



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Law & Public Safety Committee

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

Tuesday, March 30, 2021

9:00 AM

Council Chambers, Room 300

PRESENTATIONS

CPD EXTERIOR VEST COVERS

Lieutenant Chris Seta, CPD

Sergeant Robert White, CPD

LIQUOR PERMIT UPDATE

Mark Manning, City of Cincinnati Law Department

NATIONWIDE PUBLIC SAFETY BROADBAND NETWORK

Kyle Richardson, FirstNet Authority

Mark Romito, AT&T

Ryan Favor, AT&T FirstNet

Guerdy Charles, AT&T FirstNet

AGENDA

1. [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](#)

2. [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](#)
3. [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](#)
4. [202002155](#) **REPORT**, dated 2/3/2021, submitted by Paula Boggs Muething, City Manager, regarding Motion to Implement Cincinnati Black United Front and Ohio Justice and Policy Center Recommendations. (SEE REFERENCE DOC #202000774)
- Sponsors:** City Manager
- Attachments:** [Report](#)
[Attachment](#)
5. [202002158](#) **REPORT**, dated 2/3/2021, submitted by Paula Boggs Muething, City Manager, regarding CPD Response to Report on Police Reform and Racial Justice. (SEE REFERENCE DOC #202001895)
- Sponsors:** City Manager
- Attachments:** [Report](#)
6. [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](#)
7. [202101104](#) **MOTION**, submitted by Councilmember Landsman, **WE HEREBY MOVE** that the Administration provide a brief, high-level report on what it would take in terms of additional crews and funding to achieve *optimum level of public services functioning* as it relates to sanitation, road treatment, snow removal, and street paving and maintenance. (STATEMENT ATTACHED).
- Sponsors:** Landsman
- Attachments:** [Motion Investing in Public Services \(3\)](#)

ADJOURNMENT

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.



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

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

202002015



CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED DOCUMENT

Date: October 12, 2020

To: Members of the Law & Public Safety Committee

Copy to: Paula Boggs Muething, Interim City Manager

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

Subject: **Legality of No Knock Search Warrant Ban Ordinance**

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

Summary

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

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

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

¹ O.R.C. § 2933.231.

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

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

Legal Background

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

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

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

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

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

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

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

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

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

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

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

Analysis

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

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

⁷ *Id.* at (D).

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

Department's policies.

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

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

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

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

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

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

⁹ *Id.*

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

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

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

¹³ *State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 89-90 (1982) (holding that local regulations could not 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.

February 3, 2021

To: Mayor and Members of City Council

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

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

REFERENCE DOCUMENT # 202000774

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

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

REPORT

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

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

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

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

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

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

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

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

B. Adopt new policies and protocols to eliminate disparities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

De-Escalation

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

Domestic Violence

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

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

Mental Health Response

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

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

Cultural Competence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Make data public.

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

B. Desegregate adult and juvenile data.

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

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

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

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

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

Attachment: Cincinnati Law Department Bail Reform Policy

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

CITY OF CINCINNATI BAIL POLICY
EFFECTIVE IMMEDIATELY

Non-Violent Misdemeanor Offenses

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

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

Violent Offenses and Offenses that Endanger the Community

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

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

February 3, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

202002158

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

REFERENCE DOCUMENT #202001895

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

MOTION:

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

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

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

Mayor John Cranley

Response (Below)

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

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

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

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

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

- a. Only necessary uses of force are permitted.

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

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

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

- c. Chokeholds are prohibited except as deadly force.

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

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

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

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

e. Use of deadly force against a fleeing subject

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

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

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

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

Details:

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

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

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

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

Duty to intervene is explicitly stated in current CPD policy.

Details:

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

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

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

Details:

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

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

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

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

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

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

CPD requires all officers to report uses of force.²

Details:

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

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

6) Departments should train officers on crisis intervention.

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

Details:

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

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

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

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

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

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

Details:

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

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

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

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

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

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

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

Details:

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

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

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

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

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

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

Details:

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

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

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

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

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

Details:

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

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

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

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

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

Details:

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

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

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

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

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

Details:

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

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

CPD considers leadership and diversity in promotion decisions.

Details:

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

COMMUNITY (Conference of Mayors Report pg. 23)

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

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

Details:

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

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

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

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

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

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

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

Details:

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

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

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

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

Details:

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

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

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

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

Details:

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

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

CPD actively engages in community service efforts.

Details:

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

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

ADDRESSING PROTESTS (Conference of Mayors Report pg. 25)

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

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

Details:

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

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

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

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

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

Details:

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

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

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

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

CPD leadership are trained regarding response to mass gatherings.

Details:

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

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

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

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

Details:

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

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

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

Details:

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

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

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

Details:

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

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

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

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

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

Details:

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

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

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

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

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

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

CPD has an open and transparent public complaint process.

Details:

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

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

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

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

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

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

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

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

Details:

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

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

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

Details:

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

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

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

Details:

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

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

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

Details:

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

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

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

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

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

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

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

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

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

Details:

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

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

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

The program identifies and treats:

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

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

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

cc: Colonel Eliot K. Isaac, Police Chief

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED DOCUMENT

Date: January 15, 2021

To: Paula Boggs Muething, City Manager

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

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

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

Summary

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

Legal & Charter Analysis

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

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

Council Legislative Power

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

City Manager's Authority

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

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

¹ Charter, Art. II, Sec. 1.

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

³ Art. IV, Sec. 3.

⁴ Art. IV, Sec. 2.

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

⁶ Admin. Code, Art. IV, Sec. 2.

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

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

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

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

Conclusion

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

⁷ Admin. Code, Art. IV, Sec. 2.

⁸ Admin. Code, Art. I, Sec. 1.

⁹ Admin. Code, Art. I, Sec. 7.

¹⁰ Admin. Code, Art. II, Sec. 3.

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

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



Greg Landsman
Councilmember

March 12, 2021

MOTION

We hereby move that the Administration provide a brief, high-level report on what it would take in terms of additional crews and funding to achieve *optimum level of public services functioning* as it relates to sanitation, road treatment, snow removal, and street paving and maintenance.

STATEMENT

The Cities' efforts over the past few years to reinvest in public services is a long overdue project with overwhelming public support. However, more investments are needed; not least because of the increased effects of climate change on dynamic weather patterns.¹ Scientists warn of escalating levels of snowfall and rainfall in the winter, and soaring temperatures in the summer,² and it is imperative that we work to avoid public service failures ahead of time by being prepared.

Councilmember Greg Landsman

_____	_____
_____	_____
_____	_____
_____	_____

¹ "Extreme Weather gets a Boost from Climate Change" ([Environmental Defense Fund](#))

² "How Climate Change Is Fueling Extreme Weather" ([EarthJustice, 2021](#))