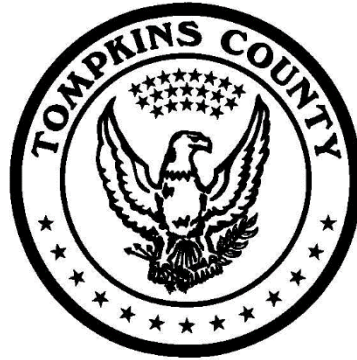


# COUNTY OF TOMPKINS



## ETHICS ADVISORY BOARD

ADVISORY OPINION IN RESPONSE TO THE MAY 4, 2022  
COMPLAINT OF CITY OF ITHACA COMMON COUNCIL  
MEMBER CYNTHIA BROCK

## TABLE OF CONTENTS

	<u>Page</u>
PREFACE.....	1
I. INTRODUCTION .....	1
II. EXECUTIVE SUMMARY .....	3
III. CHRONOLOGY .....	6
IV. FINDINGS, CONCLUSIONS & RECOMMENDATIONS .....	7
Question 1 .....	7
Question 2 .....	14
Question 3 .....	17
Question 4 .....	20
Question 5 .....	20
Question 6 .....	26
Question 7 .....	32
Question 8 .....	42
V. CONCLUSION.....	42
VI. APPENDIX OF REFERENCES .....	44

## **PREFACE**

Section 808 of the General Municipal Law governs the boards of ethics established by the respective counties in the State of New York. The statute provides in pertinent part that the board shall render advisory opinions to officers and employees of municipalities within the county with respect to this article and any code of ethics adopted pursuant thereto. Such advisory opinions, shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board may prescribe. General Municipal Law §808(2). The county board of ethics shall not act with respect to the officers of a municipality located within such county or agency thereof, where such municipality has established its own board of ethics. General Municipal Law § 808(4).

In accordance with that statute, Tompkins County established the Tompkins County Ethics Advisory Board (“TCEAB”). Under the Tompkins County Ethics Code, the TCEAB consists of five (5) people appointed by the Tompkins County Legislature. The Tompkins County Ethics Code requires that one of the members of the TCEAB is a member of the County Legislature. However, none of the other four (4) members may be an elected or appointed official of Tompkins County. These other four (4) members of the TCEAB serve as volunteers.

The City of Ithaca adopted a revised Code of Ethics in 1993. Chapter 8 of the City Code provides the authority for the creation of an ethics advisory commission to review and consider ethics complaints. However, the City has not adopted such legislation or created an ethics advisory board or commission. In the absence of a City ethics advisory board or commission, TCEAB is legally required to act with respect to ethics complaints against the officers and employees of the City because it is located within Tompkins County. General Municipal Law § 808(4). Under New York law, the TCEAB is further obligated to “receive, review and hear” all signed complaints alleging ethical violations and render advisory opinions. This necessarily involves a fact-finding and investigative process of the allegations and all related issues. TCEAB then determines if the complaint has merit and if there have been any violations of ethical standards and/or conflicts of interest.

## **I. INTRODUCTION**

After the murder of George Floyd and in response to the Governor’s Executive Order 203 in June 2020, the City and County evaluation of the public safety system in our community has been a reasonable and necessary activity. This Advisory Opinion focuses only on the processes used in furtherance of this effort and does not address the substance of the Reimagining Public Safety Proposal. No other inferences should be drawn.

On or about May 4, 2022, the TCEAB received a written complaint from Ithaca Alderperson Cynthia L. Brock. Since the City has not established an ethics advisory board or commission, the complaint was referred to the TCEAB, which was legally mandated to perform an investigation of the allegations. The TCEAB actively engaged in this investigation for the past

eleven (11) months and expended significant time, energy and resources to complete its investigation, despite several unnecessary obstacles and obstructions.

Essentially, the TCEAB was legally obligated to serve the City in this capacity. As such, there should have been a clear effort by the City administrators and elected officials to support and cooperate with the inquiry. Unfortunately, despite repeated efforts to speak with City staff and elected officials, the clear response from the City's leadership, as is shown in the following pages, was adversarial.<sup>1</sup> While there was a limited response from the City, the TCEAB was denied access to most requested and relevant documents. Furthermore, multiple requests by the TCEAB to interview those in City government, most of whom were involved in the Reimagining Public Safety ("RPS") process were repeatedly ignored. An additional barrier to a thorough review was the City's failure to publish Common Council and Committee minutes throughout the period of the investigatory review. Consequently, this report is less comprehensive than the TCEAB could have produced with even modest cooperation from the City.<sup>2</sup> The City Attorney's extensive jurisdictional objections, assertions of privilege, refusal to produce, and in some cases attempts to mislead, appear purposefully designed to obstruct any meaningful exploration of the allegations within the complaint.<sup>3</sup> The City Attorney has not responded to our last letter of December 19, 2022 seeking a good-faith resolution to permit the TCEAB to perform its legally mandated investigation.. As a direct consequence of the City's failure or refusal to provide necessary documents and information, and despite repeated warnings to the City Attorney, the TCEAB was forced to reach its findings based on upon information obtained from other sources and several adverse inferences were taken against the City, its officials, and employees. An adverse inference

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<sup>1</sup> See letters to Faith Vavra, Laura Lewis, Robert Cantelmo, and Aaron Lavine all dated June 21, 2022; e-mail to Acting Mayor Laura Lewis dated July 5, 2022; letters to Jorge DeFendini, Ducson Nguyen, Cynthia Brock, Jeffrey Barken, and George McGonigal, all dated October 7, 2022; letters to Aaron Lavine dated July 1, 2022, August 2, 2022, September 7, 2022, October 12, 2022, November 10, 2022, December 14, 2022, December 19, 2022; and letters from the City Attorney to the EAB dated July 1, 2022, August 17, 2022, August 31, 2022, September 22, 2022, November 2, 2022, and December 3, 2022. The EAB engaged in extended internal discussions as to how we might be able to obtain City cooperation. Ultimately, in the face of the City Attorney's claim that he represented the City employees, and was apparently directing them to not appear, the EAB determined that further requests would be fruitless.

<sup>2</sup> While perhaps not intentional or directed towards thwarting this investigation, the failure of the City to maintain on-line records of its meeting, agendas, minutes, or video recordings, lent an opaque quality to its activities in general, and made the research into the issues discussed here more difficult.

<sup>3</sup> While the City did not cooperate with this investigation, it did commission and use approximately \$70,000 of taxpayer funds for its own report to be prepared, "City of Ithaca Reimagining Public Safety Investigation Report" by a Syracuse, New York lawyer, Kristen E. Smith, dated December 7, 2022. While carefully making no findings of any ethical violations, the Smith Report actually does provide factual information relevant to our inquiry that we were otherwise unable to obtain from the City. Particularly, in the EAB interview with Svante Myrick, he indicated that he was unaware of any factually inaccurate information, although he also stated that he disagreed with some of the conclusions. This Report is cited as the Smith Report.

permits a finder of fact to conclude that information was not produced because it would be unfavorable to the person or entity from which it was requested.

Furthermore, the City's failure and/or refusal to cooperate in this investigation has thwarted the intended purpose behind the City Code of Ethics: ensuring that ethical issues are identified, learned from, and addressed going forward. While City employees and officials may feel territorial, this investigation is clearly a service to its citizens, not the elected and appointed leaders. Residents of the City should have confidence that their government supports ethics in substance, rather than just in form. While communicated through the City Attorney, it is unclear if his efforts to obstruct this investigation represent the policy of the current Mayor and Common Council or have been taken independently without their review or approval.<sup>4</sup> To avoid this dynamic in the future, and in furtherance of the public interest, an obvious recommendation is for the City to form its own ethics advisory board or commission and empower such a board with sufficient independent authority to provide effective oversight of the City Code of Ethics.

Conversely, the TCEAB wishes to note that during the investigation, it received detailed and thoughtful responses from a variety of sources including Karen Yearwood, Eric Rosario, Svante Myrick, Lisa Holmes, Anke Wessels, Laura Branca, the Park Foundation, the Center for Policing Equity, and Matrix Consulting, together with information from other documentary sources. This Advisory Opinion also encompassed an inquiry into the conduct of the County. The TCEAB received cooperation without objection from current County leadership.

## **II. EXECUTIVE SUMMARY AND FINDINGS**

Based upon the documents, evidence and information obtained and otherwise provided to it, the TCEAB, makes the following findings:

- A violation by the City of Ithaca of its Procurement Policy in retaining the Center for Policing Equity, Matrix Consulting, and Understory, without the required review.
- A violation by the County of Tompkins of its Procurement Policy in retaining the Center for Policing Equity without the required review.
- A violation by Svante Myrick of the City of Ithaca conflict of interest policy in receiving direct and indirect benefits from an organization with interests in City government.
- A violation by Svante Myrick of the City of Ithaca requirement to disclose conflicts of interest in or with this outside organization.
- The appearance of a violation by Svante Myrick of the City of Ithaca prohibition against receiving compensation and other benefits from an outside organization which may have compromised his ability to make impartial judgments solely in the public interest of the City.

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<sup>4</sup> *It should be noted that one Common Council member, Cynthia Brock, brought forth this complaint and cooperated with the inquiry. She further offered that she was not aware of any direction from the Common Council to the City Attorney regarding how he should respond to this investigation, and to her knowledge, his actions were taken independently of the Common Council. The current Mayor, Laura Lewis, did not appear or otherwise cooperate. As a result, it is unknown whether she authorized the City Attorney's actions.*

- The appearance of a violation by Svante Myrick of the City of Ithaca prohibition against using the position of Mayor for purposes of career advancement with a third party.
- The appearance of a violation by Svante Myrick of the City of Ithaca prohibition against receiving compensation in exchange for services to be rendered in City matters.
- The appearance of a violation by Svante Myrick of the City of Ithaca requirements to maintain the confidentiality of City matters subject to confidentiality.
- No violation of the City Code of Ethics by Working Group Co-Chair Eric Rosario.
- No violation of the City Code of Ethics by Working Group Co-Chair Karen Yearwood.
- No violation of the City Code of Ethics by the volunteer members of the City Working Group.

To the extent the following organizations could be construed as subject to the City of Ithaca Code of Ethics, the TCEAB makes the following findings:

- No violation of the City Code of Ethics by the Park Foundation.
- No violation of the City Code of Ethics by the Center for Transformative Action.
- No violation of the City Code of Ethics by the Dorothy Cotton Institute.

The TCEAB lacks sufficient information to reach determinations regarding the conduct of the Center for Policing Equity or Matrix Consulting. Therefore, no inferences other than what may be stated herein should be drawn regarding the findings of the TCEAB.

Retention of the Center for Policing Equity (“CPE”) by the City and County indicates a breach of their respective procurement policies. These procurement policies are intended to facilitate provision of services within ethical boundaries. CPE’s offer to provide services without charge led to retention of the consultant without any formal review. No conflict of interest analysis was performed, and no consideration given to whether CPE might have its own agenda or special interests. The retention of CPE in this manner occurred largely through the actions of the former Mayor, together with the acquiescence of the County, and implicate the ethical provisions of both the City and County Procurement Policies. Both governments are advised to assess their current policies to address the issue of large or politically sensitive goods and services proposed to be donated or provided to the government without charge.

The scope of services provided by CPE was undefined for almost the first year of its engagement and remained ambiguous thereafter. For example, it appears that CPE did not just participate in, but controlled the decision to retain a second consultant, Matrix Consulting, to advise the City Working Group charged with examining the Ithaca Police Department. Further, the City disclosed certain non-public information to these consultants without agreements in place to address issues of confidentiality or ownership. Much like the decision to compensate Working Group members, retaining CPE without a documented review of qualifications and appropriateness for its services invite criticism. There is a potential conflict of interest in having a consultant provide services where it may be pursuing an independent policy agenda or its own special interests. The City’s commissioned investigation, the Smith Report, identifies eight (8) areas where CPE participated, and where inappropriate influence could have occurred. Given the services donated by CPE were valued in the hundreds of thousands of dollars and were provided for free, only enhances the suspicion. However, in reviewing the redacted meeting notes from the

Working Group, the TCEAB is unable to categorically determine the extent to which any improper influence occurred. The Co-Chairs of the Working Group stated there was no improper influence by CPE in its work, and the Working Group was not improperly influenced. There is no evidence before the CEAB to suggest otherwise.

The most significant area of inquiry for the TCEAB involves the former Mayor Svante Myrick's activity in separate employment at a not-for-profit organization, People For the American Way ("PFAW"). As part of his employment with PFAW (while simultaneously serving as Mayor), Mr. Myrick was involved in a paid lobbying effort supporting the adoption of the Working Group recommendations. He lent his name to fundraising efforts to support the lobbying using his title of Mayor. During this lobbying, Mr. Myrick shared internal City emails with employees of PFAW. It also appears Mr. Myrick shared information he received regarding the ongoing activities of the Working Group. Mr. Myrick received money in the form of his salary at PFAW and was also rewarded with a promotion to Executive Director during the same time he was fundraising for the PFAW lobbying and serving as Mayor. In addition, during this dual employment, Mr. Myrick received national press coverage regarding his role in the RPS process. His police reform efforts as Mayor are referred to in the announcement of his promotion at PFAW. Further issues arise as there was no public disclosure of these outside activities until after his resignation as Mayor. Mr. Myrick's City Annual Financial Disclosure forms do not identify his involvement with this public policy lobbying undertaking at PFAW. Further, Mr. Myrick made no public statement to explain his dual employment and public policy activities.

While Mr. Myrick provided a response alleging the mere alignment between the two organizations' (the City and PFAW) policy goals somehow eliminated any conflict of interest, the TCEAB disagrees. General alignment on policy goals is not the test of whether an ethics violation has occurred, and in this case his declaration is entirely self-serving. No government employee and/or elected official can receive compensation from an outside entity which has an interest in forming the public policy of that government. Further, a government employee and/or elected official must maintain independent judgment and cannot place themselves within the financial control or influence of an outside organization interested in matters of public policy. In this instance, the TCEAB finds that Mr. Myrick's conduct while Mayor constitutes a clear violation of the City Code of Ethics related to: (a) conflicts of interest; (b) failure to disclose; and (c) the receipt of improper benefits in exchange for such violations.<sup>5</sup>

Beyond the direct conduct of Mr. Myrick, much of the substance examined by the TCEAB regarded the lack of transparency in actions taken to form and operate the Working Group. Decisions were made to provide compensation to Working Group members without any public discussion or announcement regarding the solicitation of participants. With hindsight, it is easy to understand how proceeding in this manner naturally invited criticism. The process used for a

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<sup>5</sup> *While this report necessarily focuses on the actions of the former Mayor, he did not operate in a vacuum. There appears to have been a broad lack of visibility into and oversight of his activities by the Common Council. In hindsight, a more demanding and inquisitive Common Council might have prevented some, if not all, of these violations from occurring. To the extent City staff were aware of his actions, their roles, including that of the City Attorney, appeared to passively validate and enable rather than restrict the ethical violations.*

public policy initiative as complicated and socially fraught as RPS could be reasonably expected to generate scrutiny in the best of circumstances. Deciding to pay members who would otherwise typically act in a volunteer capacity required disclosure and explanation in advance. Unfortunately, that did not occur. The TCEAB recommends the City provide clarity as to the status of volunteers assisting the City, including whether they are intended to act as City Officials and, if so, a process needs to be developed to orient them to the City Code of Ethics.

