) generally provides that a law enforcement official must “give notice of his intention to execute the warrant and then be refused admittance” prior to nonconsensual entry to execute a search warrant.¹ But the O.R.C. also provides that a law enforcement officer, prosecutor, or other authorized individual may ask the court for a “no-knock” warrant for nonconsensual entry under limited circumstances. If City Council were to enact an ordinance to legislatively contradict or invalidate the O.R.C.’s warrant provisions in Cincinnati, such a law could be vulnerable to state preemption challenge and raise Charter issues, as described below.

Instead, modifications to the no-knock warrant policies and procedures of the Cincinnati Police Department can be pursued through the City Manager’s authority to operate and administer the police department. The City Manager’s

¹ O.R.C. § 2933.231.

administrative role over CPD falls within the City's power of local self-government.² The power of local self-government is not subject to state conflict and preemption limitations.

Accordingly, while City Council cannot legislate a change to CPD practices and procedures, City Council can express its position on the use of no-knock warrants via motion, request reports from the Administration regarding the use of no-knock search warrants, and ask questions about their use. The City Manager has the authority to direct the Police Chief and Police Department's work. The City Manager and Police Chief also have the authority to revise the Police Department policies to prohibit unannounced searches.

Legal Background

The Fourth Amendment to the United States Constitution governs how police officers may conduct searches of private property:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

As a result of these Fourth Amendment rights, officers must secure a warrant before searching someone's home or seizing their property. In 1958, the U.S. Supreme Court recognized that police must give notice before making a forced entry, which was extended to all states in 1963 (the “knock and announce” rule).³ In 1995, however, the Supreme Court held the “knock and announce” rule could be considered and dispensed with by a court issuing a search warrant.⁴

The Ohio Revised Code requires “a law enforcement officer or other authorized individual executing a search warrant to give notice of his intention to execute the warrant and then be refused admittance to a dwelling house or other building before he legally may break down a door or window to gain entry to execute the warrant.”⁵ However, pursuant to O.R.C. § 2933.231, a law enforcement officer, prosecutor, or other authorized individual *may* include in the affidavit for the

² The Ohio Supreme Court has held that “the organization and regulation of [the City's] police force, as well as its civil service functions, are within a municipality's power of local self-government.” *State ex rel. Lynch v. Cleveland* (1956), 164 Ohio St. 437, quoting *Harsney v. Allen*, 160 Ohio St. 36 (1953).

³ *Ker v. California*, 374 U.S. 23 (1963), citing *Miller v. United States*, 357 U.S. 301 (1958).

⁴ *Wilson v. Arkansas*, 514 U.S. 927 (1995).

⁵ O.R.C. § 2933.231 (A)(3) (defining “statutory precondition for nonconsensual entry” as defined in O.R.C. § 2935.12).

search warrant a request for a waiver of this statutory precondition for nonconsensual entry. The affidavit for the waiver must contain:

- (1) A statement that the affiant has good cause to believe that there is a risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant if they are required to comply with “knocking and announcing” before nonconsensual entry;
- (2) A statement setting forth the facts upon which the affiant’s belief is based, including, but not limited to, the names of all known persons who the affiant believes pose the risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant at the particular residence or other building;
- (3) A statement verifying the address of the residence or other building proposed to be searched as the correct address in relation to the criminal offense or other violation of law underlying the request for the issuance of the search warrant;
- (4) A request, based on these statements, that the judge or magistrate waive the “knock and announce” requirement for nonconsensual entry.⁶

The city associated with a law enforcement officer making the request can be held liable for damages associated with the execution of the search warrant where the statutory precondition to “knock and announce” was waived.⁷ Ohio’s legislature, through its enactment of O.R.C. § 2933.231, recognized that no-knock search warrants should be used in very limited circumstances and with multiple levels of scrutiny because there is a statewide interest in protecting the safety of persons within their homes.⁸

Analysis

The City has Home Rule authority to prohibit the Cincinnati Police Department from using no-knock search warrants as a matter of local self-government, but the Manager has sole authority under the City Charter to regulate the Police

⁶ *Id.* (The request must be recorded and the judge must find that the officer will be subjected to a risk of serious physical harm and that the address is correct.)

⁷ *Id.* at (D).

⁸ See *Am. Fin. Servs. Ass’n v. City of Cleveland*, 112 Ohio St.3d 170 (2006) (finding that the Home Rule Amendment was “designed to give the “broadest possible powers of self-government in connection with all matters which are strictly local,” but the framers of the amendment did not want to “impinge upon matters which are of a state-wide nature or interest.” (quoting *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203 (1948)).

Department's policies.

I. The City could ban the use of no-knock search warrants under its Home Rule authority.

The Ohio Constitution grants municipalities the authority to engage in self-government and enact laws that do not conflict with the general, police-power laws of Ohio. Specifically, cities can exercise all powers of local self-government and adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with Ohio's general laws.

When an ordinance relates to local self-government, the ordinance is a valid exercise of the City's Home Rule authority.⁹ The City can exercise its power of local self-government relating to the regulation of its police department as long as the regulation is not an exercise of police power.¹⁰ The Ohio Supreme Court has held that "the organization and regulation of [the City's] police force, as well as its civil service functions, are within a municipality's power of local self-government."¹¹

A local ordinance "must relate 'solely to the government and administration of the internal affairs of the municipality.'"¹² The Ohio Supreme Court held that a municipality cannot "infringe on matters of statewide concern" even in the regulation of exclusively local matters.¹³ The Ohio Supreme Court provides some guidance regarding when a regulation of the City's Police Department may be preempted by state law:

[E]ven if there is a matter of local concern involved, if the regulation of the subject matter affects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest.¹⁴

A narrowly crafted City ordinance banning the use of no-knock warrants as a matter of CPD policy and procedure within the City limits by CPD officers who are not serving on state or federal task forces would regulate the administration of the Police Department and internal affairs of the City without impinging on other

⁹ *Id.*

¹⁰ *State ex rel. Canada v. Phillips*, 168 Ohio St. 191, 194 (1953).

¹¹ *State ex rel. Lynch v. Cleveland*, 164 Ohio St. 437 (1956) quoting *Harsney v. Allen*, 160 Ohio St. 36 (1953).

¹² *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 556 (2008) quoting *Beachwood v. Cuyahoga Cty. Bd. of Elections*, 167 Ohio St. 369 (1958).

¹³ *State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 89-90 (1982) (holding that local regulations could not exempt the municipality from state prevailing wage laws).

¹⁴ *Id.* at 90 (quotation marks omitted).

jurisdictions.¹⁵ (In contrast, a broader City ordinance purporting to legislate on the issue of no-knock warrants independent of City Manager authority would raise state preemption issues.) Therefore, a City ordinance banning the use of no-knock warrants by the Cincinnati Police Department is likely permissible under Ohio law without any further Home Rule analysis.¹⁶ Such an ordinance, however, would conflict with the City Charter as set forth below.

II. Council does not have the authority under the City Charter to enact an ordinance banning the police department from requesting a no-knock search warrant.

While an ordinance banning CPD's use of no-knock warrants could be a valid exercise of the City's Home Rule authority under state law, such an ordinance is beyond Council's authority. The Charter delineates the powers and authority of the City Manager and Council. Pursuant to Article IV, Section 1, the City Manager is the chief executive and administrative officer of the City. The City Manager "supervises the administration of the affairs of the city, except as otherwise specifically provided in [the] charter; [sees] that the ordinances of the city and the laws of the state are enforced . . ." and exercises "all other executive and administrative powers conferred by the laws of the state upon any municipal official" except as otherwise provided in the Charter.¹⁷

The Charter vests City Council with "all legislative powers of the city" subject to the terms of the Charter and the Ohio Constitution.¹⁸ The Charter does not provide Council with administrative powers beyond its right to appoint its legislative assistants and clerk. Per the Charter, Council may exercise legislative authority; it may not exercise administrative authority.¹⁹ Council lacks the authority to legislate what is the administrative authority of the City Manager and the Chief of Police – the control and direction of police work.

The City Manager is vested with the authority to appoint the Police Chief, Executive Assistant Chief, and Assistant Police Chiefs.²⁰ The chief of police

¹⁵ *Beachwood*, 167 Ohio St. at 371 (holding that a local regulation that affects only the [City] itself, with no extraterritorial effects, is clearly within the power of local self-government and is a matter for the determination of the municipality.)

¹⁶ It is important to note that the recent trend in the Ohio Supreme Court has been to invalidate local laws, even those appearing to be a power of local self-government, under a theory that the subject matter affects the general public. Therefore, even if a policy banning the use of "no knock" warrants were implemented, there is a chance that a court could invalidate it as conflicting with state law. Such a ruling could then be used to attack the City's ability to regulate its police department in other areas, risking that important decisions about how the department operates would lie in the hands of the Ohio General Assembly.

¹⁷ Art. IV, Sec. 3.

¹⁸ Charter, Art. II, Sec. 1.

¹⁹ Charter, Art. II, Sec. 1 and Art. IV, Sec. 1.

²⁰ Charter, Art. V, Sec. 5.

falls under the control, direction, and supervision of the City Manager and, subject to the approval of the City Manager, is the commanding officer²¹ of the department with control of the direction of the police work.²² CPD officers perform their duties at the direction of the Chief of Police, who is subject to the “control, direction, and supervision of the City Manager.”²³ The Chief of Police is a principal appointive executive officer.²⁴ CPD officers are executive branch officers carrying out administrative duties.

The Police Chief may prescribe rules and regulations for the police department, which must be approved by the City Manager.²⁵ These rules and regulations must comply with policies imposed by the Chief of Police under the direction of the City Manager,²⁶ as well as state laws that establish duties for law enforcement officers across the state when executing search warrants or requesting a waiver for the same.²⁷

The Cincinnati Police Department implemented CPD Procedure §12.700, “Search Warrants/Consent to Search.” This section provides additional requirements CPD officers must meet before requesting a no-knock search warrant.²⁸ The additional requirements balance the preference to “knock and announce” with the safety of the officers. The affidavit supporting the request for the no-knock warrant must be reviewed and approved by a commanding officer (captain or above). Moreover, after the commanding officer reviews the affidavit, that officer contacts the City Prosecutor who also reviews it. The affiant officer meets with a judge or magistrate only after the City Prosecutor reviews the affidavit, where there is another layer of review imposed by O.R.C. § 2933.231. Ultimately, if a no-knock search warrant is issued in the City, it must meet the requirements under the Police Department policies and procedures, the requirements under state law, and go through a judicial review.

III. Well-established exceptions to the “Knock and Announce” could have implications on a local ordinance or policy banning no-knock search warrants.

The law provides police officers significant discretion in the execution of their work as the occupation poses inherent safety risks and dangerous situations for both the officers and the community. As a result, despite any attempt to create local

²¹ The Mayor can take command of the police to maintain order and enforce the law in time of public danger or emergency with the consent of Council. Admin. Code, Art. III, Sec. 2,

²² Admin Code, Art. IV, Sec. 2.

²³ Admin. Code, Art. IV, Sec. 2.

²⁴ Admin. Code, Art. I, Sec. 1.

²⁵ Admin. Code, Art. I, Sec. 7.

²⁶ *Id.*

²⁷ O.R.C. Ann. §737.11.

²⁸ CPD Procedure 12.700.

legislation or CPD rules and regulations banning no-knock search warrants, there may be instances where circumstances not known to officers when they apply for and receive a search warrant dictate officers execute an unannounced, nonconsensual entry instead. It is well-established that law enforcement officers may dispense with the “knock and announce” requirement when they have reasonable suspicion of exigent circumstances regardless of whether the warrant authorizes no-knock entry. When officers do not have a no-knock warrant and enter without knocking due to exigent circumstances, the justification for bypassing “knock and announce” requirements may arise as late as when the officers are at the door. Having a law that completely bans the use of no-knock search warrants under all circumstances could put officers and citizens in danger for truly emergent circumstances. It is also possible that such a policy could lead to lawsuits from the public alleging damages due to the City’s policy making a situation, like a hostage recovery, more dangerous or harmful.

Conclusion

The ultimate authority to direct the Police Department and the Police Chief lies with the City Manager. Ohio law does not preempt the City’s authority to enact an ordinance banning the use of no-knock search warrants by CPD officers within the City limits. However, Council does not have the authority under the Charter to legislate an ordinance that involves the administration of the Police Department. Council can ask the City Manager to provide a report from the Police Department regarding the use of no-knock search warrants and make recommendations. Administrative changes made to police operations by the Manager and the Police Chief regarding no-knock search warrants should take into account the current holdings of the Supreme Court of the United States and implications of officers’ work within other agencies and jurisdictions.

If you have questions, please feel free to contact me or Assistant Solicitor Kate Burroughs at 513-352-4893.

January 6, 2021

To: Mayor and Members of City Council 202002091
From: Paula Boggs Muething, City Manager
Subject: Citizen Complaint Authority Recommendations and CPD Improvement, Report 1

REFERENCE DOCUMENT # 202001079

On September 2, 2020, the Law and Public Safety Committee referred the following for a report:

MOTION, submitted by Councilmember Landsman, The Citizen Complaint Authority (CCA) is at the heart of the Collaborative Agreement but it faces two major challenges. CCA has been understaffed and the submitted complaints are not being investigated and responded to in a timely manner. At one point, CCA had a backlog of over 100 cases, including many excessive use-of-force complaints. (BALANCE OF MOTION ON FILE IN THE CLERK'S OFFICE)

The following report is the first of two in response to Motion 20200179. This report provides an overview of the CCA recommendation process, as well as recommendations submitted to CPD for response. The second report, to be submitted within 60 days, will detail responses from CPD to each recommendation identified.

