

October 8, 2021

To: Mayor and Members of City Council
From: Paula Boggs Muething, City Manager **202102934**
Subject: Implementation of Recommendations of the Economic Development Reform Panel

Reference Document # 202102641, # 202102532, and # 202102535

On September 9, 2021, City Council referred the following motion (Item # 202102641) for a report:

MOTION, submitted by Councilmember Mann, WE MOVE that the City Administration prepare a report to lay out a roadmap to implement the recommendations of the Economic Development Reform Panel.

On August 31, 2021, City Council referred the following ordinance (Item # 202102532) for a report:

ORDINANCE (EMERGENCY), dated 7/29/2021, submitted by Councilmember Landsman, from Andrew Garth, City Solicitor, AMENDING Article III, "Department of Law," Section 10, "Code Compliance and Administrative Hearings" of the Administrative Code of the City of Cincinnati for the purpose of establishing a new position of ethics and good government counselor within the Department of Law to support ethics and election and campaign finance efforts, which is contingent upon funding being appropriated to hire the ethics and good government counselor and other staff necessary for the duties of that office.

On August 31, 2021, City Council referred the following ordinance (Item # 202102535) for a report:

ORDINANCE (EMERGENCY), dated 7/29/2021, submitted by Councilmember Landsman, from Andrew Garth, City Solicitor, MODIFYING Chapter 117, "Campaign Finance - Disclosure," of the Cincinnati Municipal Code by AMENDING Section 117-3, "Reporting Requirements when Campaign has no Activity; Publication of Campaign Reports," to require timely reporting by the currently serving Mayor and Members of Council, and their associated campaign committees and political action committees, of political contributions in excess of \$200 per election cycle; AUTHORIZING the City Manager to take all actions necessary to design and implement a public-facing website through which such reports will be available; and AUTHORIZING the City Manager to develop such requirements, rules, and guidance, in consultation with the Cincinnati Elections Commission, as are necessary to carry out the purposes described herein, contingent upon funding being appropriated for such purposes.

Background and Context

On July 29, 2021, the Economic Development Reform Panel (“EDRP”) released its final recommendations and report—fulfilling its mission set forth in Council Ordinance No. 384-2020 to study “the City’s development process” and “mak[e] recommendations...regarding best practices and ways to...better insulate it from political influence and cronyism.” The panel and its work arose out of the indictment of multiple City councilmembers due to the alleged action of these councilmembers relating to various development projects in the City.

As requested in the motion submitted by Councilmember Mann, the primary purpose of this report is for the Administration to lay out a roadmap for implementation of the recommendations of the EDRP. There have been several additional proposals from various Councilmembers arising from the same set of circumstances that gave rise to the EDRP, so the Administration has incorporated responses regarding those proposals into this report for implementation of the EDRP recommendations. These additional proposals are as follows:

- Item # 202102532 - Proposed ordinance submitted by Councilmember Landsman regarding the establishment of a new positions of ethics and good government within the City’s Law Department.
- Item # 202102643 – Proposed ordinance submitted by Councilmember Landsman that would institute new campaign disclosure requirements.
- Item # 202102643 – Proposed ordinance submitted by Councilmember Goodin that would institute new campaign contribution limitations.

The analysis conducted by the EDRP was wide ranging and analyzed action by various public and private parties in the development process—including elected officials, City staff, and private developers. Therefore, the recommendations by the EDRP require changes to the manner in which these parties act and interact. Council is a self-governing body and some recommendations require that Council adopt or implement new policies that govern the behavior of its members. The role of Mayor is established under and regulated by the Charter, but Council has the authority to pass ordinances regulating that role to the extent that it mirrors or reflects the requirements of the Charter. For these ordinances, Council must take action in order to execute the recommendations; in this report, the Administration provides recommended steps that Council could take toward implementation, including by providing proposed ordinances. While certain recommendations are focused on Administration action, in the instances in which resources are required to undertake the recommended functions, Council action will be further required to appropriate sufficient resources. For those recommendations, the Administration has provided an action plan and an estimate of required resources. Finally, some recommendations are solely within the purview of the Administration; in these instances, the Administration will proceed with implementation.

City Administration Action to Date and Charter Roles

When faced with a crisis of institutional integrity, the Administration took all available steps within its purview to return the constituent entities of city government to the roles established by the Charter, roles enshrined in the Charter to address the corruption and cronyism that plagued our City’s early history. While the Administration had no role in the alleged behaviors that led to the arrests and indictments of city council members, we were cognizant of the important role the Administration could play in restoring public trust. As reflected in the EDRP report, the Administration took immediate steps to enact measures designed to restore trust by providing transparency, accountability, and efficiency, and to adhere to the Charter designated roles of the legislative and administrative arms of our City government.