However, the TCEAB did not find any evidence that the local philanthropic organizations, which arranged for funding compensation to the Working Group members, did so with any ill or improper intent. The evidence before the TCEAB establishes there was no effort by these philanthropic organizations to influence the conduct of the Working Group or the ultimate outcome of their work. We find that affirmative efforts were made by these organizations to ensure they had no influence over the membership, process, or decisions of the groups. All evidence before the TCEAB demonstrates the Working Group was free to deliberate and arrive at conclusions without input from the Center for Transformative Action, the Dorothy Cotton Institute, or the Park Foundation.

Similarly, the proposed payments to the Working Group Co-Chairs, as promised by former Mayor Myrick did not appear to influence the conduct or decisions of those individuals. We offer no opinion as to whether the City should have paid the Co-Chairs from City funds in order to satisfy the then Mayor's improper personal commitments. To the extent that ethical lapses have been identified, there is no evidence before the TCEAB that any of those actions were intentional. However, as a best practice, providing clarity as to the Mayor's individual authority to commit and spend public funds would be a useful step going forward. Further, setting policy regarding City compensation of advisory board participants should be done within the public view.

### **III. CHRONOLOGY**

- Governor's Executive Order 203: June 12, 2020
- Retention of the Center for Policing Equity: formally announced September 11, 2020
- Joint City /County collaboration announced: September 16, 2020
- Formation of joint City/County working groups to examine policing issues: October 2020 to January 2021
- Preparation of the Initial Report "Public Safety Reimagined: February 22, 2021
- County Resolution setting RPS goals, March 30, 2021
- City Resolution setting RPS goals including the decision to form a Working Group to consider changes to the IPD, March 31, 2021
- Working Group Co-Chair Eric Rosario recruited: April/May 2021
- Scope of Work Document executed by City with CPE: June 7, 2021
- Announcement of the Working Group Members: June 24, 2021
- Grant application submitted: July 12, 2021
- Working Group Co-Chair Karen Yearwood recruited: July 21, 2021
- Working Group meetings: July 21, 2021, to January 24, 2022
- Grant approved: September 15, 2021
- Availability of payment announced to Working Group members: October 21, 2021



- Presentation of the Working Group Report, “Implementing the City of Ithaca’s New Public Safety Agency: February 23, 2022
- Cynthia Brock complaint letter: April 12, 2022
- Cynthia Brock supplement letter to her complaint: May 4, 2022

#### **IV. FINDINGS AND CONCLUSION**

For convenience, this report is structured using the specific allegations and questions posed to the Ethics Advisory Board from the written complaint submitted by Alderperson Cynthia Brock.

#### **QUESTION 1**

**The conduct and appropriateness of former Mayor of the City of Ithaca Svante Myrick, and his designees, resulting in possible misappropriation of municipal funds in the promise of \$10,000 each to City RPS working group Co-Chairs for their services. This appropriation has not been presented, discussed, or approved in advance by the Common Council either by Resolution or in the City Budget.**

The Question before the EAB is whether Svante Myrick’s conduct, as Mayor by promising a payment to the Working Group Co-Chairs from City funds, and the Working Group members receiving third-party payments from the Dorothy Cotton Institute violated the City Code of Ethics.<sup>6</sup> It is clear that some members of the Working Group were offered and accepted money.

The relevant City Ethics Code Sections necessary to evaluate this question include Section 55-5 (**Gifts**) of the City Ethics Code which prohibits a “city employee or city official” from directly or indirectly soliciting, accepting, or receiving any gift having a value of more than \$75, under circumstances where it can be reasonably inferred that the gift was intended to (or could be reasonably expected to) influence the official or employee to act or not act in a matter.

In addition, Section 55-7 of the City Ethics Code, entitled **Required Conduct respecting actual and potential conflicts of interest**, identifies conflicts which can arise from specific circumstances relevant here:

- a. those that compromise a city official or city employee’s ability to make impartial judgments;
- b. where a city official or city employee provides compensation to someone, he or she has the power to appoint; and

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<sup>6</sup> *As a threshold matter, there was some ambiguity as to whether the Mayor intended to also make payments from City funds to the Co-Chairs. In the written response received from Svante Myrick, he indicates that the source of funds was the grant from the Park Foundation but does not address seeking a comparable amount for the Co-Chairs from City funds. However, in his interview, as well as the responses from several other sources, including the Smith Report and discussion at the City Administration Committee meeting of April 27, 2022, indicate that the Mayor intended to make a payment from City funds as well.*

- c. where compensation is dependent or contingent upon a party receiving compensation reaching a particular result.

The EAB finds that Working Group members were City Officials and, as such, required to follow the City Code of Ethics.<sup>7</sup> The City Ethics Code provides a broad definition of “City Official” as “any person, other than a city employee, appointed to any position in the city government.” We conclude that the Co-Chairs and members of the Working Group appointed by the City qualify as City Officials. Any alternative interpretation, where the participants had no connection to City government or responsibility to conform to ethical rules while formally helping to create City policy, is untenable from both a legal and logical perspective. As such, regardless of whether they were properly advised or oriented to their status as City Officials, the Working Group members are individuals covered by and subject to the City Ethics Code.<sup>8</sup>

While advisors to the City (and County) who serve on boards are typically unpaid, it is not necessarily illegal or unethical to provide compensation for such services. In normal and customary practice, governments pay individuals and companies for services all the time. While there is no history of paying advisory board members who provide public policy recommendations to the City (or the County), either government could decide to do so without necessarily involving an ethical violation. Issues arise under the City Code of Ethics in the event government assets are gifted, or the payments were intended to improperly influence the person’s actions. Therefore, our examination requires an analysis of both the nature of the relationship between the City and Working Group members, and the purpose behind the payments.

The members were selected by the Mayor and the formation of the Working Group was announced in June of 2021.<sup>9</sup> There is no indication of any advertising or an open application invitation announcing the ability to participate. The Common Council did not consider an alternative option of compensating the Working Group at the time. Because the City lacks a policy of paying people who serve on advisory boards and committees, this singular decision to provide payment to chosen individuals implies gifting. The evidence before the TCEAB indicates the

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<sup>7</sup> *On March 31, 2021, the Common Council resolved to form the Working Group and delegated the appointment authority to the Mayor. Smith Report Page 16. We recognize that the conclusion of the City sponsored investigation is that the participants were not City Officials, relying upon legal decisions related to City Officers. However, assuming this to be the case, a question then arises as to the basis for, and legitimacy of the Report issued by the Working Group.*

<sup>8</sup> *Several of the respondents (Anke Wessels, Eric Rosario, and Karen Yearwood), made the point that participants in the Working Group were not informed that they would become City Officials subject to the Code of Ethics. Anke writes “They weren’t oriented, required to sign forms, or given the rules of conduct standard when non-City employees agree to serve as City Officials.” This appears to be the case, and we realize leaves these civic volunteers in a difficult position. In her interview with the EAB, Cynthia Brock described an environment of intermittent and inadequate training on the Code of Ethics, including training on gifting and conflicts of interest.*

<sup>9</sup> *Implementing the City of Ithaca’s New Public Safety Agency, Page 2.*

Working Group members agreed to participate as volunteers without any promise of payment.<sup>10</sup> The Working Group commenced meeting in July 2021 and continued to do so for several months before the concept of payment ever arose. Therefore, the payments cannot be seen as an encouragement to participate. There is no indication that, other than the Co-Chairs, the members were presented with or executed contracts with the City or had specific expectations to continue as Working group members.<sup>11</sup> Nothing in this scenario supports an assertion that any Working Group member had a legal claim to these payments. Based on this evidence, it is difficult to characterize the payments as compensation for services. Instead, the payments are more easily categorized as gifts to the Working Group members.

Alternatively, the payments could be interpreted as compensation for services rendered to the City. In response to our information requests, we received answers which support this conclusion. In his response, the former Mayor states:

At that time, the City was grappling with the inherent unfairness of constantly requesting that individuals from marginalized communities provide volunteer services to the City for free. This issue was magnified by the RPS initiative, which required hundreds of hours of time from community volunteers, a large portion of which were from marginalized communities. As a result, the decision was made that, like members of the Ithaca Police Department and other City and County staff that were compensated for their time participating in the RPS initiative, the C0-

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<sup>10</sup> *The Mayor had a direct conversation with Eric Rosario in which an offer of payment was made in July of 2021. In an interview with the EAB, Karen Yearwood stated that she learned about the potential payments from Eric Rosario in late July or early August of 2021. She did not have any direct conversation with Svante Myrick. It appears all of the members learned that money would be provided when it was announced at the October 14, 2021, Working Group meeting. Smith Report Exhibit 18. Around December of 2021, Yearwood learned from Eric Rosario that there might be another \$10K coming from the City. Working Group members may also have been informed of the payments through an e-mail from Schelley Michell-Nunn dated October 2, 2021. Smith Report Exhibit 16.*

<sup>11</sup> *In the response from counsel for the Co-Chairs, it appears that they received draft written agreements from the City formalizing their appointments. However, their attorney further states that the agreements were not executed, at least by the City. Eric Rosario remembers receiving a draft agreement in late 2021, which he signed in March of 2022. While the City Attorney denied that any agreements existed at a City Administration Committee meeting on April 27<sup>th</sup>, 2022, at that same meeting, Schelley Michell-Nunn clarified that agreements were prepared, but not executed. We do not know whether other Working Group members received agreements, and no agreements between the City and the Working Group, signed or unsigned, were produced by the City. There are some indications that the City and the Dorothy Cotton Institute (“DCI”) exchanged information to track attendance at meetings, but that information has not been produced. Karen Yearwood and Eric Rosario indicated that they did not keep records of time spent on this work.*

chairs and members of the RPS Working Group, as well as members of the subcommittees, should likewise be compensated for their time and input....<sup>12</sup>

The Smith Report describes a series of missteps where the City intended to have legal agreements, but the contracts “fell through the cracks.” The Smith Report (Pages 6-7) claims that if the contracts had not been forgotten, there would have been an approval process with review by the City Attorney, City Controller, and possibly the Chair of the City Administration Committee. In his interview with the TCEAB, Mr. Myrick confirmed that this review process should have occurred.<sup>13</sup> Because there was no actual review, it is difficult to rely on this information to support the claim that the payments were intended as compensation, rather than gifts.

Laura Branca from the Dorothy Cotton Institute (“DCI”) makes a similar claim that “[T]he purpose of the grant was to provide honoraria for community members from marginalized and minoritized groups to fully participate on the RPS Working Group.” Further, Ms. Branca and Anke Wessels from the Center for Transformative Action (“CTA”) provide descriptions of the efforts they made to estimate the amount of time necessary to participate on the Working Group, and the appropriate compensation for doing so.<sup>14</sup>

In its written response, CTA referred to guidelines from the United States Housing and Urban Development Department.<sup>15</sup> Further, DCI refers to the payments as “honoraria.” A dictionary definition of honoraria is “a payment in recognition of acts or professional services for which custom or propriety forbid a price to be set.” While characterizing the payment as “honoraria” does not necessarily make it so, the term reflects the mindset of the DCI in offering

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<sup>12</sup> *While the former Mayor uses the passive tense (“a decision was made”) failing to identify who made the decision, it appears clear that Myrick was involved. The Smith Report indicates that Schelley Michell-Nunn was tasked with processing the paperwork to facilitate the payments. Smith Report Page 6. It is difficult to see how she could have received this direction from anyone other than the former Mayor. As a result, it is reasonable to infer that the Mayor made the decision.*

<sup>13</sup> *It is hard to know what to make of this claim of mistake. While in the Smith Report blame in large measure is placed upon Schelley Michell-Nunn, this seems unfair. While beyond the scope of this ethics inquiry, if this scenario is to be believed, there would have been a notably casual approach to governing systems in the City, with the Mayor, the City Attorney, City Controller, and the Common Council members who served on the Working Group either absent or unaware of the need for a review and approval. Given the public attention and importance given to the RPS effort, some minimal attention would have been expected, beyond sole reliance upon Schelley Michell-Nunn.*

<sup>14</sup> *Laura Branca indicated that with the help of Schelley Michell-Nunn, she tracked attendance (but not participation) at Working Group meetings to correspond to payments.*

<sup>15</sup> *Office of Child Support Enforcement, U.S. Department of Health and Human Services, Jan. 2022; Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Dec. 2021.*

the money.<sup>16</sup> In this sense, CTA and DCI might have intended the payments to be compensation, even though structured and delivered as gifts.

Moreover, in the response received from the former Mayor, he stated the payments “were provided purely to compensate these individuals for their time and the services provided in connection with the RPS initiative.” In his interviews with the TCEAB, Mr. Myrick indicated the payments were also intended to account for poverty and race as barriers to participation. In the letter from Ms. Branca at DCI, she states her organization “decided to base honoraria amounts on the number of meetings” a Working Group member attended, and the Co-Chairs at \$10,000 apiece. She continues in regard to the Co-Chairs, stating: “[T]his figure was 50% of their assumed fee, which at the full rate would have been within range of equivalent compensation provided by the City for similar facilitation work.” Efforts to determine the value support the conclusion that the payments were intended to compensate for services.

Unfortunately, the City failed or refused to provide any information indicating an attempt at that time to quantify the value of the services provided by Working Group members. The Working Group members received these pass-through payments without any real review or scrutiny by the City. The fact that the City received the benefit of the Working Group services creates at least the appearance of a donation or gifts to the City, even though received by the Working Group members. Further clouding the issue, the City Attorney in his August 30, 2022, response to the TCEAB implies that no attempt to value the services was ever necessary, stating the following:

25. Did the City receive any award, contribution, donation, endowment, grant, or other funding from the Dorothy Cotton Institute and/or the Center for Transformative Action with respect to the RPS initiative? If so, the amount.  
RESPONSE: No.

The City Attorney provided similar responses to Questions 22-29, so it is unlikely this was an erroneous response. Notably, his responses are wholly inconsistent with the established facts presented by Mr. Myrick, Ms. Branca, Mr. Rosario, and Ms. Yearwood.<sup>17</sup> One possible interpretation is that the City Attorney contends that because the payments went directly to the Working Group members, and did not pass through City accounts, there was no award or funding from DCI or CTA. In his written response, Mr. Myrick claims that “unbeknownst to the City, rather than these funds being provided to the City and then paid to participants via the disbursement procedure outlined above, it appears the funds went directly to participants.”<sup>18</sup> In

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<sup>16</sup> Anke Wessels specifically requested that we note in our report that participating City and County employees were compensated through salary, and she believes that providing some similar compensation to the other participants was justified.

<sup>17</sup> The Smith Report discloses that the City Attorney sent a letter in May of 2022 to the Working Group members “asking them to return payments to the funder to avoid a violation of the City Code of Ethics.” It is difficult to reconcile the aforementioned request with the position that the City was not involved. Smith Report Page 10.

<sup>18</sup> Further, in order to make the payments, the CTA used independent contractor agreements for the Co-Chairs that contained standard language about ownership of work product. However, both

interviews with the TCEAB, Ms. Branca and Ms. Wessels both stated the grant funds were always intended to go to the individuals and had not been structured to channel through the City. Therefore, based on that evidence, making the payments to the individuals directly, rather than through the City was not an alleged “administrative error”.