CCA RECOMMENDATION AND RESPONSE PROCESS

CCA provides an independent and impartial forum for the review, investigation, and resolution of complaints filed by citizens against police officers. CCA has three components: an advisory Board of seven citizens appointed by the Mayor and approved by City Council; a full-time Director with support staff; and a team of professional investigators.

CCA has existed for nearly 20 years. It was created in May of 2002 in the aftermath of civil unrest that occurred the previous year when a Cincinnati Police Officer shot and killed Timothy Thomas, an unarmed Black teenager. In resolution of lawsuits related to the shooting, Cincinnati's historic Collaborative Agreement was signed to improve police service and to implement community-oriented policing. A Memorandum of Agreement (MOA) between the U.S. Department of Justice, the City and the CPD was also executed. As a result of those two agreements, the City established CCA in its Administrative Code.

CCA investigates serious police interventions, such as discharges of firearms, deaths in custody, and major uses of force; as well as serious complaints of misconduct, such as excessive force, improper pointing of firearms, improper searches and seizures, improper stops, and discrimination (including racial profiling). Complaints not investigated by CCA are referred to CPD. CCA also makes recommendations to the City Manager and the Police Chief.

At the conclusion of an investigation, the Director makes findings based on a preponderance of the evidence standard and may also make recommendations. CCA’s Board reviews the completed investigations, and takes a vote indicating approval or disapproval of the Director’s findings and recommendations. Afterwards, the City Manager will conduct a final review and assessment. ¹

2018 – 2020 CCA RECOMMENDATIONS²

Note: This report combines some recommendations that are nearly identical, rather than setting out all the permutations of that recommendation. For instance, in cases where repeat recommendations were issued by CCA, the agency included those with substantially similar language although not always identical. In all such instances, this report includes only one version of the recommendation. All corresponding case numbers where the recommendation was made have been included for official reference purposes.

De-Escalation & Harassment

CCA Case No.	CCA Recommendation
19157	CCA also recommends that CPD make a separate policy for the utilization of de-escalation techniques. This policy should further expand on the definition of de-escalation techniques, which is listed under CPD Procedure Manual § 12.545 Use of Force. The policy should, in part, explain the criticalness of an officer’s awareness to properly select and implement the proper de-escalation technique in a given situation. Additionally, there should be a renewed focus on training and simulations that can assist officers in developing better awareness in situations where de-escalation techniques would help prevent the use of force.
18229,17163	CCA recommends that CPD create a definition of Harassment, at a minimum, in its CPD Procedure to provide officers with specific direction and guidance.

Taser/Firearm

CCA Case No.	CCA Recommendation
18181,18158, 18092,18067, 17162	In addition to previous recommendations to CPD Procedure § 12.545 Use of Force, CCA recommends that CPD further develop the Taser section regarding avoidance of prolonged, extended, uninterrupted discharges or extensive multiple discharges. To support its development, a study should be conducted to review these types of taser discharges that include analyses of the number of incidents, the demographics of citizens involved in these incidents, the types of behaviors that result in a citizen being the target, and any injuries sustained. Such a study can be impactful in assisting CPD to ensure operational taser practices align with policy and training.
18115,18076	CCA recommends that CPD create a tracking system that requires officers to document every time they point their firearms/tasers at a person (including at the low ready position) and describe the type of encounter that prompted them to have to draw their firearm/taser such as: felony traffic stop, investigatory stop, etc. This information could be added to their Contact Card or Arrest Report. The

¹ For additional information on CCA, please visit CCA’s website at <https://www.cincinnati-oh.gov/ccia/about-cca/>.

² This report does not include 2020 recommendations pending review by the City Manager and that thus have not been formally forwarded to the Police Chief.

CCA Case No.	CCA Recommendation
	results would prove useful in detecting trends as well as be used in the creation of further training tools.
18154,18076, 18042,17220	CCA continues to recommend that CPD review the Taser section of its Procedure § 12.545 Use of Force to determine when it is appropriate for officers to remove their tasers from their holsters and how officers should point and use their tasers as a means of control to avoid the appearance of a physical threat to a citizen. While CPD's recent 2019 changes continue to enforce the objective reasonableness standard, CCA feels more clarity is needed. One point of clarity that CCA recommends be included is the creation of a definition and section on passive resistance versus active resistance with explanation of what uses of force are acceptable and non-acceptable based on the type of resistance and why.

Body Worn Camera

CCA Case No.	CCA Recommendation
18139	While BWCs are primarily worn by uniformed officers, CCA expressed concern during the BWC Policy implementation period regarding scenarios where plain clothed officers should be required to wear BWC's. This case provides such an example.
19010	<p>CCA recommends the Body Worn Camera System procedure be reviewed and adjusted to provide explicit direction to officers in light of the procedure's purpose.</p> <p>CPD Procedure § 12.540 Body Worn Camera System states that officers will use BWC equipment to record all calls for service and self-initiated activities and when assisting other officers. The BWC must be activated when the officer arrives on-scene or announces he/she is on-scene in the area and must be recorded in its entirety. However, it allows exceptions for officers to deactivate their BWC in specific situations, such as completing paperwork, e.g. case report, as long as they are not interacting with the public. There are concerns that the exceptions may be contradictory to the purpose and policy behind CPD Procedure § 12.540. Furthermore, the discretion of the officer regarding when to activate or deactivate the BWC could come into question. Since CPD has the ability to redact any information that it deems confidential in nature prior to making footage public, it should not be left to the officer's discretion.</p>
18149	CCA recommends that CPD include in Procedure § 12.540 Body Worn Camera System that officers who are assigned to work the front desk be required to activate their BWC's for civilian contact regardless if it is a consensual encounter. Doing this can either confirm or refute complaints. CPD should also define the term consensual encounter, further provide guidance at what point a consensual encounter becomes a police-initiated encounter and at what point during the encounter officers should activate and de-activate their BWCs.

CCA Case No.	CCA Recommendation
17244,16247, 17033	<p>CCA continues to urge CPD to issue BWC to the FAS (uniformed and plain clothed), requiring them to wear them as patrol officers are required to wear them, in addition to during the execution of warrants. This includes scenarios that involve obtaining consent. As further support of this recommendation, the International Association of Chiefs of Police Model BWC Policy also recommends such units like CPD's FAS wear BWCs.</p> <p>In the past, CCA expressed concern regarding the FAS not wearing BWCs, including during the BWC Policy implementation period. CCA understands that the undercover units should be exempted from the practice. The FAS is not an undercover unit; its primary role is to execute warrants including the investigation, location, and apprehension of offenders with warrants.</p>
17033	Furthermore, all uniformed officers in specialized units should be required to wear BWCs. There is no exception in the current CPD Procedure § 12.540 that excludes uniformed officers assigned to specialized units like the FAS from wearing BWCs.

Use of Force

CCA Case No.	CCA Recommendation
18229,18181, 18158,18092, 17162,17073	CCA recommended in prior investigations involving the allegation of use of force that CPD re-enact the Use of Force Board. While CPD acknowledged that enactment of the Use of Force Board is not needed due to the concurrent investigations by CPD and CCA, CCA still has concern. Since Use of Force is still the underlying cause of many CPD and CCA complaints, CCA believes the Use of Force Board is imperative. CPD Procedure § 12.545 Use of Force, refers to the Use of Force Board conducting comprehensive reviews of various use of force incidents; this would also include reviewing police tactics in cases like this one. By enacting the Use of Force Board, protocols and patterns may be further identified that can lead to a decrease in Use of Force complaints.
17162	CCA recommends that a Force Continuum or Matrix be included in CPD Procedure § 12.545 Use of Force, defining the types of force/weapons that can be used to respond to specific types of resistance. This tool can further guide officers in how force should be applied, but also further encourage de-escalation.

Transparency

CCA Case No.	CCA Recommendation
19058,18114, 18214,17234, 17234	CCA recommends a review by the CPD of its handling of and response to CCA's requests for information to ensure CPD's compliance with Article XXVIII and the Collaborative Agreement. It is imperative that CCA receive evidence from CPD timely to conduct a viable investigation. At a minimum, since CCA shares all complaints it investigates with CPD, any records related to the complaint should be flagged and provided to CCA upon notification of CCA's investigation. Article XXVIII Cincinnati Administrative Code Article XXVIII, § 3-B reads (in part), "The executive director of CCA shall have reasonable access to city records, documents. . . ." In this case, CCA requested the MVR/DVR of the incident but was informed by CPD that while the evidence existed and was requested, it could not be located.

CCA Case No.	CCA Recommendation
18199	CCA continues to request that once CCA shares complaints it investigates with CPD, which occurs within 48 hours of CCA's receipt of a complaint, any records related to the complaint should be flagged and provided to CCA upon notification of CCA's investigation. It is imperative that CCA receive evidence from CPD to conduct a viable investigation. Article XXVIII Cincinnati Administrative Code Article XXVIII, § 3-B reads (in part), "The executive director of CCA shall have reasonable access to city records, documents.
19129,18199	In the interest of transparency, CCA continues to recommend that CPD record and monitor officers' telephone interactions with the public, especially when addressing citizen complaints and concerns, to ensure the officers meet the applicable procedural and regulations requirements of CPD and the City of Cincinnati's requirements for all employees.
17130,18199	CCA recommends a review by CPD of its handling of and response to CCA's request for records in this matter to ensure CPD's compliance with article XXVIII and the Collaborative Agreement. It is imperative that CCA receive evidence from CPD in a timely manner to conduct a viable investigation. Article XXVIII Cincinnati Administrative Code Article XXVIII, § 3-B reads (in part), "The executive director of CCA shall have reasonable access to city records, documents, etc." In this case, CCA Investigators requested the BWC footage within CPD's 90-day retention period. CCA did not receive the requested records and was notified by CPD's Internal Investigations Unit that the records had not been "flagged" as they should have, and had already been deleted.

Officer Review and Training

CCA Case No.	CCA Recommendation
19157	CCA recommends that Officer **** receive additional training in de-escalation techniques to prevent similar encounters in the future.
18229	CCA also recommends that Officer **** receive follow-up training in customer service and the application of policies, procedures, training in the areas of use of force, transporting and the use of de-escalation techniques to be able to decrease the potential need to use force and respond appropriately to levels of compliance or resistance.
18080	CCA recommends Officer **** receive further training on CPD Procedure § 12.412 as well as sensitivity training when working with domestic violence victims.
18120	CCA recommends Officer **** receive additional training in working with domestic violence victims as well as de-escalation techniques to prevent similar encounters in the future.
18070	CCA recommends that Officer **** receive additional training in de-escalation techniques and customer service skills to prevent similar encounters in the future.
17227	CCA recommends that the officers receive follow-up training in the application of policies, procedures and training regarding consents to search, searches, seizures and vehicle impoundments as well as use this case in future trainings as an example of what and what not to do.
17227	CCA recommends that the officers receive follow-up training in the application of policies, procedures and training regarding consents to search, searches,

CCA Case No.	CCA Recommendation
	seizures and vehicle impoundments as well as use this case in future trainings as an example of what and what not to do.
17227	CCA recommends that the officers receive follow-up training in the application of policies, procedures and training regarding consents to search, searches, seizures and vehicle impoundments as well as use this case in future trainings as an example of what and what not to do.
17227	CCA recommends that the officers receive follow-up training in the application of policies, procedures and training regarding consents to search, searches, seizures and vehicle impoundments as well as use this case in future trainings as an example of what and what not to do.
17227	CCA recommends that the officers receive follow-up training in the application of policies, procedures and training regarding consents to search, searches, seizures and vehicle impoundments as well as use this case in future trainings as an example of what and what not to do.
17227	CCA recommends that the officers receive follow-up training in the application of policies, procedures and training regarding consents to search, searches, seizures and vehicle impoundments as well as use this case in future trainings as an example of what and what not to do.
17205	CCA recommends that Officer **** receive further training in the use of de-escalation techniques to be able to decrease the potential need to use force and respond appropriately to levels of compliance or resistance.
17163,17041	CCA has noticed an increase in complaints and allegations against Officer **** and recommends that CPD review Officer **** record of complaints and allegations to determine if further training, counseling, remediation or change in assignment is needed.
17138	CCA highly recommends Officer ***** receive additional training in addressing citizens, including those in mental health crises as well as utilizing disengagement and no escalation methods.
18181,18158, 18092	CCA recommends that CPD review officers who have the same type of complaints and allegations filed against them to determine if further training, counseling or remediation is needed. This can serve as an initial warning to CPD that early intervention may be needed. All department personnel must recognize that their actions, both verbal and non-verbal, can play a significant role in the outcome and escalation or de-escalation of an interaction.
19058	Additional clarification may be needed that contact cards are required for any vehicle passenger or pedestrian detention which meets the definition of a "Terry" stop unless the stop results in an arrest or citation. Furthermore, CPD should not train its officers that self-initiated interactions do not require contact cards. To be proactive and ensure policy accountability and fairness, contact cards should be required no matter the type of stop, nor whether the stop may be considered self-initiated or not.
17162	CCA recommends that CPD instruct officers to thoroughly explain all the reasons why they were called to the scene to the citizens. CCA believes that thorough explanations to citizens could possibly reduce the amount of misunderstandings between CPD and citizens. If citizens are fully informed of the reasons for the questioning, it could possibly reduce the amount of citizen complaints filed against CPD officers, as well as foster better police/community relations.
18096	CCA recommends that Officer Smith receive training in use of force, foot pursuits, tactics, de-escalation techniques, and customer service skills,

CCA Case No.	CCA Recommendation
	particularly regarding interactions with juveniles, in order to prevent similar encounters in the future.

