

Draft Reform Proposals with Details

Mann Ordinance Establishing the EDRP proposed the following:

Best practices in other cities

- a. Consult municipal finance, development, and campaign contribution experts
- d. Review best practices in other cities across the country.

Code of Conduct

- g. Propose a Code of Conduct for the City's elected officials and developers, which Code should require developers to report inappropriate requests from the City's elected officials.

Track connection between contributions and award of development incentives.

- f. Propose ways in which the City could track connections between campaign contributions and the award of public incentives to developments.

Prohibit contract awards to developers who contributed within prior 24 months.

- h. Recommend whether contract awards should be prohibited to developers who made campaign contributions to council candidates within the prior twenty-four months.

Establish a whistle blower hotline

- i. Recommend whether the City should establish a hotline by which any citizen, including developers, can report in confidence any inappropriate request or demand from any public servant, elected or otherwise.

Takeaways from the March 26, 2021 presentation to the EDRP by Paul M. Nick, Executive Director, Ohio Ethics Commission

The core Ohio ethics law is Ohio Revised Code 102.03(D), (E) & (F).

(D) Prohibits the use of public authority to secure something of value.

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) Prohibits a public official from soliciting or accepting anything of value that could have an improper influence on the official.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(F) Relates to actions of non-public persons using something of value to influence a public official

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

Section 102.99 Penalty. [Up to 6 months in jail and a fine of up to \$1,000.]

(B) Whoever violates . . . 102.03 . . . of the Revised Code is guilty of a misdemeanor of the first degree.

Ethics commissions in other cities

There are different ethics commissions across the country, some use a criminal approach, while others use a civil approach. Los Angeles, San Francisco, San Diego, Chicago and other municipalities have their own ethics commissions, even though there may be a state commission. The most successful municipal ethics commissions have combined responsibility for ethics, campaign financing and lobbying.

Nick has provided considerable resources to the EDRP on what other cities have done, see his March 6 & 20, 2021 memos to Ann Marie Tracey.

The March 6, 2021 memo provides a list of 25 local ethics commissions across the country, along with contact information, some data about their size and budget, and links to their web sites.

The March 20, 2021 memo provides details, including excerpts of statutory authority and ethics laws, for the ethics commissions of Chicago, Los Angeles, Philadelphia, and San Francisco, which are regarded as successful programs. Nick points out that:

The key characteristics that have driven their success are that they are independent boards that combine authority over ethics, campaign finance, and lobbyist regulation. From what I have gathered from news reports and press releases from the Department of Justice, Cincinnati may benefit from modeling some of the features of each of these commissions, particularly in the areas of increased disclosures of campaign finances and lobbyist expenditures.

Nick also provides in the March 20, 2021 memo information on the Cuyahoga County Inspector General because it represents an alternative model for the EDRP to

consider. Cuyahoga County requires people doing business with local government to go through ethics training.

Lobbying

There may be a need for lobbying regulation at the local level if it is not adequate. [Emily Woerner pointed during the presentation that the city regulates lobbying in chapter 112 of the CMC.]

Disclosure

Campaign contributions are disclosed under campaign reporting laws. Payments to public officials are disclosed under ethics laws.

The question was asked: Is it better to require disclosure from the private sector or from public officials? Nick said disclosure is best done in tandem. The private sector reports what is given, and public officials report what is received.

Code of Conduct

Chicago has a code of conduct that has been “modeled,” see page 5 of the Nick March 20, 2021 memo. A code of conduct can set expectations and give an awareness to public officials and employees of possible conflicts.

Real Time Reporting

Some jurisdictions are going to real time reporting for lobbyists and campaigns, such as Missouri and California (Fair Campaign Practices Commission). While real time transparency is trending, it is expensive.

Developer/Legislature issues

Nick pointed to Los Angeles and Philadelphia as cities dealing with issues concerning interactions between developers and legislative bodies.

Reforms Generally

People must support reforms; financing also is an issue, as is whether a new entity should be created or will reform be dealt with internally.

Other programs such as hotline and whistle blower programs

Hotline and whistle blower programs are important, so people are confident in coming forward, also important are a code of conduct and regular training.

