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October 18, 2017

## **VIA HAND-DELIVERY**

City of Covington Board of Commissioners  
ATTN. Joseph U. Meyer, Mayor (contact per Resolution)  
City Hall  
20 W. Pike Street  
Covington, KY 41011

Re: City of Covington Investigation

Dear Mayor Meyer, Mayor Pro Tem Williams & Commissioners Huizenga, Wells and Downing:

### **Preface to Report**

#### **I. Brief Introduction and Context of the Investigation**

The Board of Commissioners of the City of Covington resolved to initiate an investigation triggered by the resignation of three Code Enforcement Officers, including the Manager, on May 23, 2017.

The three Code Enforcement Officers leveled a number of charges against other City employees: gross mismanagement of the Code Enforcement Department, the enabling of a hostile work environment, failures of management to adhere to a chain of command, selective enforcement of the relevant sections of the Code of Ordinances in a manner that targeted certain owners/landlords, and improper and possible criminal activity in the administrative process of issuing, resolving and adjudicating violations of the Code of Ordinances.

The Board decided to retain an outside lawyer with experience in local government issues and governance, whose practice included administrative and criminal investigations of public employees and governmental agencies, *and* whose practice did not include matters involving the City. In short, the Board of Commissioners decided that an “outsider” to Covington government and local politics should be retained.

The investigation began at the request of the Commission with an introductory meeting with Mayor Meyer on June 20, 2017, in Covington. The purpose was to obtain a clear understanding of the engagement, a general context, and identification of available resources and contact persons. Mayor Meyer stated

that the Board of Commissioners, and he as Mayor, expected the investigation to be conducted free of any influence or direction, and that the investigation should follow the evidence where it led regardless of consequences to individuals or City government. Further, he emphasized that there were no predetermined assumptions . . . only allegations that needed to be investigated and answers determined.

This Report contains the conclusions of the Code Enforcement investigation.

As a prefatory matter in order to provide the Board context for its reading of this Report on the Code Enforcement Department Investigation, here is a short summary of the principal conclusions:

There was no criminal activity or illegal conduct in the Code Enforcement Department. The Code Enforcement Department was (and likely remains) abysmally managed. The serious failure to properly manage the Department creates an unacceptable risk to the health and safety of the citizens, visitors, and taxpayers of Covington. This mismanagement generates consequences that significantly hamper the ability of the Department to do its job. The consequences include several of those described in the materials provided to the City by the three resigning Code Enforcement Officers as well as ones discovered by the investigation.

## **II. Structure of Report**

The Report will identify the individuals that will appear in the report; it will generally describe the investigation process including persons interviewed, documents and digital/electronic information obtained and reviewed, and outside resources consulted. This will be followed by a list of specific conclusions reached from the investigative process. The Report will conclude with specific recommendations.

Attached to the Report are two Appendices. The first, Appendix A, collects copies of documents, charts, specific email, correspondence, and data reports referenced or expressly identified in the Report. These will be listed sequentially as each appears as A-1, A-2, A-3, and so on. Appendix B will be a collection from the hundreds of emails reviewed in this investigation that we believe is particularly pertinent to our analyses and conclusions not specifically referenced in the body of the Report. As part of understanding the events in conducting an investigation, a broad review of the contemporaneous email is useful. This proved true here as well – the macro overview supported the conclusions drawn.

The next sub-section of this Report will be a short list of acronyms and abbreviations that will be used throughout to promote readability.

All individuals will be identified by full name and title when first appearing in the Report. Thereafter, the person will be identified by last name only. So, too, for agencies or units of City government – the full name will be set out followed by the acronym or handle it will be referred to later in the Report.

### **III. Acronyms and Abbreviations**

The following is a list of agencies, groupings or other abbreviation that will be used throughout:

“City” refers to the City of Covington’s municipal government.

“CED” refers to the Code Enforcement Department of the City government which is a Department administratively within and under the Community Services Department, which itself is administratively within and under the Department of Development. *See,*

<https://www.covingtonky.gov/government/departments/department-of-development/community-services/code-enforcement>

“CED Exterior” and “CED Interior” denotes the two separate units contained in the CED, and that one unit only performs inspections of a building’s exterior and surrounding grounds while the other are inspections only within the building and performed in partnership with the City Fire Department. Prior to 2012, there was no division of scope but a single unit of inspectors.

“CE Officer” is Code Enforcement Officer.

“City Solicitor” unless referring specifically to Assistant City Manager Frank Warnock, refers to the Office of the City Solicitor as a unit.

“Code” refers to the Covington City Code of Ordinances. Unless specifically stated otherwise when used, “Code” shall mean those provisions contained Title XV, Chapter 152 and referred to as the “Property Maintenance Code” which contains the provisions pertinent to inspections conducted by the CED. (There are other Ordinances which are relevant such as the Nuisance ordinances). The Code appears at this link on the website of the City:

[http://library.amlegal.com/nxt/gateway.dll/Kentucky/covngton/cityofcovingtonkentuckycodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:covington\\_ky](http://library.amlegal.com/nxt/gateway.dll/Kentucky/covngton/cityofcovingtonkentuckycodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:covington_ky)

“Commission” refers to the City of Covington Board of Commissioners. Current members are: Michelle Williams, Mayor Pro Tem (second term, but did not serve

during the 2015-2016 term), Tim Downing (first term), Bill Wells (second term), and Jordan Huizenga (second term).

“June 2012 Report” refers to the City of Covington Organization Reviews dated June, 2012. This is the report of an organizational review that Management Partners was commissioned to conduct in 2012. The report was submitted on June 29, 2012. The scope of the review was to conduct specific organizational reviews of the City’s Fire, Police, Community Development and Code Enforcement departments, *and* a macro review of the organization structure of the City’s administration. Management Partners was then to make specific recommendations for the consideration of the Commission. It is fair to say that the recommendations made by Management Partners were not implemented *in toto*, and that even certain specific recommendations though implemented were only done so partially. Thus, if it was Management Partners intention that the recommendations be implemented as a whole in order to achieve the benefits of its analysis, then this did not happen.<sup>1</sup>

“Mayor” refers to Mayor Joseph U. Meyer (his predecessor will be referred to as Mayor Carran).

“Whistleblowers” refer to, as a group, the three CED employees who resigned on May 23, 2017. CED Manager Tom McDaniel, CE Officer Rick Fox, and CE Officer Mike Stem (in some of the emails and other documents, his nickname “Storm” is used).

#### **IV. Brief Overview of the Investigative Process**

Soon after our engagement, with the assistance of the City, a donor provided office space outside of City Hall for us to work. The donor was completely uninvolved in the allegations being investigated, and took no part whatsoever in the investigation itself. This allowed a “safe zone” to conduct interviews; collect, organize, store, and analyze a wide scope of documents and digital media; and, provide easy access to City resources and employees.

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<sup>1</sup> This investigation makes no attempt to opine on the efficacy of the recommendations, in whole or in part, or the wisdom displayed by the Commission in what it did and did not implement. But, as noted, many of the issues presented to Management Partners for its analysis and recommendation continue to exist, and at least as regards the CED, appear to be more dysfunctional than in 2012. Just a bit of elaboration: the CED assumed its current structure shortly after former CED Director Keith Bales departure which followed the issuance of the Management Partners report. Under Bales, the CED had full-time CE officers who did both interior and exterior. It had a different policy approach to enforcement than that animating the current code enforcement approach. *See, Executive Summary, pp. 3-4; Main Report, pp. 70-99; Recommended Covington Organizational Plan, pp. 107-113; and, Attachment A, List of Recommendations #s 23, 24, 25, 32, 33, 34, 35, 36, 37, 47, 51, 52, and 55.* Even so, it is interesting to note, and perhaps ironic is the better word, that in its Executive Summary, Management Partners notes, “Code Enforcement was cited to the Mayor in his discussions with 17 of 19 neighborhood groups as *the most important priority* for City government attention.” *June, 2012 Report Executive Summary, p. 3 (emphasis added).* *See,* the cited pages are collected in Appendix A-1.

Acting City Manager Loren Wolff, City Solicitor Frank Warnock, and Code Enforcement Department Manager Walt Mace provided procedural assistance.<sup>2</sup> Though, ultimately, all of these City employees/officials were interviewed, in this role their sole purpose was to assist us administratively. All were professional, helpful, and went to any length to provide us with what we needed on a timely basis . . . even, at times, when our requests were highly time sensitive or required collecting and arranging data in formats not used before.