If, as the City Attorney contends there was no City involvement, then the payments must be construed as gifts. A grant application was made on behalf of the City by DCI and CTA to the Park Foundation. The Working Group Co-Chairs informed the Working Group members on October 14, 2021 that they would be receiving money.<sup>19</sup> The payments were made to the Working Group members with the intent to pay them in their capacity as Working Group members. All involved are in agreement that the money was related to their work for the City. For these reasons, the City Attorney’s responses to our questions seem, at best, confusing and disobliging. For our purposes, whether the money passed through City accounts does not sanitize the arrangement or talismanically transform these payments to gifts.

A review of the meeting notes provided by the CPE reveal that the Working Group held many meetings, both as a whole committee and in subcommittees. The minutes show detailed discussions of the matters at issue. There is no dispute the Working Group members invested significant effort in the process and engaged in spirited debate.<sup>20</sup> Putting aside the review of the process which led to the payments, we find that the Working Group members acted in bona fide good faith and fully intended to provide a valuable public contribution to the community.

The analysis is complicated by the fact the decision to provide payment was made after the Working Group began its work, the decision was not announced to the public, or used to recruit participants. A clear purpose of making sure every Working Group participant was equitably compensated for their work, not just public employees, was fulfilled by the payments. However, another stated intent, that of addressing the financial barrier many people have in participating in local government, would call for some type of advertisement and invitation to potential participants. That did not occur. Here, the Mayor had already selected the Working Group members, some of whom perhaps did not have the financial barriers described. Because of the conflicting evidence, we are unable to definitively conclude whether the payments should be characterized as gifts or compensation.

To the extent that payments were intended as gifts to the Working Group members, the analysis must turn to whether there was any inappropriate influence as a result. The City Ethics Code connects a gift with an intention to influence a recipient, in this case the two Co-Chairs and other Working Group members. Presumably, the parties which could attempt to exert influence in this situation were the former Mayor or the grantors.

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*Laura Branca and Anke Wessels stated that no information or “work product” was shared with CTA or DCI or was intended to be shared. See Also Smith Report Exhibits 9 and 19.*

<sup>19</sup> *Smith Report Page 13.*

<sup>20</sup> *See, WHCU radio interview with Working Group member and Police Benevolent Association President Officer Tom Condzella, March 8, 2022.*

It is undisputed that Mr. Myrick, as Mayor, promised payment to the Co-Chairs. There is no evidence that Ms. Yearwood requested or otherwise solicited a payment. Mr. Rosario denies requesting a payment. However, the former Mayor claims that Mr. Rosario requested payment, suggesting this is where the idea arose.<sup>21</sup> However, in the written response submitted on behalf of Mr. Rosario, it appears his name was placed on a draft City Grant application, but there is no evidence the draft grant was submitted. The Smith Report makes clear that some documentation originated from the City to support a request for funding.<sup>22</sup> We have no evidence the grant application was reviewed and/or approved by the Common Council, or that Alderpersons were aware of the grant request. There is no evidence the grant application was publicly announced. Further, we have received no proof that there was a public announcement of the grant award. CTA provided a grant application which it prepared and submitted to the Park Foundation and was subsequently approved. There is no evidence Mr. Rosario played any role in the actual grant.

Based on the evidence and information before the EAB, we conclude that, while perhaps unintended, the lack of City transparency surrounding this grant raises at least questions as to intent. The payments from this grant could reasonably be interpreted as an indirect attempt by the then Mayor to influence the Working Group. Given that the payments were entirely outside of City control reduces this possibility. Similarly, there is no evidence the then Mayor attempted to influence any of the thirty-five (35) participants of the Working Group. Since the Mayor selected the Working Group members, it was likely that at least some of the members were chosen because of their previously stated positions on RPS.

There is no evidence that the Park Foundation, DCI or CTA had any direct participation in the selection of Working Group members, or the activities of the Working Group. In interviews with the TCEAB, Ms. Branca and Ms. Wessels adamantly denied any involvement with the substantive activities of the Working Group (other than processing the paperwork related to the payments) and detailed the steps they each took from the outset to avoid such influence.<sup>23</sup> It is our conclusion that no such attempts to influence occurred.

Further, because the payments were not announced at the outset, there could have been no improper influence until the possibility of payments was announced in October 2021. While the

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<sup>21</sup> *However, the former Mayor stated that Rosario did make a request for payment, as well as asking for appointment of a Co-Chair, and the use of CPE. “According to Myrick, when Rosario was asked to serve, he requested compensation due to the substantial amount of work that would be required. Rosario also asked that a co-lead be appointed to share the workload. Rosario additionally requested the support of a consultant—specifically CPE.” Smith Report Page 5. See Also, Rosario e-mail of March 2, 2022 stating “I’m prepared re CPE to share my story that when Svante reached out to me, I shared that I couldn’t do this without a project manager, that I was impressed with CPE, and asked if they were available.” Smith Report Exhibit 34.*

<sup>22</sup> *While the City helped in drafting the grant application, Schelley Michell-Nunn stated that she did not believe the City could apply for the grant as it is not a 501(c) organization. It is unclear why the corporate status of the City would prevent it from applying. Smith Report Pages 8 – 9 and Exhibit 11. An incomplete draft grant application is attached as Exhibit 10 to the Smith Report.*

<sup>23</sup> *Other than processing the paperwork related to the payments.*

notes from the meetings are not determinative, there does not seem to be any significant change in the tone or substance of the discussions after October 2021. The payments were not distributed until after the completion of the Working Group, which further suggest a lack of intent to influence.<sup>24</sup> Finally, while payment was offered, not all Working Group members requested it. Therefore, for at least some, this ethical inquiry is inapplicable.

In conclusion, based on the evidence before us, we do not find any undue influence, or the intent to influence. In fact, given the chronology of payments, announcements of payments, and the work of the group, as well as information from DCI, CTA, Mr. Rosario, and Ms. Yearwood, all carefully avoided such conflicts, and developed several strategies to avoid impropriety or the appearance of impropriety.

## QUESTION 2

**The conduct and appropriateness of Myrick and/or his designee soliciting and arranging (outside of City review or regulation):**

- a. \$10,000 from the Park Foundation to pay to the co-Chairs of the City of Ithaca Working Group;**
- b. \$25,000 from the Dorothy Cotton Institute to pay:**
  - i. \$10,000 to the co-Chairs of the Ithaca Working Group, and**
  - ii. (estimated) \$12,000 to the members of the Working Group who were not employees of the City, at \$2,000 each; and**
  - iii. (estimated) \$3,000 to the subcommittee members of the Working Group who were not employees of the City, at \$500 each.**

As with the proposed payments from the City to the Working Group Co-Chairs, the payments from the Park Foundation, CTA, and DCI raise the issue whether they should be classified as compensation or gifts. This issue has been fully addressed in response to Question 1 and is incorporated by reference herein.

Having questions about these groups is indeed unfortunate. The Park Foundation, CTA, and DCI are local organizations which do much good in our community. The spreadsheet received from the Park Foundation of local funding efforts highlights the value this organization delivers to our community. These organizations wished to support the effort to reimagine public safety in our community. The organizations held a generalized desire “to help ensure that communities often left out and underrepresented . . . were not left out in this process.” The funding was meant to encourage that goal. To be clear, as stated in the discussion of Question 1, the TCEAB has no evidence before it to suggest any intent by these organizations to influence either the selection of Working Group members or their ultimate recommendations. Further, the evidence demonstrates that affirmative steps were taken to intentionally avoid this problem.

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<sup>24</sup> *Laura Branca and Anke Wessels indicated that while a couple of the Working Group members submitted requests for payment prior to the end of the process, those individuals had completed their participation.*



Beyond the matters discussed in relation to Question 1 above, there are special ethical considerations which arise because the Working Group payments were made by an outside third party. In the ordinary course, governments rely upon grant funding from many sources to help accomplish community goals. Having this financial resource is essential and entirely proper in most situations. However, grant funding typically generates clear documentation and public record of the grant and its application within the government.

Historically, volunteer advisors to the City act in an unpaid capacity. Thus, questions as to any outside compensation or influence do not arise. Because the Working Group was charged with developing a recommendation on matters of City policy, a question of potential improper outside influence unfortunately exists. As a matter of sound public policy, these payments should not have been made without clear public disclosure, and proper acceptance of the grant funds. Furthermore, given the sensitive nature of developing public policy, which utilized payments from outside groups and organizations to pay volunteers, raises appreciable speculation within our community about intent. Doing so without prior public disclosure has only increased such speculation.

The responses received from CTA and DCI are vague about whether they were directly asked to provide funding by the City or arrived at that decision independently. The consultant, CPE made various statements to City Employees in support of stipends.<sup>25</sup> Since a draft grant application was prepared by the City, it is difficult to avoid the inference that at some point there was the intent to make a solicitation.<sup>26</sup> In normal circumstances, that is what a grant application is. Unfortunately, it remains unclear how the payment decision was reached and communicated in this instance.

- Anke Wessels of CTA states that “the Dorothy Cotton Institute stepped up as a nonprofit partner to ensure that the PLEE participating in the City’s RPS working group would be acknowledged and thanked for their time, effort, and much needed expertise through financial compensation.”<sup>27</sup>
- Laura Branca states that “[I]t was then clear that the second phase of RPS would be asking for a much deeper level of commitment and time from the Working Group members than a one-time interview or one-hour focus group. Therefore, DCI submitted a new grant proposal to the Park Foundation to support community engagement in RPS which was approved in September 2021.”

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<sup>25</sup> *Smith Report Exhibits 3, 4, 5, and 7.*

<sup>26</sup> *As indicated in consideration of Question 1, the City did not provide us with its grant application, or any City resolution regarding the funds. In his written response and in an interview, Eric Rosario indicated that he recalled that his name had been placed on a grant application as a principal. He was not sure why this was done or what it might have meant.*

<sup>27</sup> *People with Lived Experience and Expertise.*

- The Park Foundation indicates that DCI approached them. Because the Park Foundation provided the funding to the CTA and DCI, it therefore claims to have had no direct involvement with the City.<sup>28</sup>
- Svante Myrick maintains “I did not solicit the Park Foundation or Dorothy Cotton Institute to donate funds to support the RPS initiative, nor did any “designee” solicit these organizations on my behalf. It is my understanding that the Park Foundation and Dorothy Cotton Institute approached the City.... As a result, the decision was made that, the co-Chairs and members of the RPS Working Group, as well as members of the subcommittees, should likewise be compensated for their time and input, and the funding offered by the Park Foundation and Dorothy Cotton Institute would be appropriate for these stipends.”
- Interestingly, the City Attorney provided the following response: “Notwithstanding the foregoing objection and response, and without waiving the foregoing objection or any other objection, respondents answer in the negative as **there was not any award, etc.**, relating to the RPS initiative. (Emphasis added).

Obviously, there were communications which resulted in the City’s decision to seek grant funding in July 2021. However, it remains unanswered who participated in the discussions, the substance of those discussions, or the person(s) who finally made the decision to apply. While Schelley Michell-Nunn purportedly drafted the initial grant application, it is unlikely she did so solely on her own initiative.<sup>29</sup> CPE may have played a part in urging compensation for the Working Group members.<sup>30</sup> Similarly, CTA and DCI appear to indicate they operated independently and did not respond to a direct request from the City. Unfortunately, the City’s vague use of the passive tense and failure to cooperate with this investigation reflects an intent to hide something.

As discussed in response to Question 1, having a City Employee or City Official solicit these organizations to make the payments with an intent to improperly influence the Working Group clearly violates Section 55-5 of the City Ethics Code. Because the idea of paying the Working Group members occurred at the City at around the same time, and the amount matches the amount promised to the Co-Chairs from the then Mayor, legitimate suspicion arises that there was, at a minimum coordination, if not solicitation. However, Ms. Branca and Ms. Wessels were adamant in their interviews that they acted on their own initiative, with the City acting independently as well.

CTA and DCI assert the failure to gain participation from individuals who are often under-resourced can lead to under-representation of groups which would be directly impacted by the

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<sup>28</sup> *We find no evidence to the contrary. A partially completed draft grant application is attached to the Smith Report as Exhibit 10.*

<sup>29</sup> *Smith Report Page 7.*

<sup>30</sup> *Smith Report Pages 7-8 and Exhibits 6 and 7.*

policy at issue. While this is a valid point, with the benefit of hindsight, it would have been better practice for the City to ensure transparency in the public discussion regarding the merits, policy, and process, of these payments.

As mentioned previously, Section 55-5 of the City Code of Ethics also addresses “circumstances in which it could reasonably be inferred that the gift was intended to influence him or her or could reasonably be expected to influence him or her in the performance of his or her official duties or was intended as a reward for any official action on his or her part.” As addressed in Question 1, all parties deny the payments were made for the purposes of influencing the Working Group members. It is significant that the payment was not disclosed until well after the Working Group members agreed to participate and had commenced work.

Again, as indicated in Question 1, while the EAB cannot fully evaluate the deliberations within the Working Group based upon the meeting notes provided, there is no evidence of any communication(s) from the grantor organizations and any members of the Working Group, or any condition placed upon them for the receipt of payment. In the case of the Co-Chairs, their public statements, as members of Black Leaders of Color (“BLOC”), before and after participating in the Working Group are consistent. Indeed, it is likely that their prior statements on public safety were a factor in the then Mayor’s decision to select them as Co-Chairs. In sum, The EAB concludes there is no evidence of any improper influence on the Working Group.

### **QUESTION 3**

**The conduct and appropriateness of members of the City Working Group being paid by a 3<sup>rd</sup> party for their participation without disclosure to the public, Council, working group members, or recusal from the process.**

In response to the last part of Question 1, the proof establishes that the offer of payments to the Co-Chairs was made without any public disclosure or Common Council approval. If, as asserted by various parties, that the intent in offering the payments was to encourage participation among members of marginalized communities, advertising the payments when the Working Group was assembled would seem to have been a necessary step. However, there was no public announcement that compensation would be offered. At an April 27, 2022, City Administration Committee meeting, Chairperson Robert Cantelmo, stated the City typically used a “long established volunteer framework” to pick Working Group members without an RFP or competitive bid process, because of the volunteer nature of the services.<sup>31</sup>

When this Ethics Complaint became public, Mr. Myrick claimed the Mayor is invested with authority to expend up to \$30,000 in City funds on a discretionary basis, implying that no review or approval was necessary. In an Ithaca Voice news article on April 29, 2022, Mr. Myrick provided an example of an unexpected expense for tires on a fire engine. He also contended that municipalities encounter unexpected expenses in the ordinary course and typically maintain money in reserve for just such occurrences, in addition to the normal ongoing contracts a municipality will make. Mr. Myrick further asserted that the Common Council would not typically be notified

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<sup>31</sup> *We have not been provided with or reviewed this “volunteer framework.”*

in such an event. However, there would almost certainly be a designated line item either within the Fire Department budget or the general City budget for the purpose of anticipating changes in the costs of City services. There is no evidence before the TCEAB that the City provides a further budgetary line to allow Mr. Myrick, as Mayor, to expend public funds on a discretionary basis.<sup>32</sup>

In his interviews with the TCEAB, Mr. Myrick provided additional information regarding how spending decisions were potentially made while he was Mayor. For example, if the spending involved a large amount of money or an unusual expense, doing so might require going back to the Common Council for approval. But often, according to Mr. Myrick, decisions to expend funds on typical items (obtaining legal advice on a simple matter), even if they might be expensive (\$100,000 for a specialized police vehicle), would not require Common Council approval. He asserted that, at times, deciding whether an expenditure required Common Council approval “was more art than science”.

