

CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE ACTION

Agenda Item Number: _____ Meeting

Date: February 13, 2013

Attachments: Yes No

CITY COUNCIL ACTION

Date: February 19, 2013

- Approved Denied
 Amended Tabled
 Other

Originating Department: City Clerk-Treasurer

Action Requested: Review and Discuss Assessing Department Staff

Background/Justification:

In the fall of 2012, we were directed to attempt to fill the position of the full-time Appraiser II in the City Assessor's office with a current employee. An individual applied, but did want a reduced schedule. The appraising position does not lend itself to a reduced schedule.

Since the staff vacancy in June we have contracted two County appraisers to complete the required data collection and appraisal of the new construction /remodeling from the City building permits (two \$5,000 contracts). Acknowledging their County duties these contractors are limited in their available hours to assist the City. No other contractors offered their services from our contacts with neighboring counties or known statewide associations.

With two employees covering our 8,800 parcels we find ourselves woefully short in the quintile appraisal goal (20% per year) and also face potential burnout from overtime work of the Appraiser (average 7 hours per week) and additional 1 to 2 hours worked each evening, some holidays (MLK), and Sundays by the City Assessor.

The fair and equitable appraisal work done by the four staff members over the past years will unravel with two appraisers attempting to meet the statutory workload and timelines. An additional appraiser is necessary to meet the workload and State requirements.

Fiscal Impact: To fill the position of the full-time Appraiser II, there will be no negative fiscal impact as this position was included in the 2013 budget request. (Range 5, \$33,009-\$45,468)

Staff Recommendation: Advertise to fill the vacant Appraiser II position.

Preparer: City Clerk-Treasurer

Signature:

APPRAISER II

Position Title: Appraiser II
Department: Clerk-Treasurer
Department Head: Clerk-Treasurer
Immediate Supervisor: Assessor
Pay Range: 5 **FLSA Status:** Non-exempt

<i>APPROVED:</i> April 5, 2000
<i>REVISED:</i> November 1, 2007
<i>REVISED:</i>

Purpose

Performs non-supervisory technical and clerical work to assist the Assessor with valuation and classification activities. Views and values residential properties for classification and determination of estimated market value. Works with the public and explains the appraisal system, tax procedures and policies. Prepares necessary reports, surveys and studies. Processes homestead applications and performs general office duties.

Organizational Relationships

Communicates with: *Internally* - Appraiser, City Clerk Planning and Development Services Secretary, Building Inspection Technician; *Externally* - County staff and property owners
Supervises: None

ESSENTIAL FUNCTIONS

Review property sales data for determining market value changes; arrive at an estimated market value on the approximately 3,000 residential properties in assigned area, review with Assessor instructions for current year estimated market value changes; understand cost depreciation schedules used in calculations; value land, buildings and new construction as of January 2nd.

Read and verify legal descriptions on all documents and verify ownership (grantors) to record all real estate transfers. Prepare sales study worksheet and update sections maps and address cards.

Send letters to taxpayers and schedule appointments with property owners; measure, inspect and collect data on land and buildings; take and organize photos in card file; and view new construction and add to tax rolls.

Answer phone for Assessor's office and refer callers to appropriate staff; personally responds to assessing-related questions; respond to inquires and complaints from property owners; and calculate tax estimates upon request and verify special assessment balances.

Responsibility to approve or deny homestead applications; mail forms and prepare follow-up correspondence when real estate transfers are involved; determine if mid-year, full, relative or non-homestead; enter homestead codes on field cards and into computer system; update social security screen on computer; and files homestead cards and applications.

Understand the operation of the computer and related programs; prepare Sales Ratio Study from information on Certificate of Real Estate Value form; process letters and worksheets; and enter and proofread new year values and assessment codes on computer.

APPRAISER II

ESSENTIAL FUNCTIONS (continued)

Record building permits in field books and manuals and conduct follow-ups; prepare/mail valuation notices; and verify social security numbers on state's match list.

Deliver and pick up documents and correspondence from County Auditor; deliver and pick up homestead, correspondence and other documents from county assessor; and deliver and pick up plat maps, correspondence and tract information from County Recorder.

Check the current levied and pending assessment balances for completeness and accuracy; and complete Special Assessment Certificates.

Attend regional meetings; read relevant literature/bulletins/correspondence; and attend classes and workshops to maintain accreditation.

Other Duties and Responsibilities

Attend local Board of Review.

Performs other related duties as assigned by supervisor or as apparent

Required Knowledge, Skills, and Abilities

Knowledge of assessment laws, procedures and the various appraisal techniques used to value properties.

Knowledge of office policies, practices and procedures.

Knowledge of Residential Cost Schedules prepared by the City Assessor.

Knowledge of MN tax billing system-assessment codes prepared by computer cooperatives.

Knowledge of the payment procedures and payment deadlines.

Knowledge of, and ability to use, MN Department of Revenue's Property Tax Administrator's and Homestead manuals.

Ability to analyze factors affecting valuations and performs accurate and complete computations of land and residential building values.

Ability to communicate and deal tactfully and effectively with property owners and the public.

Machines, tools and equipment used: metal tape measure, camera, telephone, calculator, computer, copier, typewriter, fax machine, envelope sealer machine, and City vehicles.

MINIMUM QUALIFICATIONS

A combination of education and experience equivalent to an associate's degree **and** three years of progressively responsible general administrative and clerical experience. Certified Minnesota Assessor.

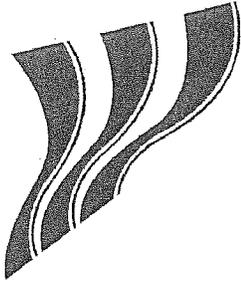
Preferred Qualifications

Certified Minnesota Assessor Specialist.

APPRAISER II

Working Conditions

Work is spent indoors in a typical office setting and outdoors in and around residential and business areas including homes/buildings/new construction. Sits, stands, and walks to perform office and field work. Performs some physical and repetitive movements including lifting/carrying objects such as field books. Short term exposure to irritants/fumes, temperature extremes, and noise. Uses all types of vision, hearing, sense of touch to view properties and perform office work.