The investigative steps were straightforward:

- Sending a concise communication via email or hard copy to all City employees informing them of the investigation and requesting cooperation if asked to be interviewed;
- Creating an identity-protected phone number by which concerns, reports or information could be provided, and then communicating that number to employees;
- Obtaining/reviewing the document package provided to the City upon the resignation of the Whistleblowers detailing the reasons for their resignation. *See*, a copy of these documents, the Stem Package, is collected at Appendix A-2;
- Obtaining an initial batch of materials and threshold scope-defining research including: organizational chart of the City; employee list of the Code Enforcement Department with official personnel files; all pertinent CED and Ethics Ordinances; determining applicable Kentucky statutes; obtaining any existing written policies and procedures governing the CED both as to substantive process and administrative operations/chain of command; obtaining forms used by CED; understanding the software program used to process enforcement complaints and actions (the software is proprietary and named “Comcate”)<sup>3</sup> ; the administrative adjudicatory process of code violations including Board of Code Enforcement agendas and orders for 2016-2017;
- Review of Kentucky statutes relevant to the city manager form of municipal government, and the Covington ordinances implementing that system.

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<sup>2</sup> This was the group of Covington employees/officials who were my primary contacts for obtaining documents, access to email accounts, collection and aggregation of data for particular study and understanding, contact information for interviewees, and miscellaneous administrative needs.

<sup>3</sup> It is my understanding that the City has decided to change the software system, or is determining whether to make a change. If so, the City Solicitor, and my recommendation is that it should be Assistant Solicitor Michael Bartlett, must be involved in assessing which software to purchase as well as insuring that the new software system is integrated with the requirements of relevant Covington ordinances and Kentucky statutes.

- As already noted, an initial meeting was held with Mayor Meyer to better understand the scope of the engagement, obtain a neutral context of the code enforcement approach in Covington, challenges facing previous administrations and Commissions, prior investigations/studies/audits, and an appreciation for how the city manager model of administration in practice operated in Covington.
- At my request, I met with the Commission in executive session on three separate occasions to discuss specific issues that had arisen (once in July, September, and October).
- The Commission requested that Acting City Manager Loren Wolff not be substantively engaged in the investigation given her short time in that position (appointed on February 21, 2017, upon the departure of former city manager, Larry Klein) and the consuming nature of her role to “run the City” until a new city manager was hired. Nevertheless, I made the decision to meet with her to better understand the context of the investigation. This was helpful from a “lay of the land” perspective, and to get another perspective on the broader picture. I also interviewed her following the start date of the new City Manager to obtain information pertaining to two issues that she had some familiarity with due to her position.
- Before this investigation, the City underwent an Organizational Review in June 2012 by Management Partners, and an examination of policies, procedures, controls, and financial activity by the Auditor of Public Accounts, Adam H. Edelen, in February, 2013. These were read and digested for insight to the current situation in the CED. Some of the issues discussed in those Reports we saw in this investigation as well. This, in and of itself, raises issues beyond the scope, in large part, of this investigation. However, given the recurrence, or continued existence, of problems or deficiencies, it is hoped that the even more recent organizational review and audit carried out this spring and summer by the consultant who assisted in the city manager search proves useful. It is worth noting that this investigation did not work with, consult, or in any manner communicate with the work of that consultant.
- Consultation with the Kentucky League of Cities to determine available resources for cities to draw upon regarding code enforcement in general and code officer training in particular.

## **Report on the Code Enforcement Investigation**

### **I. Persons Referenced in this Section**

The following people are referenced in this Section. An “\*” denotes their City email account was reviewed, and an “^” denotes they were *not* interviewed:

Mike Yeager\*, Development Director/City Engineer. He reported to the City Manager (Larry Klein and then Loren Wolff). CED was one of several program or planning units within his portfolio;

Kim Strategier\*, Community Services Coordinator. She reported to Yeager;

Tom McDaniel\*, Manager, CED<sup>4</sup>;

Jim Ediger\*, CE Officer, exterior;

Rick Fox, CE Officer, exterior;

Walt Mace, CE Officer, exterior. (Mace was promoted to Manager in June 2017);

David Pandilidis, CE Officer;

Mike “Storm” Stem\*, CE Officer;

Frank Warnock, Assistant City Manager/City Solicitor;

Michael Bartlett, Assistant City Solicitor/ABC Administrator;

Chris Kiely, Assistant Fire Chief;

Larry Klein, former City Manager who served until March, 2017;

Jay Fossett<sup>5</sup>, the City Manager immediately before Larry Klein;

Keith Bales<sup>6</sup>, the former Director of the CED from August, 2006, through November, 2012;

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<sup>4</sup> Manager McDaniel was interviewed along with the other two whistleblowers one time. He refused any further one-on-one or joint interviews. The impact of this will be discussed later.

<sup>5</sup> Fossett does not appear in the investigation report. However, as he was the predecessor to Larry Klein, it was useful to interview him to gain insight from both his prior leadership of City government and views on the current situation. The discussion proved very helpful and useful.

<sup>6</sup> Bales is not discussed in the body of this Report. He was important to gaining an understanding of the CED from an historical perspective. He is knowledgeable on how the CED moved from a Department with full-time inspectors whose approach to code enforcement was to promote compliance to one that used part-time exterior officers/full time interior that uses a strictly punitive approach which can result in diminished compliance due to the lack of City resources to effectively achieve compliance (i.e. uncollected fines, lengthy delays in collecting fines from a foreclosure or tax sale), This Report makes no judgment on these differing policies and techniques. Given the hiring of a new City Manager and the conclusions reached in this Report, such a policy discussion is worthwhile and it would be wise to include Bales in that discussion. Bales has taught code enforcement “best practices” for the Kentucky League of Cities. The KLC is another worthwhile resource the City, based on our investigation, has never tapped to provide assistance or training in code enforcement models and best practices.

Steven J. Megerle, the owner of several rental properties who has complained of selective enforcement; and,

Guy van Rooyen, the developer and via a family business a proprietor of the Hotel Covington, who discussed issues relating to the interplay developers sometimes face with the regulatory efforts of the Covington Fire Department, the CED, and PDS. Though not mentioned in the Report, his experience interacting with the various code enforcement units, Interior and Fire, of the City and the PDS was helpful to gaining a macro understanding of the regulatory environment in Covington.

## **II. Overview of the Operation of Covington's Code Enforcement Department**

### **A. Initial Concern Underlying Several Aspects of the Investigation**

There is no single document or manual or chart laying out the operation of the CED . . . much less one that is plain, simple, and understandable by just a regular person who may find themselves the subject of an enforcement action. Because of this, we started this investigation by having to piece together an understanding of how the CED performed its duties, both in theory and in practice.

This poses a serious challenge to gaining a sophisticated and accurate understanding of the Exterior unit of the CED, or the interior unit for that matter. If it was difficult for us, then it is a reasonable conclusion that it would also be difficult for any City employee of the CED or management to gain an understanding of the work of the CED. The absence of a manual or collected written policies/procedures/protocols for explicitly informing CE Officers and CED administrative staff how they are to do their job creates numerous hurdles to the efficient and competent operation of the CED. For example, lack of materials for training new officers and employees; no materials for answering enforcement questions where some decisions are inherently discretionary given the panoply of enforcement options available to the CE Officer; and, having meaningful standards by which to assess an employee's annual performance.

Bluntly put, there is no written manual or set of guidelines that describes the basic operation of the CED. There is no written flowchart or outline describing the inspection-enforcement-adjudication process to which a CE Officer, CED employee, City Manager, Commissioner, Mayor or the public can look at to understand this process. This is borne out by complaint emails from some owners against whom enforcement actions had been taken. Indeed, a review

of the materials provided along with the interview of Megerle indicates there may be a disconnect of CED staff on some of these issues.<sup>7</sup>

This observation is corroborated by materials and emails provided by the City Solicitor and review of the email accounts of Yeager, McDaniel, Klein and other CED employees. There are several emails from that Office to Yeager, primarily, and McDaniel in which concerns are raised about whether enforcement actions were adhering to statutory and City ordinance requirements – particularly following the major revisions to the relevant statutes during the 2016 legislative session. This is important also as these technical and procedural requirements could impact due process rights of the owner. If that happens, then the enforcement action itself is placed at risk of being reversed on an appeal.