Miscellaneous

CCA Case No.	CCA Recommendation
18142	There appeared to be a lot of confusion by the individuals involved and bystanders regarding walking in the street; there appeared to be a common theme that others historically walked in the street, even with the sidewalks present. If that is the case, CCA believes that this may be an excellent time to engage this community regarding City pedestrian laws.
16247	CCA is unaware of a due diligence checklist for the identification of alleged suspects with open warrants for service. If one does not exist, CCA recommends that one be created and that it be required of all execution of warrants. This recommendation would be a proactive measure to ensure that there is due diligence in the identification of an alleged suspect, especially in a case like this one where the person has a common name.
17033	Since the FAS's primary role is to execute warrants, procedurally, all officers in that squad should carry Consent to Search forms when acting in the performance of their duties. If the FAS officers do not carry and provide the correct CPD approved documentation and forms in the performance of their duties, they should be held accountable.

SUMMARY

The City Manager's Office in coordination with Citizen Complaint Authority and the Cincinnati Police Department has identified 37 unique recommendations in response to Council's request for an update on CPD's response to prior CCA recommendations. The Administration will submit a follow up report to Council within 60 days detailing CPD's response to the identified recommendations.

cc: Jason Cooper, Division Manager, Criminal Justice Initiatives
Gabriel Davis, Director, Citizen Complaint Authority
Lt. Col Teresa Theetge, Executive Assistant Chief, Cincinnati Police Department

February 3, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager **202002155**

Subject: Motion to Implement Cincinnati Black United Front and Ohio Justice and Policy Center Recommendations

REFERENCE DOCUMENT # 202000774

On June 8, 2020, the Law and Public Safety Committee referred the following for a report:

MOTION, submitted by Councilmember Landsman, WE MOVE that the Administration, working with City partners, especially the Cincinnati Black United Front and the Ohio Justice and Policy Center who have put these reforms forward, take up the following recommendations: (Balance of motion on file).

REPORT

The following report summarizes the status of the reforms recommended by the Cincinnati Black United Front and the Ohio Justice and Policy Center. All recommendations have been completed, are in development, or are the subject of ongoing discussions.

(1) Apply laws and policies fairly, and eliminate disparities in the criminal-legal system.

A. Review and release data, particularly in regard to arrests.

The Cincinnati Police Department reviews and releases data in an array of formats and venues. In addition to the over 92,000 documents CPD releases to the public through records requests annually, CPD proactively publishes summary crime information (STARS Report), weekly, to the official CPD website. The STARS report summarizes Part One reported crimes and provides comparative analysis across a variety of time periods. STARS reports are available citywide, and for each police district. CPD also publishes crime reports for each neighborhood, weekly, on its website. CPD routinely shares this information at neighborhood meetings, and actively publishes information important to the public through various social media platforms.

CPD collaborates with the City's Office of Performance and Data Analytics (OPDA) to ensure that CPD data is routinely (often daily) published to the City's Open Data Portal and to Cincy Insights, an interactive dashboard portal designed to make open data more friendly. The City's Open Data Portal currently hosts 35 public safety data sets, including crime incidents, police calls for service, traffic crash reports, police use of force, assaults on officers, traffic and pedestrian stops, and others. Through Cincy Insights, these data sets can be filtered and mapped so that the public is not only provided raw data that might be downloaded and

analyzed in any manner they see fit, but also that citizens might be able to conduct basic analysis and visualization of data in near-real time.

Each quarter the City publishes a Collaborative Agreement Performance Deck online which includes standard reporting across a range of police performance indicators, including traffic stop outcomes, arrests, and officer involved shootings. A number of metrics are tracked along race and geographic dimensions.

CPD has instituted a process improvement team that is actively working to fully implement electronic arrest reporting for every arrest.

B. Adopt new policies and protocols to eliminate disparities.

CPD is committed to bias-free policing. In 2019, CPD expanded upon existing policies and procedures intended to affirm this commitment by adding a new CPD procedure (PM 15.100), titled *Bias Free Policing*. The policy statement of this new procedure reads: “The Cincinnati Police Department will provide service and enforcement fairly and without discrimination toward any individual or group of people. Bias based profiling **shall not be used** as the basis for providing law enforcement services or the enforcement of laws. All members have the responsibility for achieving the Department’s goal of bias free policing.” This new procedure is integrated into CPD’s Manual of Rules and Regulations and Disciplinary Process and other existing policies and procedures.

CPD is also committed to developing new protocols intended to eliminate disparities, when evidence suggests they hold promise. One recent example is a collaborative effort between the City and County, called Law Enforcement Assisted Diversion (LEAD). LEAD is a community-based diversion approach with the goals of improving public safety and public order and reducing unnecessary justice system involvement of people who participate in the program. CPD is an active partner in this program. One core principle is: undo racial disparities at the front end of the criminal justice system. This program is currently piloted in District One and the Central Business District.

(2) Offer warnings first and problem solve for constructive, creative solutions while policing and review use-of-force policies.

A. Pursue new investments in problem-solving using strategies beyond charges.

CPD has defined problem solving as the Department’s principal strategy for addressing recurring crime and disorder problems. CPD’s Problem Solving Guide states: “Initially, any and all possible responses to a problem should be considered so as not to cut short potentially effective responses. Suggested responses should follow from what is learned during the investigation. They should not be limited to, nor rule out, the use of arrest.” **It is this commitment to problem solving that has resulted in a reduction in arrests of more than 50%, comparing 2000 to 2019 (from 47,188 to 21,487).**

In 2016, the City of Cincinnati launched the PIVOT initiative. PIVOT (Place-Based Investigations of Violent Offender Territories), is a strategy intended to problem solve violent criminal activity. Rather than relying solely on arrests, the PIVOT team also focuses very carefully on aspects of place, and on techniques beyond arrest that might alter criminal activity and violence. PIVOT projects are complex problem-solving projects, in collaboration with our community, stakeholders, and many City departments. Responses intended to

reduce violence have included situational crime preventive measures like installing fences and gates, modifying and improving lighting, reorganizing and regulating parking, and attending to blight that influences crime (i.e. tall grass where guns are hidden). Police have also focused on the potential benefits of proper place management, and worked with property owners to educate, convince, and in some cases compel action, through regulatory systems and courts, to regulate conduct in a way that prevents future criminal activity. PIVOT project areas have seen significant reductions in shootings and other violence, without relying on arrest as the only mechanism by which public safety might be improved.

In 2017, CPD won the international Herman Goldstein Award for Excellence in Problem-Oriented Policing, for the PIVOT strategy. In 2018, CPD was awarded a Community-Based Crime Reduction grant, through the Department of Justice, to implement PIVOT in the neighborhood of East Price Hill. This is just one example of new investments in problem solving strategies that extend beyond reliance on criminal charges. CPD's expansion of victim-liaison services, through VALU/CCROW, represents another such effort. These victim and witness services are aimed at strengthening victim and witness participation in the criminal justice system, and at improving access to restorative and protective resources for crime victims. It is hoped that greater engagement will not only result in a more effective criminal justice system, but that it will also disrupt dangerous cycles of retaliation in our community.

B. Develop a juvenile problem-solving team to reduce arrest and use-of-force against youth.

In October 2019, the Administration completed a juvenile problem solving project to improve youth-police relations in partnership with the Children's Law Center, the Urban League and Youth at the Center. The Cincinnati Black United Front was invited to participate in the effort in the fall of 2018 and spring of 2019. A presentation was made to members of Law and Public Safety by the project partners on June 10, 2019. Final recommendations were submitted to the City and are currently under review.

C. Develop ordinances to reduce arrests and ensure citations/summons are issued wherever possible.

Current CPD procedure governing arrests (PM 12.555) notes that all adults charged with misdemeanor offenses are eligible for release via a Notice to Appear (NTA), rather than physical arrest, excepting sex offenses, weapon offenses, 3rd offense OVIs, domestic violence, those charged living in a place where extradition would be necessary, or in instances where specific language or conditions in the arrest document require a physical arrest (i.e. probation warrant). Arresting officers may also cite individuals for traffic warrants.

As noted in a previous response, CPD is also engaged in a pilot pre-arrest diversion program called LEAD, which provides an additional avenue for the diversion of low-level criminal charges, in pursuit of addressing root causes of criminal activity.

For juvenile offenses (PM 12.900), a range of responses other than arrest are available to officers in many circumstances. An officer who perceives that an informal intervention by Hamilton County Juvenile Court is preferable for a first-time, non-violent misdemeanor offender may sign an unofficial complaint. Unofficial hearings provide an opportunity for juveniles and victims to arrive at a solution. In cases where an unofficial hearing is not the proper solution, officers may issue a "closed referral" for any non-violent misdemeanor offense other than drug or alcohol offenses, provided the juvenile has not previously been issued a

closed referral. A closed referral is written documentation of an offense, used in part to inform a responsible adult (i.e. parent) of the circumstances. Closed referrals are not processed as criminal complaints.

D. Direct city prosecutors to take a position against monetary bail for all misdemeanor suspects in non-violent offenses.

The City Solicitor's Office adopted the attached bail policy in early 2020, which instructs prosecutors to not oppose the pre-trial release of defendants on their own recognizance subject to exceptions for certain offenses where the community has a strong interest in pre-trial detention for public safety.

E. Conduct internal and external reviews of current use-of-force protocols as well as trainings to identify changes with particular attention to de-escalation, domestic violence, encounters with the mentally ill, and cultural competency.

CPD conducts internal and external reviews of use-of-force and actively seeks and administers training, with particular attention to de-escalation, domestic violence, and encounters with those affected by mental health. CPD prioritizes cultural competency. As a part of CPD's organizational structure, the Planning Section of CPD is charged by the Police Chief with conducting long-range planning, developing and maintaining policies, procedures and forms, and conducting legal research. Upon approval by the Chief to revise a procedure, the Planning Section opens a procedure revision project. Procedure revision projects include reviewing the policies and procedures of other agencies, model policies, best practice, and internal and external recommendations. CPD Planning Section often engages with Inspections Section, Internal Investigations Section, and Training Section to understand any perceived weaknesses or negative outcomes of past procedures, and to seek feedback on potential procedure revisions. The frequency with which CPD reviews and revises operating procedures may be misunderstood by some. In any given moment, multiple procedures are under review. In 2019, 41 of CPD's 188 procedures were reviewed, revised, and approved for Department use. CPD's Use of Force procedure is one of the most frequently reviewed and revised procedures. It has been revised 34 times since 2002; the most recent approved revision was implemented in June of 2019. CPD requests feedback from the Citizen's Complaint Authority (CCA) when considering revision to the Use of Force procedure.

De-Escalation

CPD emphasizes de-escalation. It is defined and discussed in CPD Use of Force procedure, as well as in procedures that outline response to those who are mentally ill and in procedure that governs the discharge of firearms by police personnel. It has also been a core training topic for more than a decade. It is embedded in many Department trainings. In March of 2020, CPD conducted *Force Science Fundamentals of Realistic De-Escalation*, which teaches officers necessary skills to accurately assess potentially violent confrontations and defuse them when possible, to avoid potential uses of force. Field training officers and new police supervisors are provided *Civil Liability and Use of Force* supplemental training to assist them in acting as leaders and department role models, reinforcing the prioritization of de-escalation and the use of only necessary force.

Domestic Violence

CPD recognizes the risks inherent in responding to domestic violence incidents when suspects are still present, and trains officers to respond in a way that is intended to generate a rapid protective response for victims, while working to minimize the need for force during

the arrest of an abuser. CPD's policy and practice makes it clear that domestic violence is highly prioritized and that it is clearly understood that victims of these crimes may benefit from services beyond traditional law enforcement and criminal prosecution. For this reason, CPD has a longstanding partnership with Women Helping Women. Most recently, CPD has actively engaged in the DVERT program. DVERT advocates aid department personnel by providing around-the-clock, on-site support, resources, and options to victims, allowing officers to focus on the law enforcement aspects of an incident. DVERT advocates from Women Helping Women are dispatched to the scene within the hour to focus on the needs of the survivor and dependents.

Mental Health Response

It is clear to CPD that implementing best practices when responding to persons experiencing a mental health crisis may help to minimize instances in which force is necessary. Since 2002, all CPD recruits receive 40 hours of Mental Health Response Team (MHRT) certification training. MHRT officers are dispatched on all runs involving individuals experiencing mental illness. If two MHRT officers are available, they will be dispatched as a team.

CPD officers routinely collaborate with the Mobile Crisis Team (MCT). MCT members are mobile clinical team participants, comprised of licensed master level social workers trained to respond to mental health emergencies throughout Hamilton County. Three MCT members are embedded in CPD districts, enhancing their ability to respond to support relevant calls for assistance that are received through the Emergency Communications Center, and to which CPD officers respond.