Even applying Mr. Myrick’s expenditure approval process while he was Mayor, the payments to the Working Group members are not analogous to replacement of police vehicles or other standard governmental purchases. Providing payment to a select group of advisory board members potentially creates precedent for requiring payments to other advisory boards. Doing so raises significant policy implications which should rest within the province of the Common Council or at least require its consultation.

In the investigation commissioned by the City, the City Attorney and City Controller contradict the existence of discretionary spending authority by a Mayor. Instead, they assumed that because there were funds in the City Budget in the RPS line, Mr. Myrick, as Mayor, could use it for this purpose. However, evidence reveals that money was already committed elsewhere.<sup>33</sup>

When these promises of payment became public, consideration of this action was taken by the City Administration Committee of the Common Council on April 27<sup>th</sup>, 2022. One of the members, Ducson Nguyen, made a motion to pay each of the Co-Chairs \$10,000.00 from funds held in a City contingency fund. His rationale was that despite the Common Council not being advised of Mayor Myrick’s commitment to pay the Co-Chairs, the City, through the former Mayor, had made a commitment which should be honored. At that meeting, the Committee did not approve the payments and the Co-Chairs did not receive further payment from the City.

While these specific payments to the Co-Chairs were not approved, the TCEAB does not understand the legal or structural basis for the former Mayor’s belief there was an existing policy permitting him to make discretionary expenditures and/or payments, without public disclosure or Common Council approval. In the written response received from Common Council member Robert Cantelmo, he states:

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<sup>32</sup> *At the October 26, 2022, City budget meeting, City Controller Steve Thayer explained that there are no discretionary funds available to the Mayor to spend without Common Council approval, and he stated that he did not understand what the former Mayor might have been referencing.*

<sup>33</sup> *Smith Report Pages 15-16.*

“Yes, the sum of \$400,000 was budgeted in restricted contingency for the RPS initiative in a manner that would encompass payments by the City to Ms. Yearwood and Mr. Rosario, were such payments authorized. At its meeting of April 27, 2022, the City Administration Committee voted against releasing such funds from restricted contingency.”

That response suggests that Mayor Myrick may have intended to use money within the general budget line for RPS to pay the Co-Chairs. What remains unclear is how such a payment could be authorized without disclosure or approval. The former Mayor appears to contend he possessed discretionary spending authority, to include the provision of payments to individuals, without further committee or Common Council approval. As indicated above, the City Controller contradicts this contention. If the City indeed has such a policy, a clear affirmative statement would have assisted the resolution of questions before the TCEAB. Similarly, the opportunity to interview knowledgeable City Officials, which was denied the TCEAB, would also have provided clarity.

The implicit issues of gifting and undue influence raised within Question 3 have largely been addressed in the responses to Questions 1 and 2. However, the last item, recusal from the process requires attention. Consideration of recusal is necessary where an actual or potential conflict of interest arises.<sup>34</sup> City Ethics Code section 55-7 addresses conflicts of interest. Presumably, the question was submitted to inquire whether the members of the Working Group had a duty to consider conflicts of interest when it became known that they were to receive payment from the DCI, and potentially recuse themselves from participation.

As determined in response to the first two questions, there is no evidence to suggest that CTA or DCI (and the Park Foundation) exerted any undue influence on the Working Group members. The secretive and delayed disclosure of the payments might oddly buttress the lack of intent to exert pressure or influence. Under these circumstances, and the evidence before the EAB, it is difficult to identify an **actual** conflict of interest which Working Group members could have anticipated in accepting these appointments. Even when the prospect of payment arose, without an indication of a quid pro quo, an **actual** conflict does not necessarily arise in our opinion.

However, once the payments were announced, a **potential** conflict of interest arose. The promise of payment made during the Working Group activities could have possibly led to a change in behavior by, or perceptions of, a Working Group member(s). Again, there is no evidence that anyone acted to exert influence on the Working Group, or that any member altered his or her behavior in consequence. But the issue raised within Section 55-7 does not vanish- City Officials need to consider both actual and **potential** conflicts of interest.

In this instance, the Working Group members were not aware that: (a) they were City Officials subject to the Code of Ethics; (b) made aware of the Code of Ethics; or (c) otherwise

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<sup>34</sup> *New York State Comptroller Informal Opinion 95-2 to the Town of Bristol, January 24, 1995.* “We have found that members of local bodies, including planning boards, with conflicts of interest in a particular application or matter before the body, should recuse themselves from taking any actions with respect to that matter or application.”

advised as to the examination of conflicts of interest. Under these circumstances, it would be unjust to ascribe any fault to the Working Group members for continuing their work without consideration of recusal. The EAB recommends that in the future, a properly oriented and advised working group should be held to standards that would include consideration of recusal when necessary.

#### **QUESTION 4**

**Possible conflicts of interest created by the Park Foundation and Dorothy Cotton Institute;**

- a. If, by providing funding for the services provided by the members of the City of Ithaca Working Group, the donating organizations may have had any:
  - i. Influence in the selection of the members, and**
  - ii. Influence over perspectives and performance of the members themselves.****

The substance of Question 4 has been addressed in responses to Questions 1, 2, and 3.

#### **QUESTION 5**

**The appropriateness of City (and County) staff in their enforcement (or lack thereof), and interpretation of State and City procurement legislation regarding the use of unpaid services that would:**

- a. Be expected to result in legislative changes,**
- b. Impact a City (and County) department which receives Federal funding and support (see Item 13 General Purchasing Standards, City Purchasing Policy and Procedure Manual, pg. 7),**
- c. Impact agency functions, staffing, oversight, as well as have a potential impact PBA union contract, and**
- d. Potentially result in the need for one or more City referendums.**

This question raises an inquiry which extends beyond the City, to include the conduct of Tompkins County in its joint work with the City on the RPS initiative. As such, a review of this question 5 requires reference to separate City and County ethics rules, as well as procurement policies.

**a. Tompkins County Procurement**

Tompkins County maintains a Procurement Policy (06-07, last updated January 2021).<sup>35</sup> The County Procurement Policy provides a process for reviewing potential vendors for materials, goods, and services, and is intended to include purchase of Professional Services. In addition to analyzing cost, the Policy allows for use of a “best value” analysis. In Section (III) (F) (4), the Policy provides several criteria related to professional services, including:

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<sup>35</sup> *The January 2021 updates did not change the substance addressed here.*

- Indicators of probable supplier performance under the contract such as past supplier performance, the supplier’s financial resources and ability to perform, the supplier’s experience or demonstrated capability and responsibility;
- Ability to comply with state, federal, or other requirements linked to funding sources for specific projects including but not limited to MWBE participation, Section 3, Davis-Bacon, previous violation of federal or state labor standards, conflicts of interest, and equal employment opportunity;
- Business Enterprise status (e.g., DBE, MWBE, SDVBE) and/or;
- Other factors relevant to determining the best value for the County in the context of a particular purchase, including the status of the vendor as a Tompkins County based business.

The Ethics Advisory Board sought information from the former County Administrator serving at the time of the appointment of CPE. Unfortunately, the former County Administrator asserted he had a conflict of interest (the nature of which was not disclosed) which prevented him from responding.<sup>36</sup>

Despite not receiving a response from the former County Administrator, former Mayor Myrick made the following statement in his written response related to the initial agreement between the City and County:

Shortly after the kickoff event, Tompkins County Administrator Jason Molino, contacted me to express his interest in collaborating with the City and CPE in the RPS initiative so that the City and County, being the two largest law enforcement agencies in the County, could develop a comprehensive strategy to solicit feedback from community members that would serve as the basis for the recommendations ultimately set forth in the RPS Report. County administrative leaders then interviewed CPE and determined they were qualified. On September 16, 2020, the County and City officially announced the “Public Safety Reform” Collaborative.

In a response received from the current County Administrator, Lisa Holmes, who was serving as Deputy County Administrator at the time, she stated “There were no public funds provided to CPE for their involvement and as such the County did not undertake a formal procurement process, which would have involved seeking quotes or issuing an RFP for paid services.” It appears that the County had initially proceeded with the intention of using assistance from local advisors but went along with the City selection of CPE.

In an August 21, 2020 e-mail to former Mayor Myrick and a representative from CPE, then County Administrator, Jason Molino, wrote “I share this with all of you so that you are aware that there may continue to be confusion about the ways the City and County will be moving forward together. I realize we still may be playing catch up with what Svante originally started

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<sup>36</sup> *We note that the International City/County Managers Association, ICMA, Code of Ethics appears to articulate an affirmative duty for a County Administrator to cooperate in this investigation. Jason Molino is a Credentialed Manager with ICMA and, as such, subscribes to following the intent of the ICMA Code of Ethics.*

with CPE a week prior to our discussion and we haven't yet come into sync." At least to some extent, it appears that in order to proceed with a common City/County consultant, and because the services were being provided without cost, the County went along with the City selection. As a result, no formal review occurred at the County level. Further, because the services were to be provided without charge, no contracts were prepared, and as a result, no procurement review was performed.

At the end of April of 2021, the City, County and CPE prepared a scope of services memo in connection with implementation of the RPS resolutions passed by the County on March 30, 2021 and the City on March 31, 2021. A review of this memo suggests it led to the creation of the Scope of Work document signed by CPE and Mayor Myrick in June of 2021. While the County and CPE had been operating together prior to April 30, 2021, the scope of work described in the response from Lisa Holmes addresses actions going forward. It is not clear whether there was a written understanding of the CPE services to be provided before that time.

In evaluating the process which was actually followed against the provisions of County Procurement Policy, it is clear that the "best value" analysis which the County has adopted was not followed in this instance. Under these circumstances, the County received "free" services which could reasonably be construed as a gift. The County Code of Ethics provides in Section III(e)(3) that:

A County officer or employee shall not accept or receive any gifts having a value of fifty dollars (\$50) or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be expected to influence the performance of official duties or was intended as a reward for any official action.

There is absolutely no indication that any personal benefit of any kind was received by any County officer or employee.<sup>37</sup> However, there is some ambiguity whether this provision applies to gifts of services to the County generally. In this case, the issue arises within the context of allowing an outside group to participate, either directly or indirectly, in the formulation of County policy, without a thorough review of qualifications or subjecting the process to competitive alternative organizations. Given the importance of RPS and the sensitive nature of the topic, ensuring that consulting services were unbiased was a critical element of gaining broad public support for the outcomes. As a recommendation for future practice in the event "free" services are offered, the County should conduct its own independent review of qualifications and "best value" and then provide a step for approval at a public meeting. In instances where the County operates in collaboration with another municipality, a clear lesson learned is the increased importance of ensuring that both governments are satisfied that a thorough review was conducted.

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<sup>37</sup> *The County employee most directly involved with CPE, Deanna Carrithers, the County Chief Equity and Diversity Officer, after leaving County employment was hired by CPE. <https://policingequity.org/about/team/our-team/staff/deanna-carrithers>. We have no evidence as to when the discussions regarding employment occurred, and have not undertaken any inquiry regarding this employment, but do note that the hire occurred.*



**b. City of Ithaca Procurement**

The City maintains a City Purchasing Policy and Procedure Manual (last updated April 2018) which provides rules for reviewing potential vendors for materials, goods, and services. The City Attorney asserted in his August 31<sup>st</sup>, 2022 letter to the TCEAB that “None of these procurement requirements are applicable in the event goods or services are provided free of charge.” The City Attorney is correct to the extent that the City Purchasing Policy and Procedure Manual contains an exception from its requirements on page 9 for “Purchases under \$500.” The rules within the Manual on page 18 describe the necessary action for this type of purchase:

Vendor selected by Department and processed for payment on a claims voucher.  
Selection of vendor based on lowest price is encouraged.

Purchase order not required but may be necessary for certain vendors.

\*If applicable, Department enters Purchase  
Order No. into computer system and/or Purchasing Department enters purchase order.

Presumably, this exception is intended for small departmental purchases where application of the competitive bidding and other requirements contained within the Manual are not warranted from the standpoint of “operational efficiencies and economics.” Apparently, following this rationale, former Mayor Myrick retained CPE on his own initiative in the summer of 2020. He claims that:

“... in late July 2020, I contacted CPE’s co-founder and CEO, Dr. Phillip Goff, to inquire as to whether CPE would be interested in partnering with the City to assist in coordinating the RPS initiative. Dr. Goff immediately responded confirming that CPE would be happy to assist, and furthermore, that CPE could provide this assistance free.”

The City appears to have proceeded to work with CPE from this point forward without any further steps to confirm the hiring, beyond the preparation of a non-disclosure agreement. As indicated previously, no contract was prepared. We have no evidence that any other review was performed at the time of retention, such as for insurance, debarment, ownership of work product, or conflicts of interest.<sup>38</sup>

As indicated in relation to the County procurement policy discussed above, the City and County prepared a joint memo dated April 30, 2021, which outlined requested CPE services following passage of their respective RPS resolutions. There does not appear to be a written response to this request for services, or that this memo led to the creation of contracts. However, CPE continued to provide substantial services. Later, in conjunction with the formation of the City Working Group, CPE did provide a scope of services to the City which was signed on June 7,

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<sup>38</sup> *We note that this lack of review issue is compounded in the retention of the Matrix Consulting Group and Understory, in that the selection of both this data analyst and public policy consulting firm appears to have fallen entirely to CPE, with no apparent City or County involvement or approval at all.*

2021, by then Mayor Myrick and a representative of CPE. The scope of services document includes three main areas of activity in the relationship. CPE would assist with Working Group operations to support community engagement, particularly with ensuring underrepresented voices would be included. CPE would also provide administrative support to the Working Group to facilitate meetings, timelines, and report preparation. Finally, CPE would provide content expertise to support the design of an alternative response model for policing services in the City.

While the City Attorney concludes that no reference to the Purchasing Policy and Procedure Manual was necessary, there is at least one other valid interpretation. While the City Purchasing Policy and Procedure Manual is intended to address many City goals in purchasing, including those outlined on page 6 of the Manual entitled Ethics of Purchasing, there are also specific issues implicating the City Code of Ethics. Section 55-1 (A) of the City Code of Ethics provides:

That the purpose of this chapter is to establish minimum standards of conduct to help ensure that the exercise of governmental responsibilities by City of Ithaca officials and employees is free from improper influences that might cause those officials to make, promote, or hinder public decisions in order to advance their own private interests. The standards and guidelines set forth in this chapter are intended to eliminate, to the greatest extent possible, the existence of conflicts of interest pertaining to city officials and city employees in the exercise of their official duties, to minimize unwarranted suspicion that such conflicts exist and to avoid potential conflicts of interest before they arise.

Additionally, Section 55-7 (B) of the City Code of Ethics states:

City officials and city employees should avoid circumstances which compromise their ability to make impartial judgments solely in the public interest and should, to the greatest extent possible, **avoid even the appearance of conflict of interest**. No city official or city employee shall knowingly take any action or incur any obligation of any nature which is in conflict with or might reasonably tend to conflict with the proper discharge of his or her duties on behalf of the city of Ithaca. (Emphasis supplied).

