

**Opinion of the City of Rochester Board of Ethics
Opinion Number 2021-1
September 7, 2021
C21-1**

Overview

On May 13, 2021, the Rochester Police Locust Club filed a complaint with the Board of Ethics regarding Councilmember Mary Lupien’s correspondence to the public on March 11, 2021. The complainant requested an advisory opinion on Councilmember Lupien “directing a scripted response for the public response to matters that she would vote and act on as a city council member.” The matter cited in the complaint was the advocated support of a private organization via her City of Rochester e-mail account and sending the communication in her capacity as a member of City Council. Ms. Lupien as a member of the Rochester City Council is an officer of the City of Rochester.

Applicable Code of Ethics Provisions

Relevant sections of the Code of Ethics:

- C.4 *No City officer or employee, acting in the performance of his or her official duties, shall treat, whether by action or omission to act, any person more favorable than it is the custom and practice to treat the general public.*
- C.5 *No City officer or employee shall use or permit the use of city-owned vehicles, equipment, materials or property for the convenience or profit of himself or herself or any other person.*

Opinion

Authority of the Board

The authority of the Board is set forth in the City Charter, Code of Ethics, Section 2-18 F. (3) as follows:

The Board of Ethics shall render written advisory opinions to City officers and employees with respect to the Code of Ethics and Article 18 of the General Municipal Law or amendments to either. Any relevant matter may be brought before the Board for an opinion upon the written request of any City officer or employee or upon the initiative of the Board...

The Board has no authority to rule on allegations of alleged wrongdoing or potential ethical violations involving City officers or employees beyond those standards and provisions as expressly set out in the Code of Ethics (“Code”) and it possesses only the powers and responsibilities conferred on it by the Code. The Board therefore cannot and is not able to render an opinion on ethical considerations other than as specified in the current Code. The Board

believes, however, that reasonable inferences may be applied to Code provisions. The Board feels reasonable interpretations may be applied where necessary to avoid an overly technical application of the Code or where its provisions are ambiguous.

City Charter, Code of Ethics, Section 2-18 C. (4) and Section 2-18 C. (5)

It is clear that that matter did not involve any economic interest by Councilmember Lupien which would disqualify her from any future voting and the Board finds that no violation of the Code of Ethics occurred related to that issue of the complaint.

A review of the communication sent by Ms. Lupien indicated a favoritism of “Color for Change”, a clearly controversial, private organization, and supported this organization through the use of City resources. “Color for Change” was treated differently than the public at large by Ms. Lupien in her capacity as an officer of the City of Rochester (See Exhibit 1 as to the actual e-mail communication).

It is therefore the opinion of all members of the Board that the action of Ms. Lupien, even though apparently done in good faith and inadvertently, did violate those sections of the Code referenced above and that an ethical violation occurred. The simple use of her own personal e-mail account by the Councilmember or reference to or advocating support of the subject matter involved in a general fashion without referencing support for a particular organization would have avoided the issues complained of.

The Board further unanimously believes that the awkward framework and imprecise language of the current Code contributed to this matter before the Board and strongly recommends that a complete updating of the Code be effected by the City Council of Rochester.

(Steinbrenner, Cannon, Escher, Graham, Patterson, Scott, Weir)

EXHIBIT 1

From: Lupien, Mary <Mary.Lupien@CityofRochester.gov>
Sent: Thursday, March 11, 2021 11:56 AM
Subject: If not HERE, then WHERE? If not NOW, then WHEN?

Hello,

What better place than here? What better time than now? We can't afford to wait any longer for too-little reform measures to make cosmetic changes around the edges to our system of policing. The world-wide spotlight on Rochester due to our string of outrageous shows of police abuses has created a once in a generation opportunity to transform our system and the way we think about public safety. There are several opportunities in the next few weeks and months to reimagine policing.

Rochester's Police Reform Plan (Executive Order 203)

Last week I co-hosted a public presentation and forum (watch recording [here](#)) on the [Mayor's draft policing plan](#) with the [Police Accountability Board Alliance](#). The Alliance asked questions about the lack of transparency in the creation of the plan and the Police Accountability Board Presented on how their recommendations ([here](#)) were implemented (or not) in the plan. There are some disturbing omissions, most shockingly is refusing to commit to firing officers with ties to white supremacist organizations.

We need to commit to giving the People in Crisis (PIC) Team the resources they need to meet the demand for non-police response and provide culturally responsive, trauma informed care for behavioral health emergencies, when children are present and other non-criminal crisis

Most important of their visionary recommendations is to Fully fund the PAB so that they can sustain their work in holding the department accountable, exposing abuses and proposing changes to the way the department operates.

Speak out!

City Council will host two Public Hearings on the plan, [March 17th and March 18th 5:30-7:30pm](#). If you can not speak at the meeting, you can email your comments ahead of time to council@cityofrochester.gov and they will be read on record. We will vote on the plan at a Special Meeting on March 25th.