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Originating Department: Finance Department

Action Requested: Requesting permission to post internally and advertise externally to fill the vacant Accounting Clerk position.

Guiding Principle: City Council, State & Federal Governmental Accounting & Financial Auditing, Policies and Procedures Reporting Requirements.

Introduction: One of two Accounting Clerks handed in her resignation on January 2, 2013, indicating that January 16, 2013, would be her last day of work.

Background/Justification: The City Finance Department presently consists of four employee positions. That of Finance Director, Accounting Supervisor and two Accounting Clerks (job descriptions attached). In 1986 when I was hired, it also had an Assistant Finance Director position that was eliminated in 1988. Upon notification of her resignation, I proceeded to contact Rice Memorial, Willmar Municipal Utilities, the City computer software company, the City Auditors and temporary service company. All indicated either no capacity, or ability to perform the duties of the Accounting Clerk position (see attached job description) at the timeliness and level of service the City Council, City Staff, and Citizens of Willmar have come to expect and deserve.

Fiscal Impact: 2013 Budget for position, wages \$35,321, benefits \$22,879. Starting Range 4 \$14.71-\$20.26 potential savings of \$7,500 to \$17,000 is wages and benefits. Hourly costs to go from \$27.98 budgeted to potentially a range of \$19.81 to \$24.38. Software company quotes of \$155 for assistance and temporary service \$17.00. Issues with temporary services are access to confidential information, productivity, and history of continually training someone due to the finding of full-time employment. Daily logs are available for further review upon request.

Alternatives: Continue to explore alternatives and risk the potential loss of additional employees due to an increased level of stress and worker fatigue. Reassign other internal employees or duties. Run the risk of not meeting reporting requirements and paying penalties.

Staff Recommendation: To continue to explore cost saving ways to deliver services but to post internally and advertise externally to fill the position of Accounting Clerk.

Reviewed by : Steven B. Okins

Preparer: Steven B. Okins

Signature:

12/31/2012

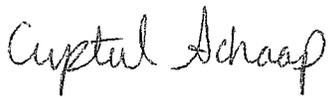
Dear Steve,

This letter is to inform you that I am resigning from the City of Willmar. My last day of work will be January 16, 2013. I have accepted a position at POET in Sioux Falls, SD.

Thank you for the support and the opportunities that you have provided during the last three years. I have enjoyed my time with the City.

If I can be of any assistance during this transition, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Crystal Schaap".

Crystal Schaap

FINANCE DIRECTOR

Position Title: Finance Director
Department: Finance
Department Head: Finance Director
Immediate Supervisor: City Administrator
Pay Range: 12 **FLSA Status:** Non-exempt

APPROVED:	April 5, 2000
REVISED:	
REVISED:	
REVISED:	

Purpose

Serves as Department Director with primary responsibility for directing all of the City's financial activities. Performs supervisory, professional and executive work to manage City finances and investments; assist Administrator in budgeting process; prepare financial reports and statements; develop administrative policies and procedures; prepare capital improvement, equipment replacement and other planning documents; participate in labor negotiations; oversee accounts payable, accounts receivable and payroll activities and related reporting/record keeping; and performs various other support activities. This position is responsible for making recommendations to the Administrator and the City Council for matters affecting the finance department, including issues that might have a city-wide impact.

Organizational Relationships

Communicates with: *Internally* - City Administrator, other department directors, all City employees, MUC staff, Rice Hospital staff, Mayor, City Council, and various board and commission members; *Externally* - County officials, numerous state agencies, League of Minnesota Cities, School District personnel, Regional Development Commission, Convention and Visitors Bureau, Chamber of Commerce, numerous vendors and contractors and the general public.

Supervises with full authority: Accounting Clerk II-B, Accounting Clerk III, Accounting Supervisor and Information Systems Technician.

ESSENTIAL FUNCTIONS

Manage the City's financial operations by developing administrative policies/procedures and operational plans; monitor each department's compliance; communicate with City Council; and compile, prepare and recommend capital improvement, equipment replacement, spending and budget plans; and performs some investment management activities.

Plan, direct and administer grants; and administer and supervise grant compliance.

Provide and maintain compensation information; participate with Administrator in collective bargaining; review and administer collective bargaining agreements and personnel policy to make appropriate payments to employees; and provide input on necessary changes.

Provide jurisdiction support services such as assessment activities and contract compliance and monitoring.

Plan, organize and oversee department daily operations to ensure workload is met.

Supervise and provide technical direction and oversight to department staff including training, assigning and reviewing work, and conducting performance evaluations.

FINANCE DIRECTOR

ESSENTIAL FUNCTIONS (continued)

- Review departmental operations and develop short and long-term goals.
- Develop, prepare and maintains City financial records in conformance with generally accepted accounting principles and standards.
- Establish procedures and formats used for various monthly reports showing the financial condition of the City and year-to-date budget figures.
- Prepare monthly and other interim financial reports and statements as necessary or as directed by the City Council or Administrator.
- Assist the Administrator in the preparation of the annual city budget including preparing draft, presenting to City Council and adjusting as directed by the Council.
- Prepare and file required certifications on budget with the State Auditor's office and ensure records are published in accordance with legal requirements.
- Establish internal control procedures to ensure transactions are authorized and accurately recorded.
- Establish and maintain procedures for processing payroll, accounts payable, utility billing, accounts receivable, cash management and personnel records as necessary to meet department requirements and state and federal standards and laws.
- Oversees accounting work to ensure compliance with legal requirements, policies, and procedures.
- Monitor the budget and confer as necessary with other department directors to ensure adequate balances and recommend adjustments to the Administrator.
- Ensure that legal requirements are met to maximize the ability of the City to levy and collect taxes.
- Assist the public by answering questions regarding special assessments and affected property taxes.
- Monitor cash flow to ensure sufficient cash is available to make necessary payments.
- Oversee and participate in accounts receivable and payable functions, code expenses and prepare vouchers for data entry.
- Work with auditors at year-end and communicate with throughout the year as necessary.

