

CITY OF ANN ARBOR
REPORT OF CONFIDENTIAL INVESTIGATION

ATTORNEY-CLIENT PRIVILEGED

To: Stephen K. Postema, City Attorney
From: Jennifer B. Salvatore, Salvatore Prescott Porter & Porter, PLLC
Subject: Independent Investigation Re City Administrator
Date: June 29, 2021

I have been retained to investigate concerns raised about a number of comments alleged to have been made by the City Administrator that demonstrate insensitivities to issues of diversity, equity and inclusion. The issues came to the City's attention in May through a number of City employees who met with the Mayor about their concerns. The Mayor then met with the City Administrator and the City Attorney and the City Administrator authorized an outside investigation of the matter, and asked the City Attorney to arrange it.

Investigation Process

Salvatore Prescott Porter & Porter, PLLC was contacted by the City Attorney and, after determining that there were no conflicts, the firm was retained in this matter on June 1, 2021. Between June 1 and June 18, 2021, I conducted interviews with five individuals who work with and had witnessed concerning comments by the City Administrator. I also conducted a phone call with the current Human Resources Director to determine if any additional concerns had been raised with or reported to him. I then interviewed the City Administrator regarding the allegations.

The witnesses all participated in these interviews via zoom from a private location. I did not record the interviews, but I did take notes. I informed each witness that I had been retained by the City to conduct an independent investigation and that I would provide a report to the City Attorney regarding my findings. I found all of the witnesses to be cooperative, candid and professional.

I also reviewed emails provided by one witness; relevant City policies – specifically, the City Human Resources Policy regarding Employee Standards of Conduct (Policy No. 2.1) and the Employee Non-Discrimination Policy (Policy No. 2.2); as well as the Employment Agreement for the City Administrator.

Relevant Background

In assessing whether any City policies were violated, I reviewed and considered specifically the following policies:

Employee Standards of Conduct (Policy 2.1)

The City's policy regarding "Standards of Conduct" provides guidelines (not intended to be all-inclusive) as to the types of behavior that are not acceptable to the City of Ann Arbor. The policy generally provides that "all employees are expected to behave in a professional and respectful manner at all times and failure to do so will result in disciplinary action up to and including termination of employment." (Section 4.3).

Section 5.0 of the Policy provides a list of examples of acts of misconduct, which may result in disciplinary action. Of those provided, the examples that I deemed to be potentially relevant to the matters at issue are the following:

- 5.8 – Failure to behave in a professional and respectful manner;
- 5.19 – Indecent or offensive conduct;
- 5.28 – Engaging in any behavior or action, on or off duty, that is detrimental to the reputation or image of the city or the operations of the workplace.

Employee Non-Discrimination Policy (Policy No. 2.2)

The City's Non-Discrimination Policy addresses discrimination, harassment and retaliation. Generally, the policy "prohibits discrimination against any employee on the basis of a person's protected classification under state, federal or local law." Discrimination "includes bias or prejudice based on a person's protected class, which results in an adverse employment impact, including, but not limited to, discipline, demotion, failure to hire or failure to promote." (Section 3.1).

Potentially relevant portions of this policy include the following:

- "All supervisors, managers and Service Area Administrators are responsible for ensuring that no discrimination of any kind occurs or persists in the workplace. It is the responsibility of management to create an atmosphere free of unlawful discrimination, and to implement this policy within their area."

Investigation Report

Tom Crawford was hired as interim and then full-time Ann Arbor City Administrator in 2020, following the departure of his predecessor Howard Lazarus. Prior to serving as City Administrator, Mr. Crawford worked for the City for over fifteen years, most recently as Chief

Financial Officer. During his tenure as CFO, Mr. Crawford served three times as Interim City Administrator. All of the concerns raised and investigated in this matter involve comments made during Mr. Crawford’s most recent tenure as interim and then permanent City Administrator.

Specifically, the investigation focused on allegations that on a number of occasions Mr. Crawford is reported to have made comments to other City employees that reflect insensitivity to issues of diversity. There were a number of specific comments or incidents that were raised as problematic. Each is addressed in turn below.¹

1. Comment re hiring of minority applicants

In late 2020, during the hiring process for a new employee in the City (who is a person of color), there was a point at which the applicant indicated that he was going to withdraw from consideration because he thought some aspects of the background check process were racially biased. In the context of discussing this issue and how to remedy it, Mr. Crawford allegedly made a statement to another member of the City leadership team that: “This is why you have to be careful hiring minorities—because you can’t fire them or let them go.” The individual to whom the comment was made immediately reported it to the City’s legal department. I confirmed with the ██████████ in the department that the comment was reported to her in or around the end of 2020.

