



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, February 2, 2021

9:00 AM

Council Chambers, Room 300

AGENDA

1. [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](#)
2. [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](#)
3. [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](#)
4. [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](#)

5. [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](#)
6. [202100210](#) **MOTION**, submitted by Vice Mayor Smitherman, **WE MOVE** that the city administration solicit a quote for the total cost of a forensic audit on all development deals that have come before Cincinnati City Council over the past three years.
- Sponsors:** Smitherman
- Attachments:** [Motion 202100210](#)
7. [202100218](#) **ORDINANCE**, submitted by Councilmember Seelbach from Andrew W. Garth, City Solicitor, **MODIFYING** Cincinnati Municipal Code Charter 908, "Crimes Against the Person," by amending Section 908-3, "Criminal Intimidation," for the purpose of adding "gender identity" and "gender expression" to the list of people protected by this Section.
- Sponsors:** Seelbach
- Attachments:** [Transmittal 202100218](#)
[Ordinance 202100218](#)
8. [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](#)
9. [202100268](#) **MOTION**, submitted by Councilmember Young, **WE MOVE** that the undersigned move that the City Solicitor issue a legal opinion addressing the following question: "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." (STATEMENT ATTACHED)
- Sponsors:** Young
- Attachments:** [Motion](#)
[Attachment](#)

10. [202100292](#) **MOTION**, submitted by Councilmember Landsman, Cincinnati families are facing unprecedented financial challenges, and the fear of eviction continues to loom for tens of thousands of our children and families. We recognize that our nonprofit partners have, and will continue to receive, significant rental assistance support. But the process of getting these resources to families quickly, and before they end up in eviction court, has been a challenge. As such, **WE MOVE** that the administration pursue a request for information (RFI) to determine who can build a shared data system to enhance eviction prevention programmatic performance and coordination. Such a system would allow providers to more effectively allocate relief and prevention services, keeping more and more of our children and families in stable housing. We ask that the RFI inquire into: 1. Which companies or providers could create such a data system, 2. How much it would cost the city to support the creation of one, 3. How quickly we could build the platform, and 4. How best to get our eviction prevention support providers onto such a system.

Sponsors: Landsman

Attachments: [Motion](#) [Eviction RFI](#)

11. [202100297](#) **MOTION**, submitted by Councilmember Landsman, **WE MOVE** to request that the Administration provide an update on Ordinance 402-2019, which guarantees that eviction filing data from the Hamilton County Clerk of Courts be made available to service providers partnering with the City of Cincinnati in eviction relief services and eviction prevention initiatives. To date, we have not been able to obtain this data in a regular and reliable manner. The City may need to provide support to the Clerk of Courts to secure this data, and we encourage the Administration to pursue that support. Getting this data in the hands of our partners will allow them to help our residents struggling to pay rent with rental assistance, the ability to stay in their homes, avoid an eviction, or even avoid having to attend eviction court.

Sponsors: Landsman

Attachments: [Motion](#) [Eviction Data](#)

12. [202100487](#) ORDINANCE (VERSION B), submitted by Andrew Garth, City Solicitor, on 2/1/21, MODIFYING Cincinnati Municipal Code Chapter 908, "Crimes Against the Person," by amending Section 908-3, "Criminal Intimidation," for the purpose of adding "gender identity" and "gender expression" to the list of people protected by this Section.

Sponsors: Seelbach

Attachments: [Transmittal](#)
[Ordinance 202100487](#)

SUPPLEMENTAL

PRESENTATIONS

Report Regarding Text Messages

Andrew Garth, City Solicitor

Emily Smart Woerner, Deputy City Solicitor

13. [202100545](#) REPORT, submitted by Andrew Garth, City Solicitor and Emily Smart Woerner, Deputy City Solicitor regarding Motion #202100060 (text messages).

Attachments: [REPORT](#)

ADJOURNMENT

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

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.



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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 except 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

City of Cincinnati



801 Plum Street, Suite 356
Cincinnati, Ohio 45202

Phone (513) 352-3464
Email christopher.smitherman@
cincinnati-oh.gov
Web www.cincinnati-oh.gov

202100210

Christopher E. C. Smitherman
Cincinnati Vice Mayor

January 14, 2021

MOTION

WE MOVE that the city administration solicit a quote for the total cost of a forensic audit on all development deals that have come before Cincinnati City Council over the past three years.