2020/2021 Budget

The City budget is where its priorities are articulated. What we spend money on is what we value. The police department is 1/5th of our budget while other services like housing, youth, jobs programs, recreation, libraries, Pathways to Peace, Crisis Intervention Services, Police Accountability Board get a fraction of the funding. We need to demand the City reallocate funding from the police to invest in the programs, services and organizations that create strong and safe communities by giving people what they need to be successful. We can also shift roles away from sworn officers (like writing police reports and wellness checks) to professionals who are residents of this city. Police are but one part of a public safety ecosystem.

The Mayor is asking for feedback until March 18th. Provide feedback [here](#).

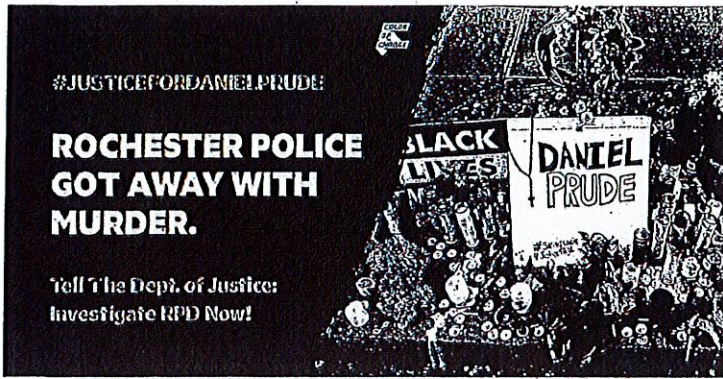
The budget will be released in May for public review and Council will host hearings and vote on the budget in June.

Color of Change Calls on DOJ to investigate the RPD

.....Color for Change released a [petition](#) is demanding the Biden Dept. of Justice immediately investigate the Rochester Police Department for civil rights violations and anti-Black violence. They are also asking folks to record a quick video to support the petition. See their email below:

Until we address RPD's racism and violence head-on, Black people in Rochester will not be safe. We need your help and your video to build public pressure now.

[Here's the link to record your video. It'll only take a moment, and we've included everything you need to know below.](#)



We've provided some talking points below to guide your message, but please share your own story, your personal connection to this issue, or why this is so important to you. After you submit your video, we'll professionally edit it, adding logos and captions, and then send it back to you to share. We'll share some on our social media accounts too.

Thank you for taking action to defend Black lives!

RECORD YOUR VIDEO

Until justice is real,

Erika, Rashad, Arisha, Malachi, Megan, Ernie, Madison, Ariel, Trevor, Ana, McKayla, and the rest of the Color Of Change team

TALKING POINTS TO HELP GUIDE YOUR VIDEO MESSAGE

1. Rochester Police murdered Daniel Prude, a Black man experiencing a mental health crisis. In recent weeks, RPD has handcuffed and maced children and tackled a Black woman in the street. **These are not isolated incidents of police brutality. Rochester Police continue to terrorize Black people and endanger Black lives.**
2. The city's failure to take bold action after Daniel Prude's murder enabled RPD to continue terrorizing Black people. **This racist violence must end. That's why we're demanding a DOJ investigation into Rochester Police.**
3. Until the Rochester Police Department's pattern of brutality and racism is revealed — and Rochester leaders hear activists' demands to prioritize public safety initiatives that protect Black lives — Black Rochesterians are not safe.
4. Black voters showed up and delivered a Biden presidency and a Democratic Senate majority. **Now, we're counting on the Biden/Harris administration to act on their pledge to hold corrupt police departments accountable.**

5. We're calling on the Department of Justice to immediately investigate the Rochester Police Department for civil rights violations, as well as a pattern and practice of inappropriate use of force, particularly targeting Black people.
6. Rochester officials can no longer defend a system that fails to deliver justice for victims of police brutality. We demand safety, and we demand action. A DOJ investigation is a critical first step.

PLEASE READ: Video Recording Tips

1. You should aim to make your video 1 minute 30 seconds or less! If you try recording and it cuts you off, please record again.
2. You can record your video on your phone or your computer. If you do it on your phone, it's best to record it directly on your phone's camera app and then upload it by clicking "Upload Your Video" on the video page.

Sometimes the video files are too large to upload, and it may take several minutes. If this happens, you can upload the video to Google Drive by following these directions and email it to scott.brown@colorofchange.org.

3. Record in a place with good lighting (ideally with a light source in front of your face) and without too much background noise.

To see an example video for inspiration, click here to watch a video submission from Color Of Change member Nataia calling for justice for Daniel Prude!

RECORD YOUR VIDEO

Justice for Daniel Prude

Mary Lupien (she/her/hers)

*Councilmember East District
30 Church Street, Room 301A
Rochester, NY 14614
585-406-4709 Cell*

"Those who profess to favor freedom, and yet depreciate agitation, are men who want crops without plowing up the ground." —Frederick Douglass

(You're receiving this email because you have sent me a message or attended an event about policing issues. If you'd like to be removed from my list, please reply asking me to do so. Thanks!)

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