


January 26, 2021

FOR YOUR INFORMATION

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager 

Subject: Charter Analysis and Updated City Administration Policies

The recent indictment and arrest of three City Councilmembers on federal corruption charges has exacerbated distrust in our local institution of government. In order to achieve both transparency and accountability, the City's leaders must demonstrate a more sophisticated understanding of the separation of powers enshrined in our City Charter and closely adhere to these public mandates. Abiding by these Charter designated roles will establish meaningful boundaries between the Administration and elected officials that will minimize the opportunity for self-dealing that is alleged in the criminal complaints against the three former Councilmembers. It will also promote administrative professionalism, expertise, and efficiency.

With multiple City parties purporting to perform overlapping functions, the public has likely become confused about the proper allocation of responsibility. Eliminating this confusion must be a top imperative and can be accomplished in two steps. The first is education - reiterating to the public the appropriate functions of Council, the City Administration, and the Mayor. This memorandum is part of that effort. The second is prospective behavior of all City parties - including establishing policies and practices to maintain appropriate conduct going forward. This memorandum also begins that work. We must ensure that our words and actions honor the division of responsibility.

This memorandum provides an overview of the attached Solicitor's opinion outlining the appropriate roles of City Councilmembers, the Mayor, and the City Manager in City government and operations. It also outlines the steps that the City Administration will take to restore proper respect for these roles. We undertake these actions in order to begin the restoration of public trust in our City government, to increase transparency and efficiency, and to ensure that we do not face a similar, future crisis.

Summary

Under the City Charter, Councilmembers comprise the legislative body that establishes the policy direction for City government through committee and council debate and deliberations. The Mayor's role is a blend of executive and legislative duties - to participate in the Council policy deliberations, to act as the voice of the City, and to participate in administrative matters as a bridge between external parties and the City Manager. The City Administration's purpose is to carry out the administrative functions and operations of the City in accordance with the Charter, state law, and the ordinances established by Council, for the benefit of the municipal corporation. The roles of Council and the City Manager are separate and distinct, while the Mayor plays a role in both the legislative and executive functions.

In order to ensure that the City Administration is complying with its Charter mandates, I am implementing the following changes:

- Establishing Constituent Affairs function in the Manager's Office.
- Executing an Administrative Regulation directing the members of the administrative service to guide Council inquiries to Constituent Affairs.
- Establishing a tracking and reporting mechanisms for Constituent Affairs for Council and public access.

I will also present legislation to Council to amend the Administrative Code, as described more fully below, in order to further increase efficiency, transparency, and accountability.

Charter Analysis

This is not the first time that the City of Cincinnati has faced a crisis of trust created by the influence of elected officials on City operations. In fact, such a crisis in the early 20th century is what led to the initial creation of our council-manager form of government, which was later modified in 1999 to provide for the current "stronger mayor" form of government. Returning to our foundational document - the Charter - is essential to restoring faith in our government.

I requested a legal opinion from the City Solicitor to update prior Charter guidance and provide specific guidance as to the Mayor and Council's role in the City's permit and development process. A copy of the 2021 opinion is included as Attachment A to this memorandum. Together with the 2015 Solicitor's Office opinion on the relative powers of the Mayor, Manager, and Council, this 2021 opinion provides further guidance on the proper roles and allocation of authority and responsibilities under the City Charter for City Council, the City Manager, and the Mayor in the legislative and administrative functions of the City.

The Charter vests legislative powers primarily in Council, administrative and executive powers primarily in the City Manager, and a mix of both legislative power and executive authority in the Mayor. The Charter establishes a balance among these three parties. This balance separates the administrative and legislative functions of the City, reducing the impact of political pressures on the professional municipal workforce.

Council Legislative Power

The Charter provides that the legislative authority of the Council includes the power:

- (1) to gather information to inform legislative action by making inquiries, requesting reports, and holding public hearings;
- (2) to set City policy by passing legislation;
- (3) to organize the administrative service by passing amendments to the Administrative Code;
- (4) to fund the government by appropriating money and enacting a City budget; and
- (5) to hold the City Manager accountable and act with the Mayor to remove the City Manager if necessary.

