



February 14, 2024

*Via email*

Metropolitan Governance Task Force Members

RE: Response to Myron Orfield's Addendum to the Task Force Report

Dear Task Force Members:

This letter responds to Myron Orfield's February 2, 2024, addendum to the Task Force report. The addendum accuses Metropolitan Council staff of "gross ethical violations" and "improper interference with the Task Force deliberations." The Council denies these allegations.

In response to the allegations, a copy of a memorandum from the Council's Office of General Counsel is enclosed.

The memo concludes that Council staff did not defame Mr. Orfield, violate federal fair housing law, improperly or illegally interfere in the Task Force process, or commit bribery.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles Zelle".

Charles Zelle  
Metropolitan Council Chair

Enc.



## MEMORANDUM

**DATE:** February 13, 2024  
**TO:** Charles Zelle, Metropolitan Council Chair  
**FROM:** Metropolitan Council Office of General Counsel  
**SUBJECT:** Review of Myron Orfield's Addendum to the Task Force Report

### Introduction

At your request, the Office of General Counsel reviewed Myron Orfield's February 2, 2024, addendum to the Task Force report which accuses Metropolitan Council staff of "gross ethical violations" and "improper interference with the Task Force deliberations." The Office of General Counsel reviewed relevant documents, hearing records, and the law.

The Office of General Counsel did not find ethical violations or improper interference with Task Force deliberations. The relevant documents and hearing testimony show that Council staff provided factual information to certain members of the Task Force, who consistent with an email from non-partisan legislative staff asked questions in a hearing based on that information. Neither Council staff nor Representatives Koznick or Klevorn accused Mr. Orfield of having an illegal conflict of interest. The October 25, 2023 hearing recording further reflects that Council staff responded to Mr. Orfield's questions concerning the legal makeup of the Council to the satisfaction of the Task Force chair Representative Hornstein.

### Factual Background

The Task Force legislation requires the Council to "cooperate with the Task Force and provide information requested in a timely fashion."<sup>1</sup> Consistent with that obligation and as detailed in the timeline below, the Council provided information concerning Mr. Orfield's role in two housing-related lawsuits against the Council and responded to Mr. Orfield's questions concerning the legal makeup of the Council.

- September 27, 2023 – At a Task Force meeting, Mr. Orfield asks the Council's Executive Director of Community Development "What is the Met Council's duty under the federal fair housing act to affirmatively further fair housing." Mr. Orfield also asks about money awarded to housing developments in the central cities rather than in suburbs.<sup>2</sup> Mr. Orfield does not mention any past or present role he has played in fair housing lawsuits against the Council at this meeting.

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<sup>1</sup> 2023 Minn. Laws. Ch. 68, Sec. 123, Subd. 5.

<sup>2</sup> September 27, 2023, Task Force meeting at 1:34:00 – 1:34:45

[https://www.youtube.com/watch?v=fgcT3f\\_OMqM](https://www.youtube.com/watch?v=fgcT3f_OMqM)

- October 11, 2023 – Representative Koznick emails the Council’s director of government relations and asks “How do we find out what the lawsuits facing the Met C is about. I assume there are usually a few, but mostly concerned with the ones that Orfield is involved with.”<sup>3</sup>
- October 12, 2023 - The Council’s director of government relations responds to Representative Koznick stating “Per your request, attached are the Met Council lawsuits that Myron Orfield has a hand in.” Attached to the email is a document describing a HUD Housing Discrimination Complaint and the *Stairstep Foundation v. State of Minnesota, Minnesota Housing, and Metropolitan Council* lawsuit.
  - With respect to the HUD Complaint, the document notes that it was brought by MICAH and states that “According to MICAH’s November 2014 release ‘Myron Orfield serves as local counsel’ for the Complaint.” The document also provides a link to the MICAH release stating Myron Orfield serves as local counsel.<sup>4</sup>
  - With respect to the ongoing *Stairstep Foundation* litigation, the document notes that Stairstep Foundation’s initial disclosures identify Mr. Orfield as someone who is likely to have discoverable information on “Historical affordable housing development and availability trends in the Twin Cities metropolitan area; historical policies and practices of Defendants with respect to affordable housing; the impact of Defendants’ conduct on affordable housing and segregation in the Twin Cities metropolitan area; the impact of housing segregation on persons and communities in the Twin Cities metropolitan area.”<sup>5</sup>
- October 12, 2023 – Representative Koznick responds to the director of government relations stating “Thank you sir.”
- October 25, 2023, 10:00 am – October 25 Task Force meeting is called to order.<sup>6</sup>
- October 25, 2023, 10:13 am – Representative Koznick who is in attendance at the Task Force meeting emails Director of House Research Patrick McCormack and asks “If a Task Force member is part of a lawsuit against the met C is there a conflict of interest or other legal considerations that prohibit their participation in the Task Force?”

