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**INVESTIGATION REPORT**

TO: The City of Lake Forest City Council  
FROM: S. Leigh Jeter, Esq., Jeter Law Office   
DATE: February 19, 2017  
RE: Investigation Report Regarding City Expenditures to a Lobbying Firm in Connection with the Acquisition of an Amtrak Stop and Pedestrian Underpass

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In late December 2017, City Council Alderman Jack Reisenberg contacted me to conduct a neutral, independent investigation into information that the City Council had learned about an agreement between The City of Lake Forest ("City") and lobbying firm Chambers, Conlon, and Hartwell ("CCH"). This report details my findings, conclusions, and recommendations regarding the investigation.

**OVERVIEW OF THE INVESTIGATION**

On November 30, 2017, members of the *Citizens for Action* group ("ACTION Group") sent an email to City Council members alleging that the City had "funneled hundreds of thousands of dollars through the [Filippini] Law Firm to pay a DC Registered Lobbyist to lobby for an Amtrak stop" in Lake Forest. The email indicated that through this arrangement, the City had paid the lobbying firm, CCH, approximately \$200,000. The email further indicated that the City Council "may be unaware of this expenditure of taxpayer dollars because it is likely disguised as a 'legal expenditure' to its attorney."

The City Council conducted a preliminary investigation into these matters. Based on the nature of the allegations, Alderman Reisenberg contacted me on behalf of the City Council in late December 2017 and asked me to conduct a neutral, independent investigation into these allegations. In connection with the investigation, the City Council requested that I interview relevant parties of interest, review any relevant documents, and prepare a report that sets forth my overall investigation findings, conclusions, and recommendations.

Significantly, throughout the investigation, I was given the opportunity to review all relevant documents and interview all relevant witnesses. No one from the City, the City Council,

or otherwise limited my investigation or otherwise provided me any directives regarding the investigation or my findings. To be clear, no one influenced this report's findings, conclusions, or recommendations.

During the investigation, I interviewed relevant witnesses and parties of interest, including various City staff, the City's Attorney, current and former elected officials, and members of the ACTION group. During the investigation, I also reviewed extensive documents and emails.

One question that arose during the investigation was the scope of what the City Council wanted me to investigate. In particular, the ACTION group shared with me a number of concerns that they had beyond the extent of the lobbying expenditures and payments to CCH. I shared those concerns with the City Council. The City Council determined that the scope of my investigation should be limited to its initial question; namely, the lobbying expenditures and payments to CCH. Thus, this report addresses those questions only.

## **I. Background Regarding the City's Structure and Governance**

The City is an Illinois home rule municipality located in Lake County. Under the City Charter, City Code, and/or Illinois Municipal Code, the structure and governance of the City is set forth as follows:

- The City Council is comprised of the Mayor and eight alderman.
- The City Council is a legislative body that establishes, but does not implement, policies of the City.
- The Mayor is a member of and presiding officer of the City Council, as well as the chief executive officer of the City. As chief executive officer, the Mayor is responsible for overseeing the implementation of the policies established by the City Council and "shall take care that the laws and ordinances are faithfully executed." 65 ILCS 5/3.1-35-5. When a policy is articulated without specifying the means of implementation, the Mayor has the authority to exercise discretion in implementing such policy.
- The City Manager is the City's chief administrative officer and is charged with assisting the Mayor in implementing the laws and policies of the City.
- The City Attorney is an administrative officer of the City, appointed by vote of the City Council. The City Attorney's client is the City itself.

## **II. Applicable Ordinances**

Pursuant to Code Section 38.31, the "City Manager or his or her designee shall have the power to make all purchases involving a total expenditure of less than \$20,000. All other purchases ... shall require the approval of the City Council." Relatedly, Code Section 38.37(A) provides that contracts with vendors or other providers delivering services on an "unspecified but

ongoing basis in annual amounts anticipated to be more than \$20,000" shall be presented to the City Council for consideration as part of the review and approval of the City's annual budget.

City Code Section 40.01 provides that "It is essential to the proper operation of democratic government that public officials be independent and impartial; that governmental decisions and policy be made through proper channels; and in accordance with the Illinois Open Meetings Act, being 5 ILCS 120, and other statutes and laws governing conduct by public officials; and public office not be used for private gain; and that there be public confidence in the integrity of government."