Other Duties and Responsibilities

- Performs other job-related duties as assigned or apparent.

Required Knowledge, Skills, and Abilities

- Knowledge of accounting practices and procedures.
- Knowledge of applicable state and federal laws, rules and regulations particularly those relating to municipal finance and accounting, labor and employee relations.
- Knowledge of bonding, financing and administrating projects.
- Skill in governmental accounting and financial reporting.

FINANCE DIRECTOR

Required Knowledge, Skills, and Abilities (continued)

Ability to operate various office machines including AS400 computers, PCs, Printex printers, laser printers, routers, patch panels/cords, modems, PC Network file server, Wycom check protector, Digital network copier, IBM Execjet 4072 printer, color printer, fax machine, telephones, calculators, typewriters, postage scale, microfilm reader, staplers, and punches.

MINIMUM QUALIFICATIONS

Bachelor's degree in finance, accounting, or business administration **and** eight to ten years financial management experience in positions of similar complexity.

Working Conditions

Work is performed in typical office environment with travel to attend meetings. Sits for extended periods of time. Uses near vision, ability to focus, sense of touch, and hearing. Uses fine and large motor movements at times.

ACCOUNTING SUPERVISOR

Position Title: Accounting Supervisor
Department: Finance
Department Head: Finance Director
Immediate Supervisor: Finance Director
Pay Range: 6 **FLSA Status:** Non-exempt

APPROVED:	October 20, 2003
REVISED:	_____
REVISED:	_____
REVISED:	_____

Purpose

Performs supervisory technical/clerical work with responsibility for performing moderately complex tasks in accounts receivable, accounts payable, cash receipts, fixed assets, budget support and financial record keeping. Decisions are made in accordance with established procedures although variety and complexity may be great. Independence of work activity is expected. Serves as back-up for payroll.

Organizational Relationships

Communicates with: *Internally* - All City departments, MUC staff and Rice Hospital staff;
Externally - HRA, County and State agencies, ACS, Heritage Bank, auditors and various vendors/suppliers.

Supervises: Accounting Clerk IIB and Accounting Clerk III.

ESSENTIAL FUNCTIONS

- Answer phone for Finance Department, greet visitors and direct to appropriate staff.
- Perform nightly back-ups on AS400 for off-site back-ups.
- Process billing requests by typing invoices, preparing statements and handling collections.
- Type finance agendas, make copies and distributes to appropriate people as directed by Supervisor.
- Process daily cash receipts.
- Perform backup duties for payroll processing.
- Process all City bills through verifying and coding invoices, printing checks, maintaining W-9s on vendors, and handling EFTs.
- Monthly reconcile bank statements.
- Maintain detailed fixed asset records on all relevant purchases.
- Calculate interest breakdowns for any interest earnings received; calculate investment breakdowns for any investment that is purchased or cashed; and compiles quarterly Investment/Interest Activity Report for Finance Director.
- Gather, compile and compute the monthly sales/use tax to be reported to the State of Minnesota; process requisition for payment.
- Assist Finance Director with the production of the Annual Financial Statement.
- Process tax settlement by receipting payment, balancing taxes and assessments.

ACCOUNTING SUPERVISOR

ESSENTIAL FUNCTIONS (continued)

Keep records on all contracts/leases/agreements that require billing; maintain summary sheets for reference.

Process journal entries.

Set up new codes as directed by Finance Director and keep current chart of accounts on hand.

Compile year-end interest receivable report for all interest earned on investments.

Maintain records on Eagle Lake Sewer District, bill the County monthly and processes all correspondence from them relating to the district.

Perform monthly closings on financial software.

Run monthly revenue and general ledger reports to copy and distribute to Finance Director and place in appropriate physical files.

Compile monthly balance sheets, income statements and tax-collected graphs for the Convention and Visitors Bureau; and copy and distribute to appropriate parties.

Answer questions from other departments concerning payables/receivables, fixed assets, payments, coding of receipts, reports, etc.

Record all bonds (City, MUC, Hospital) by type and payment schedules.

Assign work to employees, including assigning work duties, determining work priorities and assigning work hours.

Direct employees, evaluate assigned work product and exercise the authority to reject the assigned work product which does not meet standards.

Approve requests for vacation and sick leave.

Approve and sign time cards.

Complete and sign probationary employee evaluation forms.

Issue verbal reprimands to employees when necessary and discuss corrective action.

Recommend the issuance of a written reprimand of an employee, the suspension of an employee, and the discharge of an employee.

Serve as the Department's representative at Step 1 of grievance procedure, including responding orally and/or in writing to grievance.

Other Duties and Responsibilities

Works on various projects and miscellaneous tasks as assigned by Finance Director.

Performs other related duties as assigned.

ACCOUNTING SUPERVISOR

Required Knowledge, Skill, and Abilities

Knowledge of accounting practices and procedures including A/R, A/P and payroll.

Skill in operating IBM AS400 computer using Quickbooks Pro, Excel, Word and PC desktop software and ability to perform some basic troubleshooting.

Skill in handling cash receipts, financial transactions, payroll and fixed assets.

Ability to be flexible in work tasks.

Ability to initiate tasks, works with little supervision and use independent judgment.

Ability to prioritize work tasks and complete with 100% completeness and accuracy.

Ability to understand and follow written and verbal instructions.

Ability to establish and maintain effective work relationships with others.

Machines, tools and equipment used: printers, copiers, fax machine, calculators, telephone, wycom box, binding/punching machines, postage scale and typewriter.

MINIMUM QUALIFICATIONS

Associate's degree in accounting **and** a minimum of three years of previous accounting or record keeping experience including the use of personal computers and automated accounting systems.

Working Conditions

Works in typical office setting sitting for extended periods of time working at computer and desk. Use fine motor skills and performs repetitive movements and some lifting of object such as office supplies and files. Uses near vision, hearing, and sense of touch.