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<sup>3</sup> The Task Force legislation requires the Council to “cooperate with the Task Force and provide information requested in a timely fashion.” 2023 Minn. Laws. Ch. 68, Sec. 123, Subd. 5.

<sup>4</sup> On October 26, 2023, Mr. Orfield emailed the Council’s General Counsel and attached a letter dated February 12, 2015, from national counsel for MICAH to HUD stating that Mr. Orfield is withdrawing as local counsel for MICAH. The Council is not copied on this letter has no record of receiving it before October 26, 2023.

<sup>5</sup> In the Office of General Counsel’s opinion, the questions Mr. Orfield asked of the Council’s Executive Director of Community Development at the September 27, 2023 meeting, are at issue in the *Stairstep Foundation* litigation and within the scope of what the Stairstep Foundation identified as Mr. Orfield’s area of knowledge in its August 7, 2023 initial disclosures.

<sup>6</sup> <https://www.lcc.mn.gov/mgtf/11012023/10-25-23-Meeting-Minutes-Draft>. Mr. Orfield’s addendum references an October 26, 2023, Task Force meeting. There was no Task Force meeting on October 26, 2023.

- October 25, 2023, 10:21 am – Mr. McCormack responds as follows:

**From:** Patrick McCormack <[patrick.mccormack@house.mn.gov](mailto:patrick.mccormack@house.mn.gov)>

**Date:** Wednesday, October 25, 2023 at 10:21 AM

**To:** Jon Koznick <[Rep.Jon.Koznick@house.mn.gov](mailto:Rep.Jon.Koznick@house.mn.gov)>

**Cc:** Ginny Klevorn <[rep.Ginny.Klevorn@house.mn.gov](mailto:rep.Ginny.Klevorn@house.mn.gov)>

**Subject:** RE: Met c task force

The short answer is probably no.

There is clearly an interest – the lawsuit creates an interest on behalf of the task force member. But most members have an interest or pre-existing policy position. A conflict of interest is defined (in statute) and shorthand, means the two roles conflict and one confounds or prevents the good faith performance of the duties of the other.

The member might consider disclosure when the lawsuit interacts with testimony. The other members, if they perceive that the task force is being used to help the lawsuit, could protest. A Chair could rule out of order questions that seem to bring the lawsuit into the meeting (which has a different purpose). The perception issue clearly exists. But one goal of a task force like this is to get multiple points of view, and suing the Met Council does not ipso facto disqualify a member of the task force.

Finally, if I were advising the Met Council, I might suggest that they be aware and that they are free to refuse questions that seem to involve the lawsuit. (As you know, we are in the middle of a lawsuit on that question, and therefore I am not going to answer questions here that should be asked in court with counsel present.)

- October 25, 2023, 10:50 am – Representative Koznick forwards Mr. McCormack’s response to the Council’s director of government relations and some additional Task Force members.
- October 25, 2023, 10:57 am – The Council’s director of government relations responds to Representative Koznick stating “sounds like good counsel.”
- October 25, 2023, approximately 11:11 – 11:30 am – Discussion and questioning of Council’s General Counsel concerning Mr.’s Orfield’s questions about the structure and legal authority of the Met Council.<sup>7</sup> As detailed below, during this questioning Representatives Koznick and Klevorn asked questions about the factual information received from the Council.
  - At the beginning of this discussion, Chair Hornstein states that “I want to limit the conversation just because we have to move on to the next thing. . . maybe one to two questions and one to two follow-ups would be appropriate.”<sup>8</sup>

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<sup>7</sup> In advance of the hearing, the Council provided written responses to the Task Force’s questions on this topic. A copy of that response is attached as Exhibit A.

