FIRE
Foundation for Individual Rights and Expression

October 7, 2026

Robert G. Cantelmo
Mayor's Office
108 E. Green St.
City Hall, 4th Floor
Ithaca, NY 14850

Public Comments re: Agenda item 11.1, Cornell University Moratorium

Sent via U.S. Mail and Electronic Mail (council@cityofithaca.org) and via public comment form

Dear Mayor Cantelmo:

FIRE, a nonpartisan nonprofit that defends free speech, is concerned about the proposed resolution before the City of Ithaca Common Council for a moratorium on issuing permits to Cornell University and its affiliated student groups. If approved, the moratorium would infringe upon the First Amendment rights of Cornell University students, faculty, and staff to engage in protected expression in traditional public forums and even on private property. FIRE urges the Council to reject the proposed moratorium because of its serious constitutional flaws.

Our concerns arise from the draft resolution Mayor Robert Cantelmo submitted to the City of Ithaca Common Council, calling on the Council to adopt "a Temporary Moratorium on the Issuance of Certain Permits to Cornell and Affiliated Organizations" at its October 7 meeting. The resolution introduces a policy banning issuance of city permits to "Cornell University, residential and nonresidential sorority and fraternity student organizations affiliated with Cornell University, general student organizations affiliated with Cornell University, and university student organizations affiliated with Cornell University." If adopted, the ban will go into effect immediately and last until November 5.

The draft resolution claims the moratorium "will reduce the number of social gatherings—including but not limited to parties at fraternities, sororities, and off-campus housing affiliated with student clubs and organizations—where sexual

violence and gender-based harassment proliferate, while providing the City with an opportunity to determine appropriate mechanisms to better protect victims and the community at large."

Further, the resolution claims these measures are necessary due to "substantial concerns for the safety, health, and welfare of the residents of and visitors to the City of Ithaca" and concerns about Cornell's and its affiliates' "ability and willingness to adequately assure public safety and order in connection with permitted events." The moratorium would apply to any new permits issued for assemblies, parades, special events, use of the Ithaca Commons, and certain noise permits under the City of Ithaca's General City Law, section 20(13).

Thus, the proposed policy would block Cornell University and a wide variety of Ithaca residents and visitors from obtaining permits to engage in protected free expression based solely upon their affiliation with the university, raising serious First Amendment concerns.

Because permit requirements themselves impose a prior restraint on speech, there is a "heavy presumption" against their constitutionality. *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). The Supreme Court has long made clear the "public retain[s] strong free speech rights when they venture into public streets and parks, 'which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *See, e.g., Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983)). The Ithaca Commons particularly has long been precisely this kind of public gathering ground, though this doctrine remains applicable in public forums throughout the City of Ithaca. The authority of government actors like the City of Ithaca to "limit expressive activity" in these quintessential public forums is "sharply circumscribed." *Perry Educ. Ass'n*, 460 U.S. at 45.

Identity-based speaker restrictions also raise freedom of association concerns, as it is well established that "'guilt by association alone, without [establishing] that an individual's association poses the threat feared by the Government,' is an impermissible basis upon which to deny First Amendment rights." *Healy v. James*, 408 U.S. 169, 186 (1972) (quoting *United States v. Robel*, 389 U.S. 258, 265 (1967)). Ithaca's inclination to restrict the speech of those affiliated with Cornell is no more constitutionally defensible than historical attempts to curb the rights of those associated with the Communist Party, *Robel*, 389 U.S. at 265–68, Students for a Democratic Society, *Healy*, 408 U.S. at 185–86, or the Republican Party, *Branti v.*

Finkel, 445 U.S. 507, 517–20 (1980). The government may not deny constitutional rights based solely on affiliation. Here, Cornell affiliation says nothing about whether a particular student group contributed to, condoned, or even had any connection to the conduct Ithaca seeks to address. "[T]he Government may commit a constitutional wrong when" it "tak[es] the right to speak from some and giv[es] it to others." *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). This is true even where the intention is not to restrict speech based on content.