City of WILLMAR

ACCOUNTING CLERK

Position Title: Accounting Clerk
Department: Finance
Department Head: Finance Director
Immediate Supervisor: Accounting Supervisor
Pay Range: 4 **FLSA Status:** Non-exempt

APPROVED:	<u>April 5, 2000</u>
REVISED:	<u>May 4, 2009</u>
REVISED:	
REVISED:	

Purpose

Performs non-supervisory technical/clerical work with responsibility for performing moderately complex tasks in accounts receivable, accounts payable, cash receipts, fixed assets, budget, Payroll support and financial record keeping. Decisions are made in accordance with established procedures although variety and complexity may be great. Independence of work activity is expected.

Organizational Relationships

Communicates with: *Internally* - all City employees, Rice Hospital, Willmar Municipal Utilities; *Externally* - County personnel, PERA staff, Blue Cross, state and federal agencies, National Benefits, Great West, Minnesota Mutual, MN State Retirement, CDS, Willmar employees' exclusive representatives, MBA, MN NCPERS, BRC, American Business Forms, Berkely Administrators, RCM Data Corporation., H&T Corporation and Print House.

Supervises: None

ESSENTIAL FUNCTIONS

Process the complete payroll cycle by verifying and inputting time sheets, writing checks, printing and distributing reports, updating files and mailing vendor checks, making tax payments and completing/submitted quarterly and annual reports including W-2s. Calculate and or disburse special payments such as clothing allowance, merit pay and back pay.
Answer phone for Finance Department, greet visitors and direct to appropriate staff.
Perform nightly back-ups on AS400 and off-site back-ups
Process billing requests by typing invoices, preparing statements and handling collections.
Process all monthly insurance payments.
Calculate employee salaries and benefits for budgeting purposes as well as actual payment schedules; and review and use collective bargaining agreements for applicable wage and benefit information.
Track employees' paid time off such as personal leave days, vacation and sick leave, donated sick leave hours, and family and medical leave.
Respond to various surveys through telephone contact and completing hard copy questionnaires.
Calculate and submit billing requests for employees who need to be billed for benefits.
Prepare worksheet regarding unemployment reports and salary payments for auditing purposes.
Process daily cash receipts
Process all City bills through verifying and coding invoices, printing checks, maintaining W-9's on vendors, and handling Electronic Fund Transfers.

ACCOUNTING CLERK

ESSENTIAL FUNCTIONS (Continued)

Gather, compile and compute the monthly sales/use tax to be reported to the State of Minnesota; process requisition for payment

Annually calculate project worker's compensation costs.

Verify worker's compensation checks and jury pay checks with contract provisions and time missed from work.

Order all necessary supplies such as blank checks/time sheets/ W-2s, paper and other stock supplies.

Track employee participation in deferred compensation program; make adjustments on computer as needed; and keep up-to-date on relevant government guidelines.

Load upgrades on the AS400 when applicable.

Track certain retirees' benefits; track participants in City's sick leave conversion program, make appropriate adjustments to employees' health insurance premiums; enter information on W-2; and track City's contribution for health insurance premiums under retiree buy-out program.

Provide support for budgeting process; prepare a variety of worksheets relating to employee salaries and benefits; input proposed requests into computer; run computer reports according to various sorts; prepare computer-generated summary sheets; balance totals, including personal services and capital outlay items; and prepare sufficient number of copies of budget.

Prepare worksheets for "Actual Salaries versus Budgeted Salaries" and "Back Pay Costs versus Budgeted Salaries" for journal entries.

Process and maintain the flexible spending accounts program.

Maintain the payroll book, employee numbering book, employee ro-lo-dex and a job duties and instruction book.

Perform year-end special assessments through reconciliation with the general ledger.

Perform year-end expenditure process through balancing fixed asset accounts, printing 1099's and calculating encumbrances and prepaids.

Account for miscellaneous payables and process requisitions for payment.

Keep records on all contracts/leases/agreements that require billing; maintain summary sheets for reference.

Maintain records on Eagle Lake Sewer District, bill the County monthly and processes all correspondence from them relating to the district.

Troubleshoot problems with printers, computers, cash receipts systems and software problems.

Answer questions from other departments concerning payable/receivables, fixed assets, payments, coding of receipts, reports, etc.

Keep up-to-date on law changes and procedural issues by attending class, seminars and other training; and review pertinent correspondence and literature received at office.

Other Duties and Responsibilities

Works on various projects and miscellaneous tasks as assigned by Supervisor personnel

Maintain a list of all Rice Hospital, MUC, and City employees regarding who is on the fuel system. Perform other related duties as assigned or apparent.

ACCOUNTING CLERK

Required Knowledge, Skills and Abilities

Knowledge of and ability to apply departmental policies, procedures and practices as well as provisions of the City's personnel policy, collective bargaining agreements and safety policy. Knowledge of, and ability to apply to position's work tasks, applicable accounting/bookkeeping procedures, state and federal laws/rules/regulations and insurance company provisions. Ability to organize and prioritize work tasks and be self-motivated. Ability to complete tasks in a thorough and timely manner with appropriate level of documentation. Ability to work on multiple ongoing tasks with sufficient attention to detail. Ability to understand and follow written and verbal instructions. Ability to initiate routine tasks and work with little supervision. Ability to be flexible in work tasks. Ability to establish and maintain effective working relationships with others. Ability to use departmental office equipment and machines. Ability to understand and use City's accounting and network software applications. Ability to produce work results with 100% completeness and accuracy. Ability to work with confidential information with an appropriate level of discretion. Ability to respond, orally and in writing, to employees' payroll-related questions. Ability to establish effective work relationships with others and exercise appropriate interpersonal and communications skills.

Machines, tools and equipment used: AS400, personal computer, printers, typewriter, copiers, fax, binding machine, calculator and phone.

MINIMUM QUALIFICATIONS

Knowledge at a level consistent with and two years of practical experience.

