

## D E V E L O P M E N T   P R O C E S S

Development in Cincinnati can be an extremely complicated process. The larger the project, the likely more complicated the project is, requiring both multiple levels of reviews and approvals and potentially financial assistance from the City. The failure of any of which may make the difference between whether the project happens or dies.

It should also be recognized, that the smaller developer or the first-time developer, may need special assistance in navigating the complexities of development in Cincinnati. That assistance should come from the city administration, not elected officials, except, perhaps, for an elected official to direct the developer to the appropriate administrative office designated by the city manager capable of providing assistance.

### FINANCIAL ASSISTANCE

City financial assistance to developers comes in a variety of ways. Some of it is essentially non-discretionary. If a project meets the pre-existing conditions defining the requirements for a particular financial benefit the developer is essentially assured the benefit. Other financial assistance may be competitive and discretionary, subject to complicated negotiated contracts.

### LAND USE AND ZONING APPROVALS

Projects may also require multiple administrative, quasi-judicial and/or legislative approval from multiple boards and commissions (for example, the Planning Commission, the Zoning Hearing Examiner, the Historic Conservation Board, the Zoning Board of Appeals, the Building Board of Appeals) and city council. The rules and procedures for each are different and appropriate interaction between elected officials and those bodies (excluding city council) varies and should be defined in an ethics policy for elected public officials and their staffs. Appropriate enforcement mechanisms must be a part of that.

### CITY COUNCIL IS A LEGISLATIVE BODY

The legislative powers of the city are vested in the council (Charter Article II Section 1.) City council and the mayor make policy that effects development. They do so by adopting legislation establishing the criteria that must be met to be eligible for financial assistance.

They also do so by adopting ordinances authorizing the city manager to execute contracts awarding such benefits. However, the City Charter limits the role of council to the legislative approval of such contracts. Council members are not expected to play a role in directing either the administration or a developer in the negotiation of such contracts. Council may as a part of the legislative process adopt, amend and adopt or defeat such ordinances. The mayor may sign and approve ordinances adopted by Council or exercise the mayor's veto power.

#### RECOGNIZING LIMITS

Council, should adopt as a part of its Code of Ethics a provision that council's role under the Charter is legislative and that council members and the mayor "Except for the purpose of inquiry...shall deal with that part of the administrative service for which the city manager is responsible, solely through the city manager." (Charter Article IV Section 2.) They must recognize the importance of observing this role and allow the city administration to perform its duties without improper interference from council members or the mayor, especially in development matters. Therefore, Council members and the mayor must align their behavior with the following principles.

- Under the City Charter, council's authority is purely legislative, which in the development realm means:
  - 1) Setting general policies applicable to economic development (e.g., tax incentive policy),
  - 2) Helping to communicate constituent concerns (including developer and community) to the city manager for report and possible action,
  - 3) Voting whether to approve the economic development projects brought to council by the city administration; and
  - 4) Voting on legislative approvals where required by law.
- If council has concerns about a project before council, then the option available, under the Charter, is for council to work through the city manager.
- Council members are not to direct city employees on matters of administration except for the purpose of inquiry related to making laws. While the mayor has the authority to negotiate with external parties in conjunction with the city manager, city council does not.

To support Council's Charter mandates the EDRP endorses the following measures already taken by the City Manager:

- The establishment of a Constituent Affairs function in the manager's office. (Constituent inquiries from council members and the public are directed by all city staff to an assistant city manager for tracking and response.)
- Directing the city administration and solicitor's office to provide all inquiries from council members, or the mayor, on development deals directly to the city manager for coordinated response, including requests for substitute versions of development legislation.
- The city administration should provide consistent, coordinated and comprehensive onboarding and ongoing training process for council members regarding council's role under the Charter, as well as the functions and operations of city departments. The city manager, likewise, should ensure that city employees are aware of city council's appropriate role under the Charter.

#### **LIMITS REGARDING NONFINANCIAL LAND USE APPROVALS**

With regard to the approvals or denials of various non-financial matters related to development, the roles of the mayor and council also need to be emphasized and defined. The mayor has the right, subject to the advice and consent of council, to appoint the members of most boards and commissions dealing with development. Some membership is defined by Charter or ordinance.

When the Planning Commission is dealing with a legislative matter, elected officials have the same right as any citizen, for example, to urge the Planning Commission to recommend the approval or denial of a zone change or amendment to the Zoning Code. Elected officials are free to appear before the Planning Commission or send written materials to the Commission just as are citizens, community councils or developers. However, when the Planning Commission is acting in a quasi-judicial capacity the situation is different. Similarly the Zoning Hearing Examiner, the Historic Conservation Board, the Zoning Board of Appeals, or the Building Board of Appeals almost always act in a quasi-judicial capacity. In those circumstances the role of elected officials is limited, as is that of any citizen. Quasi-judicial proceedings are essentially trials. The body hearing the matter is expected to make decisions solely on the record before them and not be influenced by private communications with anyone. Elected officials or their staffs may testify before such bodies, but as with any other witness, they would do so under oath and subject to cross-examination. It is, however, improper for them to communicate privately with the decision-makers in such proceedings.

Council should adopt an ordinance requiring that the Zoning Hearing Examiner, or any member of a board or commission conducting quasi-judicial proceedings, who is contacted privately by an elected official or the staff member of an elected official regarding a matter coming before them, must report such contact to the City Solicitor and include a recognition of this limitation in the Code of Ethics.

#### FORENSIC AUDIT TRANSPARENCY

Following the creation of the Economic Development Reform Panel the City adopted Ordinance No. 216-2021 approving funding for a forensic audit of City Council ordinances related to economic development between January 1, 2018 and December 31, 2020. The results of that audit should be released publicly. City Council should consider those results and determine if additional work is necessary to study possible links between campaign contributions and development agreements, and determine what further action is appropriate, and allocate a budget for it accordingly.

#### TAKE ADVANTAGE OF 2020 CENSUS

Detailed 2020 census data will soon be available. The City Planning Department staff should analyze that data and report to Council on the impacts that development incentives have had on the City population and where those impacts have occurred. It may be necessary to seek assistance in that analysis from appropriately skilled experts that may well be found at one or more of our local universities.

#### SUMMARY OF SPECIFIC RECOMMENDATIONS

- 1) Elected officials should execute a Code of Ethics, at or before the first meeting of Council at which they are seated, the original of which shall be filed with the Clerk of Council.
- 2) The Code of Ethics should include recognition that the role of council is legislative and that members of council and the mayor may not, except for the purpose of inquiry, attempt to direct the administrative service for which the city manager is responsible.
- 3) The Code of Ethics should include recognition that developers seeking financial assistance or land use approvals from the City should be directed to the city manager's office.
- 4) The Code of Ethics should specifically include a recognition of the obligation of elected officials to not attempt to privately interfere quasi-judicial proceedings of

boards and commission or the Zoning Hearing Officer and should adopt an ordinance requiring the Zoning Hearing Officer and members of such boards and commissions to report any such contacts to the city solicitor.

- 5) Council and the mayor should insure that the results of the forensic audit funded by Ordinance No. 216-2021 are publicly released without delay and publicly determine if additional steps are necessary.
- 6) The mayor, council and the city administration should utilize the 2020 census to assist in evaluating the impact of the City's financial development incentives, where they have been utilized and the impact they have had on population. Planning staff may be able to conduct such evaluation, but city council and the mayor should be prepared to fund independent experts who may be found at a local university to complete such a study.