<sup>8</sup> October 25, 2023, hearing video at 1:11:25 - [https://www.youtube.com/watch?v=vVIWqbc0i\\_8](https://www.youtube.com/watch?v=vVIWqbc0i_8)

- Representative Klevorn tells Mr. Orfield that it has come to her attention this morning that there was litigation involving the Met Council and since a disclosure was not made to the Task Force previously, she wants to make sure that any questions being asked relate to the work of the Task Force and not any other cause or event.<sup>9</sup>
- Mr. Orfield ask the Council’s General Counsel several questions and Mr. Orfield concludes his questioning with “that’s all.”<sup>10</sup>
- Representative Koznick states that “one of the purposes of the whole committee is to add transparency and accountability and I’m a little concerned” about Mr. Orfield’s role in the matters described by the Council. Representative Koznick states “it *looks like* a conflict of interest to me when you are grilling the Met Council . . . I think for the transparency of the Task Force what are you really getting at? . . . I am not sure where we are going with this Mr. Chair, and I am not sure that it is fully appropriate.”<sup>11</sup>
- Chair Hornstein notes that the Task Force is moving past the discussion of the issues that Mr. Orfield raised about the statutory structure of the Met Council.<sup>12</sup>
- Chair Hornstein notes that counsel for the Met Council “cooperated fully.”<sup>13</sup>
- Representative Klevorn states “I just want to be perfectly clear I was not accusing in any way Professor Orfield of having a conflict of interest, . . . I just wanted to make sure that the questions are fully intended for the work of this Task Force.”<sup>14</sup>
- Representative Hovland states that if Mr. Orfield is being compensated as an expert that the Task Force should know that.<sup>15</sup>
- Mr. Orfield states that he thinks that the Task Force should discuss the fair housing case. He further states he does not believe there is a conflict and that he is not being compensated.<sup>16</sup>

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<sup>9</sup> October 25, 2023, hearing video at 1:13:40 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>10</sup> October 25, 2023, hearing video at 1:13:00- 1:19:13 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>11</sup> October 25, 2023, hearing video at 1:19:14- 1:20:48 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>12</sup> October 25, 2023, hearing video at 1:22:15- 1:23:06 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>13</sup> October 25, 2023, hearing video at 1:24:00 -1:24:22 [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>14</sup> October 25, 2023, hearing video at 1:24:30 – 1:24:45 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>15</sup> October 25, 2023, hearing video at 1:25:10 – 1:25:24 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>16</sup> October 25, 2023, hearing video at 1:25:40 – 1:26:15 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

- Representative Koznick responds to Mr. Orfield noting that there was a previous discussion with the Council on housing policy in an earlier Task Force meeting and that he might have been more guarded in his comments if he knew that another member was involved in a housing-related lawsuit. Representative Koznick states “I just think that transparency is lacking.”<sup>17</sup>
  - Chair Hornstein notes that he “allotted a limited amount of time” for the conversation on the Council’s statutory makeup, that it is a relevant conversation, and that “we’ve had that conversation, and we are ready to move on.” Chair Hornstein concludes by reminding panel members that the Council is a creature of the legislature and it is up to the legislature to make any changes to the Council.<sup>18</sup>
- February 1, 2024 – Final Task Force meeting
    - At this meeting, Mr. Orfield makes many of the same assertions that the makes in his written addendum.<sup>19</sup> He also states that there are “potential problems under the House rules . . . even under the criminal code Minnesota [Statutes] section 609.42 prevents these kinds of statements.”<sup>20</sup>
    - Representative Klevorn responds and states that she made it very clear in the previous Task Force meeting that she was asking that questioning be limited to the work of the Task Force and that she “made it very clear that I was not accusing anyone of conflict of interest” and asked that if her name was included in Mr. Orfield’s report that it be stricken.<sup>21</sup>