Preferred Qualifications

Associate's degree in accounting/bookkeeping or closely related. Additional payroll administration and record keeping.

Working Conditions

Works in typical office setting sitting for extended periods of time working at computer and desk. Use fine motor skills and performs repetitive movements and some lifting of object such as office supplies and files. Uses near vision, hearing, and sense of touch.

ATTACHMENT A

AFSCME-General

Grade	Step Year	1	2	3	4	5	6	7	8	9	10	11
		Minimum	<u>1</u> Year	<u>2</u> Years	<u>3</u> Years	<u>4</u> Years	<u>5</u> Years	<u>6</u> Years	<u>7</u> Years	<u>8</u> Years	<u>9</u> Years	<u>10</u> Years
1	2011	10.95	11.38	11.87	12.32	12.79	13.31	13.64	13.99	14.34	14.70	15.07
	2012	11.06	11.49	11.99	12.44	12.92	13.44	13.78	14.13	14.48	14.85	15.22
	2013	11.23	11.66	12.17	12.63	13.11	13.64	13.99	14.34	14.70	15.07	15.45
2	2011	11.99	12.45	13.00	13.49	14.02	14.60	14.96	15.32	15.70	16.10	16.50
	2012	12.11	12.57	13.13	13.62	14.16	14.75	15.11	15.47	15.86	16.26	16.67
	2013	12.29	12.76	13.33	13.82	14.37	14.97	15.34	15.70	16.10	16.50	16.92
3	2011	13.11	13.63	14.19	14.74	15.34	15.95	16.36	16.76	17.18	17.61	18.06
	2012	13.24	13.77	14.33	14.89	15.49	16.11	16.52	16.93	17.35	17.79	18.24
	2013	13.44	13.98	14.54	15.11	15.72	16.35	16.77	17.18	17.61	18.06	18.51
4	2011	14.35	14.94	15.52	16.15	16.78	17.47	17.90	18.34	18.81	19.26	19.76
	2012	14.49	15.09	15.68	16.31	16.95	17.64	18.08	18.52	19.00	19.45	19.96
	2013	14.71	15.32	15.92	16.55	17.20	17.90	18.35	18.80	19.29	19.74	20.26
5	2011	15.71	16.36	17.01	17.69	18.41	19.14	19.60	20.10	20.60	21.13	21.64
	2012	15.87	16.52	17.18	17.87	18.59	19.33	19.80	20.30	20.81	21.34	21.86
	2013	16.11	16.77	17.44	18.14	18.87	19.62	20.10	20.60	21.12	21.66	22.19
6	2011	17.21	17.90	18.62	19.36	20.14	20.93	21.47	22.00	22.55	23.10	23.69
	2012	17.38	18.08	18.81	19.55	20.34	21.14	21.68	22.22	22.78	23.33	23.93
	2013	17.64	18.35	19.09	19.84	20.65	21.46	22.01	22.55	23.12	23.68	24.29
7	2011	20.42	21.25	22.11	22.98	23.92	24.84	25.48	26.14	26.76	27.44	28.14
	2012	20.62	21.46	22.33	23.21	24.16	25.09	25.73	26.40	27.03	27.71	28.42
	2013	20.93	21.78	22.66	23.56	24.52	25.47	26.12	26.80	27.44	28.13	28.85
8	2011	22.02	22.91	23.82	24.76	25.78	26.79	27.46	28.16	28.85	29.58	30.31
	2012	22.24	23.14	24.06	25.01	26.04	27.06	27.73	28.44	29.14	29.88	30.61
	2013	22.57	23.49	24.42	25.39	26.43	27.47	28.15	28.87	29.58	30.33	31.07
9	2011	25.68	26.71	27.78	28.89	30.05	31.25	31.56	31.88	32.2	32.52	32.85
	2012	25.94	26.98	28.06	29.18	30.35	31.56	31.88	32.20	32.52	32.85	33.18
	2013	26.33	27.38	28.48	29.62	30.81	32.03	32.36	32.68	33.01	33.34	33.68

0 % raise for 2011
 1 % raise for 2012
 1.5% raise for 2013

Steve Okins

From: Brandenburg, Carol <carol.brandenburg@xerox.com>
Sent: Monday, January 07, 2013 2:50 PM
To: Carol Cunningham; Steve Okins
Cc: Shannon Strei; Crystal Schaap
Subject: RE: Summary of Carol Brandenburg/ACS phone call

Looks good. Thanks for the follow up. Crystal....goodbye – so enjoyed working with you! cb

From: Carol Cunningham [<mailto:ccunningham@willmarmn.gov>]
Sent: Monday, January 07, 2013 2:48 PM
To: Steve Okins
Cc: Shannon Strei; Crystal Schaap; Brandenburg, Carol
Subject: Summary of Carol Brandenburg/ACS phone call

Hi Steve-

As you requested, I am e-mailing you the results of my conversation with Carol Brandenburg (ACS) this morning:

ACS/XEROX cannot perform payroll functions - mainly due to liability involved. ACS can, however, supervise the person processing payroll. Consequently, we have three options available to us through ACS/XEROX: 1) Carol B. could come to our office and supervise the payroll process at a cost of \$155 per hour plus mileage. 2) Carol B. could supervise over the phone at a cost of \$155/hour; or 3) the person doing payroll could perform the process and call the ACS/XEROX Help Desk whenever there are questions/issues - the ACS representative may not be Carol B in this instance, in fact it will more than likely be Nancy Flodquist. We would not be charged extra for Option No. 3 as it is part of our agreement - I suppose unless a major catastrophe occurred which would require considerable time to be spent by ACS...

If you have further questions about this, please feel free to contact Carol B at ACS/XEROX.