### **III. City Policies Regarding the West Train Station and Amtrak**

For many years, the City Council has supported building a pedestrian underpass and securing an Amtrak stop at the West station. In fact, such policy considerations are included in the City's Budget for every year since at least 2014.

Documents show that the City formally began pursuing the Amtrak stop for Lake Forest as early as 2002. In 2012, the City, Metra, Amtrak, Illinois Department of Transportation ("IDOT"), Wisconsin Department of Transportation ("WISDOT") and the Canadian Pacific Railroad signed a Memorandum of Understanding to investigate the feasibility of creating an Amtrak stop in Lake Forest. Subsequently, the City Council adopted a resolution in July 2012 referencing the Memorandum of Understanding and supporting the pursuit of an Amtrak stop at the West station.

### **IV. Background Regarding the Retention of CCH**

The regulation of railroads is very complex and largely governed by federal law. As such, it is not unusual for entities to employ lobbyists and/or consultants to assist with navigating the complex regulations, grant possibilities, and other issues that arise in this area.

The City's initial lobbying efforts to gain grant funding for the Amtrak stop and/or pedestrian underpass began in the 2012-2014 time period (and possibly earlier). At that time, the City's Attorney, Victor Filippini, was employed by the law firm Holland & Knight. Holland & Knight offered lobbying services through its Washington, D.C. offices. To obtain lobbying assistance, the City thus retained Holland & Knight attorney Robert Bradner to secure federal funding and support for the West station issues. As one would expect (as Mr. Bradner was an attorney with Holland & Knight), bills for these services were included in the City's legal bills from Holland & Knight. In June 2014, Mr. Filippini left Holland & Knight and the City no longer relied on Holland & Knight's lobbying services.

As the City began to find someone new to assist the City in its efforts, City Manager Bob Kiely learned about the CCH firm, which specializes in transportation issues. Although Mr. Kiely knew that CCH also happened to work for Metra, Mr. Kiely and Mayor Don Schoenheider

did not perceive a conflict as Metra was a necessary partner in getting the pedestrian underpass and Amtrak stop.

On or about November 20, 2015, Mr. Kiely reached out to Jason Tai, the President of CCH, regarding the possibility of retaining CCH for two defined purposes: (1) assist with getting an Amtrak Hiawatha service stop in Lake Forest; and (2) assist with getting funding related to the construction of a pedestrian underpass associated with the proposed Amtrak stop. I did not obtain any evidence in the course of the investigation to suggest that the scope of the lobbying efforts ever expanded beyond these stated goals.

In an email on December 2, 2015, Mr. Tai proposed the basic terms of a contract with the City for CCH's services, which included the following relevant terms:

- 12 month term with a 30-day out clause exercisable by either party,
- proposed retainer would be \$9,500 per month plus expenses, and
- the scope of work was identified as follows: (1) advocate state/federal officials and other public and private stakeholders as necessary on behalf of an Amtrak Hiawatha service stop in Lake Forest; and (2) advocate state/federal officials for capital funding related to the construction of a pedestrian underpass associated with the proposed Amtrak stop

Mr. Kiely shared this email with Mayor Schoenheider. Indeed, although Mayor Schoenheider stated that he does not recall ever seeing the financial terms of the contract, he is copied on emails where Mr. Tai's proposed terms, including the financial terms, are included. In addition, it is worth noting that Mayor Schoenheider was present in a face-to-face meeting with Mr. Kiely and CCH prior to any contract being signed, as well as in meetings after the contract was signed.

During executive session with City Council on January 19, 2016, Mr. Kiely updated City Council about various issues related to the West Train station. During that discussion, he advised City Council that he and Mayor Schoenheider had been talking with a lobbyist about getting assistance for obtaining federal money for the pedestrian underpass and securing an Amtrak stop. Mr. Kiely noted that they had been talking specifically to Mr. Tai, and explained that they had been speaking with him because Metra had used him as a lobbyist and he was very effective in these areas. Mr. Kiely further noted to City Council that the City needed to obtain lobbyist assistance to reach its two goals. Mayor Schoenheider subsequently remarked that the primary focus of the lobbyists would be to secure the funds necessary to build the pedestrian underpass. Neither Mr. Kiely nor Mayor Schoenheider mentioned the proposed cost of the lobbying contract.