Opinions from the Ethics Commission

The Ethics Commission invites people to seek opinions from the Commission. Advisory opinions provide immunity [assuming the Commission's advice is followed].

Ethics programs are important to create a culture of doing the “right thing.”

Local and state laws must be consistent to avoid conflicts and inconsistent results. (Alicia Bond Lewis suggested that in making our recommendations, if local regulation conflicts with state regulation, the state regulation would “trump.”)

Mr. Nick advises the EDRP look at what other cities have done. Once the EDRP has an idea of what we might recommend, Mr. Nick is willing to consult with other cities to see what advice they might have on what the EDRP is proposing.

Proposals from Council Members

Steve Goodin

Bar elected officials from soliciting donations from sources doing business with the city.

Goodin's proposal was reported in the *Cincinnati Business Courier* as follows:

[T]he mayor and City Council members [would be barred] from asking for donations from anyone who has business before the city. That wide array of individuals would include developers seeking city incentives or zoning changes, nonprofits seeking grants from the city or companies seeking contracts with the city.

Those people could still give to council members and the mayor but the elected officials could not ask for their contributions. If an elected official violated the ban, he or she would be guilty of a misdemeanor.

Wetterich, Chris. 2021. “Councilman would ban some campaign solicitations, allow members to be expelled.” *Cincinnati Business Courier*, April 1, 2021.

Create a new office of public information.

Require city elected officials to file campaign reports with the Ohio Secretary of State.

The *Cincinnati Business Courier* reported:

Goodin also wants to beef up transparency by establishing and funding a new

city office for public information and transparency and require every elected official to file their campaign finance reports in the Ohio secretary of state's searchable database.

Wetterich article, *Cincinnati Business Courier*, April 1, 2021.

Expulsion and censure of council members

The *Cincinnati Business Courier* reported:

Under Goodin's ordinance, seven council members can vote to expel a member who faces indictment. For lesser offenses, such as a drunken driving charges, they could censure that member.

If a member was expelled, his or her successor designee(s), the fellow council members whom he or she selected to pick their successor in case of death or resignation, would choose a replacement.

Wetterich article, *Cincinnati Business Courier*, April 1, 2021.

Landsman

December 2020 Motion: City Hall Reforms

Establish a local ethics commission.

Create a chief ethics and good government officer.

Enact local campaign finance reform.

Require ethics and good government training.

Enact charter amendments for finance reform and penalizing and removing council members.

Specifically, Landsman proposed the following:

Cincinnati Ethics Commission

In partnership with the Ohio Ethics Commission, the Administration will establish a local commission to improve oversight and transparency. This 'Cincinnati Ethics commission' will be supported by a Chief Ethics and Good Government Officer, and [be] developed and designed by the Administration and not elected officials, particularly the number and qualifications of the commissioners. The commission should be in support of and in addition to the Ohio Ethics

Commission. It should not supplant any of the work of the Ohio Ethics Commission.

The commission should be tasked with local reporting of financial disclosure forms and developing new training for public officials and relevant city staff. The local disclosure requirements and trainings should go beyond what is currently required by the state. Again, this, as in all things the Cincinnati Ethics Commission does, would be in partnership with the state's ethics commission.

Legislation should be prepared for review and approval by Council and the Mayor.

Chief Ethics and Good Government Officer

The Administration should also prepare legislation to identify and/or hire a Chief Ethics and Good Government Officer, reporting directly to the City Manager, to lead local reforms and support the work of a new Cincinnati Ethics Commission.

Local Campaign Finance Reform

The Administration should prepare the necessary legislation to update local campaign finance rules to require the immediate disclosure of any contribution to a campaign committee or leadership PAC from anyone that has business before the City of Cincinnati. This may require the creation of a publicly facing website that allows for such disclosures as well as creates real transparency.

Additional and Ongoing Training

Local training for public officials and relevant city staff (e.g. individuals in departments such as Purchasing and Economic Development) will cover ethics and good government policies, including training around the appropriate use of public funds, publicly funded equipment, campaign finance rules, and public records and open meeting requirements. Initial training should be completed within the first 60 days of taking office and/or the beginning of employment status with the city with annual training to follow. Trainings and the completion or noncompletion of trainings should be made public.