Carol Cunningham
Accounting Supervisor
City of Willmar Finance Dept
333 SW 6th Street
Willmar, MN 56201
(320) 214-5177
ccunningham@willmarmn.gov

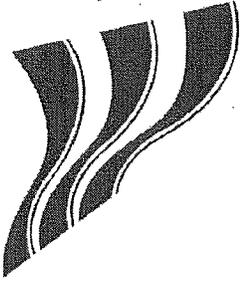
Steve Okins

From: Nicholas Hemmesch <NicholasH@mastersonpersonnel.com>
Sent: Wednesday, January 02, 2013 12:26 PM
To: Steve Okins
Subject: Masterson Staffing Solutions

Good Morning Steve,
Hope you had a great holiday season! I just wanted to reach out and touch base with you in regards to staffing. Just seeing if there is anything Masterson can help out with again. Please don't hesitate to call if there is anything we can do to assist you.

Thank you,

Nicholas Hemmesch
Business Development Manager
Masterson Staffing Solutions
60 10th Ave S
Waite Park, MN 56387
Cell: 320-444-7327
Fax: 320-253-3866
NicholasH@mastersonstaffing.com



**CITY OF WILLMAR, MINNESOTA
REQUEST FOR COMMITTEE ACTION**

Agenda Item Number: _____

Meeting Date: February 13, 2013

Attachments: Yes No

CITY COUNCIL ACTION

Date: February 19, 2013

- | | |
|-----------------------------------|---------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Denied |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Tabled |
| <input type="checkbox"/> Other | |

Originating Department: City Administrator

Action Requested: Review and discuss any changes to the proposed Conflict of Interest policies.

Background/Justification:

Council Member Ahmann previously suggested the City consider adopting a conflict of interest policy that would apply to appointed and elected officials. The City Administrator and City Attorney were directed to review the matter and suggest an appropriate policy.

The City Attorney has drafted the attached policies for review and discussion.

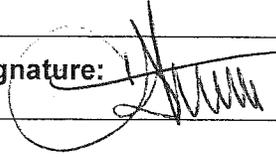
Fiscal Impact: There would be no fiscal impact to the City if either policy were adopted.

Alternatives: Make no changes to current city practice or policy.

Staff Recommendation: Review and discuss any changes.

Reviewed by: C. Stevens

Preparer: C. Stevens

Signature: 

Comments: N/A.



MEMORANDUM

To: Chairperson Ahmann and Labor Committee Members

VIA EMAIL ONLY

cc: City Administrator Stevens
Mayor Frank Yanish

From: Robert T. Scott and Christopher M. Hood

Date: February 7, 2012

Re: Draft Conflict of Interest Policies

As directed by the City Council, please find attached to this memorandum draft revisions to the City's current Personnel Policy 2.9 on conflicts of interest (Appendix A), as well as a new draft conflict of interest policy for the City's elected and appointed officials (Appendix B).

The attached draft policies reflect the analysis and recommendations provided in our December 6, 2012 memorandum to the Labor Committee, which is attached hereto as Appendix C for your reference.

The draft amendments to Personnel Policy 2.9 clarify what a conflict of interest is from the perspective of a city employee and bring the policy into full conformance with the Charter's restriction on City employees having an interest in any contract entered into by the City, among other suggested changes. The draft policy for elected and appointed officials contains a definition of conflict of interest that is consistent with applicable state law as summarized in our December 6, 2012 memorandum, and establishes a procedure for elected and appointed officials to follow when they believe they may have a conflict of interest.

The City Council has the authority to apply this policy to itself and its boards and commissions that do not have independent statutory authority, including its four committees. The City lacks the authority to apply this policy to private or otherwise independent community organizations (such as the Willmar Design Center, West Central Industries, the Willmar Lakes Area Convention and Visitors Bureau, Willmar Fest, etc.), joint powers boards (including the Economic Development Commission) or those boards and commissions of the City that *do* have independent statutory authority (including the Municipal Utilities Commission, the Rice Memorial Hospital Board, the Housing and Redevelopment Authority). However, for those public entities that are beyond the reach of this policy, their officials remain subject to the laws upon which the policy is based.

As noted in our December 6, 2012 memorandum, if there are specific provisions from the Minneapolis, San Jose, or Toronto (or any other) policies that the Committee has considered and feels would be appropriate for Willmar, we can certainly revise either or both of these policies to

incorporate such provisions into the draft policies before they are presented to the full City Council.

We look forward to continuing to work with the Labor Committee and/or City Council on this issue. In the meantime, should you have any questions or require additional information, please contact us at (651) 225-8840.

RTS-CMH

APPENDIX A

2.9. Conflict of Interest

The following actions by an employee of the City shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts below or disciplinary action as appropriate:

- Use or attempted use of the employee's position with the City to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public;
- Acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of duties for the City;
- Failure to disclose a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City and refrain from participating in their capacity as a City employee in the making of such sale or in the making or performance of such contract;
- Actions as an agent or attorney in any action or matter pending before the City except in the proper discharge of duties required to be performed for the City or on the employee's behalf; and
- The solicitation of a financial agreement for the employee or entity other than the City when the City is currently engaged in the provision of the services which are the subject of the agreement or where the City has expressed an intention to engage in competition for the provision of the services; unless the City waives this clause.

It shall be the responsibility of each employee to recognize when a conflict of interest exists and report the matter to their supervisor, a department head, or the City Administrator. If an employee has any question about whether a conflict exists he/she should consult with their supervisor, a department head, or the City Administrator.

Supervisors and Department Directors should be constantly aware of conflicts, potential conflicts, and the appearance of conflicts, and are responsible to ensure that all employees are made aware of this policy and are advised of its requirements. Questions of conflict of interest should be submitted immediately to supervisors or the City Administrator.

If the employee, their supervisor, a department head, or the City Administrator determines that a conflict of interest exists, the matter must be assigned to another

employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment.

~~It is the responsibility of every employee to be constantly vigilant to perceive the dangers inherent in situations that give rise to a conflict of personal interests with the public interests of the City. Perfect avoidance of all conflicts of interest is not possible, but Willmar citizens expect and deserve the kind of loyalty and ethical consciousness that will motivate employees to recognize conflict situations when they occur, disclose them immediately, and endeavor to resolve them.~~

~~The following subsections include representative examples of conflict of interest apply to specific situations which that may occur in the course of your public employment. Since all possible situations may not be anticipated, it is the responsibility of every employee to exercise careful judgment and to discuss questionable situations with supervisors.~~

2.9.1. Personal Gain No employee of the City shall use or attempt to use his/her employment position to secure or accept benefits, privileges, exemptions or advantages for themselves, their immediate family, or an organization with which they are associated.