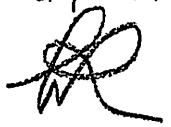
Vice Mayor Christopher Smitherman

_____	_____
_____	_____
_____	_____
_____	_____

COMMITTEES

Chair: Law & Public Safety • **Committees:** Economic Growth & Zoning • Neighborhoods


01/14/2021



01/14/2021

20210218

Date: January 14, 2021

To: Councilmember Chris Seelbach
From: Andrew W. Garth, City Solicitor 
Subject: **Ordinance** – Modifying Cincinnati Municipal Code Chapter 908-3
Gender Identity and Gender Expression

Transmitted herewith is an ordinance captioned as follows:

MODIFYING Cincinnati Municipal Code Chapter 908, “Crimes Against the Person,” by amending Section 908-3, “Criminal Intimidation,” for the purpose of adding “gender identity” and “gender expression” to the list of people protected by this Section.

AWG/KMB/(lnk)
Attachment
325737

City of Cincinnati

KMB

AWB

An Ordinance No. _____

- 2021

MODIFYING Cincinnati Municipal Code Chapter 908, "Crimes Against the Person," by amending Section 908-3, "Criminal Intimidation," for the purpose of adding "gender identity" and "gender expression" to the list of people protected by this Section.

WHEREAS, the Cincinnati Municipal Code occasionally must be updated to remove outdated language and ensure the most accurate terms and definitions are used to express the intention and purpose of the laws of the City of Cincinnati; and

WHEREAS, the terminology in Section 908-3 of the Municipal Code surrounding the protections of transgender individuals needs improvement and correction to ensure the clearest application of the law using the most current accepted language; now, therefore.

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 908-3, "Criminal Intimidation," is amended to read as follows:

Sec. 908-3. Criminal Intimidation.

- (A) No person shall violate section 908-5, 908-7, 908-9, 908-11, 908-13, paragraphs (A)(3), (4), or (5) of section 908-15, or section 907-3 of the Municipal Code by reason of the actual or perceived race, color, religion, national origin, gender, physical or mental disability, homeless status, sexual orientation, gender identity, gender expression, or age (60 and above) of another person or group of persons.

- (B) *Definitions:* For the purposes of this section, the words and phrases used herein shall have the meanings respectively ascribed to them unless the context clearly indicates or requires a different meaning.

"Gender expression" shall mean the external appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender identity" shall mean one's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

"Homeless Individual" shall mean:

- a) An individual who lacks a fixed, regular, and adequate residence;
- b) An individual with a nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including but not limited to: a car, park, abandoned building, bus or train station, camping ground, overpass, woods, benches, parking garage, or doorway;
- c) An individual who lives some or all of the time in a publicly or privately operated shelter, transitional housing, motel, hotel, detoxification facility, hospital, nursing home, jail or any other facility meant for temporary residence;
- d) An individual who is exiting a facility meant for temporary residence or residing in a temporary residence pending transition to a permanent residence;
- e) An individual exiting jail or prison without a permanent residence to go to; or
- f) An individual abandoned at a hospital or awaiting foster care placement.

"Homeless Status" shall mean an individual's actual or perceived status as a homeless individual.

"Sexual orientation" shall mean an individual's actual or perceived heterosexuality, homosexuality, or bisexuality ~~or transgender status~~, by orientation or practice.

"Transgender" shall mean the condition or state wherein a person manifests gender characteristics, behavior and/or self-identification typical of or commonly associated with persons of another gender, and which may be characterized by assumption of the clothes, hairstyles, cosmetic usage or other appearance qualities commonly associated with another gender and/or by the surgical or medical modification of primary sexual organs in order to assume the gender role of another sex

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

Section 2. That existing Section 908-3, "Criminal Intimidation," of the Cincinnati Municipal Code is hereby repealed.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

Mayor

Attest: _____
Clerk

New language is underscored. Deleted language is struck through.

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.



202100268

January 21, 2021

MOTION

WE MOVE that the undersigned move that the City Solicitor issue a legal opinion addressing the following question: "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."