The City Purchasing Policy and Procedure Manual includes consideration of issues which go beyond the lowest price. In a competitive bidding situation, the City Manual determines that the:

Award will be made to the lowest responsible bidder. The term “responsible” means: financially responsible; accountable; reliable; sufficient resources; skill; judgment; integrity; responsive; and moral worth. In deliberating the responsibility of a bidder, contractor or a sub-contractor, all contracting agencies shall give consideration to any credible evidence or reliable information regarding the guidelines set forth in Chapter 39 of the City Code.

The Manual contains an exception for the evaluation of Professional Services, recognizing that specific additional considerations are in order, stating:

Generally, professional services involve specialized expertise, use of professional judgment and/or a high degree of creativity. The individual or company must be chosen based on accountability, reliability, integrity, and moral worth. These qualifications are not necessarily found in the individual or company that offers the lowest price, and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

As can be seen, the evaluation of professional services also includes consideration of various factors other than price. The Manual provides that “[N]egotiations for all services which are not determined to fall under the RFP process shall be determined by appropriate staff of the City of Ithaca.” Because the City unilaterally restricted its response to our multiple requests for information, and specifically objected to responding to requests regarding this subject, there is no evidence that any further review took place in the retention of CPE.<sup>39</sup> Former Mayor Myrick indicated that he performed some level of review in his response, stating:

After being unable to identify local partners willing to assist in the RPS initiative, I began researching and contacting leaders of other municipalities to identify nationally recognized organizations with experience coordinating community-based police reform initiatives. The response I received, and what my research confirmed, was that the Center for Policing Equity (“CPE”) was indisputably **the** most well-regarded organization in the nation for leading community-based police reform initiatives.

In his interviews with the TCEAB, Mr. Myrick provided more information regarding the local individuals and groups, as well as national organizations, he considered for the role.<sup>40</sup> However, after a Zoom meeting with Dr. Goff and Tracie Keesee of CPE, he determined that only CPE could provide the administrative support necessary for the Ithaca RPS project. In the written response received from the County, it had initially identified three local individuals willing to

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<sup>39</sup> *Myrick indicates that because the services were to be provided free, he did not seek legislative or other approvals.” Smith Report Page 25. The City Attorney and City Controller state that they did not perform any review of CPE. Because the services were offered for free, the City Attorney did not see the need for any review. The Controller was unaware and described himself as “completely out of the loop” presumably because there was no financial element. Smith Report Pages 27-28.*

<sup>40</sup> *Locally, he recalled speaking with Cal Walker, Kirby Edmunds and his wife, and perhaps the Community Dispute Resolution Council for the role. Nationally, he stated that he spoke with LEAP, the Law Enforcement Action Partnership, and LEAD, the Law Enforcement Assisted Diversion National Support Bureau. No physical documents were provided to support this research.*

assist in facilitating the RPS process.<sup>41</sup> However, ultimately, the County agreed to use CPE. In any event, while former Mayor Myrick’s review was important, more was required for an undertaking as work-intensive, and politically sensitive as the RPS initiative. In our opinion, relying upon the exception for purchases under \$500 is inadequate under the circumstances. Use of the review process within the City Purchasing Policy and Procedure Manual would have been far more practical and productive for considering potential conflicts of interest and as stated therein, to help “[G]overn by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.”

## QUESTION 6

### **What was the scope and the role of Center for Policing Equity in City and County efforts, which were not fully discussed or disclosed?**

The retention of the Center for Policing Equity (“CPE”) is a central question raised in this ethics complaint. Because CPE began its work in Ithaca without a contract or other written description of its role and responsibilities, a complete examination of its role and involvement is not possible. This has been further frustrated by the City’s failure and refusal to cooperate with this investigation. As there was no procurement review, there was no meaningful consideration of any agenda or special interests of CPE in advance and whether it constituted a conflict of interest. Until the unsigned joint City/County Memo requesting services was prepared on April 30, 2021, and the City/CPE Scope of Work document was executed on June 7, 2021, CPE operated within parameters which were largely oral and undocumented. As a result, differing interpretations and perceptions of their involvement and participation have emerged. Even after the Scope of Work document was signed, and CPE commenced providing services to the City Working Group, the description of activities within that scope is subject to varied interpretations.<sup>42</sup>

For example, both the April memo and the June Scope of Work outline administrative and facilitation type activities intended to keep the projects moving and on topic. However, both documents also request CPE to provide content expertise. These roles are quite disparate. As an indication, within its capacity as a content expert, CPE unilaterally chose Matrix Consulting (also without charge to the City or County or any procurement review) to provide data analysis of Ithaca Police Department activity. Presumably, the Matrix Report served as the basis for the Working Group to make at least some of its substantive policy recommendations. Further, because there are two separate documents outlining the supposed services, we do not know if CPE was conducting itself within the parameters of the April memo, the June Scope of Work, or some

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<sup>41</sup> *In her interview with the TCEAB, Laura Branca disclosed that she provides facilitation services of the type involved here and has done so in the community in the past. She was not approached in this instance.*

<sup>42</sup> *In his interview with the TCEAB, the former Mayor characterized the involvement of CPE as analogous to the City receiving technical advice from a volunteer, such as the Executive Director of the Chamber of Commerce, serving on a committee. In this instance, the broad scope of authority allowed to CPE, and the actual control over the whole process that was exercised, seems somehow different in character from an individual contributing input.*

combination of both. As such, even before attempting to consider what happened in actual practice, it is difficult to make a clear assessment of what CPE was requested to do.<sup>43</sup>

Governments often employ outside groups to assist with projects similar to the RPS initiative. An independent third party can provide useful perspectives acting as subject matter experts, facilitators, or in some other capacity. In this role, a consultant may make recommendations to the government which impact several aspects of public policy. Ultimately, however, public policy needs to be determined by the elected leaders of government. A consultant should never attempt to impose its own agenda or special interests on a governmental body which retains its services.

The complaint before the TCEAB alleges exactly that; an improper role, where CPE allegedly influenced the public policy recommendations arrived at by the Working Group. If this is the case, then Section 55-7 (A) of the Code of Ethics applies, in that ceding power to an outside party to form public policy would conflict with the duty of City Officials and City Employees to act “solely in the public interest.” Similarly, Section III(a)(3) of the County Code of Ethics states that “A County officer or employee shall not use or permit the use of County resources for personal or private purposes.”

As indicated above, the Scope of Work document allocates logistical and administrative responsibilities to CPE. It further tasks CPE with providing content expertise and design of a new policing model for the City. These roles are expansively contrastive, with the content expertise and police design roles potentially encroaching into the appropriate role of the Working Group members. The City sponsored investigation relied upon eight indicators to characterize CPE involvement as “expansive”: (1) The Size of CPE’s presence; (2) CPE’s role in Project Management meetings; (3) CPE’s role in Working Group Meetings and Operations; (4) CPE’s Role in Working Group Subcommittees; (5) CPE’s Retention and Use of Subcontractors; (6) CPE’s Attempt to Broaden its Involvement; (7) CPE’s Emphasis on Confidentiality, and; (8) Ownership/Control of the Working Group’s Work Product. Smith Report Pages 31-39. Because the TCEAB was denied access to City officials, staff, and information, it is difficult to expand upon the factual findings of the Smith Report. But a glaring concern is the extent to which CPE may have attempted to or advanced its own national agenda and special interests into this local public policy process.

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<sup>43</sup> *The complaint received also notes the existence of a separate “RPS Collective Weekly Project Management Meeting” made up of City, County, and CPE staff that were apparently meeting concurrently with the Working Group. We have not received or reviewed agendas or minutes from these meetings so it is not clear what the purpose or outcome of this separate group might have been. The title of the group suggests an administrative function. However, we do not see any direct reference to this project management group in the notes of the activities of the City Working Group. As a result, we are unable to determine whether there is any relation to the ethical considerations before us that arise due to this separate meeting.*

Schelley Michell-Nunn, expressed some concerns in this regard, but also denied that CPE orchestrated the agenda.<sup>44</sup> The City Chief of Staff, Faith Vavra, indicated that CPE in some instances went to Mayor Myrick when “the City attendee’s decision on an issue did not line up with CPE’s.”<sup>45</sup> Some Working Group members described a high degree of CPE influence and control, but all of this information was provided to the TCEAB as unverified secondary and collateral sources.<sup>46</sup> In interviews with the TCEAB, Mr. Rosario and Ms. Yearwood described the role which CPE actually played in the Working Group as between being a facilitator and a content expert. They were both comfortable that CPE aided the discussions but did not guide where the Working Group members determined to go.

CPE undeniably invested a substantial amount of personnel and financial resources into its work on the Ithaca RPS initiative without receiving payment or financial remuneration. After the first year of work, CPE apparently floated the possibility of continuing, with funding coming from the City of Ithaca. In her complaint, Cynthia Brock alleges:

According to Councilmember Robert Cantelmo, Faith Vavra indicated that the Center for Policing Equity offered a contract of services to the City for work in 2022-2023 for \$700,000.

Although the City declined to provide funding in response to this request, CPE nonetheless continued to provide additional donated services. While this figure of \$700,000, is not necessarily a determinative estimate of the total value of the services provided by CPE, it nevertheless provides insight into the magnitude of donated services.<sup>47</sup> Matrix Consulting provided a series of invoices just for their services in the amount of \$47,480.00, presumably paid by CPE. A glaring question is why would CPE make such a large commitment to this project, both before and after this conversation about funding without being paid?

The complaint before us submitted a transcript of an August 26, 2021, radio interview which the Chief Executive Officer of CPE, Dr. Phillip Atiba Goff gave to WBEZ Chicago. In that interview, Dr. Goff describes a text exchange he had with Mr. Myrick:

We were in the midst of what felt like a really acute uprising, post the public lynching of George Floyd I got a text from a friend of mine, Svante Myrick, who's the Mayor in Ithaca.

He continues:

He's like, look, I don't want to just sort of paper over what's going on. I want to lead in this area. I think we've got enough support on city council and among community members that we can do something really big, what's the best thing we can do? And

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<sup>44</sup> *Smith Report Page 32-33.*

<sup>45</sup> *Smith Report Page 32.*

<sup>46</sup> *Smith Report Page 33.*

<sup>47</sup> *In the response received from the City Attorney, a figure of \$610,000.00 is referenced. August 17, 2022, letter, page 20. See also, Smith Report Exhibit 4.*

I said to him in the text was like, well, you don't need to have a police department. He said let's do it. Like, oh, okay, great.

Dr. Goff goes on to say:

They don't need to have one. I think that way. I think by that time, we were actually on the phone, but I was like, you know, I don't know if you need to have a police department. He's like, Yeah, cool. Let's make that happen.

In his interviews with the TCEAB, Mr. Myrick read from a portion of this text message exchange with Dr. Goff.<sup>48</sup> The portion he read appeared to corroborate the words used by Dr. Goff, but Mr. Myrick claimed he and Dr. Goff were somehow joking and Dr. Goff's radio interview was taken out of context and exaggerated.<sup>49</sup> As noted in response to Question 5, Mr. Myrick's written responses to the TCEAB creates confusion because it does not acknowledge that he knew Dr. Goff or was familiar with CPE prior to late July 2020. While unclear, Mr. Myrick's written submission infers he had never communicated with Dr. Goff before then. His response includes the following:

After being unable to identify local partners willing to assist in the RPS initiative, I began researching and contacting leaders of other municipalities to identify nationally recognized organizations with experience coordinating community-based police reform initiatives. The response I received, and what my research confirmed, was that the Center for Policing Equity ("CPE") was indisputably **the** most well-regarded organization in the nation for leading community-based police reform initiatives.

In his subsequent interviews with the TCEAB, Mr. Myrick clarified these divergent accounts.<sup>50</sup> He admitted he knew Dr. Goff prior to the summer of 2020, but had not thought of him or his organization until he had reached out for advice. At that point, he realized that Dr. Goff could be a useful resource for the work that would need to be done in Ithaca.

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<sup>48</sup> *In his interview, he agreed to produce the text messages. At the time of this Advisory Opinion, we have not yet received a copy of the text messages.*

<sup>49</sup> *In a letter to the City dated September 15, 2021, Dr. Goff apologizes for making the statements made in the podcast but does not deny them. Smith Report Exhibit 59.*

<sup>50</sup> *In the City sponsored investigation, Myrick offered that he had previously met Dr. Goff at a TED Talk presentation Goff gave in 2019, although the Mayor thought it might have been in 2017-18. Smith Report page 24. The TED talk is referenced in an e-mail from Dr. Goff. Smith Report Exhibit 27. And a Svante Myrick e-mail. Smith Report Exhibit 28. And again, in his interview with the EAB the Mayor indicated that he had met Dr. Goff at a TED Talk, and had met him socially, perhaps in 2018.*

[https://www.ted.com/talks/dr\\_phillip\\_atiba\\_goff\\_how\\_we\\_can\\_make\\_racism\\_a\\_solvable\\_problem\\_and\\_improve\\_policing?utm\\_campaign=tedspring&utm\\_medium=referral&utm\\_source=tedco\\_mshare](https://www.ted.com/talks/dr_phillip_atiba_goff_how_we_can_make_racism_a_solvable_problem_and_improve_policing?utm_campaign=tedspring&utm_medium=referral&utm_source=tedco_mshare)

In its written response to the TCEAB's specific questions, CPE provided redacted notes it prepared from the meetings of the Working Group. As indicated in the response to Question 1, the Working Group held many meetings, had extensive discussions, and applied diligent efforts. Working Group members are named at the beginning of some notes, but not others. It appears that different CPE employees prepared the notes with differing levels of detail. Further, because of the redactions, we are unable to determine who made certain comments. CPE personnel participated in each of the meetings and at some points, the notes identify CPE employees by name. As a result, the notes are not determinative in assisting us in reaching a meaningful understanding about the true nature of CPE participation in the Working Group. Because CPE operated without a contract or charge, there is no evidence of any evaluation of whether it was delivering the requested services.

It does appear that CPE exercised full control in the selection and retention of Matrix Consulting to perform analysis of Ithaca Police Department ("IPD") data (as well as another consultant, Understory, involved with drafting the report of the Working Group).<sup>51</sup> The Acting Police Chief in a letter dated January 13, 2022, objected that the data had been collected by the IPD in such a way that it did not lend itself to the analytical approach which Matrix employed.<sup>52</sup> This dispute would seem to have an objective answer, but it appears the issue was instead addressed by a majority simply overruling the concerns. The description of these interactions in the City's commissioned investigation supports a perception that CPE may have been advocating for its own agenda and special interests.<sup>53</sup>

Beyond the question of Working Group control, we also reviewed information complaining that the Working Group did not solicit information from community sources who wished to provide input. In particular, the Tompkins County District Attorney indicated,<sup>54</sup>

Though I was designated a technical advisor to the working group, my efforts to provide a background presentation about the local system, the alternatives to incarceration, and the quality of work product we need from IPD were rebuffed. I have been compiling data and analyzing the demographics from our local justice system and I have valuable insights to share.