2.9.2. Outside Employment ~~The City recognizes that it is neither proper or desirable that there be any interference with the private or personal business of employees during off work hours. However, in order to insure that conflicts of interest with outside employment do not arise, such situations shall require prior disclosure to supervisors by the employee and investigation by the proper City authority to determine if a conflict does exist. The potential for conflicts of interest is lessened when individuals employed by the City regard the City as their primary employment responsibility. All outside employment is to be reported to the employee's immediate supervisor. If a potential conflict exists based on this policy or any other consideration, the supervisor shall consult with the City Administrator.~~

Any City employee accepting employment in an outside position that is determined by the City Administrator to be in conflict with the employee's City job will be required to resign from the outside employment or may be subject to discipline up to and including termination.

For the purpose of this policy, outside employment refers to any non-City employment or consulting work for which an employee receives compensation, except for compensation received in conjunction with military service or holding a political office or an appointment to a government board or commission that is compatible with City

employment. The following is to be considered when determining if outside employment is acceptable:

- Outside employment must not interfere with a full-time employee's availability during the City's regular hours of operation or with a part-time employee's regular work schedule.
- Outside employment must not interfere with the employee's ability to fulfill the essential requirements of his/her position.
- The employee must not use City equipment, resources or staff in the course of the outside employment.
- The employee must not violate any City personnel policies as a result of outside employment.
- The employee must not receive compensation from another individual or employer for services performed during hours for which he/she is also being compensated by the City.

Work performed for others while on approved vacation or compensatory time is not a violation of policy unless that work creates the appearance of a conflict of interest.

- No employee will work for another employer, or for his/her own business, while using paid sick leave from the City for those same hours.
- Departments may establish more specific policies as appropriate, subject to the approval of the City Administrator.

City employees are not permitted to accept outside employment that creates either the appearance of or the potential for a conflict with the development, administration or implementation of policies, programs, services or any other operational aspect of the City.

2.9.3. Self Dealing No employee of the City shall engage in any activity, become employed or affiliated for personal gain with any agency or organization which is or may become subject to the control, regulation, inspection, review, audit or enforcement authority of the City by that individual; nor may that individual approve or execute a purchase obligation on behalf of the City with any firm or organization with which they are affiliated.

2.9.4. Acceptance of Gifts and Endorsements No employee of the City shall directly or indirectly receive or agree to receive any payment, compensation, gift, reward, gratuity, favor, service, employment, promise of future employment, or other benefit from any source other than the City for services or any activity which is part of the normal duties

~~of that official or employee. Any such gifts or compensation shall be disclosed to supervisors for consideration of an exception. Exceptions to this provision may include: personal gifts of nominal value; plaques or similar mementos recognizing individual service such as to a charitable cause; payment of expenses for travel or meals, not to exceed actual expenses, which are not reimbursed by the City; and honoraria or expense reimbursement for papers, presentations, or appearances made by officers or employees on their own time for which they are not compensated by the City.~~

Gifts: In the course of or in relation to their duties performed for the City, employees are prohibited from accepting or agreeing to accept from any person or entity, except the City, the following: money, a gratuity, payment of expenses, a reward, real or personal property, a service, a favor, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment.

The following, however, may be accepted by employees in the course of or in relation to their duties performed for the City:

- A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
- Payment of reimbursement expenses for travel or meals, not to exceed actual expenses incurred, which are not reimbursed by the City and which have been approved in advance by the City as part of the work assignment;
- Food, beverage, or a gift given at a reception, conference, or meal by an organization, if the attending employee received approval for their attendance at such event from the City in relation to their duties performed for the City; the City or attending employee paid fees for such event; and the food, beverage, or gift is given or offered to all other attendees; and
- Honoraria or expenses paid for papers, talks, demonstrations, or appearances made by employees on their own time for which they are not compensated by the City.

Employees are also prohibited from accepting any gifts of any size or value, under any circumstances in which it could reasonably be thought to influence him or her in the course of or in relation to their duties performed for the City.

Endorsements:

Employees are prohibited from recommending or endorsing a particular product or business to an individual who is not an employee of the City in the course of or in relation to their duties performed for the City.

2.9.5. Use of Confidential Information No appointed official or employee of the City shall use or allow the use of confidential information obtained in their normal employment capacity to further their own or other private interests, and shall not accept outside employment or involvement in a business or activity that will require use or disclosure of such information.

2.9.6. Use of City Property No appointed official or employee of the City shall use or allow the use of work time, supplies, equipment or other City property to further their own private interest or in any capacity not in the interests of the City.

Supervisory Responsibility Supervisors and Department Directors should be constantly aware of conflicts, potential conflicts, and the appearance of conflicts, and are responsible to insure that all employees are made aware of this policy and are advised of its requirements. Questions of conflict of interest should be submitted immediately to supervisors.

Employee Responsibility All appointed officials and employees are responsible to conduct themselves in accordance with this policy; to develop and maintain an attitude of awareness of those situations in which an appearance of a conflict of interest might arise; and to strive at all times to avoid not only actual conflicts, but also the appearance thereof. Conflict of interest situations, actual and apparent, shall be disclosed to supervisors immediately upon discovery.

APPENDIX B

CITY OF WILLMAR CONFLICT OF INTEREST POLICY

ARTICLE I

Purpose

The purpose of this policy is to establish ethical principles regarding conflicts of interest to which public elected and appointed officials associated with the City of Willmar are expected to adhere. This policy is intended to supplement but not replace any applicable laws governing conflict of interest.