As relevant here, those present at this executive session included former Finance Chairman and Alderman George Pandaleon, Alderman Prue Beidler, Alderman Randy Tack, Alderman Timothy Newman, Alderman Michelle Moreno, and Alderman Jack Reisenberg. During this discussion, Alderman Beidler asked a general question about the issues related to the West train station; however, none of the alderman asked any questions about the lobbying efforts or the costs of any such efforts.

In December or January 2016, Mr. Kiely reached out to Mr. Filippini and advised him about the City's interest in engaging CCH for lobbying services. Ultimately, Mr. Kiely proposed having the CCH bills go through Mr. Filippini's firm to protect confidentiality, to avoid an unfair advantage with competitors, and because that is the way that the City had handled its earlier lobbying efforts through Holland & Knight. Documents show that Mr. Kiely advised Mayor Schoenheider that the CCH bills would be included with the legal bills from Mr. Filippini's firm.

The initial consulting agreement between the City and CCH was finalized in a contract dated February 4, 2016. Mr. Filippini signed the contract in his capacity as City Attorney.

In February 2017, CCH sent an updated engagement letter to Mr. Filippini regarding renewal of the consulting agreement. Mr. Kiely authorized Mr. Filippini to renew the contract. Documents show that Mr. Kiely advised Mayor Schoenheider that he was providing Mr. Filippini with this authority. Mayor Schoenheider stated that he does not recall this exchange. On February 8, 2017, Mr. Filippini signed the second contract with CCH in his capacity as City Attorney.

During the course of CCH's work for the City, CCH made required, public reports regarding its lobbying efforts on behalf of the City. Those reports identified the client as "Filippini Law Firm LLP on behalf of The City of Lake Forest." In other words, its work for The City of Lake Forest was publicly identified.

## **V. Background Regarding the Payments to CCH**

As City Council is aware, approval was not sought from or given by the City Council for the potential and/or actual costs of these two contracts. When asked why that was not done, Mr. Kiely stated that when the initial contract was signed, they were not sure how long the engagement with CCH would last -- 2 months, 6 months, or longer. Mr. Kiely claimed that once the contract began, he focused on the strategy involved with reaching the City's goals and did not think about the administrative details. He also explained that he felt that the City Council was engaged insofar as Mayor Schoenheider (and later Mayor Rob Lansing) were involved with phone calls and meetings with CCH and aware of what was going on with the lobbyists. Mr. Kiely acknowledged that it was an error on his part not to seek City Council approval for the CCH expenditures.

Mayor Schoenheider stated that he never knew the amount of the lobbyists' expenditures and assumed that it was within the \$20,000 authority that Mr. Kiely possessed. He explained that he regrets not seeing the emails that he is copied on where the amounts are included.

Mayor Lansing acknowledged that after he became mayor, he asked Mr. Kiely how much the lobbyists cost. When Mr. Kiely told him that it was \$9,500 per month, Mayor Lansing assumed that City Council had previously approved the payment and did not think much about it. Mayor Lansing noted that he thought the cost was reasonable in light of the lobbying efforts.

A question that arises is why were the CCH bills included in Mr. Filippini's law firm's legal bills? Mr. Kiely explained that the City wanted the relationship with CCH to remain as confidential as possible because the City was concerned that other entities were vying for the same Amtrak stop and grant money. The City did not want other entities to know about the nature of the lobbying activities and somehow gain an unfair advantage in this regard. Mr. Kiely denied trying to keep the information confidential from City Council and pointed to the fact that he was sharing information with Mayor Schoenheider, Mayor Lansing, and (at least in some respects) other Council members. Mr. Kiely also noted that the City had previously paid for the City's lobbying efforts through the legal bills, so he did not view that as unusual.