Cultural Competence

As part of continuing professional training in 2019, Officer Fred Gilmer taught *Empathy Through American History* to his fellow officers. The objectives of the course included the history of race relations in the United States and the immense impact of assisting people through empathy and applying this approach to develop stronger communities.

F. Create publicly available report(s) explaining the development, implementation and results of use-of-force reviews, policies and trainings including the employee tracking system, records management system and electronic contact cards.

Police use-of-force data is publicly published by the City of Cincinnati, through the Office of Performance and Data Analytics. It is available both on Cincinnati's Open Data Portal and on the Cincy Insights dashboard. CPD procedures, including those governing the process by which use of force is reported and investigated, is published publicly on CPD's official website. Procedures and Staff Notes that govern the manner in which CPD uses the Employee Tracking System (ETS), Records Management System (RMS), and contact cards, are also posted on CPD's website and available for public review.

An update was provided to the Manager's Advisory Group (MAG) at the December 2019 meeting on the status of the ETS, RMS, and electronic contact cards. CPD completed a presentation and hosted a question and answer session.

(3) Address the pandemic as an issue of public health, not of criminality.

Since the beginning of the pandemic, the City's approach to the health crisis has been to emphasize compliance with regulations that have been implemented for the safety of the

entire community, rather than strict enforcement. For that reason, enforcement has been limited. Since April, when Council passed legislation that enabled Health Department sanitarians to take the lead on pandemic-related enforcement, CPD has not signed criminal charges for the enforcement of any Ohio Department of Health (ODH) orders. Prior to April, CPD focused on achieving compliance, rather than enforcement. Just 17 individuals were charged with only failing to comply with the various ODH orders. An additional 16 persons were charged with violating the ODH orders in addition to other criminal offenses.

The City Solicitor's Office has treated the prosecution of these individuals as one of education, rather than punishment. Defendants have been addressed on a case-by-case basis by prosecutors to ensure that defendants are not being prosecuted for a lack of information or education about the issue, or lack of means to comply. As a result, over a third have been dismissed to date. Prosecutors continue to evaluate each case as it appears on the docket and recommend dismissal where circumstances dictate public health or safety would not be served by a conviction.

(4) Revive the Citizen Complaint Authority (CCA).

CCA has a long record of active and diligent service to Cincinnati. In September 2020, Gabe Davis was appointed CCA Director; continuing CCA's strong tradition of service to the community, he has accomplished a great deal in that short amount of time, as set forth below.

CCA recently hired three experienced and diverse investigators. The new investigators include a former NYPD detective fluent in Spanish, a former Cleveland prosecutor with criminal defense experience, and a counterintelligence investigator from the U.S. Intelligence Community. These new hires immediately brought CCA into compliance with staffing requirements under CCA's governing statute. They also strengthened CCA's ability to complete investigations of citizen complaints in a timely fashion, identify patterns, and meaningfully influence police accountability outcomes and decision-making.

Reduction of CCA's case backlog was a high priority. In order to address this issue and improve efficiency, the director implemented a plan that included the use of concrete internal targets for case completion, measurable benchmarks, strategic assignment of cases, and streamlined processes for report-writing designed to expedite the completion of less-complex cases.

CCA enhanced engagement with the community by creating opportunities for the public to virtually participate in CCA's Board Meetings. CCA staff worked with the Board to create more opportunities for the community to offer comments during Board Meetings and opportunities to become educated about issues related to the community's concerns through the use of guest speakers and relevant agenda topics. Further, the Director has engaged community stakeholders in one-on-one meetings designed to build relationships and improve the delivery of CCA's services to the public.

Finally, CCA has had multiple collaborative discussions with the City's leadership and other divisions and departments - including important collaborations with the Cincinnati Police Department, Office of Human Relations, Criminal Justice Initiatives, Office of Performance and Data Analytics, the Solicitor's Office, and others. These collaborations have addressed topics such as strengthening CCA's recommendations process, revisions to police policy, collaboration regarding monitoring of discrimination complaints, and improvements to transparency.

(5) Revive the Manager’s Advisory Group (MAG).

The City Manager's Advisory Group (MAG) was suspended in 2020 from March to July, as the Administration grappled with the COVID-19 pandemic's early impacts. Nearly 1,700 City employees were furloughed, including the Division Manager of Criminal Justice Initiatives. In addition, leadership changes in the City Manager’s Office required additional transition time. Meetings of the MAG resumed in September 2020. Since then, the City has:

- Resumed quarterly publishing of the Collaborative Agreement Performance Deck.
- Provided a Year 1 Summary on the Administration's 2019-2020 collaborative refresh work.
- Responded to questions and concerns from MAG members.
- Recruited ten new community members to serve on the MAG.
- Launched a new internal working group to improve interdepartmental coordination between the City Manager's Office, Police Department, CCA, Performance and Data Analytics, and the Solicitor’s Office on criminal justice matters.

(6) Take steps necessary to fully implement a public safety academy within Cincinnati Public Schools.

The City Administration and the Cincinnati Police Department support the establishment of a public safety academy to provide our young people a reasonable path toward employment at CPD. In 2018, the Charter was amended to allow the Civil Service Commission to award credit for police and fire recruits who graduated from a public safety academy established by the Cincinnati Public Schools (CPS).

We understand that CPS is in the process of implementing the public safety academy. The primary obstacle to realization is that to obtain civil service credit, the public safety academy must award a certification at the completion of the program. However, there are no peace officer certifications in Ohio that can be completed in that time by an individual under 18. As a result, CPD and CPS are considering various alternative certifications that would have value to the police department such as a private security certification. CPS and CPD are meeting in the coming weeks to assess the viability of these alternatives.

(7) Improve policing data collection, analysis, and evaluation capabilities – including tracking by race.

A. Make data public.

As detailed throughout this document and particularly in response to Item 1, CPD makes data public in a variety of formats.

B. Desegregate adult and juvenile data.

The Office of Performance and Data Analytics is available as a resource to assist the community in working with the Open Data Portal to conduct additional or more complex analysis.

As detailed in response to item 1 above, CPD has instituted a process improvement team that is actively working to fully implement electronic arrest reporting for every arrest. This will improve CPD’s ability to conduct detailed analysis of arrest activity. As of November 2020,

CPD has fully transitioned into the use of the electronic 527 Arrest Form in the Records Management System for all physical arrests citywide.

(8) Coordinate Collaborative Refresh with all of these actions and implement refresh promptly.

The City of Cincinnati continues to actively engage the spirit of the Collaborative Agreement, and to work toward ensuring that the tenants of the Collaborative Agreement are operative in Cincinnati. The Administration is currently soliciting ideas, suggestions, and feedback for our 2021-2022 collaborative refresh work. This process includes one-on-one meetings with members of the MAG, city leadership, and other key stakeholders and partners. A draft plan will be presented to the MAG for feedback in March 2021.

Attachment: Cincinnati Law Department Bail Reform Policy

cc: Sheryl Long, Assistant City Manager
Andrew Garth, City Solicitor
Colonel Eliot K. Isaac, Police Chief
Gabe Davis, CCA Director

CITY OF CINCINNATI BAIL POLICY
EFFECTIVE IMMEDIATELY

Non-Violent Misdemeanor Offenses

It is the policy of the City of Cincinnati to eliminate wealth-based pretrial detention. For nonviolent misdemeanor offenses, the presumption of this Office shall be that release on personal recognizance is the appropriate recommendation.

- NOTE 1: This policy requires City Prosecutors to recommend OR bond to the court on nonviolent misdemeanor cases whenever the Court asks the State for its recommendation on bond.
 - This includes in RM A (or less likely in RM B) at initial arraignment.
 - This includes in a courtroom at any point after the case has been rolled to a judge and the issue of bond is raised.
 - This policy applies regardless of the number of capiases the defendant has for failure to appear.
- NOTE 2:
 - You should **not** defer to the court when asked about bond – state a position.
 - If there is reason to request a cash bond because of a threat to a victim or danger to the community, speak with your supervisor ahead of time and be prepared to articulate why an exception should be made. Exceptions should be rare.

Violent Offenses and Offenses that Endanger the Community

For offenses of violence and offenses that endanger the community, prosecutors shall weigh each of the following factors in making a bail recommendation:

1. *The weight of evidence against the accused;*
 2. *Whether the accused poses a substantial risk of serious physical harm to any person or the community;*
 3. *Whether alternative release conditions exist that would reasonably assure the safety of the community; and*
 4. *The probability of appearance at trial by the accused.*
- NOTE 1: Offenses of violence include the following (see R.C. 2901.01(A)(9) and the handout):
 - Assault, domestic violence, menacing, aggravated menacing, menacing by stalking, arson, inciting to violence, riot, inducing panic, and intimidation (of an attorney, victim, or witness in a criminal case).
 - NOTE 2: Offenses that endanger the community include the following:
 - Vehicular Homicide, OVI offenders with a prior conviction, sexual imposition, public indecency, telephone harassment, child endangerment, CCW, improper handling of a firearm, having a weapon while intoxicated, and TPO violations.

February 3, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

202002158

Subject: CPD Response to Report on Police Reform and Racial Justice

REFERENCE DOCUMENT #202001895

On September 1, 2020 the following item was referred for a report:

MOTION:

I MOVE that City Council endorse the attached *Report on Police Reform and Racial Justice*.

I FURTHER MOVE that the Administration prepare in response to the recommendations made by the U.S. Conference of Mayors' Working Group on Police Reform and Racial Justice.

I FURTHER MOVE that the Administration's report identify whether it believes the Cincinnati Police Department already meets each recommendation; and to the extent that it does not, provide an analysis of why or why not CPD should or should not make the recommended change.

Mayor John Cranley

Response (Below)

**CPD Self-Assessment of
United States Conference of Mayors:
Report on Police Reform and Racial Justice**

Cincinnati Police Chief Eliot K. Isaac directed a review of The United States Conference of Mayors: *Report on Police Reform and Racial Justice*. This report represents the Cincinnati Police Department's self-assessment of the recommendations included in the report. Forty specific recommendations were identified. Thirty-one recommendations were oriented toward police departments. The remaining nine recommendations focused on decisions of municipal or state government. The thirty-one police department recommendations are listed below, with a response from CPD. Supporting references, such as the most relevant portions of CPD procedures are included.¹ Within the United States Conference of Mayors Report, recommendations are categorically organized. These categories are preserved in the response below.

SANCTITY OF LIFE (Conference of Mayors Report pg. 17)

- 1) **Departments should have a use-of-force policy that provides officers will:**
 - a. **Use only the minimal amount of force necessary to respond, if any force is necessary at all;**
 - b. **Continually reassess the situation to calibrate the appropriate response;**
 - c. **Not use chokeholds, strangleholds, or any other carotid restraints, unless deadly force is necessary;**
 - d. **Not shoot at or from moving vehicles, except when under extreme, life-threatening circumstances that are not avoidable; and**
 - e. **Not use deadly force against a fleeing individual, unless the individual poses an immediate threat of death or serious physical injury to another person.**

Based on current CPD procedure and information detailed below, CPD meets the standards detailed in this recommendation.

- a. Only necessary uses of force are permitted.

CPD's Use of Force (Procedure 12.545) specifically addresses each of the recommendations listed above. 12.545 (policy section) states (emphasis preserved): **"When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more."**

- b. Tailor the use of force based upon new information.

The Use of Force procedure continues **"Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control"**.

- c. Chokeholds are prohibited except as deadly force.

¹ Responses within this report are intentionally succinct, to support a summative assessment in the spirit of the original report. All quotations of CPD policy and procedure should be interpreted as "in-part". Only policy statements that most directly address specific recommendations have been included. In many cases additional information exists that supports the overall conclusions made by CPD. (If additional information is requested related to specific items, CPD would be glad to append this report or otherwise provide additional responsive information.)

“Choke holds are prohibited unless a situation arises where the use of deadly force is permissible under existing law and Department policy.” (use of deadly force is permissible when the officer has probable cause to believe a suspect poses a threat of serious bodily injury or death to officer or others – see *Tennessee vs. Garner*, 471 U.S. 1 (1985)).

d. Use of deadly force into or from a moving vehicle

CPD’s Discharging of Firearms by Police Personnel (Procedure 12.550) states (emphasis preserved): “**Officers shall not discharge their firearms at a moving vehicle or its occupants unless the occupants are using deadly force against the officer or another person present, by means other than the vehicle**”.

e. Use of deadly force against a fleeing subject

(Procedure 12.550): “When all other reasonable means at the officer’s disposal have failed the use of firearms is authorized, only under the following circumstances, as a last resort to apprehend a fleeing felon:

- The officer has probable cause to believe the suspect has committed or is committing a felony, and
- The suspect presents an immediate risk of death or serious physical harm, either to the officer or another person if not immediately apprehended.
- If possible, the officer will give a verbal warning before using the firearm.”

2) Departments should have a clearly stated de-escalation policy.

CPD does have a clearly stated de-escalation policy and prioritizes de-escalation through rigorous training.

