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

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
BRIDGET McCAULEY NASON
TONA T. DOVE
AARON S. PRICE
DAVID L. SIENKO
CASSANDRA C. WOLFGAM
DEBRA M. NEWEL
CASSANDRA J. BAUSTISTA
MATTHEW K. BROKL

MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: May 2, 2019
RE: Conflict of Interest Policy; Agenda Item 8(c); May 7, 2019 Council Meeting

Section 1. Background. This relates to item 8(c) on the agenda for the May 7th Council meeting dealing with the City Forester performing landscaping or tree related work on property owned by the Mayor.

Under Minn. Stat. § 412.191 the Mayor is part of the Council and the term “Council” includes the Mayor. The City has a policy that prohibits any consultant from doing work for anyone on the Council.

Attached to this memo is a ***Resolution Adopting a Policy with Respect to Conflicts of Interest Concerning City Consultants and Employees*** dated February 3, 2009. Attached to the resolution is the City’s Policy Relating to Conflicts of Interest (City’s Policy).

Section 4 of the City’s Policy prohibits a consultant from providing any services to a Councilmember. Section 5 of the City’s Policy prohibits a consultant from providing tree trimming, tree planting, removal or any other site improvements to a private landowner in the City. Section 6 of the City’s Policy provides an exception to Section 5 under limited circumstances, but Section 6 is not an exception to the prohibition in Section 4.

In summary, the Forester cannot provide services to a Councilmember unless the Council amends the City’s Policy or votes to waive the prohibition in this instance.

Section 2. Council Action. The Council is being asked to address a request that requires either a waiver of the City’s Policy or an amendment to the City’s Policy.

Attachment

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

RESOLUTION NO. 09-05

**A RESOLUTION ADOPTING A POLICY WITH RESPECT TO CONFLICTS OF
INTEREST CONCERNING CITY CONSULTANTS AND EMPLOYEES**

WHEREAS, it is appropriate that the City adopt a policy with respect to conflict of interest situations involving City consultants and employees.

WHEREAS, such a policy enhances the respect of the public with respect to the operations of the City.

WHEREAS, such a policy places the consultants and employees on notice with respect to conflict of interest situations that are to be avoided.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
SUNFISH LAKE THAT THE ATTACHED POLICY IS HEREBY ADOPTED.**

Passed and duly adopted by the City Council of Sunfish Lake this 3rd day of February, 2009.



Molly Park, Mayor

ATTEST:


Catherine Iago, City Clerk

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

**A POLICY RELATING TO CONFLICTS OF INTEREST WITH
RESPECT TO CITY CONSULTANTS AND EMPLOYEES**

Section 1. PURPOSE AND INTENT. It is important that the City consultants and employees avoid conflict of interest situations that involve City Business. It is also important that the public know and perceive that when consultants and employees are working on a matter involving City Business, the consultants and employees are only working for the City and not for private parties. The purpose of the policy herein is to establish procedures and rules with respect to possible conflicts of interest situations so that such situations can be avoided.

Section 2. CITY BUSINESS. City Business means any of the following:

- a. Any matter that requires a City permit or the approval, agreement, or permission of the City. Such matters include, but are not limited to, site and building plan approvals, plats, lot splits, building permits, and approvals of drainage plans or landscape plans.
- b. Any actions or tasks whereby the City is enforcing its ordinances or the laws of the State of Minnesota. Such matters include, but are not limited to, demands or orders to remove nuisances, noxious weeds or diseased trees.
- c. Any litigation involving the City of Sunfish Lake.

No employee or consultant of the City shall work as an employee of a private non-governmental party on any matter of City Business. No employee or consultant of the City shall contract with a private non-governmental party to provide services with respect to any matter of City Business.

Section 3. GOVERNMENTAL ENTITIES. With respect to governmental entities other than Sunfish Lake, no employee or consultant of the City shall represent, advise, or consult with such other governmental entities with respect to any litigation involving the City of Sunfish Lake where the other governmental entities are adversarial parties.

With respect to other governmental entities, if a consultant or employee has been retained or works for other governmental entities, with respect to any matter which requires a permit from the City of Sunfish Lake or which requires the approval, permission or agreement of the City of Sunfish Lake, then the consultant or employee of the City shall notify the Sunfish lake City Council of such representation.

The Sunfish Lake City Council shall then decide whether the consultant or employee shall continue to represent the City of Sunfish Lake on that particular matter.

Section 4. WORK FOR COUNCILMEMBERS. No employee or consultant of the City shall be an employee of any Sunfish Lake Councilmember. No employee or consultant of the City shall contract with a Councilmember to provide services to the Councilmember.

Section 5. WORK FOR PRIVATE LANDOWNERS ON LAND IN CITY. Subject to the exceptions stated in Section 6 hereof, no employee or consultant of the City shall work for any private landowner with respect to improvements to land or buildings, or repair or maintenance to land or buildings in the City of Sunfish Lake. Such improvements to land or buildings include, but are not limited to landscaping, grading, drainage improvements, construction, maintenance and repair of structures, installation of septic systems, tree trimming, tree planting or removal, planning of site improvements or engineering of site improvements.

Section 6. WORK OF CITY FORESTER. The following is an exception to Section 5.

The City Forester may perform work for a private landowner on land in the City if the following conditions exist:

- a. The work does not result from, relate to, or arise out of a City enforcement action or a complaint that the private landowner is not complying with City ordinances or State law.
- b. The work is not prohibited by Section 2 or by Section 4.
- c. The City Forester did not solicit the work. The private landowner initiated contact with the City Forester and solicited the services to be provided by the City Forester.
- d. Before the work commences, the private landowner executes a written release and acknowledgment whereby the private landowner acknowledges that the entity performing the work is not doing so in a capacity as a City employee or independent contractor; the instrument shall release the City from any claims against the City relating to the work to be performed. The form and content of the release and acknowledgement are subject to the approval of the City Attorney.
- e. On or about June 30th and December 31st of each year, the City Forester shall file with the City Clerk a report for the respective previous six (6) months that shows, for the work performed under this Section, the following information:
 - (i) Name of landowner and address at which work was performed;
 - (ii) General description and nature of work performed;
 - (iii) Dates on which work was performed; and
 - (iv) The signed release and acknowledgement forms referenced above.

Section 7. OTHER ETHICAL CODES. Nothing contained in this policy shall be deemed to limit any of the other ethical codes to which the consultants and employees, by virtue of their profession, may be subject.

Section 8. APPLICABILITY. This policy shall apply to all consultants and employees of the City.

Section 9. SUPERSEDING EFFECT. This policy supersedes the policy adopted by the City in 1991.