As a result, I'm concerned that the RPS Working Group has operated without full knowledge of how the local justice system functions. This is reflected in the report. Without an understanding of the interaction between the Ithaca Police Department, the courts and the District Attorney's Office, a vital piece of the equation is missing, relative to any organization that calls for service.

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<sup>51</sup> *Smith Report Pages 34-36. We have no information regarding this consultant, Understory, or what input that might have had in the substance of the Working Group Report.*

<sup>52</sup> *Smith Report Exhibits 46 and 47.*

<sup>53</sup> *Smith Report Pages 34-36 and Exhibit 63.*

<sup>54</sup> April 6, 2022, Statement of District Attorney Matthew Van Houten



Ms. Yearwood stated that the Working Group was only looking at the first RPS item involving the IPD and did not need the input from the District Attorney at that stage. She anticipated his assistance would be required in other areas.<sup>55</sup>

Cynthia Brock indicated she had concerns that the Mayor had brought “prepackaged” proposals to the City which had been developed by outside groups responsible for delivering fully formed policy to the City, despite the appearance of local development.<sup>56</sup> Ms. Brock noted that she supported the City resolution engaging the City’s commissioned investigation in the hope that it would lead to a much broader focus than just the activities related to this RPS Working Group. However, that resolution was limited to inquiries into “potential outside financial influence in the Reimagining Public Safety Process” and did not include non-financial influences or require any consideration of the development of other City initiatives<sup>57</sup> Accordingly, the Smith Report is confined to the RPS issues. Ms. Brock raised further concerns with the TCEAB that since the release of the Smith Report in December, it has not been placed on an agenda for Common Council consideration. As a result, there has been no public discussion or debate regarding the Smith Report and no policy proposals have been forthcoming to this point.

Our inquiry has been further clouded by a deliberate effort to keep the Working Group discussions confidential.<sup>58</sup> In an April 6, 2022, statement by then Acting Mayor Laura Lewis at a City Administration Committee meeting, she offered the following recollection as a participant in the Working Group discussions about the process used:

I will tell you one of the first decisions we made on the Working Group was, we discussed, and I believe voted, perhaps this was consensus, nevertheless, it was widely held that we did not want to be signing non-disclosure agreements, but we did, all Working Group members, agree to respect confidentiality. There were members of the community, members of IPD, were making suggestions that they wanted to be able to feel free to make and so for that reason we were not trying to prevent information, we were trying to allow the Working Group to do its work without... with confidentiality at its heart. I am sure people on this Zoom have been members of committees and organizations, groups where you want the free exchange of ideas, and you don’t want to stifle people’s participation so they must feel a sense of confidentiality in their remarks.<sup>59</sup>

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<sup>55</sup> *Smith Report Exhibit 66.*

<sup>56</sup> *The TCEAB did not undertake to investigate these other policy initiatives.*

<sup>57</sup> *City of Ithaca Resolution 3.8, July 6, 2022. In her interview, Cynthia Brock indicated that the Smith investigation was proposed and recommended by the City Attorney.*

<sup>58</sup> *Karen Yearwood did not have any recollection of discussions regarding the New York State Open Meetings Law. Eric Rosario thought that the City Attorney may have rendered advice that the Open Meetings Law did not apply to the Working Group. CPE appears to have advocated Working Group confidentiality and the use of non-disclosure agreements. Smith Report Exhibits 52 through 56.*

<sup>59</sup> *The City, County, and CPE executed a Non-Disclosure Agreement in March of 2022, after the Working Group had completed its work and the “Implementing the City of Ithaca’s New Public Safety Agency” Report issued.*

While the rationale to allow full and free opportunities to discuss difficult and delicate issues is understandable, it also presents a challenge to public understanding of how important and consequential public policy recommendations were developed.<sup>60</sup> There is a trade-off here between favoring candor or transparency.

An essential, and underlying, purpose behind establishing a code of ethics is to ensure a good and transparent process for the development of sound public policy and public decision-making. The City's commissioned investigation report sheds some light on what occurred here. However, in this instance where the evidence is secondary, the inability to view directly what occurred prevents the TCEAB from having sufficient information necessary to reach a definitive conclusion on this Question 6.<sup>61</sup> Unfortunately, since the TCEAB is unable to reach a conclusion on this question, we are equally unable to clear any clouds of suspicion which surround this work and will likely continue to do so in the future.

## QUESTION 7

**If an actual or perceived conflict of interest exists in:**

- a. Then Mayor Myrick being a paid employee of People for the American Way during his tenure as Mayor, and**
- b. While employed at PFAW, in 2021 Myrick transitioned from the non-profit branch of the organization and began being paid by the lobbying branch of PFAW whereby he fundraised with PFAW for the hiring of 5 organizers (a value of over \$250,000) for the purpose of lobbying in support of the Reimagining Public Safety specific legislation and referendum – legislation which was presented by Mayor Myrick in February 2021 to Common Council for adoption;**
- c. Myrick using his position as Mayor and by extension through PFAW to influence and pressure members of Council, staff, and the public for the purpose of implementing legislation that he proposed.**

In answer to the first element of this question, Mayors and other local elected officials are permitted to hold legitimate outside employment.<sup>62</sup> An issue only arises if the outside employment

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<sup>60</sup> *In her interview with the TCEAB, Cynthia Brock noted the contrast of working to preserve confidentiality of Working Group discussions, while CPE and Matrix were provided with access to several categories of City information and work product with limited restrictions on their use. In fact, it appears that the City can no longer get access to some of its material held by these consultants. Smith Report Pages 38-39.*

<sup>61</sup> *While documenting "extensive" CPE involvement, the City sponsored investigator, having had a much closer view of the evidence, ends up speculating that ". . . it may be that this partnership helped facilitate a process to arrive at a conclusion that was truly the Working Group's (and Myrick's) vision even if it also aligned with CPE's view of the world." Smith Report Page 49.*

<sup>62</sup> *Neither the City nor County have any restriction on holding outside employment or any time period after leaving office when an elected official might engage in lobbying activity involving their respective local government.*

creates a conflict of interest. Svante Myrick’s financial disclosure forms indicate that during his time as Mayor, he also served as a director at a non-profit business, People For the American Way (“PFAW”). Because conflicts can arise in a variety of ways, and the individual is in the best position to understanding what he or she is doing in their non-governmental job (beyond reporting on the disclosure forms) elected officials have an affirmative duty to exercise due diligence to avoid **actual or potential** conflicts of interest.<sup>63</sup> Therefore, beyond review of the City Financial Disclosure forms prepared by Mr. Myrick, this inquiry requires some examination of the roles and activities he undertook while employed both at PFAW and the City.

Mr. Myrick’s financial disclosure forms do not provide any details as to the job duties and responsibilities he held at PFAW.<sup>64</sup> Through other public information, it appears Mr. Myrick has been involved for many years as a member of a PFAW program entitled Young Elected Officials Network. In 2017, Mr. Myrick was named a Director of Youth Leadership Programs.<sup>65</sup> While not expressly stated, it appears his employment at PFAW after that point has been compensated. The stated goal of this activity, “getting young people involved in politics,” would not seem to create any conflict of interest with his duties as Mayor of Ithaca. In his response, Mr. Myrick provides the following information:

Beginning in January 2017, I have served as a Director for People for the American Way. In this capacity I led programs to support young, elected officials, the African American Ministers Association, young progressive activists, and ran trainings in how to run successful movement campaigns, all of which were administered and funded primarily by PFAW’s non-profit (i.e., 501(c)(3) arm.

In his interviews with the TCEAB, Myrick stated that he was offered the position of Executive Director of PFAW between Christmas and New Years Eve 2021. He goes on to state:

In February 2022, I was appointed to the position of full-time Executive Director, which added to my roles fundraising, donor cultivation, media public speaking roles, as well as continuing my work to build strategic partnerships and advance PFAW’s public safety and democracy reform initiatives.

The website for PFAW provides a press release from January 5, 2022, announcing the appointment of Myrick as the Executive Director.

**WASHINGTON, DC** – Today, People For the American Way President and CEO Ben Jealous announced the full-time appointment of Ithaca Mayor Svante Myrick as Executive Director of People For and praised Myrick’s progressive record as Mayor. Myrick will transition from his duties as Mayor and part-time executive director of the People For next month, where his expanded duties will include fundraising, donor cultivation, media, and public speaking roles, as well as continuing the important work he has already initiated to build strategic

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<sup>63</sup> *Ithaca Code of Ethics Section 55-7(E)(1)*

<sup>64</sup> *We did not receive a disclosure form for 2019.*

<sup>65</sup> *Ithaca Voice, January 13, 2017*

partnerships and advance People For's public safety and democracy reform initiatives.

This announcement coincides with the announcement of his resignation as Mayor.<sup>66</sup> Upon leaving office later in February 2022, the Code of Ethics no longer applied to Mr. Myrick, and his independent activities are no longer constrained.<sup>67</sup> Our examination only focuses on the period when he held both roles. This press release, and Mr. Myrick's response to our inquiry, both confirm he was involved in a PFAW initiative related to transforming public safety while he served as Mayor. As an advocacy organization, PFAW is organized to develop policy agendas and positions, which it did in the area of public safety and law enforcement. PFAW issued a position paper entitled "All Safe: Transforming Public Safety" with extensive policy recommendations for municipal governments.<sup>68</sup> The All Safe Report specifically mentions the Ithaca Public Safety Model several times, insinuating the PFAW position was influenced by Mr. Myrick's activities as Mayor. However, the PFAW All Safe Report shows a copyright of June 2022, and was a revision of an earlier policy paper, so it is unclear whether these PFAW policy positions were developed while Mr. Myrick served as Mayor. Although Mr. Myrick maintains that individuals at PFAW would argue about and emphasize different public policy initiatives as critical, he admitted transforming public safety was a primary goal of PFAW. We have no information as to when Mr. Myrick assumed these transforming public safety policy responsibilities at PFAW, other than it had to have occurred between 2017 and his resignation as Mayor in February 2022. In his interviews with the TCEAB, Mr. Myrick asserted PFAW developed its police reform positions over time, with some influence from his own work in Ithaca, other input from the Young Elected Officials group, and perhaps elsewhere. He maintains that after the murder of George Floyd, just about every local government in the country was having some conversation about what had happened, including the ones with a more conservative outlook. As such, it was difficult for him to determine the origin of the PFAW policy. Mr. Myrick's City financial disclosure forms do not provide any information on this aspect of his job duties and responsibilities at PFAW. We have not been provided any information that anyone at the City reviewed or analyzed the appropriateness of the then Mayor's external involvement related to public safety and law enforcement policy.

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<sup>66</sup> *While we do not have financial information as to changes in the Mayor's compensation at PFAW, the announcement indicates a change to full time employment and a promotion in title. As a not-for-profit corporation, PFAW is required to file information with the Internal Revenue Service (Form 990) that includes salary information for the highest paid employees. The latest filing is from 2020. A salary for Svante Myrick is not shown in 2020, and the title of Executive Director is not included. In his interview with the TCEAB, Myrick declined to disclose salary information. However, the salary ranges for the top four senior executives at that time range from \$90,067 to \$182,858. It appears that Myrick, in going to full time employment in 2022, would have received compensation within these parameters. On November 14, 2022, PFAW announced Myrick's further promotion to President of the organization. <https://www.pfaw.org/press-releases/svante-myrick-named-incoming-president-of-people-for-the-american-way/>*

<sup>67</sup> *Obligations to protect confidential information continue.*

<sup>68</sup> <https://drive.google.com/file/d/1adLHJwQeaaUf2WGaiZCgllqSEpa425Ma/view> *Interestingly, the acknowledgements to the All Safe Report recognize and thank "Dr. Tracie L. Keese, Cofounder and Senior Vice President of Justice Initiatives, Center for Policing Equity."*

The concern is that while Mayor, Mr. Myrick may have been attempting to implement the policy goals and special interests of PFAW, rather than acting “solely in the public interest” of the City. Mr. Myrick responded:

As an initial matter, Mayors are permitted to hold outside employment. Likewise, mayors are permitted to seek policy outcomes. In this case, the policy outcome I was seeking was a much-needed reimagining of the City’s police department. There is no basis to assert that there existed a conflict of interest, or that I somehow violated the City’s Code of Ethics, based solely on the fact of PFAW’s mission, “to build a democratic society that implements the ideals of freedom, equality, opportunity and justice for all,” and related campaigns aligned with my political stances and the policy outcomes I was advocating for as mayor. In fact, my employment by PFAW was specifically disclosed each year on the City’s Annual Statement of Financial Disclosure (attached hereto as Exhibit C), in accordance with the City’s Code of Ethics.

Mr. Myrick is correct that as a local politician, an aspect of his duties was to take political stances and advocate for policies in which he believes. Mr. Myrick is likely right in asserting he personally felt aligned in both his roles. In his interviews with the TCEAB, he further outlined how PFAW had used firewalls between its public advocacy and lobbying entities to separate the activities. However, even if firewalls were somehow in place, the difficulty for the public arises in determining whether Mr. Myrick was asserting these policy positions and acting in his capacity as Mayor, or as a paid employee of an external advocacy and lobbying organization. Based upon the evidence before us, we cannot determine which entity he represented. It is insufficient to claim that general alignment alleviates the issue.<sup>69</sup> In short, if any policy distinction arose between the stated goals of PFAW and the needs of the City, how could those issues be resolved? As indicated in the report’s Acknowledgements, other elected officials participated in formulating the All Safe: Transforming Public Safety Report. However, these elected officials presumably did so in an unpaid volunteer capacity, where there would be no employment obligation to specifically align goals.<sup>70</sup> Moreover, the other elected officials were not subject to the City of Ithaca Code of Ethics.

The City Code of Ethics has multiple references to conflicts of interest which may be triggered through secondary employment. It appears Mr. Myrick’s activities as a paid employee of PFAW, whose job responsibilities included the development and advocacy of public policy related to policing and transforming public safety, violated these ethical obligations related to conflicts of interest. In fact, the City Charter states:

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<sup>69</sup> *New York State Comptroller’s Informal Opinion 97-5 to the City of Oswego, February 27, 1997. “As an overall matter, we conclude that a member of a city council must avoid circumstances which compromise his or her ability to make decisions solely in the public interest.”*

<sup>70</sup> *The Acknowledgment thanks these individuals and makes no statement related to compensation. In his interview with the TCEAB, the Mayor indicated that he was not familiar with earlier versions of the All Safe Report, that is prior to June of 2022, so the issue of alignment becomes further clouded in any event.*

The Mayor shall receive such compensation as may be fixed and determined by the Common Council and no other fee or reward excepting necessary expenses and disbursements incurred.”<sup>71</sup>

It is unclear if this provision is intended to only cover payments from City funds. However, it is implicit that the Charter requires that no additional payments be made to a Mayor for conducting City business. To the extent Mr. Myrick’s argument is that the alignment between himself and PFAW somehow sanitized or waived the conflict of interest, then the clear distinction of who was paying him for this City business dissipates. However, claiming alignment to justify the receipt of money from this outside source for him to work on City business certainly violates the spirit and intent of this Charter provision. Because of the ambiguity in the Charter language, we do not offer an opinion as to whether an actual violation of this Charter Section occurred.