Mr. Filippini explained that having the CCH bills paid by his law firm was not unusual, nor was it designed as a cover-up. In support of this conclusion, Mr. Filippini noted the following:

- Filippini Law Firm LLP's engagement letter with the City specifically provides that the law firm is authorized to hire third parties in furtherance of the City's legal interests. There is no limitation in the engagement letter on what type of consultants can be used or the amounts that may be paid to them. Mr. Filippini noted that this is a common practice among attorneys and their clients.
- Holland & Knight and Filippini Law Firm LLP have retained numerous third-party providers on behalf of the City, some in the ordinary course of litigation and administrative hearings (e.g., court reports); others at the firms' recommendations (e.g., expert witnesses); and others at the City's requests (e.g., real estate consultants and lobbyists). In each of these instances, the contract with the third-party provider was between Mr. Filippini's law firm (on behalf of the City) and the third party.
- The Finance Committee Chairman reviews the monthly check register and grants the approval of all bills paid, including legal bills. As such, the law firm's legal bills have been subject to review by the designated City Council member.
- Each legal invoice from Filippini Law Firm LLP has been approved by action of the City Council. As such, Mr. Filippini did not think the CCH contract needed to be specifically approved by the City Council because City Council approved his law firm's legal bills, which included the CCH invoice. Mr. Filippini assumed that City Council was aware of the arrangement via approving his law firm's legal bills. He explained that he did not know that City Council was not aware of it.
- Mr. Filippini assumed, prior to recent events in December 2017, that the Finance Committee Chair was reviewing his law firm's detailed legal bills -- not just the summary check register. He noted that in many communities, his law firm's legal bills are part of City Council's packet.
- Mr. Filippini noted that the detailed information regarding his law firm's legal bills, including the CCH payments, was available to City Council and the Finance Committee Chair.
- In his cover letter to Mr. Kiely each month with his law firm's legal bills, Mr. Filippini specifically mentioned that he is attaching "the invoice from CCH relating to the lobbying services that are billed under 'City Manager-Miscellaneous.'" The actual invoice from CCH is attached to the bills. Finance

Director Elizabeth Holleb and Communications Director Susan Banks are copied on this cover letter and attached bills.

- Mr. Filippini explained that in this instance, there was a desire to maintain confidentiality/attorney-client privilege over certain matters because of the competitive nature of the situation and wanting to keep the City's efforts "as close to the vest" as possible. He noted that there was a desire to maintain attorney-client privilege if key information came in, particularly about grant conditions.
- Mr. Filippini noted that the City's finances were audited and there was nothing identified as unusual in any audit regarding his legal bills.
- Mr. Filippini stated that the payments to CCH over \$20,000 do not violate the City's Code provisions because of the facts outlined above.

## **VI. Use of the General Fund Contingency Account**

The City provides two General Fund contingency accounts which were established to enable the Finance staff to record and track an expense that may exceed a line item budget or may be an unbudgeted item. Such expenses occur on a regular basis and the contingency account serves as a place to record the items, so they do not get charged in an undisciplined manner to other accounts.

In preparing for the FY2017 Budget, Mr. Kiely asked Finance Director Elizabeth Holleb to add \$108,000 in the budget for the General Fund contingency account for a lobbying contract under discussion. Ms. Holleb did not question Mr. Kiely about this request. Apparently, no one on the City Council noticed this increase in the budget for the contingency account.

The CCH expenses initially were charged to the City's legal accounts. However, once the FY2017 Budget was put in place, expenditures for CCH were transferred to come from the General Fund contingency account where it had been budgeted. That process was continued when preparing the FY2018 Budget.

## **VII. Analysis, Findings, and Recommendations**

### **A. City Manager Bob Kiely**

Mr. Kiely violated City Code Sections 38.31, 38.27(A), and 40.01 when he allowed the City to engage in two contracts with CCH without obtaining the required approval from City Council. Collectively, the two contracts with CCH and the work that CCH has since done under those contracts exceed \$200,000 – well above the \$20,000 in purchasing authority that Mr. Kiely possesses. Although Mr. Kiely asserted that he was not aware of the probable extent of the CCH engagement when it started, at a minimum he should have sought City Council approval once it became apparent that the CCH engagement was going to extend more than two months (i.e., thereby exceed \$20,000). Given that the initial contract lasted the full twelve months, it was even more incumbent on Mr. Kiely to seek City Council approval before authorizing a second

contract with CCH containing the same terms. Notably, Mr. Kiely agrees that this was a mistake on his part and agrees that the CCH contracts should have been approved by City Council. Significantly, he did not gain any personal advantage or financial benefit as a result of his actions. Therefore, it does not appear that there were further violations of any City ordinance or law.