These legislative powers do not permit Councilmembers to become involved in City operations outside of their legislative function or by directing City staff. Even well-intentioned inquiries can have negative or improper effect. City employees are dedicated and responsive. As a result, a direct question from a member of Council or Council staff to an administration employee can interfere with the employee's job performance or could be construed as direction to take a particular administrative action or reprioritize the subject of the inquiry in a manner that is inconsistent with City Administration objectives. Many employees are unaware that the Charter prohibits Councilmember involvement in the administrative and executive functions of the City.

The Charter requires that Council work through the City Manager on issues of administration, except in the limited case of legislative inquiry made in pursuit of a legislative purpose. A legislative inquiry is a question asked by a legislator to inform their decisions as they make new law, as opposed to a question about the administration of existing laws. Thus, it is appropriate for Council to establish policy for the City, but inappropriate for Council to stray into the operations of the City Administration when an inquiry seeks to influence the City Administration's execution or enforcement of a policy of the City. (See pages 6-8 of the Solicitor's opinion for an example of the separation of powers.)

City Manager Duties

The Charter provides that the City Manager is the chief executive and administrative officer of the City, responsible for the management and operations of the City's administrative service. The City Manager has the duty to execute all City contracts, enforce City and State law, to keep Council advised of the financial condition and future needs of the City, and to report to the Mayor and the Council. The City Manager keeps elected officials informed through proactive submissions of FYI memoranda, responsive reports to formal requests through committee or Council, and informal responses as necessary.

Mayor Role

The proper role of the Mayor presents a useful contrast to the role of a Councilmember. The Charter grants the Mayor both legislative and executive authority. The Mayor has legislative responsibilities such as the authority to introduce legislation, to refer all legislation to committee for consideration, and to exercise the veto power. The Mayor is also the individual vested with authority to act for and represent the City and is the official head of that City that can be held directly accountable by the public through the election process. This external role serves as a bridge between third parties and the City Administration. However, the Mayor is similarly constrained by the Charter prohibitions on interference with the appointment or removal of members of the administrative service, interacting with City staff only through the City Manager's office, and contracting authority. The Mayor also has the exclusive power to initiate and recommend to Council the removal of the City Manager. This oversight authority requires collaboration and cooperation between the Mayor and Manager, in particular with respect to City matters concerning external parties.

Clarity of Roles and Next Steps

Recent events require a reexamination of practices that have evolved over time, often for the laudable goal of increasing service and responsiveness. Having served the City for many years in different roles, I am certain that we can provide effective service and responsiveness while respecting Charter-defined roles. The remaining sections of this memorandum set forth the steps the City Administration will take to ensure the appropriate separation between the administration and operations of the City from the legislative body and policy making role of Council

Updated City Administration Policies

In order to provide centralized access to the City Administration through the City Manager's office, I am reorganizing my office by prioritizing constituent affairs

and adding capacity to increase responsiveness to the Council and to the public. Consistent with this reorganization, administrative staff are directed to provide all inquiries from elected officials to Constituent Affairs. These steps will allow the City Administration to respond to inquiries in a coordinated manner and provide the opportunity to gain a better understanding of problem areas that might require more customer service support or operational changes. A key component of the constituent affairs function will be a tracking and reporting system, and reports will be filed with the Council on a periodic basis. While these measures alone will not restore public trust, they will promote transparency in government operations and establish practices that are consistent with the boundaries set by the Charter.

1. Changes to City Manager's Office Structure and Function

The steps proposed in this memorandum require structural change to the City Manager's Office to ensure proper and timely service delivery to Council and the public. Therefore, I am implementing the following changes:

Constituent Affairs Function. Part of the core function of Council is to receive feedback and input from the public. Though this feedback can inform policy and legislative action, frequently public feedback will be directed at specific functions of the Administration that do not involve legislative action. While Councilmembers are within their proper roles to perform this conduit function of connecting the public to the City Administration, direct contact with administrative staff can cross the line established by the Charter. In order to ensure that Councilmembers can perform this important function while both the City Administration and Council adhere to the Charter mandated separation of roles, I will establish a new functionality in the City Manager's Office to serve as a clearinghouse for constituent inquiries. To provide for efficient operations, a single Assistant City Manager will be assigned to facilitate the collection of this type of information from Councilmembers and the public. City staff will be directed to forward to the assigned Assistant City Manager all communications from elected officials or their staff so that these requests can be logged into the system for response, tracking, and reporting.

