

City of Cincinnati

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An Ordinance No. _____ - 2008

AMENDING the provisions of Title X, Environmental Code, of the Cincinnati Municipal Code, by enacting Chapter 1041, Environmental Justice.

WHEREAS, the City of Cincinnati is a municipal corporation authorized by Article XVIII, Section 3, of the Ohio Constitution to exercise home rule police power to protect the health, safety, and welfare of its citizenry; and

WHEREAS, protecting the citizenry from material, cumulative adverse impacts on health or the environment is a necessary exercise of the City's police power; and

WHEREAS, certain uses of property, including those releasing pollutants affecting air, water, or land, create a significant potential that vulnerable individuals in the City will be subject to material, cumulative adverse impacts on health or the environment; and

WHEREAS, land use regulation is an effective means to protect vulnerable individuals from material, cumulative adverse impacts on health or the environment; and

WHEREAS, pollution is associated with increased risk for disease; and

WHEREAS, above-average concentrations of poverty exist in certain areas of the City; and

WHEREAS, there is evidence that low-income residents in the City are more likely to be exposed to pollution; and

WHEREAS, persons with less income than the federal poverty line are more likely to be in poor health; and

WHEREAS, areas of the City with the highest concentrations of poverty are also in or near the areas of the City with the least restrictive zoning laws; and

WHEREAS, heavily low-income neighborhoods in Cincinnati host a larger share of industrial pollution sources than other neighborhoods; and

WHEREAS, robust economic growth is fostered by protection of our natural resources, the health of citizens, and the basic right of citizens to equal protection; and

WHEREAS, there is evidence that low-income residents in the City of Cincinnati are more likely to suffer from health problems, including asthma, heart disease, cancer,

lead poisoning, and low birth weight incidence, which are likely to be exacerbated by pollution; and

WHEREAS, City departments and commissions now issue building permits, perform zoning reviews, approve zone changes, and issue licenses, which may unintentionally allow a property use to cause a material, cumulative adverse impact on health or the environment; and

WHEREAS, the additional review required by this ordinance will substantially promote the protection of vulnerable individuals from material, cumulative adverse impacts on health or the environment by providing relevant analysis to City departments and commissions; and

WHEREAS, Title VI of the Civil Rights Act of 1964, as amended, prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. Title VI prohibits intentional discrimination. Under EPA's Title VI implementing regulations, EPA-funded permitting agencies are prohibited from permitting actions that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin. Title VI discrimination complaints may be filed with the Federal agency that provided the financial assistance. EPA's Office of Civil Rights (OCR) is responsible for the Agency's administration of Title VI. All Title VI administrative complaints are processed and investigated by OCR; and

WHEREAS, on February 11, 1994, the President of the United States of America issued Executive Order number 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations" stating that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands; and

WHEREAS, a panel of the National Academy of Public Administration for the United States Environmental Protection Agency published a report in July 2003, entitled, "Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning." In that report, the Panel's recommendations, based on the research detailed in the body of the report, was summarized as follows:

- State and local executive and legislative branches of government must demonstrate leadership to address Environmental Justice concerns. They should use their full legal authorities to enact appropriate legislation, issue policies, develop guidance, and develop accountability measures to ensure that, at both levels of government, core government functions are authorized and required to address Environmental Justice. They should also enhance opportunities for

meaningful public participation in all government decisions that have environmental and public health impacts; and each level of government should improve public access to information about land use planning, zoning, siting, and permitting.

- All levels of government should conduct thorough examinations of their respective legal and regulatory authorities - including common law authorities for protecting the general welfare of citizens - to develop creative solutions for Environmental Justice problems.
- Federal, state, and local levels of government should work in concert to ensure that their actions for responding to Environmental Justice issues are compatible and mutually reinforcing. They should share information, coordinate programs, and develop comprehensive rules that will ensure consideration and mitigation of localized environmental and public health impacts, especially in low-income and people-of-color communities.
- National associations of local governments should disseminate information and offer training on best practices in land use planning and zoning that are currently used by cities and counties to ensure fair treatment, as well as meaningful involvement, of all people in decisions that affect public health and the environment.
- City and county governments should incorporate consideration of potential environmental and public health impacts of land use decisions into the fabric of their planning and zoning activities. They should actively explore how they can use current authorities to prevent excessive levels of pollution and mitigate environmental and other impacts like noise, odor, and traffic - especially in low-income and people-of-color communities.
- State, county, and city officials who are responsible for planning, zoning, public health, and environmental protections should take immediate action to determine whether their residents in low-income and people-of-color neighborhoods are exposed to excessive levels of environmental and health hazards. If so, they should initiate appropriate actions to reduce risks and communicate to the public when and how these risks will be reduced or eliminated; and

