

MEMORANDUM

from **Mark L. Silbersack**

May 21, 2009

TO: Members of the Excellence in Government Panel

RE: Revised "Environmental Justice" Ordinance

This will follow up on my recent transmission to you of the revised draft ordinance, the City Administration's report on it, and our letter to the Vice-Mayor about the prior proposal.

As requested at our last Panel meeting, I have created a summary of what seem to me to be some key points about the revised ordinance. You may find this helpful in considering the matter.

I do not believe that our Panel has the time to conduct a full study and discussion of this matter (as we did for the prior version). Individual Panel members may want to make your views known to City Council, if and as you wish.

1. Differences/Similarities

The new version is conceptually similar to prior draft but has some major differences.

The basic concept is the same: someone proposing a new business development (or expansion) must seek review by a City official, who will take comments from all "interested" parties and then either grant or deny permission to proceed, based on deciding whether the project creates some degree of additional environmental risk, even if state environmental enforcement authorities have already issued a permit for the project.

The key changes (which address some of our previously stated concerns) are these:

- It no longer applies to all projects, but only those where certain types of environmental permits must already be sought.
- It covers the entire City, not just certain low-income areas.
- It tries to spell out some more definite standards for determining whether there is additional environmental risk (a so-called "material cumulative adverse impact") that warrants stopping a project.
- It declares any such project to be a "public nuisance" (whatever that means).
- It no longer purports to order other City officials not to grant permits or zoning orders that are within their jurisdiction.

2. Continuing Concerns

I'm not an environmental lawyer, so I might be missing some key points here. Further, I have not seen comments from those criticizing the new draft. But these seem to me to be the big concerns it raises:

- It is impossible to quantify the supposed benefits of this new regulation.
- It is at least debatable whether such an ordinance is actually necessary.

- The City's budget is tight; this new regulation will be expensive to implement.
- The cost might better be spent fighting serious cases of pollution within the City.
- It may create a big disincentive to economic development within the City.
- It still doesn't address noise pollution.
- The "EJ standard" is still too vague.
- The notice provision is unnecessarily burdensome for applicants.
- The process is too long. Perhaps review could be coordinated with investigation of a project by more expert state/federal environmental officials. Why require an applicant to get an environmental permit and then start all over again at the City?
- The procedure still does not provide adequate "due process" for the applicant.
- Declaring a project to be a "public nuisance" has uncertain consequences.

3. Discussion

My initial review of the new draft suggests that it is substantially improved over the prior version. Many of the criticisms we raised have been addressed. (Lest we take too much credit, I should note that others, including City staff, raised some of the same points we did.)

Previously, our major concern was that, in an effort to prevent a *few* potentially egregious instances of cumulative pollution, the City was proposing to establish an expensive bureaucratic system that would apply to *all* new development, thereby preventing many good projects that would have benefited the very people the "EJ ordinance" was supposedly intended to protect. While the same concern about frustrating economic development still exists, the new draft seems a lot less burdensome, although there's still plenty of room for improvement.

I'm trying to find out what the schedule is for consideration by City Council of this matter, and whether we have any opportunity for meaningful input. To aid my consideration, I'd like to hear what other Government Panel members think about the new draft.

4. Next Steps

Here's what I propose:

- As soon as I hear about the schedule, I'll let you know.
- If you have any comments, please email them to me as soon as possible.
- If we can timely submit comments, I will draft a letter early next week and circulate it for your review and comments.
- I'll ask Bob Schrage to OK the final version of the letter before I mail it.

Thanks in advance for your assistance on this. If Cincinnati is to re-establish itself as a "player" in improving City government, we have to move quickly on issues like this, and I really appreciate your help and encouragement.

M.L.S.