Setting aside the free association concerns raised by the proposed moratorium, it is also not narrowly tailored to the City's asserted significant government interests, as is required for content-neutral restrictions on speech in a traditional public forum. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). While narrow tailoring does not require the least restrictive means, the government may not "burden substantially more speech than is necessary" to further its legitimate interests. *Id*. at 799.

There is no question that the City of Ithaca has a significant interest in protecting public safety and preventing sexual violence. But rather than narrowly providing for reasonable safety regulations, the proposed moratorium would categorically deny permits to more than 1,000 Cornell student organizations, including those with no connection whatsoever to the alleged misconduct giving rise to the proposal. The moratorium would apparently reach even a Cornell student organization seeking a permit to protest sexual violence or criticize the University's handling of sexual-assault complaints—the very conduct the City says prompted the moratorium proposal. This starkly illustrates how poorly Cornell affiliation tracks the harm the City seeks to prevent. In other words, because of the University's response to the alleged misconduct of a small group of individuals, the city would burden the expressive activity of an enormous class of people, including those who wish to support the alleged victim.

This distinct mismatch between means and ends is the opposite of narrow tailoring. As the Supreme Court has explained, a complete ban can be narrowly tailored "only if each activity within the proscription's scope is an appropriately targeted evil." *Ward*, 491 U.S. at 800 (quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)). Here, expressive events organized by students, faculty members, cultural organizations, political groups, and other Cornell-affiliated speakers bear no apparent relationship to the alleged sexual violence or Cornell's response to it. Yet all would apparently lose access to the City's permitting process.

The City also has less speech-restrictive means of addressing legitimate safety concerns. It may enforce generally applicable laws, impose content-neutral safety

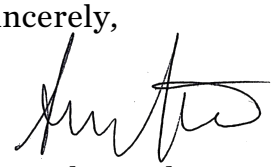
requirements, evaluate permit applications according to objective criteria, and take action against those responsible for unlawful conduct. The Supreme Court has cautioned that the government cannot choose a sweeping restriction merely because doing so is more convenient; where substantially less speech-restrictive measures are available, the government must demonstrate why those measures would fail to advance its interests. *McCullen v. Coakley*, 573 U.S. 464, 494–95 (2014). A blanket moratorium based solely on an applicant's affiliation with Cornell cannot satisfy that requirement.

Nor does the proposal's attempt at including a constitutional "savings clause" salvage it. The text indicates it would "not apply to or be construed in such a way to infringe upon the rights of the affected parties to engage in constitutionally protected activities," and promises that "to the extent permitting is required for any such activity, the City shall continue to process and issue such permits as provided by law." However, once First Amendment-protected activities are excluded, the moratorium has little effect, as the enumerated permitted activities are those of an expressive nature. A savings clause will not save a speech regulation when it "is inconsistent with the plain meaning of the words of the [regulation]." *Gay Lesbian Bisexual All. v. Pryor*, 110 F.3d 1543, 1550 (11th Cir. 1997). Such a clause cannot "save" a speech restriction that may not be imposed in the first place. Even with such a clause, a restriction leaves open opportunity for censorship and may itself deter students and others from seeking permits or engaging in protected activity.

FIRE calls on the City of Ithaca to reject the proposed Temporary Moratorium and to ensure its citizens, including those affiliated with Cornell University, are fully able to exercise their First Amendment rights. FIRE has successfully worked with other municipalities to ensure their regulations governing public spaces both protect residents' First Amendment rights and further legitimate government interests in reasonably regulating the time, place, and manner of speech. We would be happy to do the same with the City of Ithaca, free of charge, in accordance with our charitable mission.

We respectfully request a substantive response to this letter no later than October 8, 2026.

Sincerely,



Amanda Nordstrom
Strategic Campaigns Counsel