



MEMORANDUM

TO: Peter Breen, Chairperson
Economic and Community Development Committee

FROM: William J. Heniff, AICP, Director of Community Development *WH*

DATE: July 27, 2012

SUBJECT: **Chick-fil-A Appreciation Day**

At the request of Trustee Peter Breen, Chairperson of the Economic and Community Development Committee (ECDC), consideration of draft resolution from the ECDC recognizing "Chick-fil-A Appreciation Day," will be placed on the July 31, 2012 meeting agenda. The draft resolution for consideration by Trustee Breen is attached.

For reference purposes, staff received the attached opinion from Village Counsel relative to the authority of the Committee to pass resolutions. The ECDC is being requested to make a recommendation relative to the resolution to the Village Board accordingly.

DRAFT

RESOLUTION NO. R-00-13

**A RESOLUTION TO SUPPORT
CHICK-FIL-A APPRECIATION DAY AND AFFIRM
FREEDOM OF SPEECH AND RELIGIOUS EXPRESSION**

WHEREAS, Village businesses and their leaders are the backbone of our community; and

WHEREAS, the freedom of speech and free exercise of religion are not merely recognized and protected by our United States Constitution but are cherished values of our community; and

WHEREAS, government decisions, including those related to business and zoning, should not be made in violation of these cherished values; and

WHEREAS, the residents and business owners of the Village, and the members of this Village Board, hold a wide range of religious and political opinions on any number of issues of public concern – and all of us share an equal right to robustly express those opinions in public without fear of government retribution; and

WHEREAS, after much hard work by Village officials and staff, the Village is now home to a Chick-fil-A restaurant, which is creating jobs and bringing new people and revenue to our community; and

WHEREAS, the Chick-fil-A company has been subjected to negative government treatment in neighboring areas because of the sincerely held religious beliefs of its leaders, in response to which National Chick-fil-A Appreciation Day has been set for August 1, 2012; and

WHEREAS, our community should support occasions like Chick-fil-A Appreciation

Day, which serve to both support one of our local businesses and to reaffirm for all that “Lombard values” are pro-business, pro-jobs, and pro-freedom;

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That all people of good will celebrate the freedoms of speech and religious expression recognized herein and affirm them at every opportunity.

SECTION 2: Residents of the Village are encouraged to support National Chick-fil-A Appreciation Day of August 1, 2012 and events like it that highlight and support outstanding businesses in the Village.

SECTION 3: That this Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

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T 708 349 3888 F 708 349 1506www.ktjlaw.com**To: David A. Hulseberg, Village Manager, Village of Lombard****From: Jason A. Guisinger, Assistant Village Attorney****Via e-mail only****Date: July 26, 2012****Re: AUTHORITY OF ADVISORY VILLAGE COMMITTEE TO PASS RESOLUTION**

Please accept this memorandum as a response to your question regarding whether a standing advisory committee of the Village has the authority to pass its own resolution, as opposed to simply making recommendations to the Village Board for approval. It is our opinion that an advisory committee of the Village generally does not have the authority to pass its own resolutions.

Advisory municipal committees, such as those utilized by the Village, are the creature of the corporate authorities of the municipality; thus, any such committee's function must first have been authorized by the corporate authorities. *Gillett v. Board of Supervisors of Logan County*, 67 Ill. 256 (1873). Indeed, "[s]uch committees are mere agencies or instrumentalities of the governing body. . ." 4 Eugene McQuillin, *THE LAW OF MUNICIPAL CORPORATIONS* §13.74 (3d ed. rev. 2011). Thus, any power or function exercised by a municipal advisory committee must be authorized by the corporate authorities that created it.

The standing advisory committees of the Village (hereinafter referred to as "Committees" or singularly as a "Committee") were created and are governed by Chapter 30 of the Village Code. The Committees were given specific duties and functions, which are clearly defined in the Village Code.

Pursuant to §30.24 of the Village Code, the duties and powers of the Committees are defined. Most importantly, the Committees are generally only given advisory powers, meaning that they can make recommendations to the Village Board, but have no authority to take any final action on their own. Indeed, §30.24(A) states that "[e]ach advisory committee shall make recommendations to the corporate authorities regarding matters of policy and legislation..."

Further, each individual Committee's powers are specifically defined and limited in Chapter 30 of the Village Code. For example the Economic and Community Development Committee's ("E CDC") duties and powers are set forth in §30.24(E) of the Village Code as follows:

Economic and Community Development Committee. The Economic and Community Development Committee shall consider and make recommendations to the corporate authorities regarding:

- (1) Community liaison. The Committee shall have the responsibility of coordinating a solid, positive working relationship with community organizations and resident groups.

- (2) **Development.** The Committee shall make recommendations to the corporate authorities which encourage and guide development and re-development in the community, but shall not intrude upon the duties and responsibilities of the Plan Commission or Zoning Board of Appeals.
- (3) **Resources.** The Committee shall review related resources, plans, grant applications and proposals and other materials pertaining to community betterment and development.
- (4) **Downtown Redevelopment.** The Committee shall have the responsibility to study and to recommend appropriate action concerning the redevelopment of the downtown area to include but not be limited to adaptive building reuse and the preservation of buildings of historic and architectural significance.
- (5) **Tax Increment Financing Districts.** The Committee shall act as a conduit and coordinating body for the tax increment financing district(s) of the Village.
- (6) **Other matters.** The Committee shall consider other matters which are specifically referred to it by the corporate authorities.

As such, ECDC only has the authority to make *recommendations* to the Village Board within the confines of the outlined categories of responsibility for ECDC. Thus, while ECDC has the power to recommend that the Village Board pass a resolution that fits within one of the listed categories of responsibility, it has no authority to pass such a resolution itself. This same principle applies to all of the Committees of the Village.

In order for a Committee to have final authority to take action on behalf of the Village, the Village Board must specifically delegate the authority to the Committee. For instance, under §30.25(C) of the Village Code, the Village Board has given ECDC the authority to approve Downtown Lombard Renovation and Improvement Expenditures of less than \$10,000. Absent a specific grant of authority to take final action on a matter, a Committee is without such authority.

The same principles discussed above in regard to resolutions, would apply to a Committee making a proclamation. The Village Board has not given the Committees the authority to make proclamations; thus, none exists.

In sum, advisory committees of a municipality, as mere agencies or instrumentalities of a municipality, are relegated to those powers specifically granted by the municipality itself. Under the Village Code, the Village Board has given the Committees no power to pass resolutions. Rather, the Committees have only been given the power to make recommendations regarding whether the Village Board should pass a resolution, assuming that the resolution fits within the defined responsibilities of the particular Committee.

Please contact us with any questions.

cc: Thomas P. Bayer, Village Attorney