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November 15, 2021

City of Milwaukee City Clerk  
City of Milwaukee Common Council Members  
City of Milwaukee Mayor

Re: Common Council File 211024, Objection to Creation of City Charter 3-03-1.5

Dear City Clerk, Council Members, and Mayor Barrett:

By letter dated November 5, 2021, concerning Council File 210001 (budget amendments), the City Attorney's Office had asked the Council to deny any effort to remove positions from the City Attorney's Office. Unfortunately, an ACA position was moved to the City Clerk's Office. We now see that at the Judiciary & Legislation Committee meeting on Monday, November 15, File 211024 will be considered, that being creation of subsection 1.5 in Charter Ordinance 3-03, allowing the Council to employ and compensate special counsel "to assist in or take charge of any matter in which the city is interested." We respectfully urge that this file not be passed.

There has not been any research to suggest that changing the Charter in this fashion would permit the hiring of an attorney by the City Clerk. The contemplated position would not be a "special counsel" which is a term of art describing an attorney retained to work on a specific legal matter. The proposed Charter amendment would go far beyond what is authorized by §62.09(12)(g) of the Wisconsin Statutes in municipalities other than Milwaukee (§62.03(1) provides that §62.09(12)(g) does not apply to the City of Milwaukee as a 1<sup>st</sup> class city).

We understand that there are rare occasions when the Common Council feels the need to retain special counsel because of a conflict with the Mayor's office or even more rarely, with the Office of the City Attorney. The solution in those situations is for the Common Council to retain special counsel. Creating a full-time attorney position in the Office of the City Clerk raises a number of issues. What would be the day-to-day duties of the position? Would the position have the authority to disregard the views of the Office of the City Attorney? Would the position have authority to render opinions binding on City



Departments and staff? Would individual Alderpersons have the right to request legal services or advice from the attorney holding the position or would requests only come from the full Common Council?

As you can see, the proposed amendment to the City to allow the creation of this new position in the Office of the City Clerk raises a number of issues and concerns that should be carefully considered before final action is taken. At the very least, this matter deserves more study and consideration. We ask that the Judicial Legislation Committee and the Common Council not move forward and explore more alternatives to address the concerns raised in this file.

Very truly yours,

TEARMAN SPENCER  
City Attorney