WHEREAS, there is national and state evidence that low-income persons are more likely to suffer from health problems known to be exacerbated by pollution; and

WHEREAS, the United States Environmental Protection Agency has recognized the importance of local governments exercising local police power to protect vulnerable populations from pollution, and that the Agency does not have the authority to make local land use decisions; and

WHEREAS, the added measure of protection is enacted by this ordinance on behalf of Cincinnati's low-income population to protect them from actions that have the potential to further degrade the air, water, or land, or to exacerbate community health impacts; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Title X, Environmental Code, of the Cincinnati Municipal Code, is hereby amended by enacting Chapter 1041, Environmental Justice, to read as follows:

Chapter 1041. ENVIRONMENTAL JUSTICE

Sec. 1041-1. Environmental Justice Defined.

Environmental Justice ("EJ") is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear disproportionately high and adverse human health or environmental effects.

Meaningful Involvement means that: (1) residents of any potentially affected EJ community have an appropriate opportunity, as set forth in this chapter, to fully participate in decisions about any proposed project that will affect their environment and/or health; (2) the public's contribution can influence the city's review, decision, or any appeal of such review or decision; and (3) the concerns of all participants involved, including the EJ community, will be fully considered in the decision-making and any review or appeal process.

Sec. 1041-3. Purpose.

The purpose of Chapter 1041, Environmental Justice, of the Cincinnati Municipal Code, shall be to insure that all covered zoning reviews, zoning map changes, building permit reviews, and Board of Health licensing and permit reviews, properly consider the EJ standard as the initial step in each review.

Sec. 1041-5. Definitions.

For the purpose of this chapter the words and phrases defined shall have the meaning set forth below, unless a different meaning is clearly indicated by the context.

Sec. 1041-5-A. Environmental Justice Community.

"Environmental Justice Community" means any census block group, which is located, in whole or in part, within one mile of the proposed project and within the city of Cincinnati, with a low-income population whose percentage is equal to or greater than the average percentage of the city of Cincinnati population at or below the national poverty threshold. If the low-income population percentage in a census block group, which is located, in whole or in part, within one mile of the proposed project, is equal to, or greater than the average percentage of the city of Cincinnati population at or below the national poverty threshold, the census block group will be considered an Environmental Justice Community and the EJ standard will apply to the proposed project. Low-income population percentages in census block groups shall be measured using the most recent available United States decennial census data, which the city will determine and will update when reliable new data becomes available.

Sec. 1041-5-B. Low Income.

"Low-income" means at or below the national poverty threshold in the most recent United States decennial census data, which the city will determine and will update when reliable new data becomes available.

Sec. 1041-5-C. Zoning Review.

"Zoning Review" means any legislative, administrative, or judicial consideration (including any decision or interpretation) of any of the following: (1) General Zoning Review; (2) Variance; (3) Special Exception; (4) Expansion or Substitution of Non-conforming Uses; (5) Limited Use; (6) Conditional Use Approval; or (7) Change of Use.

Sec. 1041-5-D. Building Permit Review.

"Building Permit Review" means any review by the Chief Building Official of an application and associated documents for the purpose of issuing a permit to: (1) construct, alter or demolish a building or structure; (2) place equipment; or (3) excavate and/or fill land.

Sec. 1041-5-E. Zone Map Change.

"Zone Map Change" means a change of the zoning district designation on any parcel or parcels.

Sec. 1041-5-F. Board of Health Licensing and Permit Review

“Board of Health Licensing and Permit Review” means any review by the Board of Health of an application for a license required under Ohio Administrative Code Section 3745-37-01 or any comment on any state environmental permit application for a project

Sec. 1041-5-G. Material.

“Material” means any impact on the EJ community that is not trivial.

Sec. 1041-5-H. Environmental.

“Environmental” and “Environment” mean the physical environment, including the air, land, and water; but not including aesthetics.

Sec. 1041-5-I. Cumulative.