The written materials created by the City Solicitor’s Office, primarily by Assistant City Solicitor Michael Bartlett are excellent, and proved extremely useful to this investigation. These materials were made available to Yeager and McDaniel with offers to provide trainings, but this did not always occur. And, when they did occur, it was typically at the CED weekly meetings instead of part of a formal training for a new employee or a designated training program set aside for that purpose. Our review of emails often indicates that problems were spotted by the City Solicitor after the enforcement action had proceeded to the Board or simply anecdotally. In those instances, the involved CE Officer or administrative staff person was corrected.

The lack of a central document or digital repository of policies deprives CE Officers and managers of a fundamental resource. There are no policies or written guidelines, aside from those created by the City Solicitor, which the CED can refer to in determining what constitutes a violation of the Code; or, obtain guidance for the CE Officer to refer to in exercising discretion in assessing the appropriate initial regulatory approach to a violation (compliance can be attempted on the low end with a “fix it” letter, an intermediate tack taken with a notice of violation, or on the aggressive end of the enforcement spectrum by seeking an entry order or a referral to law enforcement.

There are no useful job descriptions.<sup>8</sup> There is no written chain-of-command. There are no applicable written protocols or policies for dealing with

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<sup>7</sup> Note though, we found no corroborating evidence of “targeted enforcement”.

<sup>8</sup> On September 9, 2016, Strategier emailed a list of her duties to her direct supervisor, Yeager, in response to an apparent verbal request from him to know what she did and for what she was responsible – it appears that he was considering adding even more duties to her over-flowing plate of responsibilities or considering her for another position. A credible and current position description to define her duties to insure she was performing as hired never seems to have occurred to Yeager or others. This is a reasonable conclusion to draw. A review of email accounts evidence that Acting City Manager Wolff was obliged to ask CED employees to write their own job descriptions just so she would be able to understand what

management challenges that arise in a regulatory enforcement unit such as: disagreement amongst CED employees with the action taken on a particular complaint; overlapping or “soft” geographical enforcement zones; taking and entering complaints of violations; mailing out form due process notices; or, even who is authorized to sign a CE Officer’s name on a form letter or enforcement form mailed to an owner accused of being in violation of the Code.

Compounding this absence of written manuals, guidelines or policies easily available to CED staff is a lack of any meaningful attempt to collect and aggregate data to assist management in the operation, supervision and administration of the CED (i.e. evaluating CE Officer performance, noting trends with code enforcement issues, and determining if changes need to be made in boundaries of assigned Enforcement Areas to name a few examples).<sup>9</sup>

The absence of these types of written, or even digital, materials is disturbing given that the CED relies on four part-time exterior enforcement officers. It creates an environment in which serious and chronic issues can arise. For example, this lack of written materials can lead to inconsistent enforcement, areas of the City that are ignored or under- or over-staffed, and employees not held accountable with written guidelines/standards of which all are on notice.

The most serious risk these conditions create is foreseeable and should by itself cause management to demand appropriate written policies and protocols. In this type of regulatory milieu, a real risk exists that the City employs and places into service CED employees that are poorly trained, and, at its worst, lack the training and ongoing supervision to perform competently. This defeats the purpose of code enforcement, and heightens the risk to public health and safety.

Code Enforcement is, at its heart, a public health obligation the government owes its citizens, visitors, and taxpayers. That is textbook public administration and plain old commonsense. Bales discussed this purpose in detail during his interview. Code enforcement seeks to bring structures into compliance with local ordinances enacted to prevent or abate: unsafe buildings and rental

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each employee and position did on a day to day basis. One of these was Strategier . . . who was required to do this very same task seven months previously for Yeager. *See*, these emails are located in Appendix A-3.

<sup>9</sup> The use of data sets for the CED was on the radar screen of City management at least at the beginning of 2017. There is an email dated January 10, 2017, from Todd Sink, Ph. D., the City’s Manager of Analytics and Intelligence, responding to a request from Jessica Moss, Business Analyst & Project Manager, for CED questions she could discuss in a meeting with Comcate that could be answered with “data and metrics”. In the email, Sink provides a series of possible issues for which data collection and aggregation would be useful to his work and that of the CED. There is no indication this was followed up on, or that this type of data collection, aggregation and analysis ever took place. Since this type of data use and reporting did not exist, as part of the investigation, CED Manager Walt Mace at our request did just that himself for several items. This email string and Mace’s reports are collected in Appendix A-4.

housing, threats to health from diseases or illnesses caused by nuisances like insect and urban mammal infestations, and safety hazards from fires or use of abandoned buildings as “drug houses”.<sup>10</sup>

This policy is plainly understood by the City and the CED, which in fact promotes that as the very purpose of the CED on the code enforcement page of the official City of Covington website:

Covington's Code Enforcement Department ensures that the living and working environment within Covington is healthy and safe by enforcing the City's Property Maintenance, Nuisance, and Zoning Codes, which govern the proper maintenance and zoning of residential and commercial properties. The Code Enforcement Department conducts periodic inspections of existing residential rental properties and commercial structures in an effort to ensure proper property management, which leads to the elimination of blight and the stabilization of neighborhoods.

<http://www.covingtonky.gov/government/departments/department-of-development/community-services/code-enforcement>

See, a copy of the CED webpage is found in Appendix A-5.

#### B. Structure & Current Operation of the Code Enforcement Department

Covington’s Code Enforcement Department is divided into two separate “units”: Interior, which inspects the interiors of properties; and, pertinent to this investigation, Exterior, which inspects the exterior and immediate grounds of structures. The Covington Ordinances applicable to the scope, enforcement and adjudication of structures are contained in Title XV, Chapter 152 of the City’s Code of Ordinances, and are referred to as the “Property Maintenance Code”.<sup>11</sup> Or, more colloquially, the Building Code.

As of the date of the resignation of the Whistleblowers, the CED was headed by Mike Yeager, Development Director/City Engineer.<sup>12</sup> Yeager reports

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<sup>10</sup> Email account reviews of Klein, Yeager, McDaniel and line CE officers indicate that abandoned buildings and rental houses posed a risk of becoming locations where drugs were both sold and used.

<sup>11</sup> *See,* [http://library.amlegal.com/nxt/gateway.dll/Kentucky/covngton/cityofcovingtonkentuckycodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:covington\\_ky](http://library.amlegal.com/nxt/gateway.dll/Kentucky/covngton/cityofcovingtonkentuckycodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:covington_ky) As pointed out earlier, there are other Code provisions which the CED uses in its work.

<sup>12</sup> A common theme in the City of Covington is the grouping of responsibilities in a somewhat haphazard basis. This was true for Yeager. His portfolio included for example: engineering, recreation, zoning, code enforcement, preservation & planning, economic development, community development and housing development. In short, he carried an exceedingly large portfolio. As several interviewees noted, the typical protocol was to reassign or reorganize duties to existing employees when an employee left, and this was particularly true at the level of management (directors). Anecdotally, it appears that

directly to the incumbent City Manager. Kim Strategier, Community Services Coordinator who works in a full-time position, reports directly to Yeager. She serves a variety of functions in the CED, including initial intake, inputting various form data for complaints and subsequent actions in the enforcement process, following up on assignments, maintenance of vacant lists, and a variety of other duties.<sup>13</sup> The next level of supervision was Tom McDaniel, the Manager of the CED – including both the interior and exterior units. McDaniel was full time and reported to Yeager. He had been promoted to manager in mid-fall 2016. The manager position has no supervisory authority over Strategier given that her position is a direct report to the Director.

Next, were the line inspectors known as CE Officers who carried out the actual inspections and shepherded the enforcement process from initial assignment through termination of the action. If the CE Officer determined that a violation existed, then it is left to the discretion of that CE Officer on which enforcement action to impose on the owner.

There were four part-time exterior CE Officers which included Rick Fox and Mike Stem.<sup>14</sup> McDaniel also performed inspections on an irregular basis.

Until the last year, the CE Officers could pick their own work schedule so long as they met their hours. This policy was recently changed requiring all hours be worked from Monday to Friday, between 7:00AM to 5:00PM, except for meetings, such as the Code Board. The weekly CED meeting is in theory mandatory, and based on the witness interviews this held true in fact as well.