In Section II.D. of the report the EDRP emphasized the importance of recognizing the appropriate role of Council as purely legislative and endorsed certain actions already taken by the City Manager, including the establishment of the Office of Constituent Affairs, directing city staff to provide all inquiries from elected officials on development deals directly to the City Manager's office, and to increase onboarding and training of elected officials on the appropriate roles under the Charter. The Office of Constituent Affairs and its portal: (1) centralize collection and reporting of constituent concerns regarding operations, both externally and internally; (2) improve customer service and service delivery using the data and information gathered from the aggregated data; and (3) provide transparency and accountability through a public accounting of the conduit function of elected officials in utilization of the Administration to address operational concerns.

The Administration will continue implementation and enforcement of these measures and remains committed to excellent service delivery and responsive customer service channels. The Administration will continue to solicit and utilize feedback to improve and update policies and practices that will yield these results and maximize impact.

I. EDRP Recommendations – Development Processes¹

Improper Influence on Quasi-Judicial Matters

The EDRP recommends adoption of an ordinance requiring the Zoning Hearing Examiner and members of boards and commissions considering quasi-judicial matters to report to the City Solicitor any private contact from elected officials or their staffs attempting to influence the outcome of such matters. For clarity, quasi-judicial functions of these bodies typically involve the body having a hearing, being presented facts about the specific circumstances, and then the body making an interpretation of existing law and coming to a decision. The EDRP identifies City Planning Commission, the Zoning Hearing Examiner, the Historic Conservation Board, the Zoning Board of Appeals, the Building Board of Appeals as bodies that frequently act in a quasi-judicial manner in the development process.²

Existing Cincinnati Municipal Code (CMC) 113-3 and 1501-29 prohibit members of Council, members of the Administration, parties to the subject proceeding, or any other person from interfering with, attempting to interfere with, or improperly influence a hearing examiner in the performance of the duties of the office. To fully implement the EDRP recommendation, the Administration recommends an amendment to CMC Chapters 113 and 1501 to add a reporting requirement for the zoning hearing examiner and to clarify that private communication that is not conducted in public as part of the public hearing on the matter is not permitted.

The Administration further recommends an amendment to the CMC to establish a similar overarching prohibition and reporting requirements, as detailed in the EDRP report, that will apply to all City decision-making bodies and officials that act in a quasi-judicial function. This includes those bodies identified by the EDRP as relating to land use and development and all other City bodies acting in this capacity, such as the Civil Service Commission.

The City Administration will produce and introduce an ordinance encompassing the above recommendation for Council consideration.

¹ In Section II and in Section VI of its report, the EDRP recommends that Council adopt a code of conduct. The Administration's recommendations on this item are contained below in Section IV of this report.

² Council operates almost exclusively through legislative authority. In the unusual instance that Council would hold a quasi-judicial hearing, the Administration would notify Council of applicable rules in advance (e.g., for matters appealed to Council under CMC 1449-01).

Development Process Simplification

Another EDRP recommendation is to make the development process simpler. This recommendation is premised on the assumption that simplification of the development process will increase opportunities to more developers and level the playing field. Complexity of the development process can create an environment where only a small group of repeat players or those willing to hire specialist attorneys or advisors can navigate the various administrative and legislative processes necessary to complete a development project. This creates an opportunity for political influence in the development process.

The Administration has prioritized simplification of the development process with multiple policy goals in mind—including promoting housing affordability by encouraging additional production of housing and to improve service delivery and efficient use of resources. The Administration is following three strategies to accomplish this:

- 1) Simplify the zoning code to create more as-of-right development options and streamline administrative approval processes. Current proposals in this area include an omnibus zoning code clean up ordinance and a proposal from Councilmember Keating to remove unit/area density regulations.
- 2) Improve service delivery by transitioning our current permitting and permit review software to an updated online platform that will facilitate and expedite permit review and approval.
- 3) Commit additional resources to provide targeted technical assistance for various customer groups—including non-profit development corporations, for-profit developers, and small businesses. This has occurred through a restructuring of the Department of Community and Economic Development (DCED) and the establishment of a Neighborhoods Divisions, which will focus on providing assistance to community non-profit development corporations; a solidified Economic Development Division, which will provide assistance to for-profit developers; and a small business assistance office in the DCED Director's Office that will provide assistance to small businesses.

The Administration will continue to work on these three strategies, introduce legislation to further these goals, and remains available to provide support to Councilmembers interested in legislation to support these strategies. In future budget cycles, adding resources to DCED for additional staff in the Neighborhoods Division and the Economic Development Division will provide greater capacity to facilitate the type of technical assistance recommended by the EDRP, specifically for small developers.