“Cumulative” means the total exposure to multiple environmental stressors (e.g., chemicals), including exposure from multiple sources and traveling via multiple pathways over a period of time.

Sec. 1041-5-J. Trivial.

“Trivial” means insignificant, of little consequence, small outcome or effect.

Sec. 1041-5-K. Final Environmental Justice Review.

A Final EJ Review is the determination, after all appellate review, if any, as to whether a proposed project is likely to have a material, cumulative adverse impact on the health or the environment of any Environmental Justice community.

Sec. 1041-7. Proposed Project.

(a) The term “Proposed Project” does not include the following uses as defined by the Cincinnati Zoning Code:

- (1) All Residential Uses.
- (2) All Public and Semi-Public Uses, except: government facilities and offices, facilities and installations.
- (3) Accessory Uses, except: any use omitted in the Zoning Code or any small-scale specialized incinerators.

- (4) Commercial Uses, except: commercial laboratories; vehicle and equipment services – vehicle repair.
- (5) Transportation, Communication and Utilities, except: truck terminals and warehouses, commercial piers and ports; public utility plants; transportation facilities – airports; transportation facilities – railroad train yards; watercraft and riverfront facilities – barge terminals; watercraft and riverfront facilities – boat and ship yards; watercraft and riverfront facilities – transportation passenger terminals.

(b) The term “Proposed Project” does include every use not excluded within one mile of an EJ community, in addition to the following uses as defined by the December 1, 2005 Zoning Code:

- (1) Agriculture and Extractive Uses.
- (2) Industrial Uses, except production industry – artisan; wholesaling and distribution.

Sec. 1041-9. Environmental Justice Standard.

As established by this chapter, an EJ review shall determine whether a proposed project is likely to have a material, cumulative adverse impact on the health or the environment of any EJ community. A final EJ review that determines that a proposed project is likely to have a material, cumulative adverse impact on an EJ community shall have the following effects:

- (a) The Chief Building Official shall not issue a building permit and/or the Director of City Planning shall not perform a zoning review for the proposed project;
- (b) The final EJ review shall be submitted to the planning commission and the city council for their consideration when reviewing proposed zone changes involving the proposed project. This section does not modify the discretion of the planning commission when reviewing zone changes involving a proposed project. A zone change shall not be approved by city council for a proposed project if the final EJ review is that the proposed project is likely to have a material, cumulative adverse impact on an EJ community; and
- (c) The final EJ review shall be submitted to the Cincinnati Board of Health for its consideration. The Board of Health shall report any concerns relating to the EJ review and the proposed project to all appropriate federal or state departments and officials. Unless prohibited by state or federal law, the Board of Health shall not issue a license for the proposed project. Unless prohibited by state or federal

law, for license renewals or transfers, if there has been a Change of Use after the effective date of this ordinance, the Board of Health shall not issue a license for the proposed project. Whenever the Board of Health or its staff comment on any state environmental permit application for a project, the Board of Health or its staff shall forward any reasonably available report or review in its possession concerning environmental justice issues to the State of Ohio for its consideration.

Sec. 1041-11. EJ Factors.

In applying the EJ Standard to a proposed project, the following factors shall be considered:

- (a) Reasonably available demographic information on the EJ community, as set forth in § 1041-3-A, from EJ maps, including demographic maps and environmental maps from:
 - (1) the Department of Community Development and Planning of the city of Cincinnati.
 - (2) the U.S. EPA.
- (b) Reasonably available information on the pollution burden borne by the EJ community from nearby sources, including:
 - (1) Number of pollution sources that potentially impact the EJ community,
 - (2) Proximity of the sources to the EJ community,
 - (3) Emission information, including total toxic emissions and total criteria air pollutant emissions,
 - (4) Major roads and traffic routes,
 - (5) Parks and greenbelts,
 - (6) Areas of lead contamination,
 - (7) Number of currently licensed, registered, closed, or deregulated solid waste management and/or transfer facilities; superfund sites; hazardous waste sites.
- (c) Reasonably available information on the prevalence of disease in the EJ community (or the census tract that contains the EJ community), including:

- (1) Prevalence of various cancers,
 - (2) Prevalence of asthma,
 - (3) Prevalence of heart disease.
- (d) Reasonably available information on the presence of sensitive receptors within one mile of the proposed project, including:
- (1) Residences,
 - (2) Schools,
 - (3) Hospitals,
 - (4) Elder care facilities,
 - (5) Day care centers.
- (e) The public health, safety and welfare of the applicable EJ community.
- (f) Other information provided by applicant and/or the public about these factors and the EJ standard.