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budget issues were often the leading rationale. *See, June 2012 Report, "Background", p. 5*, "The City of Covington is facing difficult conditions. Revenues are stagnant and cash reserves are nearly gone. Personnel costs are increasing significantly due to increases in health care coverage and state assessments for employee pension systems. [ ] The City has adopted a ten-point plan designed to place Covington's municipal government on the road to financial sustainability." There can be no doubt but that Yeager is stretched thin with often non-overlapping or incongruent management responsibilities. In short, as some described, he is a "good soldier". Even so, if his approach to managing the Departments and other programmatic units in his portfolio which, by our count, are treated as twelve direct-reports, then such a scope of managerial/policy responsibility is egregiously high and demonstrates a remarkable failure of City Manager Klein and previous Commissions to responsibly structure City government. The current Commission and new City Manager would be wise to seek the advice and services of a very economical option – the Kentucky League of Cities. A copy of the organizational structure of the City is attached in the Appendix A-6..

<sup>13</sup> Like Yeager, Strategier has a myriad of other tasks often assigned on an *ad hoc* basis by persons outside of the Community Services Department to which she is assigned. She was sometimes given tasks, unrelated to the CED or even tasks related to code enforcement, but which that did not neatly fit into any other employee's typical job duties. *See also, Note 8.*

<sup>14</sup> A good description of the duties of a CE Officer is the job description prepared by CE Officer Ediger dated June 22, 2017, apparently in response to the current organizational review and audit.

The enforcement process is triggered by a complaint which can arise from a variety of sources. It is then assigned to a CE Officer generally, but not always, based on a Code Enforcement Area. The CED divides the City into four geographic “Exterior Inspection Areas” that are posted on the website. A copy of this map is included at Appendix A-7. A number of other factors can determine the assignment, or even reassignment, of a complaint such as: availability of CE Officers due to part-time status, proximity to other complaints being investigated, and particular trouble spots. CED employee interviews and email reviews did not elicit any evidence that assignments were based or grouped by property owner.

A single CE Officer is assigned a complaint. The CE Officer conducts the inspection. The CE Officer is not allowed to enter the property without prior approval from the owner. The CE Officer determines if there is a violation of the Code using a list of improper conditions such as high, unmown grass, loose mortar, steps or stairs in disrepair, damaged chimneys, presence of garbage and debris, evidence of insect or urban mammal infestation, a failing structure, unsafe conditions such as railings in disrepair, or presence of a fire hazard. The CE Officer then imposes what is determined to be the appropriate enforcement action. As pointed out earlier, this could be a simple “fix it” letter in which the owner is given a set deadline to bring the structure into compliance; a Notice of Violation which seeks a similar abatement; a Citation which could involve abatement but also carries a civil fine which can be appealed to the Board; and, referral to police or fire department if the condition presents “the existence of [a] violation [which] presents imminent danger, a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.” *KRS 65.8838*.

The penalties for a violation increase depending on various factors. To bring the building into compliance, the initial enforcement action can take the form of a Notice of Violation (NOV), verbal warning, door hanger, “fix it” letter, or Citation. There is also a process for affixing certain public notices or “placards”, such as “Unfit for human habitation, occupancy or use”; and, involvement of police or fire in an emergent situation.

The CED also maintains a vacant property list which entails other actions such as dealing with the administration of the vacant property tax.

Due process is provided via appeals to the Code Enforcement Board where the owner either declines to abate/fix, or disagrees with the issuance of a NOV or Citation. Imposition of civil fines is the penalty where the violation is confirmed. A failure to pay leads to the filing of a lien (or multiple liens for new violations on the same property) and could take priority over both prior and subsequent in time filed liens. The possibility of a foreclosure exists for

unsatisfied liens. If the violations rise to the level where statutory criteria are met, then the City can even enter and demolish.

The enforcement process utilizes a software package named Comcate. It tracks the complaint from beginning to end. CE Officers input all activity, and sometimes are assisted by McDaniel (presumably now Mace, though his email account was not reviewed) or Strategier. Photographs of the violations are required and uploaded. Comcate also provides reminders, and generates required letters and notices. It allows any CED employee, or senior management person, to call up and view the current status of any complaint and its history. Any CED employee, who inputs new data, makes a complaint assignment, revision, or creation of a form or letter is documented by logged-in name by Comcate. Thus, any person who substantively engages a complaint logged into Comcate can be identified in the history field.

This enforcement process is enabled by the “Local Government Enforcement Board Act”, KRS 65.8801 to .8839, which underwent significant amendments in the 2016 General Session of the General Assembly. Covington’s Code is contained in Title XV, Chapter 152 (and, Nuisances, also dealt with by the CED is in Chapter 92). There are very precise and technical requirements related to notice to the owner, the documents which are used to support an adjudication, and other criteria. Given that decisions of the Board on enforcement actions carry civil penalties, the adherence to these requirements by the CED are critical to filing valid liens on the property and fending off appeals to the District Court from Board decisions by the owner.

The primary management of the CED is through the supervision of Yeager and McDaniel (CE Officer Walt Mace is now the manager), and weekly CED meetings. The meeting is chaired by Yeager. The typical agenda is problem complaints, coordination of coverage for inspection, and roundtable discussions. Though the information is conflicting, it appears the agenda is standard and changes or new items are added with the approval of Yeager. These meetings are also, generally, attended by an attorney from the City Solicitor’s Office.

From time to time, the City Solicitor provides overviews of due process requirements and similar topics. First Assistant City Solicitor Mike Bartlett regularly attends given his role in Code enforcement proceedings.

The training of new CE Officers is neither standardized nor formal. It is expedited “on the job”. It includes a general orientation of the City and the operation of the CED. The new hire is given training on the use of Comcate, and an overview of the procedure for code enforcement. The new hire then “rides”

with a current CE Officer watching how inspections are conducted, what constitutes a violation (i.e. loose mortar, high grass, etc.), what enforcement action to take in a particular situation, and how information is entered into Comcate. The new hire is assigned to one of the Enforcement Areas. The new CE Officer, like the other three, sets his/her schedule and conducts inspections alone. The CE Officer has the use of a City vehicle and an iPad to make Comcate entries from the field and use to take photographs of a violation.

Any other training is anecdotal as items are presented at the weekly meeting, such as a power point by Bartlett; or, anecdotally as the CE Officer may seek advice or a consult from a colleague in the CED.

Yeager, as well as McDaniel, was asked directly about new employee training. Both confirmed the compressed, on the job process discussed above. Neither was aware of the code enforcement training offered by the Kentucky League of Cities which includes a certification process. Covington is a member of the KLC, and so is able to avail itself of this type of training at a low cost. Some of the programs related to code enforcement are free.

### **III. Summary of Whistleblower Allegations**

On Tuesday, May 23<sup>rd</sup>, 2017, CE Officers Stem and Fox and CED Manager McDaniel abruptly resigned.<sup>15</sup> Two days later, Stem emailed an explanation to City Manager Wolff and Mayor Meyer. The following Monday, CED Manager McDaniel emailed his own explanation. Between the two emails were multiple allegations of wrongdoing. These emails are included in Appendix A-8. The allegations include:

#### **A. Creation of an Abusive Work Environment**

Stem alleged that Strategier routinely verbally abused her co-workers, including him. McDaniel confirmed that “improper and caustic remarks by Strategier, both verbal and emailed, continued on almost a daily basis,” from mid-January until their resignations. Stem alleged that Strategier refused to acknowledge McDaniel’s authority, and that her direct supervisor, Yeager, failed to take action after issues were brought to his attention multiple times.

#### **B. Corrupt Internal Practices**

Stem alleged that Strategier tampered with the work product of the CE Officers, including: modifying and sending Notices of Violations and Citations, without authorization, over the signature of CE Officers; creating and sending new

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<sup>15</sup> The City formally accorded all three whistleblower status, and agreed to provide appropriate protections even extending beyond the City’s Ethics Code. § 36.50 *REPRISALS AGAINST PERSONS DISCLOSING VIOLATIONS PROHIBITED*. A copy of the letter is included in the Appendix.A-9.

Citations with the unauthorized signature of CE Officers; and editing information entered by CE Officers into Comcate, again without authorization.

C. Use of Code Enforcement Authority for Personal Reasons

Stem alleged that Strategier and Jim Ediger would use their authority for private purposes. Stem alleged that Strategier “doesn’t care for certain landlords” and would direct enforcement action against them. He alleged that Ediger “plays favorites,” overlooking violations from friends, and targeting people he disliked. McDaniel also alleged that Ediger would refuse assignments involving people he knew, while going out of his way to penalize people he disfavored. Both Stem and McDaniel alleged that Ediger would leave his assigned geographic coverage area without authorization to target specific people.