The tracking and reporting of these inquiries will be prioritized. We will implement new technology and processes to assist in this regard and will seek funding in the budget process for additional staff resources to ensure this initiative is functional. This change will provide the triple benefit of conforming the legislative and operations roles to the requirements of the Charter, increasing transparency, and maximizing administrative effectiveness and efficiency.

Proposed Administrative Code Amendment and City Manager Office Structure. To better accommodate the herein described policies and to increase efficiency of operations of the City Manager's Office, I will introduce an ordinance amending Article II of the Administrative Code. This amendment will re-organize

the City Manager's Office and specifically address the constituent affairs function discussed above.

2. Policy for Economic and Community Development Projects

The City Administration and Solicitor's office will be directed through an Administrative Regulation to provide all inquiries from Councilmembers or the Mayor on development deals directly to the City Manager for coordinated response, including requests for substitute versions of development legislation. These will be evaluated in the context of administrative authority and for appropriateness with respect to Charter roles. Responses will be issued to the entire Council.

As the issue of community engagement has become prominent in Council discussions of development projects, the City Administration is developing its response consistent with appropriate Charter roles as set forth herein and in the Solicitor's legal opinions. A separate memorandum on City Administration policy and staffing on this subject will be forthcoming.

3. Council Onboarding and Informational Sessions

The City Administration currently provides various trainings for Councilmembers on ethics, the roles of the City's constituent entities, municipal finance, the Charter, and City departments. However, to increase effectiveness and transparency into city operations, the City Administration has implemented a more consistent, coordinated, and comprehensive onboarding and ongoing training process for Councilmembers regarding the functions and operations of city departments. The first virtual session is scheduled for February.

4. Council Reports

Given the steadily increasing number of requests for reports and the complexity of those requests, I am providing the below timeframes to set expectations on the turnaround of City Administration responses. The City Administration recognizes the importance of providing Council with requested information; however, this must be balanced against the resources required for oversight and production of Council reports. There is no city department or division that has sole responsibility for generating reports; accordingly, all staff time dedicated to responding to requests reduces employee time spent performing their primary operational duties. The City Administration respectfully requests that Councilmembers remain aware that the time and resources required can be a drain on limited City staffing. Council staff remain the primary resource for Council in conducting legislative research.

The City Administration will strive to operate on the following timeframes in reports to Council:

- (1) Inquiries that can be handled by simple verbal reports will be provided during Committee and Council meetings at the next opportunity.
- (2) Some inquiries can be handled through simple e-mail responses from the City Manager's Office to Mayor and Members of Council and will be subsequently filed with the Clerk.
- (3) For straightforward inquiries that require a full written report but little or no analysis or data collection, the City Manager's Office will strive to respond to Council in no more than 30 days.
- (4) For more complex inquiries that require a written report and extensive analysis or data collection, a response may take in excess of 90 days depending on the nature of the inquiry.

When warranted the City Manager's Office may request to meet with Councilmembers to clarify whether the request is an appropriate request of the administration or more properly directed to Council staff.

Timeline

The City Administration is working with OPDA, ETS, and CAGIS to operationalize the tracking and reporting systems that will be central to Constituent Affairs work. We expect these changes to be in place in the next four to six weeks. During that time, we will present the necessary legislation to Council and answer questions or address any concerns that arise.

Conclusions

The City Administration will continue moving toward openness and greater public access to data and documents, through technological advancements and structural improvements. In order to regain public trust in city government, these changes must be accompanied by the proper context within which the functions of government occur. Our form of government is unique among cities. We must ensure that individual citizens understand that our mechanisms of governance are not the same as those of the federal and state systems and that our City Charter is the foundational document for the Cincinnati municipal corporation. In educating the public, it is critical that we abide these separate roles in word and deed.

Attachment