Forensic Audit Results

In accordance with a motion introduced by Vice Mayor Smitherman, the Administration released an RFP for services to conduct a forensic audit of all development deals that have occurred over the past three years. The City Administration has awarded a contract to Crowe LLP, a public accounting, consulting, and technology firm, to conduct the audit. A final audit report will take several more months to complete, but once received the Administration will promptly release this report to Council in an FYI memorandum and will include further recommendations at that time based on the results, in accordance with the EDRP recommendation.

II. EDRP Recommendations – Campaign Contribution Regulations and Increasing Transparency and Disclosure

One of the primary concerns extensively discussed and analyzed by the EDRP is the potential for campaign contributions to influence elected official decision-making on legislative approvals

involved in the development process. To address this potential situation, the EDRP recommends two primary actions: (1) an ordinance regulating campaign contributions that would prohibit Councilmembers or the Mayor from soliciting or accepting, or a developer from making, a campaign contribution while an applicable matter is pending in front of Council for approval; and (2) an ordinance instituting heightened campaign contribution disclosure requirements for Councilmembers, the Mayor, and candidates for those offices.

Campaign Contribution Regulation

The EDRP report describes in detail a proposed ordinance regulating campaign contributions, including definitions, scope, and a discussion of considered but ultimately rejected ideas. At this time, multiple Councilmembers have introduced proposals to limit campaign contributions and to promote increased transparency. Councilmember Goodin has introduced a proposal (Item # [202102643](#)) that closely tracks the EDRP's recommendation for limiting Councilmembers and the Mayor from soliciting or accepting contributions while specified items are pending before Council and prior to final resolution.

The primary elements of the proposal as recommended by EDRP are as follows:

- Establish a public “City business list” online specifying the names of financially interested persons associated with development projects coming before City Council.
 - City business means requests or applications for the following items requiring approval by council:
 - (a) development incentives, including loans and tax incentives, with an estimated potential value of \$100,000 or more per year;
 - (b) sales of city property with an estimated fair market value of \$200,000 or more; or
 - (c) zoning changes.
- Prohibit campaigns from accepting contributions from persons listed on the City business list while such persons have legislation pending at Council (from introduction until final legislative action).
- Require campaigns to return or give away within two weeks any contributions prohibited to be accepted under this ordinance.
- Impose civil fines against campaigns that fail to comply.
- Require the City Solicitor’s Office to investigate complaints that a Councilmember has solicited donations in violation of the ordinance and publicly report the Solicitor’s findings to Council.

The Administration recommends that Council adopt Councilmember Goodin’s proposal to implement the EDRP recommendation regarding limits on Councilmember and Mayor. Implementation of the actions required of the Administration in Councilmember Goodin’s ordinance will require an appropriation by Council of additional resources. The Administration will provide a B version of the ordinance containing an amendment to include the necessary appropriation. An estimate of the resources required are discussed in more detail below.

The EDRP also recommends a prohibition against developers *making* campaign contributions while legislation is pending with Council. The Administration recommends, instead, that the City prohibit *acceptance* and *solicitation* of contributions by Council from developers that have legislation under active consideration by City Council. To address developer conduct directly, the Administration recommends implementing the prohibition on developer contributions by including it in the developer code of conduct, as further described below.

Councilmember Landsman has introduced multiple proposals to increase transparency and improve enforcement of campaign contribution requirements. One such proposal proposes to establish a new position of an “ethics and good government counselor” within the City. The EDRP considered recommending an ethics officer but did not recommend one in its report. The panel heard from Paul Nick, the chair of the Ohio Ethics Commission (“OEC”) regarding the functions of the OEC and its broad jurisdiction to investigate and enforce the Ohio ethics laws, as well as the training the OEC provides. Some concern was expressed about reconciling the functions of the City ethics and good government counselor with those of the OEC. The EDRP also recommended additional ethics training across the board for City officials and employees, as discussed at length below. The EDRP did not directly consider whether to recommend additional staff and support for the Cincinnati Elections Commission but did discuss the need for additional funding and staff if their recommendations regarding campaign finance and an active developer list were adopted.