The Administration should prepare legislation if necessary or simply report on these new trainings.

Charter Amendments

The Administration should draft charter amendment language for the Spring ballot to update local campaign finance rules, if necessary, and to provide the most appropriate mechanisms for penalizing and possibly removing individuals from office with a supermajority vote of Council.

Landsman

Scorecard Ordinance introduced in December 2020

Establishing a City Council policy for evaluating real property tax incentives authorized by the City of Cincinnati.

As reported by Chanel 9:

The idea is to outline what sorts of attributes -- such as affordable housing, neighborhood input, inclusive contracting or local hiring, say -- should dictate whether a development project gets assistance from the city. Before presenting a development deal for City Council's approval, the administration would fill out the scorecard indicating which priorities that project meets and how.

Carbone, Mariel. 2021. "Cincinnati City Council hopes 'scorecard' will keep development projects in line with priorities." Chanel 9 Story, February 8, 2021. <https://www.wcpo.com/news/transportation-development/move-up-cincinnati/cincinnati-city-council-hopes-scorecard-will-keep-development-projects-in-line-with-priorities>. Last accessed April 10, 2021.

There follows a quote from an Enquirer article related to the Landsman Scorecard proposal.

'If you have accusations of malfeasance in Cincinnati government, then that gives some basis for more restrictions,' Renaud said. 'But If political contributions have been the issue, there [are] other ways to take that off the table.'

One way would be to simply make the governmental approval process for development projects less discretionary, he said. 'You could beef up the rules about what development is permitted and not permitted so there's less subjectivity and all these decisions don't have to come before City Council,' Renaud said.

The article identified Mark Renaud as follows:

Mark Renaud, [is] a partner in the Election Law & Government Ethics Practice of the Wiley Rein law and policy advisers firm in Washington, D.C.

Tucker, Randy. 2021. "*Council wrestles with donations.*" The Cincinnati Enquirer, February 24, 2021.

Mann

December 2020 Motion

Administration should negotiate without interference by Council.

Council member Mann said:

I move that Council change the way development agreements are negotiated. We must separate the negotiations from the final decisions. Without political interference, our civil servants should negotiate with developers pursuant to written policies adopted by Council and the Mayor.

Council would be involved only in reviewing and then approving, rejecting or modifying the proposed development. If our negotiators require guidance during negotiations, they would be expected to use a transparent process involving all elected officials.

The statement attached to the motion includes the following:

4. Until formal presentation of a development agreement to the Council, it is not appropriate for developers or their representatives to lobby or otherwise seek to involve Members of Council in the negotiation process.
5. Nor is it appropriate for Members of Council to involve themselves in the details of ongoing negotiations.
6. The rules in paragraphs 4 and 5 above should be defined as ethics violations with criminal penalties for developer and Council Member alike. Misconduct by a developer also should result in debarment from future city development projects.

From a recent Enquirer article:

Some also have suggested Cincinnati consider banning donations from developers who have business with the city. Primo, the author who's studied campaign finance, said that would be an extreme and possibly unconstitutional measure.

It's better, Primo said, to focus on reforming the development system itself. He said setting up the development process so elected officials are less involved in the nitty-gritty of negotiations might be a good start. 'It's so easy to say, 'Let's ban campaign contributions,' but the problem is much deeper and it really speaks to how development occurs,' Primo said. 'Why is the system set up so developers have to go begging to politicians to build what they want to build?'

The article identified David Primo as follows:

David Primo, [is] co-author of the book “Campaign Finance and American Democracy” and a political science professor at the University of Rochester.

Horn, Dan and Coolidge, Sharon. 2021. “*Project opens window on role of campaign Contributions.*” The Cincinnati Enquirer, March 24, 2021.

Smitherman Charter amendment on May ballot

Prohibit council members from changing successor designation after being indicted for a felony or charged with certain crimes.

Authorizing a special prosecutor to remove the council member.