**IV. Investigative Process Related to the Accusations**

After reviewing the relevant background, we began the investigation by interviewing the three Whistleblowers. All three were retired law enforcement officers having served together for an overlapping period at the Blue Ash Police Department, and Fox and McDaniel had worked in quasi-investigative roles in internal security at a large insurance company following their retirement as officers. McDaniel had also served as a Chief of Police in Ohio. All were conversant and sophisticated in the operations of municipal government. All understood the commonsense responsibilities and obligations imposed on a city employee. Each appreciated that a city employee is obliged by ordinance and ethics codes to abide by those duties, particularly those who are either in law enforcement or, as here, enforce city ordinances which carry serious penalties up to and including criminal liability.

The Whistleblowers requested an initial meeting just with Stem. At this meeting, Stem provided a very detailed narrative of the situation and events leading to the decision to resign. Importantly, he also provided substantial documentation of his allegations that had also been shared with a Kenton County Police detective. Other one-on-one interviews with Stem took place by phone and e-mail over the course of the next two and a half months.

I then met with McDaniel, Stem and Fox together. The meeting was arranged by Stem. Due to their concerns as Whistleblowers, we met at a restaurant in Cincinnati which provided a private area for us to speak. Though this meeting was informative and generated both usable and valuable information, it was primarily intended to become acquainted, review in a general way the allegations, and to understand the operation of the CED. None of the three were willing to go into significant detail beyond what Stem had disclosed previously without the protection of a formal acknowledgement of their Whistleblower status. They requested a written letter from Mayor Meyer that expressly provided

them with legal protection from any form of real or perceived retaliation. In my judgment, based on the initial meeting with Stem and my first impressions of McDaniel and Fox, this was a reasonable request and underscored the risk the men well knew they were taking in coming forward.

I reminded them that in addition to the proposed letter, that Covington had an Ethics Code with relevant provisions and that both Kentucky and federal law afforded additional protections. As my designated liaison, I contacted Mayor Meyer who, upon my recommendation, agreed to provide the requested letters. The letters were drafted, approved as to content by the three men, executed by Mayor Meyer, and given digitally and in original hard copy to each of them.

At this point, we expected to quickly move forward into detailed meetings with the former CE Officers. In particular, McDaniel advised me that he had significant and serious evidence to support not just the allegations made in the materials provided by Stem, but also other matters which he believed could expand the investigation.

I was, however, informed that the three wished to delay meeting again until the protection letter had been provided and we had interviewed the other CE Officers and Yeager. They also included Bartlett as a required threshold interview as all three anticipated he would corroborate their view that the CED was incompetently managed and structured by Yeager, and that Strategier was incorrectly placed on the organizational structure to report to Yeager rather than McDaniel.

I interviewed the other CE Officers and related persons, including Mike Yeager, Frank Warnock, Michael Bartlett, Walt Mace, Kim Strategier, Jim Ediger, David Pandilidis, and Chris Kiely, among others.

After those meetings I contacted Stem to begin scheduling individual meetings with the three Whistleblowers. I also informed him, generally, that Yeager, Strategier, Ediger and Mace had all taken the position that he, Stem, was not a competent CE Officer. All of these witnesses argued this view was substantiated by the lack of any Board cases brought by Stem in 2017; requests of Ediger to cover his Board cases in 2016; that he had issued only eight Citations in his entire CED career while Mace issued 24 in the two months following the resignations while working Stem's Enforcement Area; that the alleged illegal or improper changes made in Comcate to complaints assigned to him by Strategier were part of her duties in moving the complaint process and had occurred in cases

involving other CE Officers; displaying two cases in Comcate that McDaniel himself had made similar changes to Stem cases.<sup>16</sup>

In short, it was as Stem, Fox and McDaniel had predicted in our only joint meeting . . . Stem would be made out to be a disgruntled employee who did not do his job, that the three “Blue Ash guys” were just sticking together and that when Strategier pushed Stem to act on complaints he responded inappropriately.

The decision was made to share in a general way the responses of Yeager, Strategier and Ediger with the Whistleblowers. The interview of Mace, who had taken over both McDaniel’s role as manager and due to the vacancies covered Stem’s Enforcement Area, was also shared. In doing so, it was made clear that the three would need to respond directly to the positions made by Yeager, Strategier and Ediger which were corroborated to some degree by Mace. It is important though to note that Mace only partially corroborates Ediger, Strategier, and Yeager *vis a vis* Stem’s time at the CED. Mace worked in Interior while Stem was part-time Exterior. It is unlikely their paths crossed often, as Stem spent much of his time in the field. Mace’s opinions, in my view, are primarily informed by working Stem’s former Enforcement Area, taking over the Manager duties, and his collection and aggregation of Comcate data.

*That is no criticism of Mace* – indeed, he himself conceded his limited first-hand knowledge in his first interview. However, he was unshakable in his view of Stem’s allegations as unreliable based on working Stem’s Area, noting the less stressful CED work environment post-Stem, and his limited observations of Stem as someone more interested in telling others what to do.

In terms of value to the investigation, Fox too is of limited help. Like Stem, he was a line CE Officer and there is little interaction between CE officers during the course of a week. In large part such contact generally occurs during the weekly CED meetings chaired by Yeager. Fox was uniformly described as easy to work with and a good CE Officer by all those interviewed that expressed an opinion. However, Fox was usually not in Covington when Stem was working due to how they each set their schedule. Fox had the ability to schedule his week in a way that allowed for substantial personal travel. He also spent all of January, 2017, in Florida. Thus, he just was not around when the Stem-Strategier working

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<sup>16</sup> Strategier forwarded ninety-seven (97) emails from her City account to bolster her defense. These, along with the substance of the interviews, were persuasive on all of the allegations made against her with one exception, which in our view, is more a criticism of Yeager than her: the inability of Stem and Strategier to work together in any semblance of professionalism and that a “hostile” work environment had been created for Stem.. It is clear from the interviews and the contemporaneous emails that it was at a minimum difficult for Stem to function in that atmosphere. Though the failure of Yeager to rely on McDaniel to act as the first line of supervision to try for a resolution, Yeager’s dealing individually with Strategier which functioned as by-pass of McDaniel for her, and Yeager’s unwillingness, once he took the lead role upon himself, to involve Human Resources or deal squarely with the unprofessional and inappropriate conduct of Strategier essentially, in our view, doomed any work out.

relationship had deteriorated to the point that Yeager convened the first meeting of them on January 22, 2017, to try to resolve the problem.

Even so, based on his observations, Fox strongly expressed that Strategier was difficult due to her ability to go straight to Yeager around McDaniel. He described it as insubordinate (though the organization chart does make her direct report Yeager). Fox opined that McDaniel was never given a real opportunity to manage given Yeager's inability to not micro-manage. Fox gave examples of CED employees avoiding McDaniel's supervision by going directly to Yeager. This is substantiated by several Yeager emails.<sup>17</sup> He also corroborated fully the volatile nature of Strategier, and her frequent use of course profanity in the workplace (f###k was a frequently used word by her per Stem and Fox).

Fox also negates to some degree the statements made by Yeager, Ediger and Strategier relating to Strategier signing the name of a CE Officer to get a notice or document in the mail. Fox strongly took the position this was improper and that this had never been done to any of his documents to his knowledge.<sup>18</sup>

There are persuasive pieces of evidence that support Stem's allegations:

1. First, he received an excellent performance review by McDaniel in December, 2016.
2. There is no evidence in the email accounts of Yeager, McDaniel, Ediger, Strategier, or Klein to suggest: Stem was a problem employee, did not do his job, attacked or baited Strategier (he offered at the January 23 meeting to alter his schedule to minimize contact with Strategier), or declined to pursue legitimate violations of the Code.
3. Stem took an approach to enforcement extremely similar to that described by Bales . . . one in which the goal is compliance versus simply issuing NOVs and Citations where abatement could be otherwise achieved. Stem did not articulate this rationale in the investigation, but the documentary record does establish success in achieving abatement where appropriate.