The investigation commissioned by the City considered this issue of Mr. Myrick’s dual loyalties between the City and PFAW and concluded that no actual ethical violation occurred because of the claimed alignment between then Mayor Myrick and PFAW on the relevant policy issues.<sup>72</sup> We disagree with this conclusion for three crucial reasons. First, the proof of alignment is solely within the mind of Mr. Myrick. Mr. Myrick told the City’s investigator that “PFAW was advocating for his stated policy ideals and plans, not the reverse.” There is no way, other than accepting his subsequent and conclusory statement on trust, to determine alignment, let alone total alignment. Second, once compensation is received, a further issue of independence arises. Simply stated, elected officials must retain the ability to reconsider and change their stance on public matters. A Mayor must have the ability to exercise independent judgement to reassess and reevaluate positions. Once receiving payment or other tangible benefits from an outside group which may be in alignment on a public policy position, regardless of who might have had the original idea, an elected official becomes compromised if he or she later no longer agrees or believes that the advocacy organization speaks for the public interest. Even if unlikely in this case, it is difficult to imagine Mr. Myrick being able to go back to PFAW and renounce or modify his stance or positions. Independence is an essential function which cannot exist in the face of these payments. More critically, payment or tangible benefits from outside organizations, advocacy groups and lobbyists erode public confidence and trust in legislation, policy and other governmental actions. It further diminishes the legitimacy of such legislation, policies and actions.

As to the second and third elements of Question 7, involving Mr. Myrick’s activities at PFAW while Mayor, to organize and hire lobbyists for conducting work in Ithaca in support of the recommendations of the Working Group and his agenda, all of the issues just discussed would apply equally as well. A Mayor must act solely in the public interest of the City. The City of Ithaca and PFAW cannot have identical goals, as their purposes and essential functions are different. As a result, the TCEAB finds that Mr. Myrick could not act simultaneously as an elected representative and a paid employee of a third party with special interests in the same public policy.

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<sup>71</sup> *City of Ithaca Charter Section C-11 C.*

<sup>72</sup> *Smith Report Page 54.*

PFAW's supported and funded public lobbying efforts in Ithaca conducted after Mr. Myrick had left his position as Mayor, are beyond the scope of this investigation.<sup>73</sup> Only the organizational steps and lobbying activities Mr. Myrick was involved with before his resignation as Mayor in February 2022 are at issue. As with the Mayor's involvement with PFAW's public policy related to law enforcement, the responses submitted to the TCEAB did not disclose whether anyone from the City of Ithaca reviewed the appropriateness of, or approved, Mr. Myrick's involvement with planning and conducting this lobbying campaign. Mr. Myrick did not address this element of the complaint in his written response to the TCEAB.

In his interviews, Mr. Myrick could not recall if he made any public disclosure concerning the lobbying activities prior to the project becoming public in January 2022. During his interviews, Mr. Myrick admitted he had seen messages being sent out by the PFAW-funded group, Ithacans For Reimagining Public Safety. However, he asserted that he was employed by one entity at PFAW, a 501(c)(3) organization, and not the sister 501(c)(4) organization which was engaged with the lobbying in Ithaca. He maintains that the then President of PFAW, Ben Jealous, and Alana Byrd, a PFAW paid lobbyist for Ithacans For Reimagining Public Safety, supposedly maintained a firewall which limited his involvement. Mr. Myrick claimed he was unsure who was supervising Alana Byrd at this time.

A threshold issue exists here in that the lobbying campaign PFAW undertook was done without charge to either the City or the former Mayor. As these are activities which have monetary value, and PFAW funded them, the question arises why the City Gifting and Solicitation Policy does not apply? At the very least, the lobbying was aligned with accomplishing the then Mayor's stated goals and appeared to have some coordination. If the lobbying was intended to benefit the City and/or Mr. Myrick as Mayor, then a valid argument can be made that the PFAW activities would require disclosure as a gift. In his discussions with the TCEAB, Mr. Myrick made several points in response. He claimed that the lobbying in Ithaca was conducted by the separate political action committee side of PFAW on the other side of a "firewall". He also asserted that the rules related to gifts were somehow unclear and would benefit from clarification. Mr. Myrick further stated his belief that the work done by PFAW was not a gift. Instead, he characterized the campaign as providing public advice akin to volunteer committee work donated by any community member. As with CPE, he similarly compared PFAW services to that provided by the Chamber of Commerce members who advocate on some other City issue.

Mr. Myrick is correct in valuing public participation in RPS and local government generally. Likewise, there is generally no prohibition against PFAW, like any other advocacy or special interest organization, from lobbying. However, to the extent there was coordination at PFAW between Mr. Myrick, while Mayor, and the lobbying effort, the appearance of a conflict arises, if not an actual conflict. Furthermore, the fact that PFAW was expending funds which were intended to advance the political position of their employee, in his role as the Mayor, makes this situation markedly dissimilar. Even if unintended, the lack of disclosure and PFAW's use of an alternate name for the lobby, Ithacans for Reimagining Public Safety, is troubling if it was an attempt to camouflage the existence of a gift. As indicated above, Mr. Myrick denies he was

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<sup>73</sup> *E-mail messages from Alana Byrd to Common Council member Jeff Barken, January 10<sup>th</sup> and 12<sup>th</sup>, 2022.*

directly involved in the lobbying. There is no evidence before the TCEAB that he acted on behalf of Ithacans For Reimagining Public Safety. Nonetheless, he admittedly knew it was occurring, received communications from the lobbying arm at PFAW, and acknowledged the alignment and common purpose. When the connection eventually came to light, the resulting uproar was predictable. Public disclosure of PFAW's expenditure, and clarification of the Mayor's separation from the lobbying would have been the better course, as is required by the City Gifting and Solicitation Policy.

It is worth mentioning that in his interviews with the TCEAB Mr. Myrick disclosed PFAW had been recruiting him to be their Executive Director for "years" and had made several offers prior to the RPS project. While this information could separate the direct "cause and effect" of his promotion at PFAW in January 2022 from the Ithaca RPS initiative and PFAW lobbying efforts, it further underscores that Mr. Myrick and PFAW were working towards a closer connection for a long time. The fact that unidentified firewalls of some kind were created should not obscure this mutual benefit Mr. Myrick, while Mayor, and PFAW realized combining the City and PFAW interests.

The limited response received by the TCEAB from the City Attorney only references the disclosure forms and does not indicate that any specific review of the lobbying by the City occurred. However, in response to the City's commissioned investigation, the City Attorney disclosed he had been approached by Mr. Myrick as early as August of 2021 and provided his legal opinion on the fundraising aspect of what PFAW was doing. The City Attorney stated to the City's investigator that Mr. Myrick, as Mayor, involving himself in PFAW fundraising for RPS lobbying efforts in Ithaca somehow would not pose an ethics issue if Mr. Myrick:

- a. did not allow PFAW to donate to the City directly, at least not until the City's RPS policy was completely voted on and settled;
- b. Did not accept any funding from PFAW into his campaign account,<sup>74</sup> and;
- c. Disclosed PFAW's involvement in the RPS process.<sup>75</sup>

Several questions arise. The City Attorney anticipates the possibility of PFAW payments to the City. The purpose of any such donations is not explained. And the possibility of future payments, if such became known, would seem to pose ethical issues, even if not yet received. Given the dual loyalty issues previously identified, if donations were contemplated, the nature of such contributions would raise significant red flags. In the Smith Report, Mr. Myrick admits that he engaged in fundraising for the lobbying effort while Mayor.<sup>76</sup> These separate funding sources are not identified. As Mr. Myrick was soliciting donations from sources beyond PFAW, while Mayor, it further complicates the issues of alignment and independence discussed above.

At the very least, the concept that an elected official would secure funding for individuals to, in effect, lobby his own administration is highly unusual. There is the danger of bootstrapping

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<sup>74</sup> *We did not undertake to review Svante Myrick's campaign accounts.*

<sup>75</sup> *Smith Report Pages 50-51. It does not appear the Mayor made any public disclosure.*

<sup>76</sup> *Smith Report Page 50.*



support which might not otherwise actually exist in the community. In this instance of attempting to analyze and shift some of our fundamental public safety policies, clarity as to community support is critical.<sup>77</sup> Any steps which make actual support less clear, makes it far easier for detractors to criticize the outcomes. A fundamental purpose behind codes of ethics is to maintain these bright lines. In this case, ironically, the improper actions taken with the intention to support these policy recommendations may have made them more difficult to implement.

A further difficulty arises in considering the timeline involved with hiring these lobbyists. The organization of and strategies for this lobbying campaign necessarily occurred long before Mr. Myrick's resignation as Mayor in February 2022. As indicated above, while Mayor, Mr. Myrick sought a legal opinion from the City Attorney on PFAW fundraising around August 2021 PFAW actively recruited lobbyist in October of 2021.<sup>78</sup> In order to prepare for this job posting, a decision to proceed had to have been made before then, together with other steps necessary to plan the campaign. These actions took place simultaneously while the meetings of the Working Group were underway.

Furthermore, as is indicated in the response to Question 6, the Working Group determined to work within a confidential atmosphere and not share information with the general public prior to releasing its report. We do not know whether this confidentiality restriction included communications between members of the Working Group and the Mayor. However, it is fair to assume that the Working Group would not have wanted information related to its activities shared with any external special interest organization. For PFAW to undertake this effort, there must have been some understanding of the likely recommendations of the Working Group. We have no evidence of actual information sharing, coordination, or collaboration between the City Working Group and PFAW. However, for the organization to focus its efforts and invest significant funds on this specific City of Ithaca lobbying program, as opposed to elsewhere in the country, it is reasonable to conclude there must have been some determination that the ultimate outcome of the Working Group would be something PFAW could support.

We acknowledge that it is possible that PFAW acted without information regarding the Working Group activities. PFAW could have guessed the outcome and funded the lobbying effort upon that basis. However, a much more likely scenario is that PFAW possessed information and an understanding of the Working Group progress and acted accordingly.<sup>79</sup> We are left with the

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<sup>77</sup> *Interestingly, within the context of campaign finance reform, the People For the American Way appear to agree with the issue raised here. On their website, on a page entitled "Money in Politics: the Problem," the organization states, "With our current campaign finance landscape, wealthy special interests can set the political agenda: an agenda that's not good for ordinary Americans." Apparently, PFAW's concern did not encompass its activities in this community.*

<sup>78</sup> *An Alana Byrd social media post on an employment networking site, LinkedIn, indicates her full-time employment as the Campaign Manager for Ithacans for Reimagining Public Safety starting in October 2021.*

<sup>79</sup> *Myrick did share several City e-mails with PFAW employees in the fall of 2021. Smith Report Page 51. The specific e-mails are not attached as Exhibits to the Smith Report, so no independent*

possibility that confidential information may have been shared. If information was shared with PFAW, Section 55-6 of the Code of Ethics would apply which prohibits a City Official or City Employee from disclosing:

...confidential information acquired during the course of his or her official duties or use such information to further his or her personal interests or the personal interests of his or her family.

Again, we have no direct evidence that PFAW received confidential information. This determination only extends to the **appearance** of a violation. Similarly, if while organizing its lobbying campaign there was any City of Ithaca confidential information in the e-mails Mr. Myrick shared with PFAW, the same considerations would apply. As it appears Mr. Myrick, in his role as Mayor, participated in planning meetings for the Working Group, and independently met with CPE when CPE had concerns. At the very least, Mr. Myrick had access to information which would have been directly relevant to the PFAW lobbying efforts at that time.<sup>80</sup>

Interestingly, the City's commissioned investigator considered essentially the same evidence reviewed here and concluded that no ethical violation occurred. We do agree that the ethics rules do not "prohibit outside groups from agreeing with and helping to support an official's public policy agenda." This is called lobbying and is built into our system. However, the City's investigator further found that "[T]he result would be different if Myrick personally benefitted in some financial or other tangible way" but inferred that he did not benefit.<sup>81</sup> In his interviews with the TCEAB, Mr. Myrick unsurprisingly agreed with this position, stating that his work on police reform played no part in his promotion. In our discussion of this issue, Mr. Myrick denied that either an actual conflict or the appearance of one exists.

The TCEAB disagrees with this conclusion. The record is clear that while Mayor, Mr. Myrick received compensation in the course of his employment with PFAW between the Fall of 2021 through February 2022. Mr. Myrick was promoted to full time employment at PFAW in the position of Executive Director in January 2022, to begin in February 2022. And recently, PFAW announced his promotion from Executive Director to President of PFAW. Both announcements of his promotions at PFAW specifically reference his involvement in police reform. Since leaving City government, Mr. Myrick has promoted his own and PFAW's involvement in Ithaca RPS as a demonstration of his achieving a public policy success.<sup>82</sup>

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*review is possible. The Smith Report does not indicate if these communications contained any confidential communications.*

<sup>80</sup> *Smith Report Pages 31-32.*

<sup>81</sup> *Smith Report Page 54.*

<sup>82</sup> *See the PFAW All Safe Report, June 2022, above; and <https://www.minnpost.com/race-health-equity/2022/06/reimagining-public-safety-from-ithaca-to-minneapolis/>; FaceBook post showing Svante Myrick "Now This" video on police reform: [https://www.facebook.com/NowThisNews/videos/1324178958379397/?extid=CL-UNK-UNK-UNK-AN\\_GK0T-GK1C&mibextid=2Rb1fB](https://www.facebook.com/NowThisNews/videos/1324178958379397/?extid=CL-UNK-UNK-UNK-AN_GK0T-GK1C&mibextid=2Rb1fB); Op-Ed by Svante Myrick dated February 7, 2023, "I Know There's a Solution to Police Reform Because I've Seen It." <https://www.pfaw.org/blog->*

A city official or employee shall exercise particularly careful diligence in avoiding any actual or potential conflict of interest when voting or taking other discretionary action on any matter brought before any element of the city government by any entity that employs said official or employee. In any case, the involved city official or employee should attempt to avoid any action that could reasonably be interpreted as benefitting his or her career advancement, salary or standing within the entity that employs him or her.

City Code of Ethics Section 55-7(E)(2).

Although the Smith Report is unable to find a causal connection between the PFAW work and a personal benefit to Mr. Myrick, the links appear clear cut. Financial raises and promotions are uniformly tied to job performance. Directly after taking actions in support of PFAW lobbying and fundraising, Mr. Myrick received a promotion to Executive Director of the organization. He moved into a full-time position and presumably a salary increase. Mr. Myrick would not provide salary information to clarify this issue. The announcement of his promotion recognizes Mr. Myrick's "important work he has already initiated to build strategic partnerships and advance PFAW's public safety and democracy reform initiatives." Interestingly, on page 51, the Smith Report states regarding Mr. Myrick's role at PFAW in the fall of 2021:

Myrick reported that his role in the fundraising was to provide "validation." Others at PFAW did the actual fundraising, but Myrick's support allowed them to tell funders that he, as the Mayor, was on board. In other words, he used his name to lend weight and influence on the fundraising efforts.

While the investigation commissioned by the City recognized the value to PFAW in Mr. Myrick providing this "validation," there is no similar understanding that leveraging his name in this fundraising provided benefit to Mr. Myrick as well. Even if Mr. Myrick is unable to see any connection, it appears clear that his position as Mayor tangibly benefited his career at PFAW. He may have had other responsibilities at PFAW in 2021, and those other activities may have played a part in his promotion. The difficulty is that we are unable to separate his direct actions organizing RPS lobbying in Ithaca and his role in fundraising at PFAW from his other work. Furthermore, not only the tangible benefits he has received in the past, but his continuing media presence, and perhaps even his recent promotion to President of PFAW, suggest an ongoing benefit from the lobbying and fundraising undertaken by PFAW while Mr. Myrick was Mayor.