Details:

CPD policy, procedure, and training clearly prioritizes de-escalation. De-escalation is explicitly defined in Use of Force procedure as: “Using non-confrontational verbal skills, empathy and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force”. The same procedure directs: “Whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the officer and others.” In addition to explicitly defining and prioritizing de-escalation in CPD Use of Force Procedure, de-escalation is also articulated and prioritized in Handling Suspected Mentally Ill Individuals and Potential Suicides (Procedure 12.110), and in Discharging Firearms by Police Personnel (Procedure 12.550).

De-escalation has been a core training topic for officers for over a decade. It is an over-arching training theme that is embedded throughout all department instituted training for recruits. CPD constantly seeks new best-practices in de-escalation, and provides additional training opportunities to officers when new opportunities for training in de-escalation techniques emerge. In March 2020, the Department was approved to host *Force Science Fundamentals of Realistic De-Escalation*, which teaches officers necessary skills to accurately assess potentially violent confrontations and defuse them whenever feasible in order to avoid a potential use of force.

CPD also incorporates a robust training curriculum for all officers through annual continuing professional training, which is evaluated and updated each year to provide the newest techniques and concepts. Field training officers, who train and mentor newly graduated police recruits, and new police supervisors are provided supplemental *Civil Liability and Use of Force* training to assist them in acting as departmental leaders, prioritizing de-escalation, and reinforcing these values for those who are formal role models for other officers in CPD.

- 3) Departments should establish a duty to intervene when a fellow officer is using excessive force or otherwise contravening law or department policy. Departments should train on peer intervention, recognize officers who do intervene, and protect them from retaliation.**

Duty to intervene is explicitly stated in current CPD policy.

Details:

CPD Use of Force (Procedure 12.545) states: “An officer has a duty to stop, prevent and report the use of excessive force by another officer. Officers who use excessive force will be subject to discipline, possible criminal prosecution, and/or civil liability”.

- 4) Departments should offer first aid training to officers and require officers to provide first aid, commensurate with that training, following the use of force, as appropriate.**

CPD prioritizes emergency medical treatment of citizens, recognizing preservation of life as the highest priority.

Details:

CPD Use of Force (Procedure 12.545) states: “Following any use of force resulting in a citizen’s injury, officers will summon Cincinnati Fire Department (CFD) personnel to provide emergency medical treatment. Once the scene is stabilized and it is safe to do so, officers may administer CPR or basic first aid, if appropriate”.

CPD officers regularly receive training and certification in CPR. All CPD officers are re-certified every two years through the American Heart Association. Police recruits are provided 8 hours of First Aid/CPR/AED training, an OPOTA standard. CPD officers also receive, are trained in, and routinely carry tourniquets for the purpose of providing lifesaving first aid in circumstances where this tool may be appropriate.

Additionally, police academy training staff conduct training for members of the public when there is a potential public safety benefit. CPD has recently provided active shooter training, for the purpose of helping members of the public educate themselves on important steps they might take to mitigate harm during an active shooter event. A sub-section of this training, *Stop the Bleed*, is co-presented by CPD and CFD. It is specifically oriented toward helping members of the public understand how they might take immediate action to help slow traumatic bleed injuries while emergency medical professionals are responding to a scene.

CPD recognizes that in many situations it is important to facilitate the rapid response of highly trained and equipped medical professionals, such as CFD personnel. Department procedure and practice emphasize rapid notification of fire personnel, early communication of critical

information to responding medical professionals, and traffic control and scene stabilization to facilitate their expeditious arrival.

5) Departments should require officers to report all uses of force.

CPD requires all officers to report uses of force.²

Details:

CPD Use of Force (Procedure 12.545) states: “All members have a duty to ensure all use of force incidents and any citizen allegation of excessive force are reported to the Police Department. Whenever employees use any type of force; or confront resistance that results in an injury or complaint of injury to a citizen; or have knowledge of any of the above; or are aware of a citizen complaint of excessive force, they will promptly notify a supervisor.”

Supervisors, once notified of a use of force, respond to the scene to conduct an administrative investigation of the use of force. This investigation includes completing written reports describing the events preceding the use of force and the subsequent force used, interviews of the subject of the use of force, witnesses, and involved officers, review of any relevant video, and gathering of other evidence that may be available. During this administrative investigation, supervisors evaluate the decision to arrest and basis for stop, subject resistance, and tactics and actions of officers in response to resistance. Use of force reports are submitted through the chain-of-command and subject to a variety of review processes based on the type of force used and preliminary evaluations of propriety of force and tactics used.

6) Departments should train officers on crisis intervention.

CPD trains officers on crisis intervention and actively engages with professional clinicians, toward producing the best possible outcome for those in crisis.

Details:

Since 2002, all CPD recruits receive 40 hours of Mental Health Response Team (MHRT) certification training. MHRT officers are dispatched on all runs involving individuals experiencing mental illness. If two MHRT officers are available, they will be dispatched as a team. Once dispatched, the MHRT officer(s) on the scene are the primary officer(s) handling the situation.

CPD officers routinely collaborate with the Mobile Crisis Team (MCT). MCT members are mobile clinical team participants, comprised of licensed master level social workers trained to respond to mental health emergencies throughout Hamilton County. Three MCT members are embedded in CPD districts, enhancing their ability to respond to support relevant calls for assistance that are received through the Emergency Communications Center, and to which CPD officers respond.

² The term “use of force” connotes a wide spectrum of police action, from police presence on one end to use of deadly force on the other extreme. Cincinnati’s response is based upon procedure 12.545 which sets forth the categories of its uses of force and the required investigation for each.

EQUALITY AND DUE PROCESS (Conference of Mayors Report pg. 20)

1) Departments should have policies and training curricula for recruits, veteran officers, and supervisors that make clear that police interactions with individuals should be impartial and free from bias.

CPD has policies and robust training curricula focused on impartial and bias free police interactions.

Details:

CPD Procedure 15.101, titled “Bias Free Policing” directly addresses issues of equality and due process. The policy statement reads: “The Cincinnati Police Department will provide services and enforcement fairly and without discrimination toward any individual or group of people. Bias based profiling **shall not be used** as the basis for providing law enforcement services or the enforcement of laws. All members have the responsibility for achieving the Department’s goal of bias free policing.”

This position is also reflected in the Mission Statement of CPD, which states: “The Cincinnati Police Department will develop personnel and manage resources to promote effective partnerships with the community to improve the quality of life through the delivery of fair and impartial police services while maintaining an atmosphere of respect for human dignity.” Recruits, veteran officers, and supervisors are trained on ensuring equality and due process in many educational settings.

In 2019, the Mayor presented legislation that was approved by Council, authorizing the City Administration to implement key components of the Collaborative Refresh Process. As a result, all CPD employees attended training on explicit and implicit bias: *Fair and Impartial Policing*. Senior Command Staff and supervisors attended more extensive training on this topic in order to provide more extensive resources to those they manage and supervise. These classes focused on discovering and managing positive and negative biases a person may have so that biases do not impact their job and interactions with the community. The community was invited to participate in this training. Two opportunities were scheduled specifically for the public, so they might be directly exposed to officer training and might further the dialogue among police and public regarding this topic. This training was provided by Fair and Impartial Policing, LLC., a leader in implicit bias awareness training.

In May of 2019, CPD hosted a nationally recognized subject matter expert in constitutional policing and policy, who conducted *Police Legitimacy and Procedural Justice* training for the over 200 employees at the supervisory rank of sergeant and above. Topics covered in the eight-hour sessions included community policing and public trust for effective crime reduction, understanding use(s) of force through Body Worn Camera footage and other digital evidence, legal and constitutional concepts and the importance of critical thinking in police work.

As part of continuing professional training in 2019, Officer Fred Gilmer taught *Empathy Through American History* to his fellow officers. The objectives of the course included the history of race relations in the United States and the immense impact of assisting people through empathy and applying this approach to develop stronger communities.

2) Departments should assess their records of stops, searches, and arrests to determine where there are disparities in enforcement.

CPD regularly assesses officer activities, workload, distribution of criminal activity, and requests for police assistance, actively seeking the most equitable approach to public safety.

Details:

Stops, search, and arrest information is collected and assessed by CPD through a variety of processes. Critical to a department's ability to assess such records is that a department have infrastructure and processes in place by which to collect this information so that it might be analyzed. Stop and search information may not be collected by all departments. It is collected by CPD, via contact cards (also containing other fields including date, time, address, stop type, and disposition of stop). For many years, contact cards were completed on paper by officers, and submitted to CPD Records Section for entry. CPD recognizes there may be a better method by which to collect this information. CPD Information Technology created an electronic Contact Card module in the Records Management System, which was launched in January of 2020. This improvement is designed to help improve the ability to aggregate and analyze this data. Contact Card information is published via the City of Cincinnati's Open Data Portal. CPD's process for collection of arrest information is also currently being modified, to improve arrest record systems. A Process Improvement Team was launched in 2020 to explore how CPD might improve collection, maintenance, and analysis of arrest records. CPD's analytic process is constantly evaluated for opportunities to improve, which include changing systems and processes of data collection to improve analytic potential in the future.

CPD has performed analysis on a variety of data sets for the purpose of evaluating where enforcement has concentrated in the City. For example, in the spring of 2020, CPD crime analysts performed citywide spatial analysis of traffic stops, traffic accidents, shootings, violent crime, citizen generated calls for service, and volume analysis of arrests. This analysis was discussed internally and externally in the context of dialogue regarding disparity. It was also shared with local media outlets to improve the public's access to this information, and to encourage the collective conversation.

CPD has also implemented Body Worn Cameras (BWC), as an important tool in the transparent delivery of police services. BWC video is reviewed in a variety of circumstances, which assists the administration in ensuring stop, search, and arrest activity is properly conducted.

CPD has a history of partnering with research professionals to assist in reviewing Department activities. One recent product of this partnership is *A Multi-Method Investigation of Officer Decision-Making and Force Used or Avoided in Arrest Situations: Tulsa, Oklahoma and Cincinnati, Ohio Police Use of Force Narrative Data Analysis Report*, authored by Michael Smith, J.D., Ph.D., Rob Tillyer, Ph.D., Robin Engel, Ph.D., and Amanda Shoulberg, M.A., of the University of Texas at San Antonio and the IACP/UC Center for Police Research and Policy. The goal of this research was to “. . . provide a deeper and more contextualized understanding of how and why police use or avoid the use of force and to identify policy, training, or other ways that law enforcement agencies can reduce the need for force, lower the rates of injuries or deaths to civilians, and reduce police victimization when interacting with members of the public under stressful or uncertain conditions” (iv; 2020). It is through research-practice partnerships such as this, that CPD strives not only to understand where disparities might exist, but also searches for opportunities to improve the delivery of police service and minimize negative outcomes when possible.

3) Departments should consider assigning liaison officer to communities to provide a dedicated channel for communications between police and residents.

CPD assigns liaison officers to communities to ensure lines of communication between police and residents are open and to ensure healthy ongoing dialogue.

Details:

The Cincinnati Police Department communicates with the public they serve in a variety of meaningful ways. CPD actively engages with residents all over the city every day. Some of those interactions are informal or in routine service to the community, such as in response to calls for police service including traffic crashes, crime reports, and other public service requests. Other interactions include spontaneous conversations or officers checking in with business operators. More formally, CPD actively and regularly participates in neighborhood council meetings throughout the City. CPD District Commanders regularly attend these meetings, as do other staff dedicated to serving specific neighborhoods in their roles in CPD.

Each CPD district has a Neighborhood Liaison Unit, supervised by a sergeant, and staffed by officers designated as liaison officers to specific Cincinnati neighborhoods. Additionally, CPD maintains a Community Relations Squad, with a commitment to support citywide liaisons with clergy, Cincinnati's immigrant community, the LGBTQ community, and others.

CPD's School Resource Officers are another example of a liaison approach, given these officers are assigned to specifically partner throughout the City with school administrators, staff, and students, in a full-time capacity to support safe and healthy school environments, and to engage directly with our youth.

4) Departments should have policies and infrastructure to investigate all allegations of bias; prohibit retaliation for filing a bias complaint; and hold officers and supervisors accountable, as appropriate.

CPD has policies and infrastructure to investigate allegations of bias, to prohibit retaliation, and to hold officers and supervisors accountable.

Details:

CPD investigates all complaints, including bias, made either from the public or from employees of the police department. CPD Procedure 15.100 outlines the process for filing complaints, as well as reports of favorable conduct. All CPD employees are protected against retaliation for filing a bias complaint. As a matter of policy and procedure, all CPD employees are held to the standard set forth in the CPD Rules and Regulations Manual.

CPD broadly defines a citizen's complaint as: "an allegation from any source of any action or inaction by Department personnel the individual considers being contrary to law, proper procedure, good order; or in some manner prejudicial to the individual, the Police Department or to the community" (Procedure 15.100). Complaints are thoroughly investigated regardless of the continued participation of a complainant or of the disposition of any associated criminal charges. "The Department will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury; the Department will continue its investigation as necessary to determine whether the original allegation can be resolved. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence whether an officer did or did not use a type of force, nor will it justify discontinuing an investigation".

Additionally, any CPD employee may file a complaint through the Cincinnati Equal Employment Opportunity Office (EEO) or the Citizen Complaint Authority (CCA). CCA and CPD Internal Investigations Section (IIS) conduct independent parallel investigations of complaints made by either citizens or department employees.

5) Departments should consider whether, based on the size of the departments and makeup of their community, it would be beneficial to assign a chief diversity officer to focus on advancing the department's diversity and inclusion efforts.