### **Discussion**

#### *Neither Council Staff nor Representatives Klevorn or Koznick made false statements*

The addendum claims that at the October 25, 2023 hearing Representatives Klevorn and Koznick “interrupted by repeatedly accusing [Orfield] of an illegal conflict of interest – effectively an accusation of unethical behavior, when made at an attorney.” The addendum claims that these allegations were defamatory, violated federal fair housing law, and legislative rules. No such allegations were made and therefore there was no violation of law or rule.<sup>22</sup>

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<sup>17</sup> October 25, 2023, hearing video at 1:26:30 – 1:28:11 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>18</sup> October 25, 2023, hearing video at 1:29:45 – 1:32:10 - [https://www.youtube.com/watch?v=vVIWqboci\\_8](https://www.youtube.com/watch?v=vVIWqboci_8)

<sup>19</sup> February 1, 2024, hearing video at 14:40 – 18:45; 25:25 – 25:45 - <https://www.youtube.com/watch?v=f70ZTqz91>

<sup>20</sup> February 1, 2024, hearing video at 18:15– 18:45 -<https://www.youtube.com/watch?v=f70ZTqz91>

<sup>21</sup> February 1, 2024, hearing video at 19:36 -20:09 -<https://www.youtube.com/watch?v=f70ZTqz91>

<sup>22</sup> Even if Mr. Orfield had alleged a defamatory statement by Representatives Koznick or Klevorn, such a statement would fall under the privilege from defamation granted to members of the Legislature acting in a legislative capacity. See Minn. Const. art. IV, §10 & Minn. Stat. § 540.13.

As discussed above, at the September 27, 2023 Task Force hearing Mr. Orfield asked the Council's Executive Director of Community Development questions about housing matters on topics that overlap with the issues in the *Stairstep Foundation* litigation in which Mr. Orfield has been disclosed by the plaintiff as a potential witness. After that questioning, some Task Force members sought to better understand Mr. Orfield's role in housing litigation against the Council. Council staff provided factual information to the representatives.

Mr. Orfield's addendum does not point to any factual information he alleges was false. As detailed above, none of the Council's correspondence takes a position on whether Mr. Orfield has an "illegal conflict of interest." At the October 25, 2023, hearing Representatives Klevorn and Koznick sought to better understand Mr. Orfield's role in the housing litigation. Neither of them accused Mr. Orfield of "an illegal conflict of interest." Representative Koznick stated "it *looks like* a conflict of interest to me when you are grilling the Met Council" and sought more information. Representative Klevorn explicitly said that she was not accusing Mr. Orfield of having a conflict of interest.

*The actions were consistent with the advice from House non-partisan staff*

Mr. Orfield claims in the addendum that "all involved had in their possession a memorandum from Patrick McCormick (sic), an ethics expert in the Minnesota House research office. That memo declared *unequivocally* that I had no conflict of interest." *Emphasis added.* If the memorandum Mr. Orfield refers to is the October 25, 2023 email from Mr. McCormack to Representatives Koznick and Klevorn (which was sent during the October 25, 2023 meeting) the Representatives' actions were in-line with the advice in the email.<sup>23</sup> Mr. McCormack's email does not state *unequivocally* that Mr. Orfield has no conflict of interest. It states that he "*probably*" has no conflict of interest. The email also notes that while there may not be a conflict as defined in statute, "[t]here is clearly an interest" and "[t]he perception issue clearly exists." The email further states that "[t]he member might consider disclosure when the lawsuit interacts with testimony. The other members, if they perceive that the Task Force is being used to help the lawsuit could protest."

Consistent with this email and the fact that Mr. Orfield made no disclosures about Council-related housing litigation at the September 27, 2023 Task Force meeting, Representatives Koznick and Klevorn sought to get more information from Mr. Orfield at the October 25, 2023 meeting and raised questions of transparency. Neither the Council providing factual information (which occurred before the October 25, 2023 email) nor the questions asked at the hearing conflicted with the advice of Mr. McCormack. In fact, the Council's information—and Representatives Koznick and Klevorn's questions—contributed to the transparency of the Task Force process.

*No interference*

Mr. Orfield claims that "the Council, in concert with members of the committee, made malicious and knowingly false defamatory statements designed to impair my reputation and prevent me asking legitimate questions vital to the committees' [sic] deliberations." Not only were there no defamatory statements, but Mr. Orfield was not prevented from asking questions vital to the Task Force's deliberations.