Sec. 1041-13. Application and Collection of Information Related to Environmental Justice

Any party that has a proposed project that is subject to any zoning review or a building permit or seeks a zone change will be required to complete a formal EJ review process before a building permit will be issued, a zoning review will be conducted, or a zone change is completed where project information is available. Within fourteen (14) days of receiving the initial application for the building permit, zoning review or zone change, and in accordance with Ohio state law, the Chief Building Official will notify the applicant that the building permit, zoning review or zoning change will not be issued for this reason.

Within fourteen (14) days of receiving such notification, each such applicant shall have the duty to provide "Comprehensive Information" relevant to the portion of any EJ community located within one mile of the proposed project for which the building permit is being requested. Such information shall be delivered to the Chief Building Official, to be forwarded by the Chief Building Official to the Office of Environmental Quality.

"Comprehensive Information" shall mean relevant information on the location of the proposed project, including but not limited to the type of facility to be operated, and the regulated activities to be conducted at the proposed project, and a list of substances expected to be released from or stored at the facility.

Sec. 1041-15. Notice to Public.

The Chief Building Official shall, at the applicant's expense, provide written notice by United States mail to: (1) Any community council located within one mile of the proposed project; and (2) All readily ascertainable addresses within the EJ community located within one mile of the potential polluting project. However, written notice need not be given to any residents of that same EJ community who are located more than one mile from the proposed project. The city manager, or his or her designee, shall also give notice through the city's website of all projects that are subject to the provisions of this section.

Within fourteen (14) days after the date the notice is mailed, the city shall make all comprehensive information submitted by the applicant available to the public at the City of Cincinnati Permit Center.

Anybody that lives, works, or attends an institution located within an EJ community (an "Interested Party"), or any member of the public, may submit information to the city, and the city shall consider all such information, and all such information will be available for public review and inspection. The Interested Parties and any member of the public shall have thirty (30) days from the date the notice is mailed to provide additional written information on the factors and the EJ standard, and the application. The 30-day period may be extended at the discretion of the city manager, or his or her designee.

Each applicant and any member of the public shall have a reasonable opportunity during normal city business hours to examine any information that has been submitted concerning the proposed project. The Chief Building Official shall be responsible for collecting and storing any information relating to this EJ ordinance and for maintaining a copy of the entire file on the city of Cincinnati Permits Plus system.

Section 1041-17. Administrative Recommendation.

Within thirty (30) days of receipt of the application, the city manager or his designee shall review the existing record and all information submitted and shall make an administrative recommendation as to whether or not the proposed project is likely to have a material, cumulative adverse impact on the health or the environment of any EJ community and submit such administrative recommendation to the EJ examiner.

Sec. 1041-19. Administrative Hearing by Environmental Justice Examiner.

Within thirty (30) days of receipt of the application, the city manager shall designate as EJ examiner a person with an environmental planning background to apply the EJ standard to the applications subject to this chapter. Any interested

party or member of the public may provide questions, which are to be answered by the applicant at the discretion of the EJ examiner, to aid in the review. The EJ examiner shall consider all evidence submitted by any interested party and the applicant and shall, within sixty (60) days of receipt of the application, issue and mail to the applicant written findings and conclusions taking into consideration the relevant EJ factors and determining compliance with the EJ standard.

The EJ examiner may impose such conditions on the applicant that are determined to be in the public interest and necessary to mitigate any harmful effects from the potential project. These conditions must be expressly set forth in the EJ examiner's findings and conclusions. The EJ examiner may require a bond or other acceptable form of surety to insure compliance with the conditions imposed.

Within seven (7) days of the issuance of the findings and conclusions issued by the EJ examiner, such findings and conclusions will also be sent by the Chief Building Official to any interested party who submitted comments or who requested a copy of the findings and such findings and conclusions shall be posted on the city's website.

Sec. 1041-21. Appeal Process; EJ Board of Appeals, City Council Review.