Statement

Recently, the Federal Bureau of Investigations (F.B.I.) and the U.S. Attorney's Office filed three indictments against sitting members of our Council. The U.S. Attorney's Office stated emphatically that there is a culture of corruption within our city government. Not long ago we received an open letter to Mayor Cranley and the City Manager Paula Boggs-Muething from a citizen from the OTR, Danny Klinger stating among other things that the Mayor is involved with negotiating development deals. It is a long-standing principle that our City Manager is solely responsible for the negotiations of development contracts. Under our Charter, this responsibility is a safeguard so the neither the Mayor nor City Council are able to influence the negotiations of development contracts, however this allows our City Manager to perform his or her role with out any political influence. Given the most recent indictments and what appeared to be widespread belief among many of our citizens that corruption exist beyond the indicted councilmembers. We should take every step to preserve the authority of the City Manager without the Mayor or member of City Council to ensure and restore faith in the actions of government.

Councilmember Wendell Young



2020.01.01

Davis-Kelow, Gloria

From: Gloria Davis
Sent: Thursday, January 21, 2021 1:25 PM
To: Davis-Kelow, Gloria
Subject: Fwd: [External Email] An Open letter to Mayor John Cranley and City Manager Paula Boggs-Muething
Attachments: Elm&Liberty_Source3 Donation #4 to Cranley 2017.jpg; Elm&Liberty_Source3 Donation #2 Donation to Cranley 2017.jpg; Elm&Liberty_Elevar Design Group donations to Cranley 2017.jpg; Elm&Liberty_KEANE Donations to Cranley & Sittenfeld PACs 2019.jpg; Elm&Liberty_Source3 Donation to Cranley 2017.jpg; Elm&Liberty_Elevar Design Group Donation #2 to Cranley PAC 2019.jpg; Elm&Liberty_Source3 Donation #3 to Cranley 2017.jpg; Elm&Liberty_Elevar Design Group donation to Cranley PAC 2019.jpg

Sent from my iPhone

Begin forwarded message:

From: Gloria Davis
Date: January 20, 2021 at 6:25:02 PM EST
Subject: Fwd: [External Email] An Open letter to Mayor John Cranley and City Manager Paula Boggs-Muething

----- Forwarded message -----

From: Young, Wendell <Wendell.Young@cincinnati-oh.gov>
Date: Wed, Jan 20, 2021, 6:23 PM

Subject: Fwd: [External Email] An Open letter to Mayor John Cranley and City Manager Paula Boggs-Muething

Get Outlook for Android

From: Danny Klingler
Sent: Wednesday, January 20, 2021 4:26:58 PM
To: Cranley, Mayor <mayor.cranley@cincinnati-oh.gov>; CityManagerEmail <CityManager@cincinnati-oh.gov>; Paula Boggs Muething <paulaboggs@gmail.com>
Cc: Keough-Jurs, Katherine <Katherine.Keough-Jurs@cincinnati-oh.gov>; #COUNCIL <#COUNCIL@cincinnati-oh.gov>; ClerkOfCouncilEmail <ClerkOfCouncil@cincinnati-oh.gov>; Seelbach, Chris <Chris.Seelbach@cincinnati-oh.gov>; Landsman, Greg <Greg.Landsman@cincinnati-oh.gov>; Mann, David <david.mann@cincinnati-oh.gov>; Young, Wendell <Wendell.Young@cincinnati-oh.gov>; Smitherman, Christopher <Christopher.Smitherman@cincinnati-oh.gov>; Kearney, Jan-Michele <Jan-Michele.Kearney@cincinnati-oh.gov>; Sundermann, Betsy <Betsy.Sundermann@cincinnati-oh.gov>; Priority Budget <PriorityBudget@cincinnati-oh.gov>; sharedCitizensComplaintAuthority <cca@cincinnati-oh.gov>; law@cincinnati-oh.gov <law@cincinnati-oh.gov>; Kellam, Caroline <Caroline.Kellam@cincinnati-oh.gov>; Hoffman, Stacey <Stacey.Hoffman@cincinnati-oh.gov>; Oliver Kroner <olliekroner@gmail.com>; Johnson, Beth <beth.johnson@cincinnati-oh.gov>; Cunningham, Edward <Edward.Cunningham@cincinnati-oh.gov>; Dahlberg, Art <art.dahlberg@cincinnati-oh.gov>; Haynes, Marion <Marion.Haynes@cincinnati-oh.gov>; Sturkey, David <David.Sturkey@cincinnati-oh.gov>; Keating, Liz <liz.keating@cincinnati-oh.gov>; Goodin, Steven <steven.goodin@cincinnati-oh.gov>; Rocco, Giovanni <Giovanni.Rocco@cincinnati-oh.gov>; Florea, Lindsey <Lindsey.Florea@cincinnati-oh.gov>; Carter, Markiea <Markiea.Carter@cincinnati-oh.gov>; Community Development <communitydevelopment@cincinnati-oh.gov>; Cincinnati City Planning <planning@cincinnati-oh.gov>; DEI <DEI@cincinnati-oh.gov>; Coolidge, Sherry ; Christopher Wetterich