The ballot language follows:

Shall the Charter of the City of Cincinnati be amended to prohibit council members from revising their successor designation certificates subsequent to being indicted for a felony or subsequent to the filing of criminal charges against them for conduct in the performance of council duties; and to require the City Solicitor appoint a special prosecutor to prosecute an action under Ohio Revised Code Section 733.72 or its successor to remove a member of Council where a member of council has been indicted for a felony or a criminal complaint has been filed against a member for charges relating to official conduct, by amending Article II, Section 4b and amending Article IV by enacting new Section 5b?

Smitherman Motion approved 2/3/2021.

Cost of a forensic audit

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

Sunderman Charter Amendment on May ballot

Suspension and removal of council member charged with / convicted of felony.

Ethics training for council members within 60 days of office.

Prohibiting certain changes to successor designation certificates.

The ballot language follows:

Shall the Charter of the City of Cincinnati be amended to provide for a preconviction suspension of a member of council if the member of council is indicted for allegedly committing a state or federal felony that relates to the member of council's conduct in the performance of council duties, where the suspended member of council shall be suspended from official duties but shall receive a salary during the suspension that may be recovered by the city upon the member's conviction; to also provide for the removal of a member of council upon a conviction of or guilty plea to said crime; to require ethics training for council members within 60 days of taking the oath of office; to prohibit council members from revising their successor designation certificates subsequent to being indicted for a state or federal felony that relates to the member of council's conduct in the performance of council duties; and to clarify details regarding successor designation certificates, by amending Section 4b and enacting new Sections 4c,4d,and 4e of Article II?

Sunderman Proposed Ordinance

Reporting of certain transactions between elected officials

Sunderman's ordinance requires a council member's annual financial disclosure statement to include:

A list of all financial transactions between members of council or between members of council and the mayor for any single transaction totaling \$75.00 or more or an aggregate of multiple transactions totaling \$75.00 or more for gifts, loans, or services rendered. The list shall identify the member of council for each transaction with its purpose and amount.

Sunderman Proposal

Sunderman wrote:

Members of council who commit crimes against the city [should] pay restitution. This is long overdue. If a council member's criminal behavior results in the city being burdened with costs, the council member should be personally liable for paying the debt if a court finds the council member guilty or liable for the behavior.

Sunderman, Betsy. 2021. "*Anti-corruption charter amendment is real reform.*" The Cincinnati Enquirer, December 20, 2020.

Note: the Sunderman ballot measure includes restitution of a suspended council members pay if the member is convicted.

Mayoral Candidates' Views Related to the mission of the EDRP

(Only included are ideas not expressed elsewhere in this document.)

Raffel Prophett: Evaluate strong mayor influence on corruption.

Prophett said:

The commission should broaden its scope to include an evaluation of the stronger mayor structure and its influence on corruption.

Aftab Pureval: Adopt more stringent ethics disclosures.

Pureval said:

Right now, our ethics disclosures for local elected officials do not provide enough information to hold our elected officials accountable for relationships with people who might have business in front of the city. This is true for both gifts and salaries. The good news is that we already have a model in Ohio; we don't have to recreate the wheel. The state legislature in Ohio has much more rigorous ethical reporting standards. The first thing we should do to drive more transparency and prevent ethical violations is to raise our ethical standards to meet those of the state legislature.

Cecil Thomas: Implement a charter review of the branches of government.

Thomas said:

I would go a step further and establish an Independent Charter Review Committee to clearly and distinctly define roles and responsibilities of the branches of government and provide recommendations. There's too much ambiguity between the mayor, city manager and council, regarding roles and responsibilities.

Enquirer Forum. 2021. "*Mayoral candidates share visions for Cincinnati.*" The Cincinnati Enquirer, April 4, 2021.

LA Developer Dollar Ban

Prohibit developers from contributing while city decides a project.

The LA Council approved an ordinance in December 2019 to restrict developer contributions. This ordinance bars real estate developers from giving political contributions to Los Angeles city officials and candidates for council, mayor or

city attorney while the City weighs key approvals for their building projects, including zone changes and allowing added height. These restrictions do not take effect until the start of the municipal general election in 2022.