When asked about it, Mr. Crawford did not recall making this statement and said that he does not even understand it. He said that he was doing his best to keep this particular employee from withdrawing from the process, and the comment does not even make sense in that context. Mr. Crawford does not believe he made the statement.

2. Comments/email re Juneteenth

In or around April of 2021, during a discussion of a proposal to make Juneteenth a city holiday, Mr. Crawford verbally made a statement to an employee that he thought doing so would create some inequities in terms of other minority groups because “black people already have a holiday [in MLK day].” This sentiment was also expressed in an email on the same topic.

With respect to this issue, Mr. Crawford acknowledged that he did raise the issue of perceived inequities if a holiday was recognized for one racial group and not others. He denies that he said “Black people already have a holiday [referring to MLK day].” Rather, he says that he raised a concern that if the City began to recognize a holiday (Juneteenth) for African Americans, that the City would also have to do so for other minority groups. He wanted to make sure, from a DEI perspective, that the City was being inclusive of all minority groups.

¹ In addition, there were some general concerns raised in the course of my investigation about whether Mr. Crawford’s perceived shortcomings in this area may affect his management role with respect to hiring, compensation or supervision of employees. However, those matters were outside the scope of what I was retained to investigate. As such, those issues are not addressed in this report.

3. Comments involving [REDACTED]

In or around the end of the summer of 2020, Mr. Crawford is alleged to have made a comment in a conversation with [REDACTED], that was deemed to be racially insensitive. During a discussion on racial issues involving policing, Mr. Crawford is alleged to have said something to the effect of “When only 10% of the people in Ann Arbor are black, I don’t see why we have to worry about it.” In addition to [REDACTED] recounting the comment, it was also reported by others who attended an agenda-setting meeting around the same time that Mr. Crawford had stated in one meeting that he had “just come out of a meeting [REDACTED] and apparently I said something racially insensitive and I was called out for it.”

Mr. Crawford denied making the alleged statement. When confronted with the specific comment that he was alleged to have made, he said he was offended by the comment and that he would not have said it as it is not consistent with his views. He noted that the percentage of the City’s population that is African American does not define the struggles that African Americans have been through. While Mr. Crawford acknowledged that he may have said something at a meeting about having made a comment involving [REDACTED] that was taken as racially insensitive, he would have said that in the context of communicating to his colleagues that work on DEI issues was ongoing work that they all needed to do. But he does not recall the specific racially-insensitive comment that he was alleged to have made. Whatever it was, he does not believe it was the specific statement reported by [REDACTED].

Concerns were also raised that Mr. Crawford seems to use language reflecting racial and/or gender-based stereotypes regarding [REDACTED], who is an African American female. For example, it was reported that Mr. Crawford describes her as “intimidating,” and “angry.”

Mr. Crawford described his relationship with the [REDACTED] as good. He said that he speaks frankly with her and has tried to repair what was a fractured relationship between the commissioner and the prior city administrator. When asked if he had described her as intimidating or angry, he said that there have been conversations with his staff where others have described her that way, and he acknowledged that he may have done so as well. He does believe that the way she communicates “puts staff on their heels,” and sometimes does not positively bring people into change. He understands why she has a lot of passion and that she “has a right to be angry” about the issues she works on. He does, however, think that sometimes employees interpret it in a negative light.

4. Comments regarding race

There was a comment alleged to have been made to a city employee about an African American employee who is married to a white woman: Allegedly, Mr. Crawford stated that the African American employee “gets his arrogance from the fact that he’s married to a white woman.”

It was also reported that Mr. Crawford regularly uses the phrase: “the blacks” when talking about African Americans and/or uses “us/them” language when talking about racial groups.

Mr. Crawford categorically denied making the statement about an African American employee married to a white woman. He said that he didn’t make this comment and he doesn’t even know the people who the comment was alleged to have been about.

Mr. Crawford also denied using the phrase “the blacks” to describe African Americans. He said that he might say: “our black population,” or “our black employee base.” And he does use the term “black” and “African American” interchangeably – which he understood to be acceptable. However, he said that “the blacks” is not a phrase that he would use or has used. He then, however, noted that if he ever did use the phrase it would have been a “random event, late at night” when he may have been careless about his language.

