
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
◊STEPHEN H. FOCHLER
◊JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
ANN C. O'REILLY
◊*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
BRIDGET McCAULEY NASON
DAVID B. GATES
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
• ROGER C. MILLER
1924-2009

MEMO

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
◊ALSO ADMITTED IN OKLAHOMA

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: July 3, 2018
RE: Accept Resignation of Mayor Williams and Resignation of Councilmember O'Leary and Consider Appointment to Fill Unexpired Terms of Mayor and Councilmember Until the November 6, 2018 General Election – July 10, 2018 City Council Meeting; Agenda Item 8(a)

Section 1. Resignation of Mayor Richard Williams. Mayor Richard Williams sold his home in the City and is no longer a resident as of July 20, 2018. Under Minnesota Statute § 351.02, his position as Mayor becomes vacant when he is no longer a resident of the City.

As a result, Mayor Williams is resigning as a Sunfish Lake City Councilmember as of July 20, 2018. A copy of Mayor William's resignation is attached to this memo. A signed copy will be available at the July 10, 2018 Council meeting. Mayor Williams term would have expired on December 31, 2018. The Council should consider accepting the resignation of Mayor Williams at the July 10, 2018 Council meeting. Once his resignation is accepted, the Council will need to appoint an individual to fill the vacant Mayor position until the November 6, 2018 general election.

Section 2. Resignation of Councilmember Dan O'Leary. At the July 10, 2018 Council meeting, the Council will consider appointing Councilmember O'Leary to fill the vacant position of Mayor until the November 6, 2018 general election. Councilmember O'Leary's term expires on December 31, 2020. The Councilmember vacancy occurred before the first day to file affidavits of candidacy for the next regular City election. The Councilmember vacancy occurred when more than two years remain in the unexpired term. A special election is ordered to fill the Councilmember vacancy on the Sunfish Lake City Council. The person elected shall fill the Councilmember vacancy for the remainder of the term. The special election will be held at the next regular City election on November 6, 2018. The person elected to fill the remainder of the term shall be eligible to qualify and assume office upon receipt of an election certificate.

Section 3. 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 4. 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 O'Leary's term was scheduled to expire on December 31, 2020. 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, 2018 general election is July 31, 2018. Councilmember O'Leary's vacancy occurred on July 20, 2018, before the first day to file affidavits of candidacy for the next regular city election.

Accordingly, a special election to fill Councilmember O'Leary'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, 2018.

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 5. Resigning Member May Not Vote on Replacement. Minn. Stat. § 415.15 provides that "no resigning member of a city council shall participate in a vote of the council to choose a person to replace the resigning member." Richard Williams cannot vote on his replacement as Mayor. Dan O'Leary cannot vote on his replacement as Councilmember.

Section 6. Council Action. The Council is asked to consider the following resolutions at the July 10, 2018 Council meeting:

1. Resignation of Mayor Richard Williams;
2. Resolution Accepting Resignation of Mayor Richard Williams and Declaring a Vacancy;
3. Resolution Appointing Person to Fill Mayor Vacancy;
4. Resignation of Councilmember Dan O’Leary;
5. Resolution Accepting Resignation of Councilmember Dan O’Leary and Declaring a Vacancy;
6. Resolution Appointing Person to Fill Councilmember Vacancy;
7. Resolution Calling for a Special Election with the General Election.

Attachments

**RESIGNATION OF RICHARD WILLIAMS AS MAYOR 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 Mayor.

NOW THEREFORE, I, the undersigned, Richard Williams, do hereby resign from the position of Mayor for the City of Sunfish Lake effective July 20, 2018.

Richard Williams

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

RESOLUTION NO. 18-_____

**RESOLUTION ACCEPTING RESIGNATION OF MAYOR RICHARD WILLIAMS
AND DECLARING A VACANCY**

WHEREAS, the Sunfish Lake City Council has received the written resignation of Mayor Richard Williams, effective July 20, 2018.

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

1. The Council accepts Mayor Williams resignation as described above.
2. The Council declares that the position of Mayor of the City of Sunfish Lake is vacant effective July 20, 2018.

Adopted by the City Council of the City of Sunfish Lake on July 10, 2018.

Richard Williams, Mayor

Attest:

Catherine Iago, City Clerk

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

RESOLUTION NO. 18- _____

**RESOLUTION APPOINTING PERSON TO FILL THE POSITION OF MAYOR OF
THE CITY OF SUNFISH LAKE**

WHEREAS, the position of Mayor of the City of Sunfish Lake is vacant.

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 Councilmember Dan O’Leary to fill the vacant position until the general election is held on November 6, 2018.

Adopted by the City Council of the City of Sunfish Lake on July 10, 2018.

Richard Williams, Mayor

Attest:

Catherine Iago, City Clerk

**RESIGNATION OF DAN O'LEARY FROM THE CITY COUNCIL OF THE
CITY OF SUNFISH LAKE, DAKOTA COUNTY, MINNESOTA**

WHEREAS, I, the undersigned, have been appointed by the City Council to the position of Mayor of Sunfish Lake to fill the unexpired term of Richard Williams effective July 20, 2018.

WHEREAS, because I am serving as Mayor, I can no longer fill the position of Councilmember.

NOW THEREFORE, I, the undersigned, Dan O'Leary, do hereby resign from the position of Councilmember of the City of Sunfish Lake effective July 20, 2018.

Dan O'Leary

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

RESOLUTION NO. 18-_____

**RESOLUTION ACCEPTING RESIGNATION OF COUNCILMEMBER DAN O'LEARY
AND DECLARING A VACANCY**

WHEREAS, the Sunfish Lake City Council has received the written resignation of Councilmember Dan O'Leary, effective July 20, 2018.

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

1. The Council accepts the resignation of Councilmember O'Leary as described above.
2. The Council declares that there is a vacancy on the City Council of the City of Sunfish Lake effective July 20, 2018.

Adopted by the City Council of the City of Sunfish Lake on July 10, 2018.

Richard Williams, Mayor

Attest:

Catherine Iago, City Clerk

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

RESOLUTION NO. 18- _____

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, 2018.

Adopted by the City Council of the City of Sunfish Lake on July 10, 2018.

Richard Williams, Mayor

Attest:

Catherine Iago, City Clerk

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

RESOLUTION NO. 18-_____

**RESOLUTION CALLING FOR A SPECIAL ELECTION WITH THE
GENERAL ELECTION**

WHEREAS, the position of the Mayor of the City of Sunfish Lake is vacant effective July 20, 2018.

WHEREAS, current Councilmember Dan O'Leary was appointed by the City Council to serve as Mayor until the general election on November 6, 2018.

WHEREAS, because Dan O'Leary has been appointed as Mayor, there is a vacancy on the City Council.

WHEREAS, Councilmember O'Leary's term expires on December 31, 2020.

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

WHEREAS, the Councilmember 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 Councilmember vacancy on the Sunfish Lake City Council.
2. The person elected shall fill the Councilmember vacancy for the remainder of the term.
3. The special election will be held at the next regular City election on November 6, 2018.
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 July 10, 2018.

Richard Williams, Mayor

Attest:

Catherine Iago, City Clerk