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<sup>17</sup> There are many emails by and between Ediger, Strategier, Yeager, and Klein which can only be described as banter or humorous. This is not a criticism of that type of email as any workplace is probably leavened with this type of exchanges in person or by email. Though it also sets a tone when this occurs between an employee and a supervisor by eroding the latter's management role. And, this can be compounded when the supervisor enables, as happened here, the perception that employees can avoid direct supervision.

<sup>18</sup> The specific allegations of Stem on this issue are well-documented in the materials provided to me and the Kenton County Police Department, I have referred to as the "Stem Packet". See the third bullet of "Investigative Steps", on page 5 of this Report. The documents in question relate to Case Number 2016-2167. Though I do not believe this is evidence of a criminal act, the investigation does conclude that it is a poor practice that should cease to avoid issues that could be used by an owner as a defense to a valid enforcement action. It also removes the responsible CE Officer from performing the required tasks necessary to prosecuting a code violation.

This is not proffered as a rebuttal to Mace's analysis or a criticism of that approach to enforcement. To the contrary, that data does raise concerns. But, Stem had gone through the same deficient training already described. These are criticisms in large degree of how Stem exercised his discretion. They are not accusations that he ignored his obligations to conduct inspections or that he allowed complaints to pile up on his desk.

4. Comcate data used by Yeager and McDaniel to assess performance by the CE Officers in the first quarter of 2017 was favorable to Stem with the sole exception of Board cases. He led the CED in new cases in 2017 until his resignation. *See*, these reports are via email and collected in Appendix A-10.

5. Stem began employment in June, 2016. He had not been a CE Officer for even a year. His performance should be understood in the context of a shorter tenured employee who had no prior experience and had received negligible training. This was further complicated by the unduly stressful work environment caused by the rancorous work-relationship he had with Strategier that was not being responsibly addressed by management;

6. Yeager documents his belief that Stem was victimized by the environment in which he worked. In an email dated May 23, 2017, Stem's resignation date, Yeager stated the following to Stem:

**From:** Mike Yeager

**Sent:** Tuesday, May 23, 2017 8:06 AM

**To:** Mike Stem

**Subject:** RE: Resignation notice

Mike, I'm sorry to hear this. I really appreciate everything you did for me and for the City during your time here and I'm sorry for the work environment. I've been trying to address the issues between you and Kim since they've been brought to my attention. I actually met with her again last week and had a meeting scheduled for this week with you and Tom to hopefully continue to resolve some of the issues. Again, I'm very sorry.

Given that this email was sent not just on the date of the resignation but at the conclusion of a particularly difficult period between Stem and Strategier, the contemporaneous nature of this email likely reflects more accurately Yeager's views (which were changed later in his interview). *See*, Email from Yeager to Stem attached at Appendix A-11.

7. Code enforcement cases do not proceed to Board hearing in a matter of weeks and the majority of complaints are not given NOV's or citations. There is no evidence to suggest Stem was sitting on cases that should have moved quicker to the Board. There is not, in my view, persuasive evidence that Stem should have as a matter of fact issued substantially more NOV's or citations. The data collected and aggregated at my direction by Mace does, and should have, raised questions that needed to be addressed with Stem. Since each CE Officer applies their discretion in nearly each situation as to the best tool to use to gain compliance, then individual coaching would have been appropriate. *But*, since this data was *not* used by management to generate the types of reports and measurements I asked Mace to prepare, then the view that Stem was not doing his job is unpersuasive. Nevertheless, this opinion presented by Yeager, Strategier, Ediger, and Mace as fact. *But*, when considered thoughtfully, one realizes that the opposite is true. The data and the metrics drawn at my direction evidences the consequences of *not* properly training new officers, *not* allowing the manager to provide the necessary supervision and coaching the Department required, and *not* using the administrative position filled by Strategier effectively<sup>19</sup> or, for that matter, responsibly.

In short, Yeager, as the organizational leader of the CED chose the path of scapegoating Stem both before and since his resignation. The evidence does not support that conclusion whatsoever.

In my view, which is also shared by Stem and Fox, the critical witness to support and corroborate the Stem allegations is McDaniel.

McDaniel had been employed at the CED the longest. He had clear authority in the CED since his promotion to manager in the fall of 2016. He had the obligation to supervise the CED, including Strategier, to the extent her duties were a part of the operation of that Department. He had participated in all of the Strategier-Stem meetings that sought to resolve the issues between them. He dealt with every allegation asserted by Stem at the time the events occurred: the signing of Stem's name to the enforcement documents; witnessing the blow ups of Strategier; enforcing the general rule that CE Officers only perform inspections in their Enforcement Area unless a reasonable basis existed for an exception; Strategier's telephone manners (or, as Stem alleges, lack thereof); allegations of unprofessional conduct in the office in terms of appropriate language and demeanor; and that McDaniel had to deal with and resolve Stem's exasperated solution to the his Strategier problem by blocking all emails from Strategier sent

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<sup>19</sup> The position administratively is a direct report to the Director and not the Manager. Strategier was taxed with assignments outside of her position both on an on-going and *ad hoc* basis which produced an overworked employee operating under significant stress . . . and, like Stem, evidence of poor management not of a poor employee.

to him beginning in early May, 2017. *See*, Stem email of May 4, 2017, included in Appendix A-12.

Unfortunately, McDaniel refuses to participate any further in the investigation. This became evident when we began attempts to schedule individual follow up meetings in early July. Neither Stem nor Fox could explain or provide a reason for McDaniel's sudden decision to refuse any further interviews. The only communication I received was that he no longer "trusted the process", and felt it had simply turned into a "he said/she said" scenario in which nothing would be accomplished. I sought to reassure him that this was not the case, that we enjoyed full independence in our investigation, and that the Mayor and Commissioners were committed to allowing the evidence to lead the way regardless of consequences... good or bad.

I told him frankly that without any corroboration from him of the most serious allegations that I could not conclude, based on the investigatory record, that the allegations were true. After waiting until late July, we had no choice but to move forward. To be clear, McDaniel stated in our joint meeting that he could provide both verbal and documentary corroboration that would support his, Fox's and Stem's allegations as well as providing other relevant information.

His choice to not cooperate casts doubt on these claims.

## **V. Findings of Investigation**

### **A. Abusive Work Environment & Improper Manipulation of Comcate**

Stem and Strategier did not work well together, and the difficult relationship could not be resolved because Yeager refused to act, or allow practical action from McDaniel. Without McDaniel's participation, I was unable to confirm or corroborate anything further.

Fox was unable to corroborate Stem's allegations. He was often not in Covington due to his travel; he was able to work his job as required despite the travel. He was not around Stem very often and he did not get involved in the dispute between Strategier and Stem.

On January 22, 2017, McDaniel and Yeager convened a meeting with Stem and Strategier to resolve what, appeared to them, to be an escalating inability to work together collegially. Prior to the conclusion of the meeting, Strategier became upset, began yelling and walked out.

This pattern continued until matters became untenable again on May 4, 2017. Stem accused Strategier of removing outgoing NOV's and Citations he had written and then making unauthorized changes to them. He then unilaterally

blocked all incoming e-mails from Strategier to his computer, and began doing his own mail rather than allow her to do it, though it was one of her duties.

This led to a series of emails between McDaniel and Yeager in which they agreed that Stem's response was inappropriate, and that a meeting needed to be set up to seek a resolution. There is no evidence that any action was taken to investigate the accuracy of the allegations made by Stem.

Before the meeting could be arranged, Stem and McDaniel resigned.

A review of the emails of Yeager, McDaniel, Stem, and Strategier demonstrated that this was mishandled from the beginning. Rather than delegating the problem to the appropriate supervisor – McDaniel – to closely monitor and seek resolution, it essentially remained with Yeager, who did nothing but react. The final reaction and confrontation between Strategier and Stem was, in my judgment, due to the failure to allow McDaniel to manage a difficult work relationship in the hope of achieving a favorable resolution. Instead, the City lost its CED manager and two CE Officers.

Strategier most certainly reacted in inappropriate ways on three occasions: once at a weekly CED meeting that was corroborated by Vice Chief Kiely who attended the meeting; the January 22, 2017, meeting; and, the emails which led Stem, right or wrong, to block her as a sender. But, in my judgment, those were incidents in which appropriate employee counseling, HR support, supervisory intervention, a strict defining of her job responsibilities to which others respect and adhere, and making the CED Manager her direct supervisor could well have resolved this very difficult work relationship that certainly impacted the efficient operation of the CED and other work relationships.