Councilmember Landsman’s proposed ordinance (Item # [202102532](#)) would modify Article III, Section 10 of the Administrative Code and establish the new position of ethics and good government counselor within the Department of Law and provide staffing to support ethics and election and campaign finance efforts. The ordinance would expand the functions of the existing Office of Administrative Hearings to provide ethics and good government support to all City employees and elected officials as well as providing support for the Cincinnati Elections Commission in its administration of Article XIII of the City Charter. The ethics and good government counselor would serve as a dedicated point of contact for elected officials, their staff, and city employees for questions related to ethics and conflicts of interest. The counselor would also serve as a liaison to the Ohio Ethics Commission and provide ethics and conflicts of interest training for elected officials and city employees. Finally, the counselor would review the filings received by the Cincinnati Elections Commission, advise candidates of non-compliance, investigate and present information to the Cincinnati Election Commission regarding non-compliance with campaign contribution and filing requirements, and additional tasks as further detailed in Section VI below.

In conjunction with the adoption of the above-described proposal from Councilmember Goodin, the Administration recommends adopting Councilmember Landsman’s proposal to establish the new position and add staffing capacity to facilitate implementation of the new campaign contribution regulation as well as provided dedicated staffing for ethics, training, and good government functions.

The new position described in Councilmember Landsman’s proposal is made contingent upon an appropriation and maintenance of necessary funding for implementation. The Administration recommends and will provide a B version of the ordinance with an amendment to include an appropriation of resources for implementation. To facilitate immediate implementation, the B version will include an appropriation of necessary resources for the remainder of FY 2022; the Administration estimates the annual resources required to implement Councilmember Goodin’s and Councilmember Landsman’s proposals to be \$500,000, which will fund the counselor position, two support staff positions, and operating costs. To summarize, this funding will provide the ethics and good government officer with support to provide day-to-day ethics advice, expand existing local ethics resources and training, to provide dedicated administrative and enforcement support for the Cincinnati Elections Commission, to create and administer the “active developer list,” as well as various related investigative and enforcement actions, including the whistleblower hotline. The City Solicitor will allocate additional attorney support as needed to by the ethics and good government counselor in performance of these duties, along with City Manager prioritization of other City support required (e.g., for website improvements and database management).

As a final implementation recommendation in this area, the Administration is recommending a restructuring of one function, currently organized under the City Manager’s Office, to be moved under the authority and oversight of the newly created counselor of ethics and good government.

Article II, Section 13 of the Cincinnati Administrative Code (CAC) establishes the Office of Municipal Investigation to investigate and report on allegations of serious misconduct by City employees. The primary investigative functions of the Office of Municipal Investigation (OMI) were taken on by the Citizens Complaint Authority (CCA) upon its creation in 2002. As a result, OMI has not been *directly* staffed or funded as part of the City budget for decades. Instead, OMI's non-CCA functions have been absorbed elsewhere in the City Administration. The Solicitor's Office, which includes the Office of Administrative Hearings, currently handles the bulk of the remaining OMI functions, including investigation of allegations of misconduct by non-police City staff or misconduct by elected officials or their staff.

The Administration recommends modifying Councilmember Landsman's proposal to amend the CAC to designate the investigative functions of the Office of Municipal Investigation as formally under the City Solicitor in the Law Department. It is important to note that the former OMI and the Solicitor's Office have no authority to investigate or prosecute state ethics violations. State law makes any such investigations the exclusive domain of the Ohio Ethics Commission and its attorneys. When there is an allegation of general misconduct in performance of legal duties or work responsibilities, however, the City can and does investigate. As further described below in Section VI, if there are complaints of wrongdoing, the City Solicitor in coordination with the ethics and good government counselor will refer matters to the City Administration (e.g., for disciplinary action), the Cincinnati Elections Commission (for campaign finance violations), or law enforcement officials (for violations of state or federal law). In addition, under CM Goodin's proposed ordinance (prohibiting the solicitation of campaign contributions from financially interested persons), the City Solicitor's Office, in its capacity as staffing for the Cincinnati Elections Commission, will publicly disclose the results of investigations of improper campaign solicitation directly to Council through the Clerk.

Campaign Contribution Transparency

The EDRP report recommends increasing transparency of campaign contributions by (1) recommending passage of an ordinance that will expand disclosure requirements for Councilmembers, the Mayor, and candidates for those offices beyond the current scope of disclosure requirements set forth in Section XIII of the Charter and (2) increasing public accessibility to campaign contributions by having the Administration delineate all campaign contributions disclosed by such elected officials or candidates under the expanded disclosure requirements on the existing public and searchable online database that discloses campaign contributions.

At present, the Administration already maintains a public-facing campaign finance portal that is searchable and clearly lists campaign finance contributions disclosed under existing rules and law. Therefore, the core of the EDRP recommendation is to pass an ordinance expanding upon existing disclosure requirements to include required filing of campaign finance reports for other campaign accounts or committees over which the candidates or sitting officials have control—in effect aggregating campaign financing reporting that is required under other local, state, or federal campaign finance law and associating such reporting with the subject candidate or official. The EDRP recommends this filing happen within 48 hours of when the relevant campaign finance report is required to be filed with the other applicable regulatory body and be enforced by a secondary filing made by the official or candidate that lists comprehensive information about all campaign accounts or committees over which he or she has control.