CPD has reviewed this recommendation. Below are additional details regarding CPD's efforts to advance the Department's diversity and inclusion efforts.

Details:

CPD actively focuses on diversity and inclusion, in particular through the Chief who places the highest priority on those goals. Because of the Chief's commitment, CPD has met every recommendation with respect to Equality and Due Process. Most specifically, diversity and inclusion are critical components to the recruiting process. CPD recruiting efforts are conducted with specific attention to ensuring a diverse and inclusive workforce that is reflective of the community we serve.

CPD has partnered with a minority owned marketing firm to recruit new applicants focused on African Americans, Latinos, and women. CPD recruits regionally through radio, written media, social media, and other public broadcasts. The CPD recruitment staff regularly visit regional colleges to advertise and recruit minorities and other interested individuals.

CPD does not have a chief diversity officer, at least in name, because the Chief has assumed that responsibility personally. This communicates to the entire department that diversity and inclusion is a fundamental goal of CPD and that responsibility for achieving that goal is ingrained in the leadership of the organization at the highest level, rather than a specialized assignment.

6) Departments should have recruitment and outreach plans and goals so that departments have officers who are part of the community and reflect the diversity of the community they are sworn to protect.

CPD has recruitment and outreach plans focused on ensuring the department continues to have officers who are a part of, and reflective of, the community they serve.

Details:

As stated in response to the previous question, CPD does have recruitment and outreach plans and goals oriented toward ensuring that employees are a part of the community they serve, and to reflect the diversity of the community we are sworn to protect.

7) Departments should consider leadership in promoting diversity as a factor in promotion decision.

CPD considers leadership and diversity in promotion decisions.

Details:

CPD follows the State of Ohio employment laws and Cincinnati Civil Service regulations concerning hiring and promotion. Promotional processes are administered by outside vendors, and promotional assessors are recruited from outside agencies to ensure that those assessing promotional candidates do not know the candidates they are reviewing. This is designed to ensure that promotional decisions are made with neutrality, and that participants are scored across a range of indicators designed to gauge successful performance as police leaders. These characteristics certainly include the ability to lead a diverse workforce, to recognize diversity as a strength, and to encourage diversity.

COMMUNITY (Conference of Mayors Report pg. 23)

1) Departments should work with community leaders, including leaders of schools, unions, community centers, and religious groups, to identify common goals and challenges their communities are facing.

CPD works with community leaders and other stakeholders to identify common problems, goals, and potential solutions to the challenges we face together.

Details:

CPD works with community leaders and stakeholders throughout Cincinnati to identify common goals and challenges facing our communities. CPD's community engagement and active participation is wide ranging. CPD engagement to improve our common understanding of community problems, and collaborative problem solving toward solving these issues includes: active participation in neighborhood council meetings, participation in collaborative projects such as the Neighborhood Enhancement Program (NEP), and formation of problem solving teams that regularly meet to discuss and solve community problems (e.g. PIVOT problem solving efforts, and many others).

CPD is an active participant in the City Manager's Advisory Group, a group of stakeholders who provide information, analysis, advice, and recommendations to the City Manager in order to help continue the progress made in implementing the reforms under the spirit of the Collaborative Agreement. Additionally, CPD's use of problem solving as the primary response to crime and disorder, naturally requires working with community leaders and stakeholders to work toward common identification of problems, and to work toward solutions together. Problem solving projects encourage officers and community to engage. At weekly department-level STARS meetings (Strategic and Analytic Review for Solutions), district commanders and support personnel update Senior Command Staff on the progress of current problem solving projects.

CPD School Resource Officers routinely work with the leaders of our schools to solve problems. They also attend Cincinnati School Board meetings and meet with school board stakeholders to answer questions and show that CPD cares about Cincinnati Schools. Our officers are routinely present at community centers, sometimes simply to provide site security, and other times to participate in programs designed to enrich young people's lives. CPD officers participate in Citi Camp, and host Explorer and Cadet programs designed to help address some of the previously determined challenges our young people face, and to strengthen our collective ability to maintain healthy communities.

CPD actively engages with religious groups as well, including through our faith-based liaison officer. It is common for our faith-based institutions to be partners in community problem-

solving efforts, to host neighborhood meetings, or to otherwise be actively engaged with CPD officers to improve the health and safety of our communities.

2) Departments should consider Resident Officer Programs or other incentives for officers to live in the communities they serve.

CPD has considered resident officer programming, and CPD supports incentivizing officer residency should City administration develop such a program.

Details:

CPD understands that it is critical for our officers to be actively engaged members of the communities we serve, who have a real understanding of the dynamics and conditions specific to our community. However, state law prohibits CPD from mandating that its officers live in Cincinnati. We have found that even though our officers do not have a City residency requirement or a formalized Resident Officer Program, some officers choose to live in the city they serve. CPD also recognizes the regional impact that Cincinnati Police officers have in the Greater Cincinnati community. It has been estimated that our City grows from 300,000 residents, to over 1 million residents, employees, and visitors from the Greater Cincinnati region and beyond, on any given day. We are grateful for the opportunity to serve all who live, work, and play in Cincinnati.

CPD embraces the spirit at the root of this idea, that it is critical to work toward fostering trust between officers and the community we serve.

3) Departments should have community policing programs, appropriate to the particular circumstances of the community, such as youth engagement, immigration and refugee outreach, and homelessness programs.

CPD has community policing programs, robust youth engagement, immigration and refugee outreach, and partnerships with service providers focused on homelessness.

Details:

Our department's commitment to community policing is well established. CPD's Neighborhood Liaison Units, situated in each district, are just one of the many ways this commitment has been institutionalized. CPD officers develop, initiate, and participate in a wide variety of youth programming. Each year CPD officers facilitate the Police Youth Live-In at Camp Joy. CPD officers work to develop leadership skills in our youth through the Dive Right youth flag football program. CPD's Youth Services Section coordinates Citi Camp, a program serving up to 100 individuals 10-12 years of age, CPD's volunteer Explorer Program, serving young adults age 14-20, and the Cadet Program, a part-time employment opportunity for those 16-19 years of age, interested in a potential future in policing.

Immigration and refugee outreach efforts are coordinated through our dedicated immigrant liaison officer. Through this work, our officers partner with many service agencies, including Santa Maria Community Services, Bloc Ministries, and many others. CPD partners with many social service providers to confront challenges associated with homelessness, including Project for Assistance in Transition for Homelessness (PATH), created by Greater Cincinnati Behavioral Health to address homeless individuals with severe mental illness.

4) Departments should train officers on community-specific cultural literacy, the history of policing, and procedural justice.

The Cincinnati Police Department actively trains personnel on cultural literacy, the history of policing, and procedural justice.

Details:

These concepts are woven into a variety of training programs delivered to all CPD officers. Training sessions recently conducted included *Empathy Through American History* and *Implicit/Explicit Bias*, taught in 2019. *Constitutional Policing and Procedural Justice* was also taught in 2019, to all sworn supervisors. *Fair and Impartial Policing* was administered to all sworn officers in early 2020, during annual Continuing Professional Training (CPT) sessions. These training programs are discussed in greater detail on page 5 of this report, in response to equality and due process recommendations.

5) Departments should consider requiring officers and supervisors to regularly participate in community service efforts.

CPD actively engages in community service efforts.

Details:

Cincinnati police officers have a tradition of serving their community both while at work and when off duty. Many of our officers choose to coach local sports teams, participate in community and faith-based organizations, teach and tutor, and provide an extraordinarily wide range of volunteer service efforts aimed at bettering our community. Policing in Cincinnati draws those who wish to serve their community, and that service often does not stop when our officers conclude their work. So many of our officers do this work because they choose to do so, regardless of any department encouragement or requirement.

The department has a history of strongly encouraging our officers to perform service beyond policing in our community. Chief Isaac has routinely committed Cincinnati Police recruits to a week of community service to the citizens of Cincinnati. Recruits have helped to feed the hungry, pick up litter, paint neighborhood murals, and much more. Other programs previously discussed, such as the NEP, Dive Right, the Police Youth Live In, Shop with a Cop, and many others reflect the high prioritization of service to the community beyond traditional policing efforts.

ADDRESSING PROTESTS (Conference of Mayors Report pg. 25)

1) Departments should provide training on the First Amendment to officers and supervisors, explaining the broad parameters of protected speech and providing scenario-based training.

The Cincinnati Police Department provides training on the First Amendment and provides scenario-based training to support the application of these principles in policing.

Details:

All CPD officers are regularly given training on legal aspects pertaining to law enforcement actions. While attending Police Academy training, new police officers are required to receive

training on Federal, State, and local laws pertaining to civil rights and policy and procedure. CPD follows all Ohio guidelines (OPOTA) regarding police officer yearly in-service training and legal updates, taught by licensed attorneys. Having well-educated and trained police officers translates into better community-department relationships and fewer complaints regarding officer misconduct.

CPD regularly circulates training and legal updates regarding constitutional rights to all sworn officers. Officers are regularly exposed to scenario-based training programs for a real-time understanding of constitutional rights as well as differentiating between lawful and criminal actions.

2) Departments should, ahead of any mass gatherings, emphasize the importance of de-escalation and open communication, including developing relationships with advocacy groups and protest leaders where possible.

CPD emphasizes de-escalation and open communication, communicating with advocacy groups and protest leaders whenever possible.

Details:

CPD has worked diligently with the Cincinnati Human Relations Commission to develop a close working relationship with community leaders to facilitate constitutionally protected speech, assembly, and peaceful protest, as well as to assist in defusing any potential civil unrest. As part of the department policy and procedures concerning civil unrest, CPD has worked diligently to communicate with community partners in developing an on-going dialogue towards a mutual understanding and cooperation. Before any department response to civil unrest, CPD works with various community partners and the City Manager's Office to develop a meaningful response, complete with recognizing specific community priorities or concerns, or issues that need to be addressed. Prior to any planned response to mass gatherings, Department leadership gathers officers together to discuss expected response, potential challenges, and means by which lawful conduct will be supported.

CPD Procedure 12.160 Rumors and Potential Civil Disturbances, states, in part:

- 1) Provide for the documentation, processing, and analyzing of rumors concerning racial problems, civil disturbances, other police problems or services.*
- 2) Establish policies for handling incidents arising from or indicative of a racial nature and for protecting the civil rights of all citizens.*
- 3) Establish responsibility and authority of Police Department and Cincinnati Human Relations Commission (CHRC) personnel during field situations.*

3) Departments should have designated command staff and officers who are trained to respond to mass gatherings, including incident command training.

CPD leadership are trained regarding response to mass gatherings.

Details:

All CPD Command Officers, Lieutenant and above, are trained on Incident Command and Civil Disturbance procedures. All sworn officers are also exposed to this training and have a strong understanding of department policy and procedure.

Recognizing that specialized circumstances may be best addressed by personnel who are highly trained and properly equipped, in addition to department-wide training CPD has developed specialized groups who have been extensively trained on best approaches to the management of lawful conduct and the mitigation of harm, if criminal activity and violence occurs. CPD has a Civil Disturbance Response Team (CDRT), specifically trained and equipped to address these events. CPD has also provided additional training and equipment to mountain bike officers, also tasked with facilitating and managing these events.

4) Departments should have policies to minimize the use of provocative and unnecessarily aggressive tactics and equipment, such as riot gear and armored vehicles.

CPD policy and practice support the minimization of provocative tactics and equipment.

Details:

Although CPD possesses and utilizes specialized equipment such as riot gear and armored vehicles, these options are only used when absolutely necessary to protect the public or officers. CPD utilizes a layered approach for the implementation of specific equipment; using only equipment that is needed. CPD never seeks to escalate any situation based on its actions or appearance. CPD strives to address situations with the least amount of police presence or force, preferring to actively facilitate any lawful assembly. Command officer approval is often required before use of specialized equipment or force in crowd control situations, per Departmental policy.

5) Departments should plan for the possibility that peaceful protests may turn into unlawful assemblies, including by having crowd management plans for increasing the level of response if necessary; instructing officers to remove individuals who are committing wrongful acts, contemporaneously documenting their alleged conduct, and when possible, allowing others to continue to peacefully demonstrate; and planning for the possibility of mass arrests.

CPD plans for a range of contingencies when facilitating peaceful, lawful assembly.

Details:

CPD utilizes the Incident Command Model for supervising, managing, and controlling civil disorder. As mentioned previously, CPD utilizes specialized units such as CDRT and mountain bike squads, established and extensively trained to take appropriate actions, make arrests, prevent unlawful criminal actions, and allow lawful protests or gatherings to continue. CPD works cooperatively with neighboring law enforcement agencies as needed during civil unrest. CPD continually develops new policies and procedures ensuring public safety and property is protected. Officers document the conduct of those violating the law through a variety of means, including through the use of Body Worn Cameras.

6) A department that enters into a mutual aid agreement to manage a particularly large or complex gathering should have guidelines for those assisting and should never relinquish primary control of an incident. A department should set the policies that would be followed, including as to incident response and when force may be used.

CPD maintains mutual aid agreements with many jurisdictions, the language of which dictates that CPD retains control of mutual aid events in the City of Cincinnati.

Details:

CPD has mutual aid agreements or memorandums of understanding (MOU) with all its surrounding law enforcement agencies, including the Ohio State Highway Patrol. Specific language in every MOU includes the identification of duties and responsibility to perform accordingly.