John <John.Reiser@cincinnati-oh.gov>; Stephen Dronen

Stephen Dronen

Chris Mulloy

Tom Fernandez

Derek Baumar

Subject: [External Email] An Open letter to Mayor John Cranley and City Manager Paula Boggs-Muething

External Email Communication

Dear John and Paula,

I have known both of you for years now, and consider both of you to be, in a sense, friends.

John, I first met you as a server at Palomino in 2004, when I waited on you and you told me to make sure to read "The Death and Life of Great American Cities" by Jane Jacobs so that I would not be laughed out of Planning School when I went to MIT that fall. I took your advice.

Paula, I met you when you were at the Port, and have appreciated your support and friendship, and known you as a good-hearted leader.

I am writing to you now as fellow human beings, because what I have observed in the Mayoral, Managerial, and City Council leadership over the past few years has been shocking. Specifically, the corruption endemic to the administration vis-a-vis real estate development has been beyond the pale. It has crossed a line for me where I am unable to remain silent anymore.

We now know that council members have been taking bribes from developers. But I also know -- even if the public does not yet know -- that this corruption extends to the Mayor and, by association, to the City Manager as well. It has reached a point where I need to say something.

Let me use just one example. You have been shepherding a large development deal at the corner of Elm and Liberty through the administration and through Council. It is a deal to bring hundreds of units of luxury housing to the middle of Over-the-Rhine, with rents ranging from \$1,400 to \$2,800 in a working class neighborhood where residents struggle to pay a third of that and over half of children live in poverty. The Community Council stands firmly opposed to the project, as it offers not one single affordable apartment, violates the historic preservation ethic that has made Over-the-Rhine so successful, gives millions of taxpayer dollars away to out of town developers, and stands to be the largest gentrification project in the history of the neighborhood.

The developers are KEAN Ventures and Buckingham Group, and they are seeking \$25+ million in tax subsidies from the City of Cincinnati for the project.

The developers donated at least \$5,000 to your PAC in 2019, John, shortly after they had purchased the property* (See attached. They also gave \$5,000 to PG Sittenfeld's Progress and Growth PAC, the same PAC implicated in the FBI investigation of Councilmember Sittenfeld). They had never donated to either of your Mayoral campaigns before, nor, to my knowledge had they ever donated to anyone in Cincinnati politics. But suddenly they took a keen interest in donating you. The PAC donation will presumably be used to fund your Gubernatorial campaign.

The Elm & Liberty project architect, Tom Fernandez of Elevar, donated another \$7,500 to your PAC in the fall of 2019* (See attached), as Elevar was finalizing conceptual designs for the project. Tom and SFA/Elevar were also a top 3 overall donor to your reelection campaign in 2017, with over \$17,000 invested in your campaign through at least 10 separate LLCs** (See attached. Elevar is also a key architect for the FC Cincinnati stadium project).

Going back 4 years to the first iteration of the Elm and Liberty project, the original developers -- Source3 -- caught up in a fierce battle with the community, donated the max amount across several LLCs to your Mayoral primary campaign in March of 2017** (See attachments), right before a key vote in council. Following the donations, in April/May 2017 their multi million dollar tax abatement was approved by the City. They were Republicans who, as far as I am aware, had never donated to any City of Cincinnati politicians before. But suddenly, they were very interested in donating to you.

The Planning Department's "Review" of the current Elm and Liberty project has been a sham. The approval by the Planning Department and subsequently by the Planning Commission has been predestined by you John, and you Paula, and it was never in doubt. There was never any consideration about how the community felt about the project, how the project aligned with the Over-the-Rhine Comprehensive Plan (it doesn't), or how it met the legal standard for the zoning changes they are requesting (it doesn't). In fact, a FOIA public records request has revealed that the Department of Community and Economic Development was texting the developers cell phone, strategizing on getting turnout to the Community Council to influence the vote. In short, once they gave you the money, John, it was all a foregone conclusion.