Mr. Orfield's written questions were answered by the Council, as were his questions at the October 25, 2023 hearing. While Mr. Orfield may not have been satisfied with the Council's responses, Chair

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<sup>23</sup> The Council is not in possession of any other memorandum from legislative staff addressing this issue.

Hornstein was clear that he wanted to limit this conversation and allotted a limited amount of time for the questioning, that counsel for the Council “cooperated fully,” and that it was time to “move on” from the conversation about the Council’s statutory structure and that since the Council is legislatively created it is the Legislature’s responsibility to make any changes.

*There is no factual basis supporting Mr. Orfield’s allegation that there are “potential problems” under the criminal bribery statute*

At the final Task Force hearing on February 1, 2024, Mr. Orfield states that “the criminal code Minnesota [Statutes] section 609.42 prevents these kinds of statements” [Section 609.42](#) is the criminal bribery statute. Mr. Orfield does not provide any facts to support his allegation that there may be a violation of the criminal bribery statute or detail any *quid pro quo*. Mr. Orfield does not make this allegation in his addendum. There are absolutely no facts that suggest a violation of section 609.42 and the Office of General Counsel believes the allegation is wholly without merit.

### **Conclusion**

The facts discussed above demonstrate that Council staff did not defame Mr. Orfield, violate federal fair housing law, improperly or illegally interfere in the Task Force process, or commit bribery.





Office of General Counsel  
Writer's Direct Dial: 651-602-1105  
ann.bloodhart@metc.state.mn.us

October 18, 2023

Representative Frank Hornstein  
Metropolitan Governance Task Force Chair

*Via Electronic Delivery*

**Re: October 13 letter**

Dear Representative Hornstein:

Thank you for your October 13, 2023 letter on behalf of the Metropolitan Governance Task Force, which was received on Monday, October 16, 2023.

The Metropolitan Council is a legislatively created body that "is established as a public corporation and political subdivision of the state." Minn. Stat. § 473.123, subd. 1.

The law is well-settled that "a municipal corporation has only such powers as are expressly conferred upon it by statute or charter, or necessarily implied. It has no inherent power." *Borgelt v. City of Minneapolis*, 135 N.W.2d 438, 440 (Minn. 1965)(citations omitted). The Council operates within the bounds of its legislatively created authority on a day-to-day basis and takes its direction from its enabling legislation, and subsequent legislation passed into law governing the Council.

The law allows for the Council to exercise taxing authority, such as the recently enacted regional transportation and housing sales and use taxes. See the statutes expected to be codified as follows: Minn. Stat. § 297A.9915, subd. 2 (transportation/transit), and § 297A.9925, subd. 2 (housing). The Council has had property tax levy authority since its creation in 1967. See Minn. Stat. § 473B.08 (1967). The Council also had property tax levy authority for debt service of the former Metropolitan Waste Control Commission and the former Metropolitan Transit Commission, both of which former commissions' functions and duties were transferred to the Council in 1994. See generally 1994 Minnesota Laws ch. 628. The Council's taxing authorities include: 1) general property tax levy (Minn. Stat. § 473.249, subd. 1); 2) Right-of-Way Loan Acquisition Program (Minn. Stat. § 473.167, subd. 3); 3) Livable Communities Act Programs (Minn. Stat. § 473.254, subd. 5(b)); 4) Wastewater Treatment Systems Obligations (Minn. Stat. § 473.541, subd. 1); and 5) Metropolitan Area Transit Tax (Minn. Stat. § 473.446). These property taxes are subject to levy limits established by the Legislature. For decades, the Legislature has also authorized the Council to issue bonds for capital purposes. Those bonds have been backed by the full faith and credit of the Council.

To the extent that there are any questions about what the Legislature intended, or whether the Legislature's grant of authority to the Council is somehow unconstitutional, those are issues that are appropriately addressed to and answered by the Legislature.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ann K. Bloodhart".

Ann K. Bloodhart  
General Counsel

cc: Metropolitan Governance Task Force Members