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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.