The Elm and Liberty project is just one example of the rampant corruption at the top of the city when it comes to real estate development. This type of pay for play dealing is how business is done here. What's worse, employees are unable to do their jobs because they are afraid of losing them. They are unable to conduct honest project reviews that hold developers accountable on behalf of the citizens of Cincinnati, because they cannot afford to lose their health insurance. They are unwilling to speak out, for fear of retribution by you, John. I'm sure you know you have a reputation for being vindictive.

If you, members of council, doubt that any of this is true, then open an investigation into how this project was managed. Invite city staff for coffee and talk to them off the record. Look into the other PAC donation records (some of which are attached). You can turn a blind eye to the truth, or you can acknowledge it.

Whatever you do, do not respond with gaslighting.

Cincinnatians are losing out because you, John, are taking money from developers and then helping them get their deals through the city. It's corruption, it's wrong, and it's unacceptable, and we cannot wait another 9 months or another single day for things to change. Our city cannot be bought and sold, just as developers, architects, and construction companies cannot be permitted to buy their way into multi-million dollar tax breaks and zoning changes.

There must be accountability. What has been going on must change, and it will change.

There is a vote tomorrow at City Hall to approve valuable zoning changes and the aforementioned \$25+ million dollar tax incentive package for the Elm and Liberty project developers. The same developers who paid \$5,000 to your PAC after purchasing the property. The same architect that has contributed \$25,000 to your PAC and Mayoral Campaigns since 2017. The same project (Source3) that bribed you with contributions to your primary re-election campaign in 2017 right before a key project vote in Council.

Every council member and every member of the administration who goes along with this vote is culpable, and should be held accountable.

I urge you, John and Paula, to pull this project from Thursday's agenda and to send the project back to the Planning Department for a proper review with no political interference. And above all, I urge all of you not to take any more money from developers.



Greg Landsman
Councilmember

January 25 2021

**Preventing Evictions through Programmatic Enhancement, Coordinating
*MOTION***

Cincinnati families are facing unprecedented financial challenges, and the fear of eviction continues to loom for tens of thousands of our children and families. We recognize that our nonprofit partners have, and will continue to receive, significant rental assistance support. But the process of getting these resources to families quickly, and before they end up in eviction court, has been a challenge.

As such, **WE MOVE** that the Administration pursue a request for information (RFI) to determine who can build a shared data system to enhance eviction prevention programmatic performance and coordination. Such a system would allow providers to more effectively and efficiently allocate relief and prevention services, keeping more and more of our children and families in stable housing.

We ask that the RFI inquire into: 1. Which companies or providers could create such a data system, 2. How much it would cost the city to support the creation of one, 3. How quickly we could build the platform, and 4. How best to get our eviction prevention support providers onto such a system.

Councilmember Greg Landsman



Greg Landsman
Councilmember


January 25 2021

Securing Eviction Filing Data to Reduce Evictions
MOTION

WE MOVE to request that the Administration provide an update on Ordinance 402 [2019], which guarantees that eviction filing data from the Hamilton County Clerk of Courts be made available to service providers partnering with the City of Cincinnati in eviction relief services and eviction prevention initiatives. To date, we have not been able to obtain this data in a regular and reliable manner. The City may need to provide support to the Clerk of Courts to secure this data, and we encourage the Administration to pursue that support. Getting this data in the hands of our partners will allow them to help our residents struggling to pay rent with rental assistance, the ability to stay in their homes, avoid an eviction, or even avoid having to attend eviction court.

Councilmember Greg Landsman

Date: February 1, 2021

To: Councilmember Chris Seelbach
From: Andrew W. Garth, City Solicitor 
Subject: **Ordinance** – Modifying Cincinnati Municipal Code Chapter 908-3
Gender Identity and Gender Expression (B VERSION)

Transmitted herewith is an ordinance captioned as follows:

MODIFYING Cincinnati Municipal Code Chapter 908, “Crimes Against the Person,” by amending Section 908-3, “Criminal Intimidation,” for the purpose of adding “gender identity” and “gender expression” to the list of people protected by this Section.

AWG/KMB/(lnk)
Attachment
325737

An Ordinance No. _____

- 2021

MODIFYING Cincinnati Municipal Code Chapter 908, “Crimes Against the Person,” by amending Section 908-3, “Criminal Intimidation,” for the purpose of adding “gender identity” and “gender expression” to the list of people protected by this Section.