The EJ Board of Appeals shall consist of seven (7) persons designated by the mayor with the approval of city council, to serve for terms of three (3) years each. The members of the EJ Board of Appeals shall consist of one (1) land use planner, one (1) public environmental health professional, one (1) environmental engineering professional, one (1) representative of the Cincinnati business community and three (3) community representatives who are city residents with backgrounds of knowledge and experience with EJ issues. The EJ Board of Appeals may adopt rules of practice and procedure as necessary. The Chief Building Official shall provide administrative resources to the EJ Board of Appeals including, but not limited to, handling correspondence, issuing notices, compiling necessary data, and services for hearings.

Within 30 days of the mailing of the findings and conclusions made by the EJ examiner, the applicant, any community council located within a potentially affected EJ community, or any interested party may file an appeal in writing with the EJ Board of Appeals requesting a hearing.

The EJ Board of Appeals has the duty by majority vote to enter a decision affirming, reversing, vacating, or otherwise modifying the findings and conclusions made by the EJ examiner. A tie vote by the EJ Board of Appeals is deemed to affirm the findings and conclusion of the EJ examiner.

A decision by the EJ Board of Appeals is effective as of the date of the mailing of the decision.

Any further appeal of an EJ determination under this chapter shall be subject to the same administrative review and/or appellate process outlined under the applicable section of the CMC, i.e., Title XI for all building permits and Title XIV for all zoning reviews that are subject to the EJ inquiry.

Within 30 days of the mailing of any decision by the EJ Board of Appeals, the applicant, any community council located within a potentially affected EJ community or any interested party may file an appeal in writing with the clerk of council, requesting that the clerk of council submit the written appeal to the council for a determination affirming, reversing, vacating or otherwise modifying the decision by the EJ Board of Appeal. No later than one of the next four regularly scheduled council meetings, or within 90 days, whichever is sooner, the council shall consider the appeal pursuant to an ordinance containing the entire text of the written appeal, the written decision by the EJ Board of Appeals and any relevant documents reviewed by the EJ Board of Review during the determination process. The council may affirm the decision of the EJ Board of Appeal by a majority vote. The council may reverse, vacate or otherwise modify the decision by the EJ Board of Appeal by a vote of not less than two-thirds of its members. Any determination by Council which reverses, vacates or otherwise modifies the decision of the EJ Board of Appeal shall be fully expressed in writing in the ordinance ultimately passed by council related to the appeal.

Sec. 1041-23. Maps, Guidance and Gathering of Statistical Data.

“Reasonably available pollution data” for the applicable EJ community includes data from such services or databases as: (1) The Toxic Release Inventory (TRI), which is available on EPA’s website and which measures cumulative adverse environmental impact from toxic releases to air, water and land by various facilities; (2) the release of OSHA carcinogens on the TRI database, which is available on EPA’s website and which measures on-site releases by various facilities; (3) the number of superfund sites on U.S. EPA’s Envirofacts database or other databases; and (4) the number of facilities reporting releases of criteria pollutants as listed on Ohio EPA’s “Emission Inventory Point Source Data” or on U.S. EPA databases.

In a guidance document, the city shall annually update a list of relevant Ohio EPA and U.S. EPA databases and websites. The Office of Environmental Quality shall be responsible for annually updating the guidance document.

Those seeking to apply the EJ standard may seek guidance from the factors found in applicable sections of The Revised Region V Interim Guidelines for Identifying and Addressing a Potential Environmental Justice Case; June 1998.

After any and all appellate review, if the determination is reached that a proposed project is likely to have a material, cumulative adverse impact on the

health or the environment of any Environmental Justice community, then the city manager shall take all necessary action to gather and obtain statistical data from the affected Environmental Justice community related to the percentages of the residents within that community who are “minority group members”. Such data shall be gathered annually for 5 years following the date following the final determination is reached or after the conclusion of any and all appellate review, whichever is later. In January of each year, the city manager shall provide annual reports to council related to the information gathered regarding the statistical data in any designated Environmental Justice community during the prior calendar year, as required by this section. For purposes of this section, “Minority Group Members” shall mean persons who are African-American, Hispanic, Asian or Native American as follows:

- (a) African-American – a person having origin in the Black racial group of Africa;
- (b) Hispanic –persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture origin;
- (c) Asian American –an individual having origin in any of the original people of the continent of Asia or the Pacific Islands;
- (d) Native American – an individual having origin in any of the original people of North America and who maintain cultural identification through tribal affiliation.

Section 2. That this ordinance shall take effect and be in force from and after the earliest time allowed by law.

Passed: _____, 2008

Mayor

Attest: _____
Clerk