I also find that the use of the General Fund contingency account was not a best practice, although not necessarily a specific violation of any City Code provision. The General Fund contingency account should not be used for anticipated, calculated costs that the City expects to have. Rather, the money for the CCH contracts should have been categorized in a different accounting fashion.

I do not find that Mr. Kiely's suggestion that the City include the CCH bills with the Filippini Law Firm LLP's legal billings constituted any *per se* violation. Indeed, doing so could have been (any may have been) in the City's best interests to protect confidentiality, ensure attorney-client privilege, and keep the City at a competitive advantage in seeking the Amtrak stop and grant money for the cost of the pedestrian underpass. Nonetheless, City Council should have been made aware of this arrangement given the month-to-month expenditure of significant funds, ultimately exceeding \$20,000.

I find that Mr. Kiely did not intentionally mislead City Council about the City's use of lobbyists to implement the goals that City Council had already approved. I believe that Mr. Kiely became wrapped up in the strategy of implementing the City Council's goals and neglected to handle the administrative details. Significantly, in reaching these conclusions, I note that Mr. Kiely included Mayors Schoenheider and Mayor Lansing in telephone calls and meetings with the lobbyists, he informed all of the Council members about the intent to retain the lobbyists before signing any contract with CCH, and he included Alderman Moreno on certain emails with the lobbyists and at least one meeting. That said, more communication should have been shared with City Council regarding the status of the lobbying efforts as the months went on.

While I do not find that Mr. Kiely's actions rise to the level of termination of employment, I recommend that the City Council take appropriate personnel action with respect to Mr. Kiely consistent with its practices and procedures.

## **B. Mayor Don Schoenheider**

Mayor Schoenheider also violated City Code Sections 38.31, 38.27(A), and 40.01 when he allowed the City to engage in two contracts with CCH without obtaining the required approval from City Council. As noted above, the two contracts with CCH and the work that CCH has since done under those contracts exceed \$200,000 -- well above the \$20,000 in purchasing authority that requires City Council approval. Although Mayor Schoenheider stated that he was not aware that the lobbying costs were to exceed or ever exceeded \$20,000, documents establish that he either knew, or should have known, about the amounts in question. As with Mr. Kiely, there is no indication that Mayor Schoenheider gained any personal advantage or financial benefit as a result of these actions and, as such, I do not find any further violations.

Mayor Schoenheider also stated that he was not aware that the lobbying expenditures were being paid through Mr. Filippini's law firm. However, documents establish that he either knew, or should have known, about this arrangement.

I find that Mayor Schoenheider did not intentionally mislead City Council about the City's use of lobbyists to implement the goals that City Council had already approved. That said, more communication should have been shared with the City Council regarding the status of the lobbying efforts as the months went on.

As Mayor Schoenheider is no longer affiliated with the City, I do not have any recommendations for the City Council with respect to him.

### **C. Mayor Rob Lansing**

I find that Mayor Lansing did not violate any City Code provisions or other laws. Although Mayor Lansing became aware of the nature and cost of the CCH contract shortly after taking office in May 2017, he stated that he assumed that City Council had previously approved such contracts. Given that the CCH contracts were already in place at that time, his statement is credible. Of course, in hindsight, Mayor Lansing could have asked Mr. Kiely more questions regarding the arrangement with CCH. That said, his failure to do so does not rise to any violation. Mayor Lansing did not gain any personal advantage or financial benefit as a result of his actions.

I find that Mayor Lansing did not intentionally mislead City Council about the City's use of lobbyists to implement the goals that City Council had already approved, particularly given his relatively short tenure as Mayor. That said, more communication should have been shared with City Council regarding the status of the lobbying efforts. I recommend that the City Council take appropriate action to ensure that Mayor Lansing understands the expectations that it has with respect to his open communications with the Council.