WHEREAS, the Cincinnati Municipal Code occasionally must be updated to remove outdated language and ensure the most accurate terms and definitions are used to express the intention and purpose of the laws of the City of Cincinnati; and

WHEREAS, the terminology in Section 908-3 of the Municipal Code surrounding the protections of transgender individuals needs to be clarified to ensure the intended application of the law using the most current accepted language; and

WHEREAS, Council desires to amend Section 908-3 of the Municipal Code so that it applies to a criminal charge made under the Municipal Code or under parallel provision in the Ohio Revised Code; now, therefore.

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 908-3, “Criminal Intimidation,” is amended to read as follows:

Sec. 908-3. Criminal Intimidation.

(A) No person shall violate section 908-5, 908-7, 908-9, 908-11, 908-13, paragraphs (A)(3), (4), or (5) of section 908-15, or section 907-3 of the Municipal Code, or section 2903.13, 2903.21, 2903.22, 2909.06, 2909.07, or paragraphs (A)(3), (4), or (5) of section 2917.21 of the Ohio Revised Code by reason of the actual or perceived race, color, religion, national origin, gender, physical or mental disability, homeless status, sexual orientation, gender identity, gender expression, or age (60 and above) of another person or group of persons.

(B) *Definitions:* For the purposes of this section, the words and phrases used herein shall have the meanings respectively ascribed to them unless the context clearly indicates or requires a different meaning.

“Gender expression” shall mean the external appearance of one’s gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender identity" shall mean one's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

"Homeless Individual" shall mean:

- a) An individual who lacks a fixed, regular, and adequate residence;
- b) An individual with a nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including but not limited to: a car, park, abandoned building, bus or train station, camping ground, overpass, woods, benches, parking garage, or doorway;
- c) An individual who lives some or all of the time in a publicly or privately operated shelter, transitional housing, motel, hotel, detoxification facility, hospital, nursing home, jail or any other facility meant for temporary residence;
- d) An individual who is exiting a facility meant for temporary residence or residing in a temporary residence pending transition to a permanent residence;
- e) An individual exiting jail or prison without a permanent residence to go to; or
- f) An individual abandoned at a hospital or awaiting foster care placement.

"Homeless Status" shall mean an individual's actual or perceived status as a homeless individual.

"Sexual orientation" shall mean an individual's actual or perceived heterosexuality, homosexuality, or bisexuality ~~or transgender status~~, by orientation or practice.

"Transgender" shall mean the condition or state wherein a person manifests gender characteristics, behavior and/or self-identification typical of or commonly associated with persons of another gender, and which may be characterized by assumption of the clothes, hairstyles, cosmetic usage or other appearance qualities commonly associated with another gender and/or by the surgical or medical modification of primary sexual organs in order to assume the gender role of another sex

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

Section 2. That existing Section 908-3, "Criminal Intimidation," of the Cincinnati Municipal Code is hereby repealed.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

Mayor

Attest: _____
Clerk

New language is underscored. Deleted language is struck through.



Date: February 2, 2021

To: Members of the Law & Public Safety Committee

Copies to: Paula Boggs Muething, City Manager
Melissa Autry, Clerk of Court

From: Andrew W. Garth, City Solicitor
Emily Smart Woerner, Deputy City Solicitor

Subject: Report re Motion #202100060 (text messages)

202100545

This report is in response to Council Motion #202100060, submitted by Vice Mayor Smitherman, which states as follows:

We move that the city administration release to the public the additional 2000 plus text messages associated with the "Gang of 5," excluding any text messages related to personal matters.

Introduction and Summary

Based on Council discussion, the City Administration understands the above motion as a Council request to the administration to identify and disclose all text message public records on the five cloned councilmember phones in the possession of the City administration, excluding personal messages or content that is protected from disclosure by law (e.g., excluding medical records, attorney-client privilege, or personal financial information). This report outlines a process by which the City Administration could identify such records and release them to the public. The process necessarily involves safeguards to comply with public records laws as well as with an ongoing federal court order which restricts the release of text messages that do not concern city business. Relevant background and legal context is provided in the analysis, below. A summary of the actions required is as follows:

1. If the motion is approved by Council, the City Administration will petition the Federal Court to appoint a special master to provide court assistance in identifying to the extent feasible all the public records contained in the phone data beginning on January 2,

2018. Engaging the court provides a forum for applying the existing court order to this search and production process.
2. The Law Department would assist the committee in identifying search terms as a starting point to extract messages from phone data that may relate to official business and would therefore potentially be public records. It is anticipated that the search would be overinclusive at the outset but the final search would be subject to input and review by the special master charged with identifying and excluding private and protected messages.
 3. Once the final search terms have been approved by the special master, the Law Department would engage the City's third-party data processing vendor to perform the search and deliver the results to the special master for final review and release to the public. Initial conversations with the City's vendor suggest that the search itself would take approximately four weeks due to the complexity and the amount of data required to be sorted, indexed, and produced. The administration does not have software and computer processing capabilities required to do anything but simple, targeted public records searches from the phones.
 4. The City Law department has identified a potential existing budget source to be used for the costs of the searching and the indexing (approximately \$25,000), but the court will likely order the City to pay the fees associated with the review by the special master which would be paid from the judgment fund.