5. Comments re sexual orientation

Individuals reported two comments of concern related to the issue of sexual orientation. One was reported to have occurred in a phone call made by the City Administrator to another city employee. The individual recalls that the phone call was made in the evening not too long after Mr. Crawford became City Administrator. Mr. Crawford stated that he “just found out” that a female employee [REDACTED] “is gay.” He remarked that: “She got a butch haircut. I didn’t know she was gay.” Mr. Crawford went on to ask: “What should I call her? Does she go by gay or lesbian?” He also asked how he should refer to her spouse. The employee to whom the comment was made noted that while Mr. Crawford did not say anything derogatory about the employee and that she has not observed any discriminatory treatment of this employee, she found Mr. Crawford’s comments “surprising,” “odd,” and “unprofessional.”

Regarding this incident, Mr. Crawford thought that the conversation occurred in the context of the employee in question [REDACTED] and Mr. Crawford needing to know when the [REDACTED]. He does not believe that he called specifically to discuss the employee’s sexual orientation. He also does not recall making a comment about the employee getting “a butch haircut.” He does recall learning that the employee in question was gay and may well have wanted to make sure that he was using appropriate and sensitive language with respect to her sexual orientation, but he says he would have asked such questions in an effort to be sensitive to DEI issues and not in any way to be inappropriate, demeaning or critical in any way.

The second alleged comment was made by Mr. Crawford to a different city employee about someone Mr. Crawford knows in his personal life who had come out as bisexual. Mr. Crawford told this employee about the person coming out as bisexual and then allegedly made the observation that he thought people who were bi-sexual were “just doing it for attention.”

Mr. Crawford recalled this conversation. He noted that he made the comment about an individual who is not a city employee and [REDACTED]. He

emphasized that the comment was made in the context of the specific individual's situation and in the context of a discussion about parenting. He denies categorically that he made any general statement regarding people who are bisexual or that his observation was intended to apply to anyone other than the individual in question. He said it was a context-specific comment and was not an observation that he made about bisexual people generally.

6. Comments regarding women and childcare responsibilities

There were several concerns noted about comments regarding women's roles with respect to family responsibilities. On one occasion when the issue of a new childcare credit (during COVID) was being discussed, Mr. Crawford is alleged to have expressed concern that female employees were benefitting disproportionately from that credit because women had to take care of the kids and female employees were the ones responsible for the domestic work.

He is also reported to have made a comment during COVID to the effect of: "be nice to the moms, because they are the ones taking care of the kids while working from home."

On another occasion, Mr. Crawford was observed noting that the City's sick leave policy affects female employees differently because women tend to be the ones who take the kids to the doctor.

Mr. Crawford acknowledged that he made statements recognizing the fact that women often bear disproportionate responsibility for childcare, particularly during COVID. He denies that his comments about the childcare credit suggested that women were benefitting unfairly. Rather, Mr. Crawford said that he supported the credit and simply was noting the unfairness of the reality that women tend to have more caregiving responsibilities in our society than men do. Mr. Crawford acknowledged that the City Attorney spoke to him about this topic, but recalled that he was told "don't forget about the men," or something to that effect.

Analysis and Conclusions

The specific concerns about Mr. Crawford's insensitivities around issues of diversity from the individuals I interviewed were, in my view, consistent and credible. Multiple individuals reported the same comments or same types of comments. With respect to many of the comments—Mr. Crawford acknowledged making them, yet gave a different explanation for their context or his intentions.

While Mr. Crawford denied outright several of the most troubling allegations (i.e., he denied the comment about hiring minorities; the comment about the African American employee; and the use of the term "the blacks"), I do not find Mr. Crawford's denials in this regard credible, particularly where multiple individuals either heard the comments or heard about the comments at the time. None of the individuals who reported the comments had any discernable motive to lie about them. And everyone I interviewed reported that they have observed Mr. Crawford as having serious memory issues – and that he frequently does not remember conversations that have

occurred about routine City business. For these reasons, I gave less weight to Mr. Crawford's denials than I did to the more credible, corroborated reports of other witnesses. Given the overall credibility of the witnesses who reported the comments and the number of individuals who witnessed them, I do believe that the comments attributed to Mr. Crawford were in fact made.

Despite this finding, and while many of the comments are problematic and need to be addressed by the City in some fashion, I do not believe that the comments themselves violate the City's Standards of Conduct Policy as it pertains to "indecent or offensive conduct," (5.19), or "failure to behave in a professional and respectful manner." (5.8).

The comments in question, while legitimately perceived and reported to be insensitive, "odd," "cringeworthy," or reflective of out-dated gender norms and/or implicit bias based on race, gender or sexual orientation, do not in my view constitute "indecent or offensive conduct" as that term is typically used in employment policies or personnel manuals. Moreover, Mr. Crawford did express genuine remorse and distress over the fact that anything he said or did has offended anyone. Likewise, he demonstrates an openness to growth and development in this area.² For these reasons, I conclude that the conduct simply does not fit squarely within the parameters of either 5.19's prohibition on "indecent or offensive conduct" or section 5.8's "failure to behave in a professional and respectful manner."

