

Vice-Mayor David Crowley
801 Plum St. Rm 352
Cincinnati, OH 45202-1979

June 1, 2009

Re: "Environmental Justice" Ordinance

Dear Vice-Mayor Crowley:

I am writing to you on behalf of the members of the Excellence in Government Panel of the Cincinnati Association, concerning the revised "environmental justice" ordinance which we understand that you have recently introduced.

We should begin by thanking you both for your continuing efforts to address the important environmental issues at stake here and also for the changes you have made in order to resolve concerns that we and others raised concerning your earlier proposal. On balance, we believe that the new version is an improved piece of legislation.

General Comments

1. 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 a concern about frustrating economic development still exists, the new draft is less burdensome and applies to fewer projects.

2. We agree with the Administration's report insofar as it suggests that both the benefits that may result from and the harm that may be done by the proposed ordinance are somewhat speculative. We do, however, believe that the time and money required to comply with the procedures set up under this proposal will probably delay or impede some projects that could improve neighborhoods in our City and create new job opportunities for the people who live there. Even projects that eventually pass muster may have their long-term financial viability undermined as a result of the ordinance's requirements.

3. The ordinance still does not address noise pollution, which is often a big concern to residents in some City neighborhoods (e.g., OTR).

4. The City is facing a budget crisis. This ordinance creates procedures which will be expensive to implement; the cost estimates in the Administration's report seem to be on the low side. No effect on future City revenues has been projected. Could the money be more effectively spent on combating actual instances of pollution?

Specific Comments

We also have these questions or comments about specific provisions of the ordinance:

Sec. 1041- 7 -- The new draft introduces the notion that any project found to meet the "EJ standard" is a "public nuisance." What are the implications of this? It seems totally unnecessary. Doesn't it suffice that the EJ permit is denied? Why should the City impose such a derogatory label on a local business and risk serious unintended consequences?

Sec. 1041-11 -- Why should an applicant be forced to wait until receipt of a "permit or permit modification" from another authority before seeking an EJ permit? The EJ review process could be coordinated with investigation of a project by expert state/federal environmental officials. Why require the applicant to get a permit and then start all over again at the City? A project could be substantially expedited if the EJ permit application could be sought at the same time as the basic environmental permit. To coordinate proceedings at both levels would benefit all participants.

Sec. 1041-13 -- The notice provision is a problem. Why is individual mailed notice to "readily ascertainable addresses within one quarter of a mile" necessary, given that community councils, hospitals, schools, and day care centers will be notified and the City's website will have a posting? What is notice to an "address"? (There can be multiple units at each address.)

Sec. 1041-13 -- It is unclear who can participate in proceedings or what they can present. While "interested party" is a defined term, "member of the public" is not; thus, it seems that anyone can "submit information." Further, there are no limits on what such "information" may be; even if it is irrelevant or lacks credibility, the EJ Examiner must consider it and City staff must maintain it.

Sec. 1041-15 -- What is the relationship between "information" submitted under 1041-13 and "evidence" submitted under 1041-15? Can "members of the public" who are not "interested" submit evidence that the EJ Examiner must consider?

Sec. 1041-15 -- The hearing procedure does not provide sufficient "due process." While any "interested party" (as broadly defined in Sec. 1041-5-J) can submit any kind of "evidence," which the examiner "shall" consider, no one can challenge whatever is submitted, no matter how incorrect (even frivolous) it might be. No rules of evidence apply. No standards relating to admissible opinions apply. This is an invitation for unfair, burdensome, "junk science" proceedings. The procedure is essentially standard-less, and it is likely to provoke unnecessarily burdensome proceedings leading to poorly considered results. It does not comport with the usual administrative law requirements for fair hearings. Further, someone with "background in an environmentally related field" (the only qualification for an EJ examiner) may well lack the expertise needed to conduct a fair hearing.

Sec. 1041-19 -- Putting two residents on the Board of Appeals who have "backgrounds of knowledge and experience with EJ issues" is questionable. There is no such recognized expertise. This most likely will just come to mean "community activists" and is an attempt to "stack the deck" against those presenting projects for review.

We hope that our comments will assist you, both in thinking through all the implications of the proposed ordinance and in making additional modifications that will improve its implementation if Council enacts it.

Best regards,

Mark Silbersack
Member, Excellence in Government Panel
Cincinnatus Association

cc: Mr. Roger Smith, Cincinnatus Association