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MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: May 31, 2012
RE: Accept Resignation of Councilmember Burke and Consider Appointment to Fill Unexpired Term Until the November 6, 2012 General Election – June 5, 2012 City Council Meeting; Agenda Item 8(c)

Section 1. Background. Councilmember Paul Burke sold his home in the City and is no longer a resident as of May 30, 2012. Under Minnesota Statute § 351.02, his position of Councilmember becomes vacant when he is no longer a resident of the City.

As a result, Councilmember Burke is resigning as a Sunfish Lake City Councilmember as of May 30, 2012. A copy of Councilmember Burke's resignation is attached to this memo. A signed copy will be available at the June 5, 2012 Council meeting. Councilmember Burke's term was a four year term which would have expired on January 2, 2015. The Council should consider accepting the resignation of Councilmember Burke at the June 5, 2012 Council meeting. Once his resignation is accepted, the Council will need to appoint an individual to fill the vacant Councilmember position until the November 6, 2012 general election.

Section 2. Filling Council Vacancies. Under certain circumstances, individuals appointed to fill Council vacancies serve on a temporary basis, and the City must hold a special election to elect a permanent replacement to fill the vacancy. The procedure to fill a vacancy is set forth in Minnesota Statutes § 412.02, Subd. 2(a). Two factors determine whether an election is required: first, whether filing has opened for the next regular city election, and second, the length of the unexpired portion of the term at the time of the vacancy. If the vacancy occurs on or after the first day to file as a candidate for the next regular city election or if less than two years remain in the unexpired term, the City does not need to hold a special election and the appointed person can serve out the remainder of the unexpired term. If the vacancy occurs **before** the first day to file as a candidate for the next regular City election and **more than two years** remain in the unexpired term, the City must hold a special election to fill the council vacancy at or before the next regular City election, and the person elected will serve out the remainder of the unexpired term.

When a special election is necessary, the Council must appoint a person to hold the vacant position until voters elect a candidate to serve in that position at the special election. Procedurally, the Council should adopt a resolution that declares the vacancy.

Section 3. Analysis. In deciding whether a special election is necessary we look at when the vacancy occurred and the amount of time left in the unexpired term. Councilmember Burke's term was scheduled to expire on January 2, 2015. This means that there are more than two years remaining in his unexpired term. Next we look at whether the vacancy occurred before the first day to file affidavits of candidacy for the next regular city election. For cities with no primary election, the first day for filing affidavits for candidacy for the November 6, 2012 general election is August 2, 2012. Councilmember Burke's vacancy occurred on May 30, 2012, before the first day to file affidavits of candidacy for the next regular city election.

Accordingly, a special election to fill Councilmember Burke's vacancy is required.

The City Council calls for a special election. A special election may be held at or before the next regular City election. Many cities hold this type of special election at the same time as the next regular City election. The recommendation is to hold the special election at the time of the next regular City election, namely on November 6, 2012.

The Council must appoint an eligible person to fill the vacancy until the special election. The appointed person will serve until the special election. State law generally provides that the terms of elected city officials begin on the first Monday in January following the election. However, the attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate. [A.G. Op. 471-M (Nov. 23, 1999)].

Section 4. Council Action. The Council is asked to consider the following resolutions at the June 5, 2012 Council meeting:

1. Resolution Accepting Resignation of Councilmember Paul Burke and Declaring a Vacancy;
2. Resolution Appointing Person to Fill Councilmember Vacancy; and
3. Resolution Calling for a Special Election.

Attachments

**RESIGNATION OF PAUL BURKE FROM THE CITY COUNCIL OF THE
CITY OF SUNFISH LAKE, DAKOTA COUNTY, MINNESOTA**

WHEREAS, I, the undersigned, have moved out of the City and am no longer a resident of the City of Sunfish Lake.

WHEREAS, residency in the City is a requirement of office for the position of Councilmember.

NOW THEREFORE, I, the undersigned, Paul Burke, do hereby resign from the position of Councilmember of the City of Sunfish Lake effective May 30, 2012.

Paul Burke

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 12-_____

**RESOLUTION ACCEPTING RESIGNATION OF COUNCILMEMBER PAUL BURKE
AND DECLARING A VACANCY**

WHEREAS, the Sunfish Lake City Council has received the written resignation of Councilmember Paul Burke, effective on May 30, 2012.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
SUNFISH LAKE, MINNESOTA, AS FOLLOWS:**

1. The Council accepts Councilmember Paul Burke's resignation as described above.
2. The Council declares that a vacancy exists on the Sunfish Lake City Council effective on May 30, 2012.

Adopted by the City Council of the City of Sunfish Lake on June 5, 2012.

Richard A. Williams Jr., Mayor

Attest:

Catherine Iago, City Clerk

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 12- _____

RESOLUTION APPOINTING PERSON TO FILL COUNCILMEMBER VACANCY

WHEREAS, a vacancy exists on the Sunfish Lake City Council.

WHEREAS, pursuant to Minnesota Statutes § 412.02, Subd. 2a, the Council shall fill the vacancy by appointment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SUNFISH LAKE, MINNESOTA, AS FOLLOWS:

1. The Council appoints _____ to fill the vacant position until a special election is held on November 6, 2012.

Adopted by the City Council of the City of Sunfish Lake on June 5, 2012.

Richard A. Williams Jr., Mayor

Attest:

Catherine Iago, City Clerk

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 12-_____

RESOLUTION CALLING FOR A SPECIAL ELECTION

WHEREAS, a vacancy exists on the Sunfish Lake City Council.

WHEREAS, the vacancy occurred before the first day to file affidavits of candidacy for the next regular City election.

WHEREAS, the vacancy occurred when more than two years remain in the unexpired term.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SUNFISH LAKE, MINNESOTA, AS FOLLOWS:

1. A special election is ordered to fill the vacancy on the Sunfish Lake City Council.
2. The person elected shall fill the vacancy for the remainder of the term.
3. The special election will be held at the next regular City election on November 6, 2012.
4. The person elected to fill the remainder of the term shall be eligible to qualify and assume office upon receipt of an election certificate.

Adopted by the City Council of the City of Sunfish Lake on June 5, 2012.

Richard A. Williams Jr., Mayor

Attest:

Catherine Iago, City Clerk