The EDRP recommends that campaign reports filed with the City for municipal elections be published online within 48 hours of the filing deadline for such report and that the City's campaign reporting website be augmented to allow, for example, for online reporting. The City Administration has implemented this change, though additional staffing and technical resources would improve its functionality. Councilmember Landsman has introduced related legislation (Item # [202102535](#),

“Campaign Finance - Disclosure) related to the EDRP’s recommendations. Specifically, his ordinance calls for development of a public-facing and searchable campaign contribution website for city elected officials (and candidates). Councilmember Landsman’s proposal would also require disclosure of contributions of \$200 dollars or more within three business days following receipt by a campaign. (The EDRP recommendation leaves unchanged the existing disclosure timing requirements under local law.)

Councilmember Landsman further proposes that Councilmembers report all campaign donations online within three business days. If Council determines that three-day disclosure is appropriate but does not fund the ethics and good government counselor recommendations described above, then additional resources will be required to maintain and enforce the three-day reporting system.³ If funded, the ethics and good government administrative staff could maintain and operate such a submission portal as part of their duties in supporting the Cincinnati Election Commission.

The main component of the EDRP recommendation not addressed by a current council proposal is the expansion of existing reporting (and online posting) requirements. The EDRP recommends including public disclosure of filing of all campaign finance reports for other campaign accounts or committees over which the candidates or sitting officials have control and that are required to be filed with other regulatory bodies under existing local, state, or federal law. This recommendation is intended to increase transparency of campaign contributions that the candidate controls but of which local disclosure is not required under current Charter language. To implement this recommendation, the Administration recommends and will develop for Council consideration an ordinance to amend CMC Chapter 117 to require that copies of other campaign reports be filed with the City and added to the City’s online campaign and elections portal. Note that this is already being done for all state filings with the Board of Elections for city elected offices, although the format of the data provided by campaigns to the City and posted by the City online is typically not searchable. If passed by Council, the Administration will adapt the existing campaign finance portal to include the expanded disclosures.

In order to develop more than the minimum website envisioned by the EDRP and Councilmember Landsman, the Administration estimates that upgrades to the portal described in the EDRP report will require a one-time investment of \$75,000, which will be included in the Administration’s B version. This cost would allow for a dedicated ETS staffing plan to develop and implement website upgrades along with exploring potential off-the-shelf software for campaign contribution oversight and reporting. If Council approves the allocation of resources identified above for the good governance and ethics counselor, then no additional *ongoing* resources will be necessary, as the resources to maintain the website will not be substantially more than the resources required for the existing campaign finance portal.

III. EDRP Recommendations – Confidential Whistleblower Hotline

The EDRP recommends enhancements, re-branding, and increased marketing of the Administration’s existing Fraud, Waste, and Abuse hotline that is currently operated by the Internal Audit Division in the City Manager’s Office.

To increase the effectiveness of the hotline and to add additional confidentiality protections, the Administration intends to move the functionality from the Internal Audit Division to the new ethics and good government counselor, assuming approval by Council and appropriation of the above identified resources. By establishing this function in the City Solicitor’s Office, attorney-client

³ Additionally, for consistency the Administration recommends an amendment to Councilmember Landsman’s proposal that will expand the definition of “contributor” to incorporate the definition of “financially interested person” contained in the Goodin proposal.

privilege can be utilized when available to further increase the confidentiality and to encourage increased use of the service. If allegations of financial or operational waste are received, those complaints will still be referred to Internal Audit for further investigation. This change also aligns with moving the defunct OMI to the City Solicitor's Office, as the hotline was formerly a function of that office before being transferred to the Internal Audit Division.

As part of this transition the Administration will work on re-naming, increasing marketing and accessibility of the hotline, and expanding the topical scope, as recommended by the EDRP. Since the ethics and good government counselor is intended to conduct ethics trainings, the hotline can be incorporated into these periodic trainings.

IV. EDRP Recommendations – Codes of Conduct

The EDRP recommends adoption of codes of conduct by City Council and the Mayor, respectively, to govern themselves and their staff.

Council Code of Conduct

Section II of the EDRP report recommends adoption of a code of conduct by Council that achieves the following:

- Recognition of Council's role under the Charter as a legislative body;
- Recognition that if contacted by a private party seeking financial assistance (including sale of city land) or land use approvals from the City that the Councilmember or Council staff should direct that party to the City Manager's Office; and
- Recognition of the obligation of elected officials and staff to not attempt to privately interfere with quasi-judicial proceedings of boards and commissions or the Zoning Hearing Examiner.