Background: Litigation and Court Order

In April 2018, a person named Mark Miller filed two lawsuits against five members of Council alleging violations of the Ohio Open Meetings Act and the Ohio Public Records Act. At issue in the lawsuit was whether a quorum of Council communicating via a text message thread became a virtual "meeting" that was not open to the public. For a time, the five members of council were represented by outside counsel due to a professional legal conflict. While the members were being represented by outside counsel, in late October and early November 2018, outside counsel used a contractor to create a digital copy of the phones, often referred to as an "image" or "clone" of your phone. Because of the way that smart phones operate, the cloned data included the entire content of council members' phones. Thus, the phone clones include personal communications such as, for example, any texts sent to family members or friends – regardless of whether it had anything to do with city business.

The purpose of outside counsel in creating the phone clones was so that the five members of council could respond to discovery requests in the litigation

matter. Eventually, the cases brought by Mr. Miller were resolved. Part of the resolution was an agreed order, along with a production of texts exchanged between and among the five Councilmembers named in the lawsuit. While the City's normal practice under public records law would be to segregate "City" and "non-City" texts from any production, there was an exception made for this lawsuit. Therefore, all of the texts sent between the five Councilmembers (or any combination of them) were produced, even if they had nothing to do with roles as Councilmembers. Those texts were released to the public and are a part of the minutes of Council.

Separately, two additional lawsuits were filed in the Ohio Court of Claims regarding whether text messages on personal, privately-paid-for cell phones are subject to the Ohio Public Records Act. This was an open question under Ohio law – there were no court decisions directly on this issue. The City Solicitor's Office argued that the City did not have possession of these texts and so the public records act did not apply. However, the Court of Claims found that text messages located on private phones are subject to the Public Records Act. As a result, the City produced and released another batch of council text messages in that court case. The City has also updated its policies and retention schedules to reflect that text messages can constitute public records.

In the wake of the various lawsuits about text message communication among Council, the media and other citizens made dozens of public records requests. The City has required that all such public records requests comply with the requirements for a request under law; namely, they must be for a limited time period and include a subject which relates to City business.

However, after there were additional texts released in response to public records requests, a group of concerned people filed a lawsuit in federal court that argued their non-City communications with Councilmembers are entitled to protection. The result of that lawsuit is a permanent federal court order that prohibits the City from releasing non-City business text messages contained on the images of the phones without councilmember consent. The City has adhered to this order as required by law.

There have been at least two instances where people have requested the entire copy of the five cell phones in a public records request. The City has denied those requests because they are not proper under the Ohio Public Records Act and implicate a whole host of constitutional and privacy concerns. We explained to those requesters the following:

In 2014, the Supreme Court of the United States held that warrantless searches of an arrested person's cell phone are unconstitutional under the Fourth Amendment. *Riley v. California*, 573 U.S. 373, 403 (2014).

In reaching that holding, the Court discussed the immense storage capacity of modern cellular phones, noting, “The term ‘cell phone’ is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone.” *Riley*, 573 U.S. at 393. Here, the requester asked for a complete duplication of the “minicomputers” carried by the five councilmembers. Because the request is for a complete duplication of voluminous records, the request is denied. *State ex rel. Glasgow v. Jones*, 119 Ohio St. 3d 391, ¶ 17 (2008).

More significantly, the *Riley* court concluded, “Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life,” [citation omitted]. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.” *Id.* Here, your request for a copy of each cell phone encompasses information subject to a host of concerns, including statutory and common law privileges as well as privacy concerns of a constitutional dimension. Therefore, the request is denied under Ohio Revised Code 149.43(A)(1)(v). Similarly, given how people use personal cell phones, most of the information contained on the cell phones would involve private concerns and would not involve City business.