“Whenever employees of one cooperating Agency provide police services to another cooperating Agency, they shall be under the lawful direction and authority of the commanding law enforcement officer of the Agency to which they are rendering assistance, provided, however, that Officers shall be subject to the code of ethics, policies, and rules and regulations of their employing Agency at all times”.

TRANSPARENCY AND ACCOUNTABILITY (Conference of Mayors Report pg. 27) **Department Policies**

1) Departments should assign final disciplinary authority to the police chief.

The Police Chief has final disciplinary authority, subject to appeals processes.

Details:

The CPD Rules and Regulations Manual outlines the disciplinary process adhered to by all police department employees. It clearly states:

“The matrix does not abrogate the Police Chief’s authority and discretion to impose any appropriate discipline when he believes the officer’s misconduct exhibits a lack of fitness for duty”. The CPD Procedure Manual gives the Police Chief final authority to manage, edit or alter any and all department policies and procedures.

“The Police Chief may cancel, revise, amend, or add to any procedure or other binding directive whenever he deems necessary”.

CPD is bound by the collective bargaining agreement between the City of Cincinnati and the Fraternal Order of Police, which outlines processes by which officers may appeal discipline administered by the Police Chief or City Manager.

In December 2020, in an effort to increase police accountability and strengthen the Police Chief and City Manager’s ability to impose appropriate discipline with due process protections, the City Administration negotiated discipline reforms with the FOP in the collective bargaining agreement. The City Administration succeeded in removing Peer Review from the grievance process, requiring an anonymous decision rendered by a three-person panel for arbitrations to mitigate systemic incentives to favor one side over the other, and retain disciplinary actions resulting in a 56-hour suspension or more in a member’s personnel service record for an increased time of 7 years.

2) Departments should have public complaint processes that make filing a complaint open to all.

CPD has an open and transparent public complaint process.

Details:

CPD Procedure 15.100 outlines the process for encouraging and assisting citizens in filing complaints against department members. This procedure also covers the reporting of positive interactions with police officers. Every complaint is investigated by either district supervisors or CPD Internal Investigations. Citizens may also file a complaint on-line through the CPD internet web page.

Procedure 15.100 clearly states every officer will assist with the citizen complaint process. Complaints are generally investigated at the district level, referred to as the Citizen Complaint Resolution Process (CCRP). More serious offenses are handled through Internal Investigations Section.

“If a citizen objects to an officer’s conduct, that officer will inform the citizen of their right to make a complaint. The officer will provide the citizen a Form 648CCI, Citizen Complaint Information brochure and a Form 648, Citizen Complaint. Officers will not discourage any person from making a complaint”.

In addition to CPD’s complaint and investigative process, the City of Cincinnati also maintains a Citizen Complaint Authority (CCA) for conducting independent parallel complaint investigations.

“The Citizen Complaint Authority’s (CCA) mission is to investigate serious interventions by police officers including, but not limited to, discharging of firearms; deaths in custody; excessive use of force; improper pointing of firearms; improper stops; improper entries, searches and seizures; and discrimination. We resolve all citizen complaints in a fair and efficient manner. CCA’s ultimate goal is to address citizens’ concerns and improve citizens’ perceptions of quality police service in the City of Cincinnati”.

CPD also allows for citizens to report positive police-citizen interactions. CPD ensures that reports of positive officer-citizen interactions are shared, via Department Staff Notes, and that they are documented in officers’ performance records. This reflects the Department’s interest in recognizing and commending positive interactions, rather than relying solely on the identification of misconduct to guide officers’ actions.

3) Departments should have policies on officer investigations that clearly define the procedures for carrying out the investigations and seeing them through to completion, even if an officer separates from the department.

CPD has policies on officer investigations, seeing them through to completion.

Details:

CPD Internal Investigations Section (IIS) is responsible for conducting all officer misconduct investigations. As a matter of IIS standard operating procedure, all complaints are fully investigated, regardless of officer employment status. All cases must be investigated to completion and be given approval by the Chief of Police (or in limited circumstances, the Executive Assistant Police Chief). Regardless of recommendations for disciplinary action, the results are the same as if the employee is still employed. Case Closures clarify final action.

4) Departments should regularly release to the public, in accordance with relevant state laws, data on disciplinary actions and decisions, including those made by arbitrators.

CPD and the City of Cincinnati regularly release data on disciplinary actions and decisions.

Details:

Since the inception of the Cincinnati Collaborative Agreement, both Citizens Complaint Authority (CCA) and CPD Internal Investigations Section (IIS) data and investigative outcomes are provided to the public, through the City of Cincinnati open data portal, and through other avenues of public access.

5) Departments should have policies that require supervisors to conduct ongoing reviews of stops, searches, arrests, and uses of force.

CPD has policies that require supervisors to conduct reviews of stops, searches, arrests, and uses of force.

Details:

As part of the Employee Tracking System (ETS)/Axon Standards, supervisors are required to regularly review police officer performance including stops, searches, arrests and uses of force. Procedure 16.111 outlines supervisor responsibilities ensuring officer performance is regularly reviewed. In part it states, “*Ensure each officer is reviewed through ETS at the conclusion of each 28 day work period, or monthly, based on the work schedule of the organizational group and documented in the employee’s Evaluation Supplement Log (ESL)*”. Reviews are also conducted whenever an employee is transferred to a new assignment. Uses of force are administratively investigated with special attention to evaluations of the propriety of a stop, arrest, and use of force. CPD leadership oversees a quarterly ETS review which identifies officers with above average activity in administrative categories, for the purpose of ensuring patterns of activity are identified and appropriately addressed.

6) Departments should require body-worn cameras and develop policies for the review, release, and preservation of footage.

CPD requires body-worn camera use, and maintains policies that govern review, release, and preservation of footage.

Details:

CPD implemented Body Worn Cameras (BWC) in 2017. The cameras were replaced with newer models in 2020. CPD Procedure (12.540) outlines the policy and procedure covering the purpose and use of the police department BWCs. In part it states:

“BWC systems promote accountability and transparency for law enforcement by providing a video record of police activity. Police operations become more transparent to the public and help resolve questions following encounters between officers and citizens.”

BWC video recordings, unless “flagged” for investigations or other administrative purposes, are kept for a period of 90 days before being purged. Events associated with criminal activity or with

administrative reports, such as uses of force, may be kept much longer. Anyone may file a request with the CPD Records Section for a copy of a BWC video recording.

CPD's BWC policy was independently reviewed by Upturn in 2017, after they were first implemented. Upturn found that CPD's BWC completely or partially satisfied seven of eight criteria that were evaluated. (www.bwccscorecard.org). While Upturn identified CPD as non-compliant in a single category, officer review, CPD policy does address officer review in police intervention shootings.

“Review of the BWC footage at Criminal Investigations Section (CIS) will be made according to the investigative process and at the discretion of the Investigations Bureau commander or their designee” (12.540).

Also in 2020, CPD expanded its BWC program with the addition of technology that automatically activates the BWC when an officer draws their firearm or powers on their TASER. These actions will also activate the compatible patrol car cameras in the vicinity. By deploying this particular technology, CPD provides a fail-safe for BWC activation in sudden, unforeseen and potentially critical incidents when an officer experiences surprise, thereby ensuring the event footage is captured.

7) Departments should implement an early-intervention system to identify at-risk officers to help support their wellbeing.

CPD has processes to identify at-risk officers and to support their wellbeing.

Details:

CPD utilizes an Employee Tracking Solution (ETS)/Axon Standards allowing supervision to track and review employee uses of force, disciplinary history, and other employment records. *“The Employee Tracking Solution (ETS) is a tool to assist supervisors and managers in the assessment of overall employee performance and to serve as an early warning system for employees engaged in risk activities”.* Furthermore, CPD Procedure (16.111), outlines four levels of progressive evaluation giving supervision the ability to investigate, assess, discipline, or employ psychological evaluation and treatment. These levels are: *Supervisory Observation, Supervisory Monitoring, Supervisory Review and Supervisory Intervention.*

“Reviewing risk activities and patterns of risky behavior, as well as recognizing proper and ethical conduct is the responsibility of those supervisors and managers. ETS has been developed to assist supervisors and managers in identifying both high achieving employees and those employees in need of intervention”.

CPD also employs a Peer Support Program for officer wellbeing. Procedure (19.110) outlines the program. *“[To] Ensure a department employee's mental and emotional wellbeing after experiencing a traumatic event. The employee may receive assistance from the peer support program, assessment, and counseling by the Police Psychologist, and/or administrative leave”.*

The program identifies and treats:

1. *Obvious physical signs of emotional trauma (e.g., crying, shaking, shock)*
2. *Heightened sense of danger*
3. *Sleep difficulties/nightmares*
4. *Flashbacks/intruding thoughts*
5. *Emotional numbing*

6. *New depression*
7. *Guilt/sorrow/remorse*
8. *Suicidal thoughts*
9. *Feeling loss of control - panic/anxiety attacks*
10. *Other behaviors not characteristic of the person, based upon past knowledge*

Additionally, CPD is currently working with its contracted medical staff partners in developing new self-assessment tools for the treatment of stress related psychological issues. Employees are encouraged to participate, giving them private treatment and assistance without the fear of department interference or consequences.

cc: Colonel Eliot K. Isaac, Police Chief

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED DOCUMENT

Date: January 15, 2021

To: Paula Boggs Muething, City Manager

From: Andrew W. Garth, City Solicitor *AWG*
Kate Burroughs, Sr. Assistant City Solicitor
Mark Manning, Sr. Assistant Solicitor

Subject: **Legality of Motion Directing Amendments to Administrative Procedures**

You have requested a legal opinion on the respective Charter roles of Council and the City Manager with regard to the administration of the police department and, specifically, whether Council may require the City Manager to exercise her oversight of the administration and operations of the police department in a certain manner.

Summary

Under the City's Charter, the City Manager has the ultimate authority regarding the operation and administration of the Cincinnati Police Department. A motion does not carry the force of law, and so Council cannot use a motion to dictate how the City Manager oversees the administration and operations of the Police Department, and any ordinance purporting to do the same would violate the Charter. Council can express its position on the use of no-knock warrants through motions, request reports from the Administration regarding the use of no-knock search warrants, and ask questions about their use. The City Manager and Police Chief have the authority to revise the Police Department policies to ensure officer and community safety. However, only the City Manager has the authority to direct the Police Chief and Police Department's work and the authority to revoke, suspend, or amend the Police Department's policies and procedures.

Legal & Charter Analysis

The City's Charter sets forth the powers, duties, and structure of the City's government. Pursuant to the Charter, the City operates under a council-manager form of government, whereby elected Councilmembers serve as the City's primary legislative body and the City Manager acts as the City's primary chief executive

officer. Council appoints a City Manager to oversee day-to-day municipal operations, to draft a budget, and to implement and enforce Council's policy and legislative initiatives. The Charter vests legislative powers primarily in Council and administrative powers primarily in the City Manager.

Council Legislative Power

The Charter vests Council with "all legislative powers of the city" subject to the terms of the Charter and the Ohio Constitution.¹ The Charter does not provide Council with administrative or executive powers beyond its right to appoint its legislative assistants and clerk. Per the Charter, Council may exercise legislative authority; it may not exercise administrative authority.² The legislative power of Council includes the power to make inquiries, request reports, and to hold public hearings to inform legislative action. Council's legislative powers do not include the authority to legislate by way of a motion or otherwise what is the administrative authority of the City Manager and the Chief of Police – the control and direction of police work through its policies and procedures.

City Manager's Authority

The Charter vests administrative powers primarily in the City Manager. Pursuant to Article IV, Section 1, the City Manager is the chief executive and administrative officer of the City. The City Manager "supervises the administration of the affairs of the city, except as otherwise specifically provided in [the] charter; [sees] that the ordinances of the city and the laws of the state are enforced . . ." and exercises "all other executive and administrative powers conferred by the laws of the state upon any municipal official" except as otherwise provided in the Charter.³ The Charter also explicitly prohibits Council from interfering in personnel matters and directs that Council "shall deal with that part of the administrative service for which the city manager is responsible, solely through the city manager."⁴

As the chief executive and administrative officer, the City Manager has the hiring authority and management control over City Departments as set forth in the City Charter and Administrative Code. The chief of police falls under the control, direction, and supervision of the City Manager and, subject to the approval of the City Manager, is the commanding officer⁵ of the police department with control of the direction of the police work.⁶ CPD officers perform their duties at the direction

¹ Charter, Art. II, Sec. 1.

² Charter, Art. II, Sec. 1 and Art. IV, Sec. 1.

³ Art. IV, Sec. 3.

⁴ Art. IV, Sec 2.

⁵ The Mayor can take command of the police to maintain order and enforce the law in time of public danger or emergency with the consent of Council. Admin. Code, Art. III, Sec. 2.