Additionally, in Section VI of the report, the EDRP recommends that, in addition to the items above, the code of conduct cover the following items:

- Restriction of Council involvement in development projects and interactions with developers, including with respect to campaign contributions;
- Required reporting on a hotline or otherwise of wrongdoing, including required reporting of an offer of something of value in connection with a development project or public contract;
- Articulation of rules to maintain a level playing field, deter inappropriate behavior, reinforce proper behavior, and re-earn public confidence;
- Preclude the involvement of Councilmembers in contract negotiations, especially with respect to economic development deals; and
- Recognize the right and obligations of City employees to report conflicts of interest or violations of law.

The EDRP recommends that this code of conduct be adopted in an ordinance by Council and that elected officials should acknowledge in writing receipt of the code of conduct at or before the first meeting of Council at which they are seated.

In order to facilitate implementation of this recommendation, the Administration has produced draft legislation (two ordinances)—attached as Exhibit A and Exhibit B to this report. As proposed, the first ordinance would amend Section 101 of the CMC to establish baseline requirements for a code of conduct to be adopted by Council, require compliance by Councilmembers to their adopted code of conduct, and requires written acknowledgement by Councilmembers of the code of conduct, in accordance with the EDRP's recommendation. The second ordinance would formally adopt a code

of conduct for Council that satisfies the basic requirements set out in the amended CMC provision and follows the recommendations in the EDRP report. The Administration recommends that each subsequent Council affirmatively adopt its own code of conduct. This will help to educate and inform members of Council and, based on testimony at the EDRP by the director of the Ohio Ethics Commission, regular public discussions about ethics and conflicts expectations generally promote good government.

Councilmember Mann has agreed to introduce the proposed legislation for consideration by Council so that, to the extent amendments from the draft are required, Council can take up such debate within committee to determine the appropriate changes and allow for public discussion and vetting.

Mayor Code of Conduct

Similar to the recommendation regarding Council, the EDRP recommended that the Mayor adopt a code of conduct covering the same items detailed above for Council. As reflected in Section II.D. of the EDRP report and as previously articulated in the City Solicitor's January 26, 2021 opinion, the Mayor's role is unique under the Charter—as the Mayor has a blend of legislative and administrative powers. In this context, the City Administration is recommending that a distinct code of conduct be developed for the role of the Mayor. Language in the proposed ordinance attached in Exhibit A will amend Section 100 of the CMC to accomplish the EDRP recommendations. The proposed ordinance was drafted to ensure compliance with the Charter, so proposed changes by Councilmembers should be reviewed by the Solicitor's Office. Similar to Council, the Administration has produced a suggested code of conduct for adoption by the Mayor, which is attached as Exhibit C.

City Staff Code of Conduct

As described in the EDRP Report, the Administration already maintains a Conflicts of Interest and Contracting Ethics policy in Administrative Regulation No. 68, as well as in the City employee handbook, Personnel Policies and Procedures. As mentioned above, the City Manager has already created the Office of Constituent Affairs and issued Administrative Regulation No. 79, which generally directs staff on how to appropriately respond to direct inquiries from elected officials and provides for notification of the Office of Constituent Affairs.

The EDRP recommends that the Administration further develop and enhance the already existing rules and policies to clearly address (i) position or department specific guidelines, (ii) training for staff on the requirements, (iii) required reporting of violations of the code of conduct or unethical or illegal behavior, and (iv) reinforce obligations of city staff not to improperly influence quasi-judicial hearings.

To implement this recommendation, the Administration will be developing a comprehensive code of conduct that will incorporate the EDRP recommendations and will be promulgated in the City's Personnel Policies and Procedures. To address the particular issues arising from the development process, specific provisions will address those City staff that engage in this process—primarily staff from DCED, the Department of City Planning and Engagement, and the Department of Buildings and Inspections.

An acknowledgement of this new code will be required by all existing City staff and for new staff upon hiring. As described above, training on this new code will be incorporated into onboarding materials for new staff and into periodic trainings for all staff, as further described below.

Appointees Code of Conduct

In addition, the City Staff, the EDRP report recommends a code of conduct be adopted for City appointees to Mayor-appointed and Manager-appointed boards and commissions. The Administration recommends that this recommendation be implemented through an amendment to CMC to add a new chapter to Title II. The Administration will produce and introduce to Council a proposed ordinance for consideration.