While likely unintentional, these activities taken together present a variety of poor judgments leading to ethical violations. Mr. Myrick's dual roles as Mayor and as a paid employee of PFAW, with both jobs engaged in attempting to influence public safety policy in the City of Ithaca constituted a conflict of interest in violation of City Code of Ethics Section 55-7(A). The Smith Report indicates Mr. Myrick shared City e-mails with PFAW and attempted to align the lobbying activities with the then forthcoming report of the City Working Group. This creates the

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*posts/i-know-theres-a-solution-to-police-reform-because-ive-seen-it/?utm\_medium=email&utm\_source=nl&utm\_campaign=february2023*

appearance of a violation of City Code of Ethics Section 55-6, related to the disclosure of confidential information. There was a failure to disclose his involvement at PFAW in the Ithaca public policy fundraising initiative, while taking various discretionary acts on behalf of City government. Mr. Myrick failed to make this public disclosure despite seeking and receiving direct advice from the City Attorney, who advised him to do so. His failure to disclose the conflict of interest under these circumstances violated City Code of Ethics Section 55-8. Mr. Myrick received direct and indirect benefits from PFAW which, at the least appeared to compromise, if not substantively compromised, his ability to make impartial judgments solely in the public interest of the City in violation of City Code of Ethics Section 55-7(B). Similarly, there is the appearance, and perhaps an actual violation of City Code of Ethics Section 55-7(E)(2) in that the actions Mr. Myrick took as the City Mayor assisted his career at PFAW. Finally, while Mayor, Mr. Myrick received compensation from PFAW where there is the appearance that the compensation may have been offered for services to be rendered in City matters in violation of City Code of Ethics Section 55-7(D). At the very least this compensation creates the appearance of a conflict which should have been avoided.

### **QUESTION 8**

**Given the impact of one or more of the incidents mentioned above, can the report *Implementing the City of Ithaca's New Public Safety Agency* produced by the working group, with assistance from the Center for Policing Equity, and incorporating the Report on Patrol Staffing and Deployment produced by Matrix Consulting, be deemed to be impartial, unbiased, and appropriate for recommending legislative changes in accordance with County and City Ethics Code.**

This question and the issues raised therein is beyond the scope and authority of the TCEAB to review.

### **V. CONCLUSION**

As indicated in the Introduction, this Advisory Opinion is only focused on the process used and does not address the substance of the Reimagining Public Safety Proposal. No inferences should be drawn otherwise. In evaluating the actions of the involved individuals and organizations, we found a common shared intent to make a positive difference in our community. However, while none of the actions which have been reviewed in this Advisory Opinion appear to have ever been intentional, a lesson from this investigation is that careful process is essential to sustainable policy formation. Without appropriate and ethical processes, local governments cannot depend upon clear and strong public support for their policy initiatives. In this instance, there have been great efforts made to improve our public safety system and ensure it is built on a foundation of trust. Allowing ethical questions to arise has been unfortunate and likely has made achieving the overall goals more difficult. But in all events reimagining our public safety for the benefit of all must continue, including the broad public discussion necessary to that project. It is intended that this Advisory Opinion assist in the path going forward.

Respectfully Submitted,

The Tompkins County Ethics Advisory Board  
April 17, 2023

Rich John, Chair  
Brian Eden, Member  
Kathleen “Katie” Walpole, Member  
Gretchen Rymarchyk, Member  
Sharon Sulimowicz, Member

## VI. APPENIDIX

Complaint and exhibits Filed By Cynthia Brock:

- [May 4, 2022](#)
- [June 14, 2022](#)

Information and Documentary Responses From:

- [Tim Horner, Esq. on Behalf of the Center for Transformative Action and Dorothy Cotton Institute](#) - dated July 15, 2022
- [Rachel Leon, Executive Director, Park Foundation](#) - dated July 15, 2022
- [Jason Molino, Former Tompkins County Administrator](#) - dated July 8, 2022
- [Lisa Holmes, Tompkins County Administrator](#) - dated August 16, 2022
- [James F. Moran, Esq. on Behalf of Eric Rosario and Karen Yearwood](#) - dated August 29, 2022
- [Richard Brady, President, Matrix Consulting Group](#) - dated July 6, 2022
  - [Consulting Agreement Between CPE and Matrix](#)
  - [Matrix Consulting Group - Invoices 21-57 \(1 - 4\) - Analysis of Field Services](#)
  - [Data Collection List for the Analysis of Field Services](#)
  - [Data Collection List for the Analysis of Field Services - annotated](#)
  - [Draft Ithaca Patrol Analysis](#) - dated January 27, 2022
  - [Preliminary Results of the Call for Service Analysis](#)
  - [Preliminary Results of the Call for Service Analysis - Crime Data Trends](#)
  - [Proposal to Conduct the Analysis of Field Services](#) - dated July 28, 2021
- [Aaron Lavine, City Attorney, City of Ithaca, on behalf of Acting Mayor Laura Lewis, Alderperson Robert Cantelmo, and Chief of Staff Faith Vavra](#) - dated August 17, 2022
  - [Annual Statement of Financial Disclosure 2013-2021 of Svante Myrick](#)
  - [Center for Policing Equity's Scope of Work](#)
  - [City of Ithaca Mutual Non-disclosure and Confidentiality Agreement](#)
  - [Letter to Center for Policing Equity - ending the working relationship](#) - dated June 21, 2022
- [Svante Myrick, former Mayor, City of Ithaca](#) - dated August 31, 2022
  - [Matrix Proposal to Conduct the Analysis of Field Services](#)
  - [Center for Policing Equity - Implementing the City of Ithaca's New Public Safety Agency](#)
  - [S. Myrick - Annual Statement of Financial Disclosure \(2017, 2018, 2020, and 2021\)](#)
- [Aaron Lavine, City Attorney, City of Ithaca, on behalf of Acting Mayor Laura Lewis, Alderperson Robert Cantelmo, and Chief of Staff Faith Vavra](#) - dated August 31, 2022

- [Molly A. Jones, Crowell & Morning LLP, on behalf of Center for Policing Equity \(CPE\)](#) - dated September 15, 2022
  - CPE - [Public Safety Reimagined - A collaborative between the City of Ithaca & Tompkins County NY](#)
  - CPE - [Tompkins County - A Resolution Stating Tompkins County's RPS Plan to be Submitted in Response to NYS EO 203](#) - March 30, 2021
  - CPE - [City of Ithaca - A Resolution Adopting and Authorizing Mayor to Submit the RPS Plan Pursuant to NYS EO 203](#) - March 31, 2021
  - CPE's [Scope of Work for the City of Ithaca Public Safety Redesign](#) – June 7, 2021
  - CPE - [Draft Ithaca Onboarding Agenda July 15 and 16, 2021](#)
  - CPE - [Shared Data Protocol Reimagining Public Safety Project](#) - December 4, 2020
  - CPE - [Mutual Non-disclosure and Confidentiality Agreement](#) - March 2, 2022
  - CPE - [Implementing the City of Ithaca's New Public Safety Agency](#)
  - Reimagining Public Safety Working Group Meeting Information
    - [CPE Redacted - RPS Working Group Notes - Meeting 1](#) - July 21, 2021
    - [CPE - RPS Working Meeting 2 Agenda](#) - August 4, 2021
    - [CPE Redacted - RPS Working Group Notes - Meeting 2](#) - Special Session - August 4, 2021
    - [CPE - RPS Working Meeting 3 Agenda](#) - August 12, 2021
    - [CPE Redacted - RPS Working Group Notes - Meeting 3](#) - August 12, 2021
    - [CPE - RPS Working Meeting Agenda](#) - August 19, 2021
    - [CPE Redacted - RPS Working Group Notes - Meeting 4](#) - August 19, 2021
    - [CPE - RPS Working Meeting 5 Agenda](#) - August 26, 2021
    - [CPE Redacted - RPS Working Group Notes - Meeting 5](#) - August 26, 2021
    - [CPE - RPS Working Meeting 6 Agenda](#) - September 2, 2021
    - [CPE Redacted - RPS Working Group Notes - Meeting 6](#) - September 2, 2021
    - [CPE - RPS Working Meeting 7 Agenda](#) - September 16, 2021
    - [CPE Redacted - RPS Working Group Notes - Meeting 7](#) - September 16, 2021
    - [CPE - RPS Working Meeting 8 Agenda](#) - September 30, 2021
    - [CPE - RPS Working Group Meeting 8](#) - September 30, 2021
    - [CPE - RPS Working Meeting 9 Agenda](#) - October 14, 2021
    - [CPE - RPS Working Group Meeting 9](#) - October 14, 2021
    - [CPE - RPS Working Meeting 10 Agenda](#) - November 4, 2021
    - [CPE - RPS Working Group Meeting 10](#) - November 4, 2021
    - [CPE - RPS Working Meeting 11 Agenda](#) - November 18, 2021
    - [CPE - RPS Working Group Meeting 11](#) - November 18, 2021
    - [CPE - RPS Working Group Meeting 12 Agenda](#) - December 2, 2021
    - [CPE - RPS Working Group Meeting 12](#) - December 2, 2021
    - [CPE - RPS Working Group Meeting 13 Agenda](#) - December 9, 2021
    - [CPE - RPS Working Group Meeting 13](#) - December 9, 2021
    - [CPE - RPS Working Group Meeting 14 Agenda](#) - January 6, 2022
    - [CPE - RPS Working Group Meeting 14](#) - January 6, 2022
    - [CPE - RPS Working Group Meeting 15 Agenda](#) - January 13, 2022
    - [CPE Redacted - RPS Working Group Notes - Meeting 15](#) - January 13, 2022
    - [CPE - RPS Working Group Meeting 16 Agenda](#) - February 10, 2022
    - [CPE Redacted - RPS Working Group Notes - Meeting 16](#) - February 10, 2022
    - [CPE - RPS Working Group Meeting 17 Agenda](#) - February 17, 2022
    - [CPE Redacted - RPS Working Group Notes - Meeting 17](#) - February 17, 2022
  - Reimagining Public Safety Subcommittee Meeting Information
    - [CPE Redacted - RPS 1 Sub Committee \(B\) Facilitation Guide](#)
    - [CPE Redacted - RPS 1 Sub Committee \(C\) Facilitation Guide](#)

- [CPE Redacted - RPS 1 Sub Committee \(D\) Meeting Notes](#) - February 3, 2021
- [CPE Redacted - RPS Subcommittee Meeting 2](#) - October 14, 2021
- [CPE - RPS Subcommittee Meeting 3 Agenda](#) - October 21, 2021
- [CPE - RPS Subcommittee Meeting 4 Agenda](#) - November 4, 2021
- [CPE Redacted - RPS Subcommittee Meeting 4](#) - November 4, 2021
- [CPE - RPS Subcommittee Meeting 5 Agenda](#) - December 2, 2021
- [CPE Redacted - RPS Subcommittee Meeting 5](#) - December 2, 2021
- [CPE - RPS Subcommittee Meeting 6 Agenda](#) - December 9, 2021
- [CPE Redacted - RPS Subcommittee Meeting 6](#) - December 9, 2021
- [CPE - RPS Subcommittee Meeting 7 Agenda](#) - December 16, 2021
- [CPE Redacted - RPS Subcommittee Meeting 7](#) - December 16, 2021
- [CPE - RPS Subcommittee Meeting 8 Agenda](#) - December 30, 2021
- [CPE - RPS Subcommittee Meeting 9 Agenda](#) - February 20, 2021
- [CPE - RPS Subcommittee A - Meeting 2 Agenda](#) - October 14, 2021
- [CPE Redacted - RPS Subcommittee A - Meeting 3](#) - November 11, 2021
- [CPE Redacted - RPS Subcommittee A - Meeting 4](#) - November 11, 2021
- [CPE Redacted - RPS Subcommittee A - Meeting 5](#) - December 2
- [CPE Redacted - RPS Subcommittee A - Meeting 7](#) - December 9
- [CPE Redacted - RPS Subcommittee A - Meeting 8](#) - December 16
- [CPE Redacted - RPS Subcommittee A - Meeting 9](#) - December 20
- [CPE Redacted - RPS Subcommittee A - Meeting 10](#) - January 3
- [CPE Redacted - RPS Subcommittee A - Meeting 11](#) - January 10
- [CPE Redacted - RPS Subcommittee A - Meeting 12](#) - January 24
- [CPE - RPS Subcommittee B - Meeting 3 Agenda](#) - November 3, 2021
- [CPE - RPS Subcommittee B - Meeting 4 Agenda](#) - November 10, 2021
- [CPE - RPS Subcommittee B - Meeting 5 Agenda](#) - November 17, 2021
- [CPE - RPS Subcommittee B - Meeting 6 Agenda](#) - December 1, 2021
- [CPE - RPS Subcommittee B - Meeting 7 Agenda](#) - December 8, 2021
- [CPE - RPS Subcommittee B - Meeting 8 Agenda](#) - December 15, 2021
- [CPE - RPS Subcommittee B - Meeting 9 Agenda](#) - January 5, 2022
- [CPE - RPS Working Group and Subcommittees](#) - November 18, 2021
- [Letter from Aaron Lavine, City Attorney, City of Ithaca](#) - dated November 2, 2022
- [Letter from Aaron Lavine, City Attorney, City of Ithaca](#) - dated December 3, 2022

Anonymous Information Received:

- [Memo from Laura Branca, Project Director and Senior Fellow at Dorothy Cotton Institute \(previously received as part of the Response from Tim Horner, Esq. on Behalf of the Dorothy Cotton Institute - dated July 15, 2022\) with additional documents from Community Leaders of Color dated March 15, 2021 and April 4, 2022](#)

Correspondence From the Ethics Advisory Board:

- [Letter to A. Lavine, City of Ithaca Attorney](#) - October 12, 2022
- [Letter to A. Lavine, City of Ithaca Attorney](#) - November 10, 2022
- [Letter to A. Lavine, City of Ithaca Attorney, from Legislator Rich John, Chair](#) - December 14, 2022
- [Letter to A. Lavine, City of Ithaca Attorney](#) - December 19, 2022



Other Information:

- [Reimagining Public Safety Op-Ed Article from Matthew Van Houten, Tompkins County District Attorney](#) - dated April 6, 2022
- City of Ithaca Reimagining Public Safety Investigation Report, together with exhibits, by Kristen E. Smith, of Bond, Schoeneck, and King, dated December 7, 2022.
- Video of City of Ithaca Administration Committee meeting held on April 27<sup>th</sup>, 2022,
- WHCU radio interview with Working Group member and Police Benevolent Association President Officer Tom Condzella, March 8, 2022
- Video of City of Ithaca Common Council budget meeting held on October 26, 2022.
- New York State Comptroller Informal Opinion 95-2 to the Town of Bristol, January 24, 1995
- International City/County Managers Association, ICMA, Code of Ethics
- Center for Policing Equity webpage: <https://policingequity.org/about/team/our-team/staff/deanna-carrithers>