⁶ Admin. Code, Art. IV, Sec. 2.

of the Chief of Police, who is subject to the “control, direction, and supervision of the City Manager.”⁷ The Chief of Police is a principal appointive executive officer in the City Manager’s Administration.⁸

Pursuant to Article IV, Section 7 of the Administrative Code, the director of each department, “subject to the authority of the city manager may prescribe rules and regulations for the proper conduct of the department or office...” (Emphasis added.) Departmental prescribed rules or regulations do not go into effect until they are approved by the City Manager. The Police Chief has prescribed rules and regulations for the police department, such as CPD Procedure §12.700, “Search Warrants/Consent to Search,” which were approved by the City Manager.⁹ The Administrative Code specifically grants *only the City Manager* the power to revoke, suspend, or amend any such rule or regulation by whomever prescribed.

The Administrative Code vests the City Manager with power to investigate and to examine or inquire into the affairs or operation of any department.¹⁰ Moreover, the City Manager has sole authority under the City Charter to regulate the Police Department’s policies. A motion which directs the administration to “amend the CPD procedures” is unenforceable and clearly encroaches on the City Manager’s authority.

Under the Charter form of government, the City Manager’s role is to run a professional administration, which is insulated from politics. Changes to City policies and procedures require an expertise in the underlying subject matter as well as understanding the full context which the changes may impact. Procedural changes require input from professionals in the administration who draft or execute search warrants and who investigate or discipline officers for procedural violations. Those individuals are knowledgeable about best practices. They will also be able to reconcile or eliminate conflicting or duplicative obligations in other City policies. For that reason, directing specific procedural amendments without consultation with the City’s professional administrators is fraught with dangers which the Charter is specifically designed to prevent.

Conclusion

The ultimate authority to direct the Police Department and the Police Chief lies with the City Manager. Council does not have the authority under the Charter to direct work that involves the administration of the Police Department, but may inquire about Department’s operations. For example, Council can ask the City

⁷ Admin. Code, Art. IV, Sec. 2.

⁸ Admin. Code, Art. I, Sec. 1.

⁹ Admin. Code, Art. I, Sec. 7.

¹⁰ Admin. Code, Art. II, Sec. 3.

Manager to provide a report from the Police Department regarding the use of no-knock search warrants and make recommendations about their use through the City Manager. The City Manager can take Council's communication on the topic of the execution of search warrants into consideration as she advises and reviews policies and procedures presented by the Chief of Police.

If you have questions, please feel free to contact me or Assistant Solicitors Kate Burroughs at 513-352-4893 or Mark Manning at 513-352-4576.

Date: 2/18/2021

To: Mayor and Members of City Council 202100646
 From: Paula Boggs Muething, City Manager
 Subject: **SPECIAL EVENT PERMIT APPLICATION: Hyde Park Farmers Market**

In accordance with Cincinnati Municipal Code, Chapter 765; Hyde Park Farmer's Market (HPFM LLC) has submitted a Special Event Permit Application Form to the Chief of Police. The Special Event Permit Application has been reviewed by the following department(s): Cincinnati Police Department, Fire Department, Health Department, Parks Department, Department of Building and Inspections, Department of Community and Economic Development, Department of Finance, Department of Public Services, and Department of Transportation and Engineering. There are no current objections. Farmers markets are labeled "essential" under the states COVID-19 guidelines. The Market takes place every Sunday from May 16th until October 31st except October 3rd for the Hyde Park Art Show (PENDING).

The particulars of the requested event are as indicated:

EVENT NAME/TITLE: 2021 Hyde Park Farmers Market
 EVENT SPONSOR/PRODUCER: Hyde Park Farmers Market L.L.C.
 CONTACT PERSON: Liz Stites
 LOCATION: Hyde Park Square
 DATE(S) AND TIME(S): Sunday's 5/16/2021 thru 10/31/2021 0930-1100 hours
 EVENT DESCRIPTION: Farmers Market
 ANTICIPATED ATTENDANCE: 1,000 each Sunday
 ALCOHOL SALES: YES. NO.
 TEMPORARY LIQUOR PERMIT HOLDER IS: (identify, if "YES" is checked above)

cc: Colonel Eliot K. Isaac, Police Chief

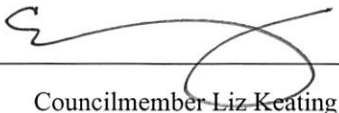


Liz Keating
Councilmember

March 4, 2021

Motion

Police officers experience multiple traumatic events throughout their entire career. A study in 2015 showed that the average law enforcement officers experience 188 critical incidents over the extent of their career. In response to the trauma they see in their everyday lives, law enforcement officers can turn to negative coping mechanisms, experience symptoms of and/or develop PTSD, as well as other mental health disorders adding unneeded and additional stress to their already stressful profession. Accordingly, WE MOVE that the Administration provide a full report regarding the mental health services available to law enforcement officers, including but not limited to counseling services, mental health training, and emotional health training. Moreover, WE MOVE that the Administration provide an additional report on the number of officers who are currently utilizing the mental health support services available to them.



Councilmember Liz Keating

Date: March 3, 2021
To: Mayor and Members of Council
Copy to: Paula Boggs Muething, City Manager
From: Andrew W. Garth, City Solicitor *AWG*
Subject: Report re Motion #202100592 (Mayor Role in Development)

This report¹ is in response to Council Motion #202100060, submitted by Councilmember Wendell Young, which states as follows:

Under the City Charter, does the Mayor have legal authority to negotiate or direct any development contracts with Developers who want to do business with the City?

Executive Summary

The 1999 Charter amendments (Issue IV) gave the office of the mayor greatly expanded powers. Included among those powers is a stronger role “as official head and representative of the City,” which necessarily includes the ability to engage in negotiations with external parties considering whether to do business in the City. The Mayor’s ability to negotiate includes engaging third parties in substantive discussions, persuasion, and advocacy concerning the interests of the City. The Mayor’s authority to negotiate is limited, in practice and under the Charter, by the City Manager’s role as the chief executive and administrative officer of the City. The Mayor is not an executive mayor, and only the City Manager can commit the City to contract terms because only the City Manager (with authorization from Council as applicable) has power to execute a contract on behalf of the City or direct the actions of the administrative service. In addition, the City Manager may at her discretion invite the Mayor to assist in negotiations to the extent that she finds the Mayor’s involvement to be in furtherance of the municipal and public interest.

¹ The points made in this memo have been detailed in prior legal memoranda from this Office. This report both recaps and simplifies that advice to increase its ease of reading. The detailed analysis and citations remain available in the previous opinions.

Analysis

It is apparent from the overall public discourse that people remain confused about the extent of the Mayor's authority to represent the City in negotiations with external parties. This confusion is understandable as the Charter does not provide for roles as being "all or nothing." However, an oversimplification of the roles would not be faithful to the text of the Charter or the intent of voters who approved this unique form of government.

In 1999, the voters intentionally established new, structural incentives in the Charter for collaboration between the Mayor and Manager to create a more accountable and effective government. Better coordination between the Mayor and Manager was the goal of the Build Cincinnati coalition in drafting and campaigning for Issue IV — a goal voters approved. Only the City Manager can execute a contract or bind the City as a matter of law. But that collaboration and coordination can occur in development negotiations is the furthest thing possible from a Charter violation; it is a Charter ambition.

Issue IV – The Stronger Mayor Charter Amendments

Issue IV fundamentally changed the City's Charter to create a stronger mayor system. It has been 22 years since the vote, and it is helpful to revisit the context for Issue IV, an initiative that succeeded after nearly a decade of failed attempts to reform the City's Charter. The day after voters passed Issue IV, the Cincinnati Enquirer published an article entitled "Cincinnati voters opt for strong mayor."² Howard Wilkinson reported that "Cincinnati voters made a sweeping change to their government" by passing Issue IV, enacting a "charter amendment for direct election of a mayor with greatly enhanced powers...."³

These changes were opposed by groups that did not want to see the Mayor's authority increased, but a majority of voters disagreed. There are still persons in Cincinnati trying to fight or limit Issue IV, but the Charter has been amended and the voters' will is binding on the City and its public officials – including as relates to roles in development.

That the Mayor was intended to play a role in development matters is plainly illustrated in commentary surrounding Issue IV. The Enquirer editorial board published an opinion on the need for the changes in Issue IV, describing "Five Good Reasons for Charter Reform."⁴ As a general matter, the Enquirer argued that Issue IV would help to address what it described as "the main flaw at City Hall: weak

² Cincinnati Enquirer, "Cincinnati Voters Opt for Strong Mayor" (May 5, 1999).

³ *Id.*

⁴ Cincinnati Enquirer, "That's Not My Job: 5 Good Reasons for Charter reform" (May 2, 1999).

leadership.”⁵ It went on to say, “If the voters say yes [to Issue IV], Cincinnati will finally get a real mayor, not a cardboard cutout that is propped up at ribbon cuttings and photo-ops.”⁶ The article provided a series of examples where stronger mayoral powers under the Charter amendment would address past problems at City Hall.

There were two express examples where the Enquirer called for a stronger mayor to be directly involved in development deals. First, the Enquirer said that a stronger mayor would have helped avoid development problems with “Fountain Square West,” a complicated development that had come under criticism for lack of City leadership. The Enquirer suggested that “with nine people in charge, nobody could be held responsible” for this development deal. The solution, they suggested, was the proposal for a stronger mayor set forth Issue IV:

Cincinnati would have had a stronger mayor who served a longer, four-year term – time enough to start a project and see it through. And voters would be able to hold one person responsible for such failures: The directly elected mayor.

In other words, the newspaper of record envisioned that Issue IV would allow the Mayor to be the “one person” responsible for major development projects such as Fountain Square. This responsibility must, of course, be tempered with the Charter authority prescribed for the City Manager and Council. But it is difficult to envision how one person could play this role if he or she were prohibited from engaging in negotiations or substantive interactions with third parties concerning development matters.

In the same article, the Enquirer opined that the “stadium wars” on the Riverfront would have gone better had Issue IV been passed, stating, “The trench warfare between Hamilton County leaders and the city manager might have been avoided if a stronger mayor was recognized as a respected, regional leader, with authority to negotiate for the city and keep promises.”⁷ The stadium deals were development projects, yet the Enquirer argued that this was precisely the sort of transaction in which the new mayor would make a difference.

The extent of the Mayor’s new Charter powers was an express reason for opposition to Issue IV by some commentators including, for example, the League of Women Voters. The League observed in its Voting Guide for Issue IV, “No other council manager city concentrates as many powers in the office of mayor as does this proposal.”⁸

⁵ Cincinnati Enquirer, “That’s Not My Job: 5 Good Reasons for Charter reform” (May 2, 1999).

⁶ *Id.*

⁷ *Id.* Emphasis added.

⁸ LWVCA May 4, 1999 Election Guide (see comparison chart).

While the above excerpts are illustrative of the intent behind the 1999 Charter Amendments, they are not dispositive from a legal perspective. For the in-depth statutory analysis, please revisit the 2021 Legal Memorandum and the 2015 opinion attached thereto. The above references, however, support that voters in 1999 knew the Charter Amendment contemplated the Mayor would have a significant role in external relations – including in discussions regarding development in the City – and that the Mayor could expect to be held accountable to the voters for that role and responsibility.

Charter Limits on Mayor’s Power to Negotiate

At the same time, the Mayor’s authority to engage in negotiations or discussions with external parties is fundamentally constrained by the City Manager’s Charter authority. The Mayor cannot “go it alone” to negotiate a deal because only the City Manager can sign the contract or direct the administrative service to implement it. There is no “deal” without City Manager involvement and buy-in. Only the City Manager has the authority to enter into a development agreement on behalf of the City. As explained on page 9 of the City Solicitor’s Legal Opinion to the City Manager on “Charter Roles, Generally and in Economic Development,” dated January 26, 2021 (the “2021 Legal Memorandum”):

The mayor’s authority to represent the city to external actors is significantly constrained by the charter powers enumerated for the city manager as the chief administrative officer of the city. The mayor cannot bind the city as a matter of law and the charter prohibits the mayor (or council) from sidestepping the city manager to work directly with city departments without the city manager’s authorization.⁹ Practically speaking, the effective exercise of the mayor’s authority as head of the city requires general alignment and support of the city manager, which is consistent with the mayor’s appointing authority over the city manager position. The charter allows the city manager and mayor to work together to facilitate and further the city’s interests in external relations.

As observed in the 2021 Legal Memorandum, “The charter allows the City Manager and Mayor to work together to facilitate and further the city’s interests in external relations.”¹⁰ The City Manager has authority to work with the Mayor and the Manager may direct the administrative service to engage in work supportive of mayoral negotiations when the Manager determines it is in the interests of the City.¹¹ It is also true that the City Manager as chief administrative officer has authority to withhold support from the Mayor and may decline to engage the City’s administrative professionals or enter into contracts in support of the Mayor’s discussions with third

⁹ Charter, Art. IV, Sec. 2.

¹⁰ 2021 Legal Memorandum at p. 9.

¹¹ Mayoral involvement may be particularly useful when, for example, a mayor has expertise or experience in the relevant subject matter.

parties. And, of course, certain types of development deals require City Council authority – the Mayor has no vote on City Council.

Conclusion

In summary, the Mayor may engage in negotiations with developers and other external parties, as provided by Charter, but only the City Manager can execute an agreement. The City's system of government works best when the Mayor and Manager are aligned, and the 1999 Charter reforms were intended to create incentives for a working relationship. Prior to Issue IV, Council appointed and removed the City Manager. After Issue IV, only the Mayor may appoint the City Manager (subject to Council approval) and only the Mayor may remove the City Manager (with Council approval).

Please let me know if you have questions.