Developer Code of Conduct

The EDRP also recommends establishing a code of conduct for private developer parties that are engaging with the City of Cincinnati to do business. The recommendation is that this code of conduct be established and enforced by the City Manager or her designee and include the following:

- Applicable legal and administrative requirements
- Behavioral expectations
- Available training
- Regulation around campaign contributions to City elected officials
- Reporting requirements for violations of City law or policies

In accordance with the EDRP recommendation, the City Manager will develop a proposed Developer code of conduct and share that proposal with Council for feedback and public vetting. As described above, this proposed code of conduct will address campaign contributions while items are pending before Council.

Regarding implementation once finalized, the EDRP recommends that this code of conduct be acknowledged in writing by developers.

As discussed in detail in Section V of the EDRP report regarding campaign contributions, the terms “economic development” and “developers” are incredibly broad and can incorporate a large range of activities and individuals—from the large developer of a multi-million dollar project to a homeowner who is seeking a permit to update a single-family residence.

Effective implementation of a code of conduct for developers must acknowledge and account for this broad array of actors and situations. Therefore, the Administration recommends utilizing the distinctions utilized under the proposed campaign contribution regulatory framework to clarify how the code of conduct will be implemented.

The Administration recommends that if a developer party falls into the category of a private party pursuing a “qualifying matter” (as defined in Section V.A. of the EDRP report)⁴, then that developer must acknowledge in writing the developer code of conduct. This acknowledgement should happen at the earliest feasible date, so the Administration will implement changes to the application processes for the three categories of action for qualifying matters to require written acknowledgement of receipt at that time.

If a developer does not fall into the category of pursuing a qualifying matter, the Administration does not recommend required written acknowledgement but instead public posting of the code of conduct—both online and in-person on the website and in the offices of the Department of City Planning and Engagement, DCED, and the Department of Buildings and Inspections. Additionally,

⁴ Such party is characterized as an “applicant” for “city business” under the proposal from Councilmember Goodin, discussed above.

information about the code of conduct will be provided in application materials for various development processes.

The Administration is able to absorb the resources needed for implementation of this recommendation, so the Administration will proceed with developing the proposed code of conduct for introduction to Council for public vetting and approval.

V. EDRP Recommendations – Training

Elected Official and Staff Training

The EDRP recommends that Council and the Mayor adopt rules to require annual ethics and good government training and education. The report notes that in May of 2021, the City electorate passed a charter amendment, originally proposed by Councilmember Sundermann, that requires elected officials to complete an Ohio Ethics Commission training within 60 days of taking office; however, the EDRP recommends that requirements are established that go beyond this minimum training. Specifically, the EDRP recommends (1) that candidates for elected office receive and acknowledge receipt of relevant training and education materials, (2) that compliance of elected officials and candidates with training requirements be publicly available, and (3) periodic trainings are conducted by the Administration that cover at minimum the following:

- Ethics
- Legal and administrative requirements regarding campaign contributions
- Interaction with developers
- Interaction with constituents
- Role of Councilmembers and the Mayor in development projects

Finally, the EDRP recommends that elected officials and staff be required to at minimum attend an ethics training annually and that non-compliance would result in a loss of legislative privileges for elected officials.

As discussed above, the Administration has not been passive since the indictments and has already greatly increased training opportunities for elected officials and their staff. At present, the City Manager's Office provides elected officials and their staff the following opportunities to receive ethics training: (1) New Council Orientation; (2) periodic City Council, Boards, and Commissions Virtual Academy; and (3) periodic Ohio Ethics Commission Trainings.

In February 2021, the City Manager's Office developed an enhanced curriculum component for the New Council Orientation that focuses on Ohio Ethics Law and the Structure of our Municipal Government, explaining the functional structure established under the City's Charter. Based on the EDRP report, the Administration will rename this curriculum the Elected Official Orientation and further enhance this curriculum component to cover all of the recommended topics identified by the EDRP. Additionally, if adopted by Council and the Mayor, this curriculum will be expanded to include an in-depth explanation of the codes of conduct for elected officials. Elected Official Orientation has already been scheduled for February 2022, and the Administration will include the above-described materials in that training.

Since the fall of 2020, the City Manager's Office has hosted a Council, Boards, and Commission Virtual Academy. This training was offered three times in the Spring of 2021 and is being offered three times this fall. It was designed to provide City elected officials, their staff, and volunteer board members with essential training on ethics and City budget, finance, and procurement policies. As of the fall of 2021, the availability of this training has been expanded to include candidates for elected office. Notice of this opportunity has been mailed to all 2021 General Election City Council

Candidates, as posted by the Board of Elections on September 1, 2021. The Administration recommends expanding the ethics curriculum to include the items recommended by the EDRP and applicable codes of conduct, if adopted.