As to the other allegations asserted by Stem. On balance, given the reasons set out earlier, in my view it is essentially a swearing match. Could McDaniel's interview and turning over of the claimed evidence answer those questions? That is totally speculative. Based on the investigation, we can not confirm the accuracy of any of the more serious allegations.

B. Corrupt Internal Practices

Stem's allegation that Strategier modified or altered code enforcement documents improperly was closely scrutinized. The refusal of McDaniel to cooperate, essentially, was a hurdle that could not be overcome by this investigation.

The concerns Stem raised regarding the manner in which Comcate could be manipulated is questionable. Mace demonstrated existing Comcate cases. He explained the auto-signature function, and that any change would automatically

be tracked by the log-in user (which Strategier's had been). Strategier is clearly authorized to make corrections in Comcate.

Mace also provided documentation that McDaniel had opened cases under Stem's name causing forms and correspondence to generate with Stem's signature. Mace also provided an exemplar of a case opened by Stem in which Strategier sent a letter which clearly shows she performed the task. And, for ease of understanding, Mace also provided an example of a Comcate case screen. *See*, emails from Mace on these matters included in Appendix A-4, referenced earlier in this Report.

This allegation, in my judgment, is disproven. It can be argued that Strategier should have communicated better with Stem on these cases, but there is no evidence of an intent to deceive. This could be addressed by appropriate supervision and coaching.

C. Use of Code Enforcement Authority for Personal Reasons

As to Ediger, the documentation clearly establishes, arguably, a norm of CE Officers going out of their assigned Areas for any number of reasons. Per the interviews of Pandilidis, Ediger, Strategier and Mace these types of out-of-Enforcement Area inspections can occur due to being responsive to a citizen or official complaint of a violation, an increase in complaints in a particular Area, or simply a function of four part-time CE Officers with varied and sometimes changing work schedules attempting to cover the entire city.

There is an email from McDaniel stating that CE Officers are to remain in their Enforcement Area. However, the actual practice indicates this directive was not followed. This is, in all probability, a result of the dysfunctional management approach applied to the CED.

The email accounts of Stem, Ediger, Yeager, Strategier evidence that Ediger was often brought in to pick up inspections needing immediate attention as well as a willingness to cover Board hearings for Stem, Pandilidis, and Fox.

This allegation is disproven in my view.

D. Additional Conclusions Regarding Management of the Code Enforcement Department

The CED has significant management problems. Some of the problems identified through this investigation:

1. *Yeager's micromanagement, poor management skills, and failure to work through the chain of command damaged the operation of the CED.*

During the short tenure of McDaniel (October, 2016, through May, 2017), Yeager functioned as the *de facto* supervisor of the interior unit. This is particularly unfortunate given McDaniel had substantial experience both in police work and the private sector of managing investigative bodies.

As the below points demonstrate, Yeager had a chain of command to enable him to properly perform his duty as the Director with the silo of code enforcement under his umbrella of responsibilities. The configuration and organization of the administration took this into account by establishing, funding and staffing a manager position to insure the efficient and appropriate operation of the CED. By being engaged “hands on”, Yeager undermined that chain of command by impairing the authority and credibility McDaniel.

Yeager was actively engaged in many of the complaints. He was copied on significant volumes of e-mail by CE Officers on particular issues, even minutiae, or updates relating to inspections and the administrative adjudicatory process.

Yeager chaired the weekly CED meetings rather than McDaniel. This set the tone that he, Yeager, was in charge. This in turn risked negating the supervisory authority of the manager which had been approved by the City Manager.

Yeager permitted employees to “end run” the manager, and take complaints directly to him for resolution or refereeing.

Yeager did not enforce an appropriate chain of command between the CE Officers and the manager.

Yeager became enmeshed in employee management issues directly rather than allowing McDaniel to attempt a resolution. There appears to be no explicit or written protocol that applied to or was followed by the CED in these situations. Instead, employees seemed to choose between McDaniel and Yeager as to whom to take routine or serious workplace complaints for resolution.

*See also, Point 7 under persuasive points supporting Stem allegations.*

2. *Strategier's position outside of the Chain of Command complicates the operation of the CED*

The decision to have Strategier report directly to the Director took a key full-time employee out of the supervisory authority of the manager. Strategier has a central role in the full spectrum of the code enforcement process. Her position outside the CED chain of command is a serious impediment to not just the efficient operation of the CED, but yet another erosion of the authority and ability of the manager to perform his duties to ensure the proper functioning of the CED.

This administrative link appears to be a vestige of the partial implementation of the June 2012 Organization Review.

3. *The combination of unrelated responsibilities in Yeager's position has created an untenable situation.*

Yeager's portfolio is too large and diverse to sustain the close level of scrutiny and management of the CED in which he has elected to engage. This opinion was corroborated by Warnock and McDaniel. It is certainly possible that these shortcomings exist in the other areas within the constellation of programs, units and departments under his umbrella.

Instead of availing himself of the assistance that a competent manager of the CED could bring to alleviating his situation, he only adds to the untenable character of his situation so that his performance, and that of the Departments under his supervision, suffers.

This was not lost on others. Aside from Warnock's confirmation that Yeager is overly burdened so that his effectiveness as a Director is compromised, Bartlett on two occasions offered to provide additional training to the CED officers and employees to enhance their performance. These offers were not accepted. Bartlett also offered this suggestion:

From: Michael Bartlett

Sent: Thursday, March 23, 2017 4:40 PM

To: Mike Yeager

Subject: FW: code board

I'm not trying to be a jerk, but it kinda seems like Kim is overwhelmed with this and other things.

I've heard second hand that people call to report code enforcement violations or request information about liens and calls don't get answered.

With the budget process currently underway, are you looking at asking for any help for managing the code enforcement stuff? If not, it might be worth asking. Just my two cents.

Yeager's response thanks but states he will not seek additional support help for Strategier. This is just more evidence of Yeager's management failings: there is no question that the overworked and practically unmanaged Strategier is a problem to the efficient operation of the CED. Whether those other "priorities" which he said were higher than Bartlett's suggestion requires a wider scope analysis of Yeager's portfolio beyond CED. Even so, a study of the CED in 2016-

17 does lead to the conclusion that those other “Higher priorities” must have been significant to outweigh that present in the CED<sup>20</sup>. See, email from Bartlett to Yeager dated March 23, 2017, and email from Yeager to Bartlett same day in Appendix 1-13.

#### 4. *Internal Controls are Missing*

The fact that many of Stem’s allegations have to be considered uncorroborated is unacceptable. The City should have sufficient internal controls, processes and policies that the allegations can be proven or disproven. Investigations like this should not hinge on evaluation of the credibility of witnesses in oral interviews. Stem was clearly credible, and acted appropriately in all respects. The City’s own existing processes and policies failed him as well as Strategier, Yeager, and Ediger.

Strong controls protect the accuser, the accused, and the public trust. The State Auditor’s report on Covington’s Finance Department is replete with similar admonishments and findings as regards the Finance Department and the City administration as a whole. This Report should have drawn attention to these very issues seen throughout the city in 2014. I strongly encourage the Commission and the new City Manager to consult that Report.<sup>21</sup>

#### 5. *The training of CE Officers is inadequate*

There was no formal training protocol established to insure the competence of a new CE Officer before assumption of their duties. There is no evidence of formal training of new CE Officers by the City Solicitor on the proper protocols for handling and documenting an inspection through adjudication.

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<sup>20</sup> This is mysterious. A review of the emails related to Strategier-Stem issue, and other challenges in the CED were shouting for resolution. Barrett’s suggestion is reasonable response.

<sup>21</sup> Just two quotes from the Report make the point:

“The City’s finance department had no written policies and procedures for revenue and collection procedures. Information about procedures for processing revenue collection activity is passed along verbally from one employee to another. Also, the revenue/collections manager does not have a role in review and supervision of daily collection processes, and additional weaknesses were noted related to revenue processing. Also, the City does not have adequate policies in place for detection and collection of delinquent taxes.” *Report, p. ii.*

“Auditors also found that job descriptions were not available for review during the examination. When staff was asked about their job duties, there was some hesitation in describing exactly what they were responsible for or what they had assumed responsibility for. Whether due to short staffing or to the former finance director’s inattention to the department, staff had absorbed various duties, sometimes unrelated to their primary workload. In some cases, this led to increased internal control weaknesses by allowing someone the ability to post transactions and also to create adjusting entries that would correct or offset the transactions.” *Report, p. 7.*

Given the highly technical requirements of the applicable statutes and ordinances, this is a serious failing.