Mr. Crawford's comments instead most clearly violate the Standards of Conduct Policy 5.28, which prohibits: "Engaging in any behavior or action, on or off duty, that is detrimental to the reputation or image of the city or the operations of the workplace." On this issue, it should be noted that several of the individuals I interviewed expressed serious reservations about their ability to work with Mr. Crawford and/or for the City in light of these comments, the attitudes that they

² Following my interview with Mr. Crawford, he sent the following email: "Having had time to reflect on my comments, I want to reiterate how disappointed I am in myself for the hurt I have caused others by my comments. Over the past eighteen months I've had many conversations about diversity, equity, and inclusion. It's an issue I care about deeply because it fundamentally involves how we as individuals can affect the health and quality of life of others, specifically those who have been marginalized either intentionally or unintentionally. This is core to public service and core to how I hope to improve the organization, our community and the world. The comments you shared with me represent a very small sample from the larger, positive comments and actions I've taken to help others and improve diversity, equity and inclusion in the city organization and community. During this past year, out of stress, frustration, or just being argumentative, I regrettably and errantly made private remarks that have contributed to the pain, discomfort and exclusion to those who heard them and to those who weren't present. The comments do not reflect how I feel or communicate on a daily and regular basis, nor do they reflect the value I place on each human being. There really is no context where these comments are acceptable, and I am genuinely and deeply remorseful for the pain and exclusion they caused. Those whom I'm closest to know that these remarks were an aberration and do not accurately represent who I am or who I strive to be, and that I believe each of us is responsible for making a better more inclusive world for everyone. I believe my long history with the city demonstrates this, and I remain committed to improving myself personally and the lives of every individual in our community."

believe they reflect, and/or a perceived lack of urgency by the City to address them. Others who work closely with Mr. Crawford felt that the comments, while unfortunate, were not malicious and reflected simply an “old school” approach or attitude that did not necessarily translate into differential treatment of any employees in the workplace. Several people noted that Mr. Crawford means well, does care about issues of diversity, and simply has a tendency to say the wrong thing.

On balance, however, given the many credible reports of troubling comments, and particularly given the comment made early this year regarding “this is why you have to be careful about hiring minorities,” use of the term “the Blacks,” and alleged comments about an African American employee, I do believe that the totality of circumstances supports a finding that the comments by Mr. Crawford violate the City’s Standards of Conduct Policy, Section 5.28 as conduct “detrimental to the image or reputation of the City or the operations of the workplace.”

Finally, with respect to the City’s Non-Discrimination Policy, the allegations at issue in this investigation did not involve any claim that Mr. Crawford has taken any adverse employment actions based on race, gender or any other protected category. Accordingly, based on the issues that I reviewed, I do not believe that a preponderance of the evidence supports that the City’s Non Discrimination Policy has been violated.

Observations/Recommendations

In addition to the above conclusions, I have a number of observations that the City may want to consider in deciding how to address this situation.

1. 
2. City employees have not received significant diversity training or training on issues of implicit bias. Although one recent diversity training took place and Mr. Crawford did participate in it, several of his reported comments came after this training occurred. The City should consider more significant training and education in this area, and perhaps even a coach to work directly with Mr. Crawford. The City may also want to consider having the Director of Human Resources more directly responsible for DEI initiatives in the City, in order to remove this as an area for which the City Administrator has primary responsibility.
3. Finally, given the number of reported issues and the credibility of the reports, I did not feel the need to interview additional employees regarding their experiences with Mr. Crawford (and felt that it may be damaging organizationally to do so in the context of an outside investigation). However, the City should consider incorporating into Mr.

Crawford's annual performance evaluation process a robust 360 review soliciting feedback from Mr. Crawford's direct reports on his management style and leadership around DEI issues in order to better understand if there are further and additional concerns in this area beyond the issues that have been the subject of this investigation. Likewise, because several individuals raised concerns that Mr. Crawford's perceived blind spots and/or insensitivities regarding issues of diversity could influence hiring, supervision, and/or compensation practices at the City (issues outside the scope of this investigation), the City should consider further exploration of those issues, either in the 360 review process or in some other manner.

Thank you for the opportunity to work with the City on this matter. If you have questions or would like follow-up on any issues, please let me know.

Respectfully submitted,

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