When presented with a proper public records request for text messages, the City has assisted requesters with narrowing their searches to comply with the law. To our knowledge the administration has produced all texts that should have been produced in response to either a lawsuit or proper public records request. It is also the case, however, that our software search capabilities are relatively unsophisticated (allowing only simple key word searches, date ranges, and recipients). Moreover, as the City’s attorneys, we cannot review texts that contain personal legal advice and for which attorney-client privilege has been asserted. And, lastly, the City administration simply lacks context and background for text message communications to be able to say — in many cases — whether it was sent in connection with city business, campaign activity, a personal exchange, or something altogether different.

There are those that may have found the City’s approach to the court order and careful application of public records laws to be frustrating. The Administration strives to be transparent — in this and other matters — and any suspicions to the contrary are misplaced. The City Administration has no objection to acting on recommendation of a majority of Council to take additional steps to release any remaining public records in its possession in a manner consistent with applicable law. But to do so without third-party (e.g., the Court) involvement is not feasible.

Identifying and Releasing Any Remaining Public Records

If Council adopts the motion, the Administration will treat the motion as a valid public records request. Due to legal limits and other practical constraints identified above, we will engage the federal court to ensure that records are properly released without subjecting the municipal corporation and its employees to public records or privacy-related liability or being found in contempt of court.

As a first step, the Administration will strive to draft a complex and broad data search to capture as many potential public records as possible. We will solicit input from members of council for search terms that potentially pertain to city business. We anticipate that the proposed search will also include parameters intended to exclude privileged attorney communications and personal communications with family and friends.

Simultaneously, the City will petition the federal court to appoint a special master to oversee the process and to advise as to the appropriate means for the owners of the five phones to participate as needed to protect privacy and privilege concerns. The Administration will present the proposed search to the special master for review and confirmation prior to conducting the search. The City would be a party to this process but anticipates that the Court would have final authority as relates to release the requested public records.

In coordination with the Federal Court, the Law Department will work to engage the City's third-party data processing vendor to perform the search. Neither the Court nor the City has the hardware and software capability to independently run anything but the simplest of term-based searches of the phone data. Law anticipates being able to absorb this cost into its existing legal services budget for FY21 absent unforeseen resource needs. The City will request the special master to confirm that, upon completion, the phone copies may be returned to the members of council or disposed of consistent with the City's record retention policy.

Search Architecture

As discussed above, the administration will assist the special master in crafting the final search based on the topics identified by City Council. In order to give an idea of how the search must be structured to extract data from the cloned phones, we offer the following example of potential search terms. We invite councilmembers to propose additional terms to the Law Department to be added. The structure of the search will be based on four basic categories:

1. **INCLUDE:** texts between identified persons (phone numbers) reasonably likely to relate to Council business. Texts in this category would include, for example, texts between one or more city public officials or texts between public officials and persons having business before the City.
2. **INCLUDE:** texts containing one or more keywords potentially relating to public business during the time in question:
 - a. [list of legislative/council keywords] Vote, voted, votes, council, city, Cincinnati, mayor, manager, department, dept, ordinance, ord, resolution, reso, motion, clerk, introduce, pass, enact, appropriate, appropriation, approve, approved, failed, fails, appropriation, committee, law, public, policy, veto, override, refer, member, meeting, amend, amendment, budget, project, administration, neighborhoods, agenda, item, rules, constituent [add], by-leave, hold, chair, majority, speaker, report, present, presentation, powerpoint, support, oppose, communication, FYI memo ... (final list with input from Council)
 - b. [list of subjects pertaining to city business in the public interest – to be developed with input from Council] resign, replace, remove, terminate, charter, municipal code, budget, retaliation, retaliate, settlement, resignation, settle, development, construct, abatement, incentive, terms, threat, threaten, zoning, neighborhood, citywide, negotiate, developer ... (final list with input from Council)
 - c. Names of departments, relevant committees, city officials, persons engaged in city business... ... (final list with input from Council)
3. **EXCLUDE:** texts with persons identified as family members, personal non-city texts (e.g., friends or relations not reasonably related to city business), private attorney communications subject to privilege under state law, communications with private health care practitioners—all to be determined by special master with input from the owners of the source phones.

4. **EXCLUDE:** Privileged communications with City attorneys to prevent inadvertent disclosure of privileged communications.

The search terms presented to the special master would include the above categories with additional input from Council. The final terms would, however, be left to the discretion of the Court.

Please let me or Deputy City Solicitor Emily Smart Woerner know if you have questions.