Elected officials and their staff are also invited to participate in the Ohio Ethics Commission trainings that are periodically scheduled for City staff by the City's Department of Human Resources. This training is instructed by the Ohio Ethics Commission and is a required course for all City employees regardless of level and classification. This training is available either on-demand, during New Employee Orientation, or in-person as hosted in City Hall every 2 years.

Regarding the EDRP recommendation for implementation of a mandatory annual participation requirement for elected officials and staff, the Administration recommends that annual participation by officials and their staff in either Elected Official Orientation or a Council, Boards, and Commission Virtual Academy session should be made a component of the elected official codes of conduct, as further described above in Section IV of this report.

Further, if approved by Council and the necessary resources appropriated, the new ethics and good government counselor, with the support of staff, will be responsible for completing, periodically updating, and teaching the curriculum described above and will further act as resource for addressing questions on the materials. Tracking of compliance with the participation requirement can also be completed by the ethics and good government counselor and made publicly available.

City Staff Training

As the EDRP recognizes, all City staff, regardless of position or classification, are currently required to attend an Ohio Ethics and Ohio Fraud Reporting training. This training is required of all new employees as part of their New Employee Orientation and is mandatory within the first 30 days of employment. City staff are also required to complete a refresher course every 2 years. City staff are also required to sign an acknowledgement form regarding required reporting of suspected fraud to the Ohio Auditor of States Office.

The EDRP recommends that staff training be required annually and cover specific ethics and "good government" practices, including job-specific issues particularly for those staff involved in the development process.

To implement this requirement, the Administration will maintain the existing system of biennial Ohio Ethics and Ohio Fraud Reporting training for employees, but that the City Manager will also require on a staggered biennial basis a new focused training that covers the City-specific items identified by the EDRP and other applicable materials, such as relevant administrative regulations, proper reporting procedures, and codes of conduct. The information from this training will also be incorporated into New Employee Orientation.

Developer Training

Finally, the EDRP recommends that the Administration offer voluntary developer training on specified items. The Administration recommends that acknowledgement of this training be incorporated into the proposed developer code of conduct and be developed so that it can be accessed virtually and on an ad-hoc basis. Through this method, the EDRP-recommended written acknowledgment of the training will be incorporated into acknowledgement of the developer code of conduct, as further described above. Further, the Administration recommends and will pursue updating the applications for "qualifying matters" (referred to as "City business" in the Goodin proposal) to include a representation as to if the training has been completed by the applicant.

VI. Additional Administration Recommendations on Implementation

The EDRP recommendations span several complex subject areas including campaign finance laws; ethics policies and laws; and codes of conduct for elected officials, developers, and staff. A key component of ensuring the effectiveness of these recommendations is establishing the appropriate enforcement mechanisms to facilitate complaints, analysis and investigation, and reporting of violations of applicable law and policies. As discussed above, the Administration recommends the creation of the ethics and good government counselor proposed by Councilmember Landsman in Item # 202102532. The Administration further recommends that the ethics and good government counselor function as a central clearinghouse to receive relevant complaints and then refer such complaints to the appropriate authorities for proper enforcement. Given the scope of the subject matter and the variations in jurisdiction for enforcement, the Administration is recommending that Item # 202102532 be amended to specifically delineate how the ethics and good government counselor will handle and refer received complaints. Attached as Exhibit D is a diagram illustrating the Administration's recommendation. The above discussed B Version of this ordinance will incorporate this recommendation.

Conclusion

The events leading to the establishment of the EDRP caused a breach of public trust in our local government. Recommending steps to restore that trust and ensure ongoing transparency and accountability in our government functions was the critical mission of the EDRP. With diligence and deliberation, the EDRP produced a well-executed report that is narrowly tailored to address the issues, is cognizant of the current landscape, and recommends steps that are achievable in a timely manner. Even in the face of challenging circumstances and time constraints, the EDRP report is a detailed blueprint of proposed reforms to improve local government systems and processes and to ensure that we are never again faced with a similar crisis of public trust. This report summarizes the Administration's recommendations on how to take that blueprint and integrate and enshrine these reforms into City policies, practices, and law.

Exhibit A
Proposed Ordinance Amending the CMC to Require a Council Code of Conduct and a Mayor Code of Conduct

[Attached]

Exhibit B
Proposed Ordinance for Council to Adopt a Code of Conduct
[Attached]

Exhibit C
Proposed Mayor Code of Conduct

[Attached]

Exhibit D
Enforcement Flow Chart for Complaint to
Ethics & Good Government Counselor

[Attached]