### **D. City Attorney Vic Filippini**

I find that Mr. Filippini furthered Mr. Kiely's and Mayor Schoenheider's ability to violate City Code Sections 38.31, 38.27(A), and 40.01; specifically, by allowing the City to engage in two contracts with CCH without obtaining the required approval from City Council. Collectively, the two contracts with CCH and the work that CCH has since done under those contracts exceed \$200,000 -- well above the \$20,000 in purchasing authority that Mr. Kiely possesses. As with the others, Mr. Filippini did not gain any personal advantage or financial benefit as a result of his actions.

Unlike Mr. Kiely, who admits that he should have obtained City Council approval for the CCH contracts, Mr. Filippini provides numerous reasons as to why the arrangement with CCH was proper without City Council approval. Primarily, he claims that because his law firm's engagement letter with the City allows his law firm to contract with third parties on behalf of the

City in any amount – and City Council approved all of his law firm’s legal bills – specific City Council approval was not necessary for the \$20,000+ expenditures to CCH.

I agree with Mr. Filippini that it is both common and appropriate for attorneys to engage certain third parties on behalf of clients and bill those expenses through the client’s legal bills. However, when doing so, it is mostly for purposes of administrative costs, consulting and testifying experts, investigations, court reporters, or litigation or anticipated litigation expenses. In a case such as this one, where a city is retaining the services of a lobbyist on an anticipated year-long basis, with month-to-month payments, it is my opinion that it is not so common to bill those expenses through the legal bills. It may be appropriate under limited circumstances to do so for confidentiality or attorney-client privilege reasons, but even assuming that is the case here, I still find that the CCH expenditures should have been approved by City Council. I believe that there exist ways to further both the interest in getting City Council approval as well as protecting the City’s interests in confidentiality. Indeed, the fact that the lobbyists were paid out of the General Fund contingency account rather than the Legal account suggests that this arrangement was not being set up for purely legal reasons. In addition, even if Mr. Filippini is correct and the “letter” of City Code Sections 38.31, 38.27(A), and 40.01 were not violated, I find that the spirit of those Code Sections was in fact violated. As such, I find that Mr. Filippini should have counseled Mr. Kiely to obtain City Council approval for the CCH contracts when Mr. Filippini became aware of them.

I do not find that Mr. Filippini attempted to conceal the nature of his legal bills. To the contrary, Mr. Filippini prominently included in his otherwise short cover letter for his legal bills that he was including the invoice from CCH with his law firm’s bills and that the invoice related to lobbying services. And, he attached the actual invoice from CCH. Mr. Filippini sent the cover letter and attached documents to Mr. Kiely, Ms. Holleb, and Ms. Banks. He also was aware that Mayor Schoenheider knew (or at least should have known) that the CCH bills were being paid through his law firm. Moreover, until December 2017, Mr. Filippini assumed that his law firm’s detailed legal bills were being reviewed by the Finance Committee Chairman, and subsequently being approved by the City Council. Under all of these circumstances, the evidence simply does not support a finding that he or anyone else was trying to cover-up the nature of the legal bills or the payments to CCH.

I recommend that the City Council take appropriate action to ensure that Mr. Filippini understands its expectations regarding his professional role and obligations as City Attorney.

#### **E. Finance Director Elizabeth Holleb**

Finance Director Ms. Holleb was aware of the amount of the payments to the lobbyists, the fact that CCH was being paid through Mr. Filippini’s firm, and the fact that CCH’s expenses were being paid out of the General Fund contingency account. Significantly, Ms. Holleb did not gain any personal advantage or financial benefit as a result of her knowledge or actions.

Ms. Holleb explained that she had concerns about how the CCH payments were being made, yet she never questioned Mr. Kiely’s direction nor did she report her concerns to anyone else such as the City Council’s Finance Committee Chairman. She explained that she knew that

the City Manager, the Mayor, and the City Attorney were in agreement with the arrangement, so she did not feel that it was her place to question these decisions. Nonetheless, I find that as the City's Finance Director, Ms. Holleb had a responsibility to question these practices and, if no changes were made despite her concerns, reach out to the Finance Committee Chairman for clarification. I recommend that City Council take appropriate personnel action to ensure that Ms. Holleb understands its expectations going forward.

Finally, I understand that the City Council and its Finance Committee has taken significant steps to make changes that will strengthen the City's internal controls and compliance. I believe that these measures will result in improved financial processes for The City of Lake Forest.