As a note, this should be able to be remediated by involvement of the KLC, and already having the basis of good training materials with the various code enforcement power points prepared by Bartlett. *See*, some of these are included in Appendix A-14, and letter from KLC to me dated October 17, 2017, in Appendix A-15.

6. *Yeager's behavior over the course of the Investigation raises serious concerns about his judgment*

The final point, which I believe is appropriately slotted in this section, are two matters of concern to me as the person charged with this investigation.

Following my interview of Yeager, I received an email dated July 17, 2017. It states as follows:

Mr. White, I'm sorry to hear about the personal issue you've been dealing with.

I'm not sure whether or not you will find this relevant to your investigation, but I had heard rumblings the last few weeks that Mr. Stem had some issues during his time with the City of Blue Ash. I issued an open records request for his personnel records and received that back this week. I've attached some of what was provided back to me. It seems that the issues he had there are similar to what we were dealing with here in Covington. I know I found his response on page 5 of the attachment particularly disturbing. If you have any questions, please let me know. Thank you again,

Mike Yeager

Development Director/City Engineer

The email attached the response by Blue Ash, Stem's former employer, to an Open Records Request made to it of Stem's personnel file.

Yeager is at a very senior level at the City. He was personally engaged in supervising Stem. He was directly engaged in attempting to resolve the Strategier-Stem conflict. He had been apprised that allegations had been made against him by Stem and McDaniel. In the context of a whistleblower investigation, it is very poor judgment to seek out what he thought was disparaging information about Stem and then forwarding it to me.

I also reviewed the email string between Yeager and Blue Ash on a City of Covington email account and City of Covington computer. Yeager was informed

that since the Blue Ash employee responding to his request assumed it was a background check on a possible employee, that she would not require a release or notification from Stem. The failure to properly inform the clerk of the reason for his inquiry, or at least tell her it did not relate to a pre-employment screening, raises concerns about judgment.

Yeager plainly sought to intervene in this investigation inappropriately. Reference to the

City's Code of Ethics, indicates:

§ 36.50 REPRISALS AGAINST PERSONS DISCLOSING VIOLATIONS PROHIBITED.

(A) No officer or employee of the city or any city agency shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence in any manner whatsoever which tends to discourage, restrain, deter, prevent, interfere with, coerce, or discriminate against any person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Board of Ethics or any other agency or official of the city or the Commonwealth any facts or information relative to an actual or suspected violation of this chapter.

Here is a link to the Code of Ethics:

[http://library.amlegal.com/nxt/gateway.dll/Kentucky/covngton/cityofcovingtonkentuckycodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:covington\\_ky](http://library.amlegal.com/nxt/gateway.dll/Kentucky/covngton/cityofcovingtonkentuckycodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:covington_ky)

On September 19, 2017, I called Yeager to check on a piece of information. During the conversation, he asked about the status of the Report. He then indicated that he had been told by a Commissioner that I had made no findings of criminal wrongdoing on the part of anyone in regards to the CED piece. I followed up aggressively and he provided me with no other information he had obtained regarding the executive session. I explained to him that attempting to find out information from an executive session, particularly on a matter that concerns him personally, is a serious matter. He indicated the information was freely given to him, and that was the extent of the information.

Next, Yeager sent me emails on July 27, 2017 and August 17, 2017, requesting a completion date of the Investigation. This too is inappropriate. Yeager had no role to serve on behalf of the City beyond cooperating with the investigation. He did this by agreeing to be interviewed, and collecting data on CE Officers who had performed inspections outside of their Enforcement Area.

Finally, in response to an email dated June 7, 2017, from Wolff to Yeager, Ediger, Strategier, Kiely on which Warnock was copied, Yeager wrote (this reply is dated June 13, 2017), “I would like to be on record that I feel like there were a handful of other steps and conversations that could have and should have been had within our organization before an outside attorney was hired to do the investigation. While I agree the allegations are serious in nature, I don’t feel others were given the opportunity to tell the whole story. Also, can you please clarify what you mean by “no retaliation by anyone against anyone else will be tolerated”? Thank you[.]”

Warnock responded to this via an email the next day, June 14, 2017, stating, “The ‘no retaliation’ reference is to emphasize that no one should retaliate against anyone for the assertions and investigation that will follow. Everyone needs to be professional, continue to do his and her job, work hard, be honest, cooperate and stay positive. Words of wisdom from my father.”

This email exchange involving a Director (Yeager), the City Manager (Wolff), and the Assistant City Manager/City Solicitor (Warnock), at the very outset of the investigative process are disturbing given it is clearly notice of a whistleblower claim. Yeager raises issues about the appropriateness of the investigation while copying employees under his supervision (Ediger and Strategier) which could impact their own willingness to cooperate or cause a belief that there was an inappropriate motive to the investigation. This, in my view, borders on insubordination towards Wolff *and* creates an adversarial tone before the investigation had commenced.

It also neatly ignores Wolff’s statement in the original June 7 email that makes the clear point that “. . . we only have one side of the story, but due to the nature of the allegations we have a duty to look into this matter thoroughly and promptly. With that in mind, attorney Louis Kelly has been retained by the City to conduct a third party review and issue a report to the City.”

More remarkable, Yeager, one of the most senior members of management employed by the City, requests clarification from Wolff of the meaning of “no retaliation by anyone against anyone”. It raises the question whether Yeager has any comprehension of the duties a member of management, or a possible target of a whistleblower claim, owes to the involved employee. In my view, the email betrays a plain motive to chill the investigation, and to chill the Whistleblowers themselves had this email leaked out.

Warnock’s response on behalf of Wolff, at this early stage, was arguably appropriate. However, a better course would have been a very direct meeting with Yeager involving a witness, perhaps another attorney in the City Solicitor office, educating him on the seriousness of a whistleblower claim, and the legal

obligations of the City and its senior management. This should have been followed up with individual meetings with Ediger and Strategier<sup>22</sup> reinforcing the seriousness of the allegations, what they could and could not do regarding the investigation, and provided an opportunity to ask any questions unrelated to the substance of the investigation.

Attached are copies of the referenced emails included in Appendix A-16.

## **VI. Recommendations**

Given the existence of the Organizational Audit and Review by the City's consultant, I am inclined to generally defer to that group. Even so, there are five concrete recommendations:

1. The City should consult with the Kentucky League of Cities to provide code enforcement officer training to all CE Officers assigned to the Interior Unit. This should include working with the League as well as Bartlett and Warnock to develop ongoing training modalities for CE Officers and new CE Officer training. This can begin by following up on the letter attached as Appendix A-15 from the Hon. Morgain Sprague, the KLC's Director of Municipal Law and Training,
2. Assess with the new City Manager and the other consultant the current assignments and workloads of Yeager to make his responsibilities appropriate to his skills, training, experience, and simply reasonable workload.
3. Mandate that Yeager undergoes additional ethics training on the responsibilities of management during whistleblower investigations which includes the situation in which the manager is the subject of the complaint. It is beyond the purview of my role as the investigator to make disciplinary or personnel action recommendations. However, I do recommend that the City should review personnel policy and ethics guidelines to determine if disciplinary action is appropriate or necessary with respect to Yeager's behavior during the investigation.
4. Reorganize the CED so that Strategier's position is a direct report to the manager. Better define the position description of manager to place direct supervision responsibility in that position for CE Officers to include conducting and chairing weekly meetings, that all discipline, resolution of employee complaints, and employee coaching be vested in that position.

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<sup>22</sup> A follow up with Kiely was likely unnecessary. The Whistleblowers had made no allegations about him or his conduct. To the contrary, he was only identified by Stem as a possible witness to some of the allegations given his attendance at the weekly CED meetings.

5. Each position in the CED should have a position description that accurately reflects the duties of that position. Management should then be trained to respect those descriptions.

### **Conclusion**

Mike Stem is to be commended for his courage in stepping forward. Too often, our government lets its people down. But for employees like Mike Stem, this investigation with its conclusions and recommendations would never have occurred.

As noted at the outset, the second section concerning the improper use of public resources for a private purpose will be issued in early November, 2017.

Thank you again for trusting me and my team with this investigation. I am available to respond to any questions or requests for elaboration that the Commission may wish to pose.

Respectfully,



Scott White