The City Council hereby determines that the Willmar City government exists to serve the people of Willmar, and in order to do so effectively, the residents of the City must have confidence and trust in the integrity of their government. The public evaluates its government by the way its elected and appointed officials conduct themselves in the posts to which they were elected or appointed. City officials hold positions of public trust under the scrutiny of public opinion and their actions must be above suspicion. The public deserves elected and appointed officials who maintain the highest ethical principles and avoid misconduct and conflicts of interest. The public has the right to expect that its public officials will conduct themselves in a manner that will preserve public confidence in and respect for the people they serve.

- This Conflict of Interest Policy provides an ethical guide and specific principles which reflect the ethical values of the City of Willmar.
- This Conflict of Interest Policy is designed to promote high ethical standards and conduct, and to foster a healthy culture throughout City government. It is the benchmark for all who serve the City to assist them in fulfilling their responsibilities to the people of Willmar.

ARTICLE II

Definitions

Appointed Officials. Appointed Officials are those individuals appointed to a Board, Commission or Committee that is subject to the City Council's authority.

Conflict of Interest. A conflict of interest is present when, in the discharge of his or her official duties, an elected or appointed official participates in a governmental decision, action or transaction in which he or she has a financial interest, excluding such circumstances when the official's financial interest is no greater than that of another member of his or her business classification, profession or occupation.

Financial Interest. A financial interest is any interest which shall yield, directly or indirectly, a monetary or other material benefit to the elected or appointed official, excluding the following assets:

- (1) ownership of shares in a diversified mutual fund;

- (2) membership in a pension plan or employee benefit plan;
- (3) de minimis ownership of bonds or publicly traded securities; and
- (4) ownership of a whole life insurance policy.

Elected Officials. Elected Officials are those individuals elected to serve on the Willmar City Council, and the individual elected to serve as the Mayor of the City of Willmar.

ARTICLE III Persons Covered

The City Council of the City of Willmar determines that it is in the best interests of the residents of the City to preserve the public confidence and integrity of government officials and to promote trust of the people in the objectivity of their public servants. Therefore, this policy covers all elected and appointed officials in the government of the City of Willmar.

ARTICLE IV Expected Conduct

Public elected or appointed officials must put the public interest ahead of their own personal advancement and financial interests, disclose conflicts of interest, and refrain from participating in decisions where a financial interest exists. Public officials must not use their position to gain privileges or special treatment. Public officials must avoid actions that might impair independence of judgment, and should strive to avoid situations that could give even the appearance of a conflict of interest.

Public elected or appointed officials shall not use or allow the use of confidential information obtained in their official capacity to further their own or other private interests, and shall not accept outside employment or involvement in a business or activity that will require use or disclosure of such information. Public elected or appointed officials shall not use or allow the use of City supplies, equipment or other property to further their own private interest or in any capacity not in the interests of the City.

Public elected or appointed officials shall abstain from participation in discussions, deliberations and voting on a City contract in which the public elected or appointed official has a financial interest. When a non-contract matter comes before the City in which a public elected or appointed official has a financial interest, the official shall abstain from participation in discussions, deliberations and voting on that matter.

ARTICLE V Conflicts of Interest in Contracts

The City, and its boards and commissions, are generally prohibited by statute from entering into any sale, lease or contract in which an elected or appointed official with authority to take part in any manner in the making of the contract has a personal financial interest. It shall be the responsibility of each appointed and elected official to recognize when the official has a financial

interest in such a contractual matter and to promptly report the matter to the City Administrator and otherwise fully comply with the provisions of Article VI of this policy.

ARTICLE VI

Addressing Conflicts of Interest

If an elected or appointed official in the discharge of his or her official duties recognizes that he or she has a conflict of interest, or potentially does, with regard to any matter that is expected to come before the governing body, board, commission or committee for consideration, the public official shall proceed as follows:

1. Disclosure.

- a. The elected or appointed official shall promptly disclose the conflict of interest (or potential conflict of interest) to the City Administrator or other chief administrative officer responsible for the administration of the affairs of the governing body or committee immediately upon becoming aware of the conflict, and shall make oral disclosure of the conflict of interest on the record at the next meeting of the governing body or committee. If the elected or appointed official cannot attend the next meeting of the governing body or committee, he or she shall provide written statement making the disclosure to the Chair of the governing body or committee to be read into the record at such meeting.
- b. If the elected or appointed official becomes aware of a conflict of interest during a meeting of the governing body or committee, the official shall immediately disclose the conflict of interest orally, on the record, to the other members of the governing body or committee.
- c. For the purposes of this Article, "disclosure" shall mean describing the matter requiring action or decision and the nature of the elected or appointed official's conflict of interest.
- d. All oral disclosures of conflicts of interest shall be documented in the minutes, if any, of the meeting of the respective governing body or committee.

2. Procedure following Disclosure:

- a. The elected or appointed official who has a conflict of interest or potential conflict of interest shall not participate in any discussion in his or her official capacity, nor shall the official vote on any matter involving the conflict of interest, except as authorized by the City Attorney or other qualified legal counsel representing the governing body or committee.
- b. If the conflict of interest involves a sale, lease or contract of any kind, the governing body or committee shall not take any action on the contract except as

authorized by the City Attorney or other qualified legal counsel representing the governing body or committee.

- c. For purposes of this Article, "participation" means making a decision, taking action, entering into a transaction, providing advice, making or supporting a recommendation, introducing, sponsoring, debating, voting on, approving, and/or investigating the decision, action or transaction, including the direct and active supervision of the participation of a subordinate in the matter.



MEMORANDUM

To: Chairperson Ahmann and Labor Committee Members

cc: City Administrator Stevens
Mayor Frank Yanish

From: Robert T. Scott and Christopher M. Hood

Date: December 6, 2012

Re: Conflict of Interest Policy—Options and Analysis

VIA EMAIL ONLY

In order to inform the Labor Committee's consideration of sample conflict of interest policies at its December 12, 2012 meeting, the following memorandum presents our summary analysis of the current rules and regulations applicable to the Mayor and members of the City of Willmar (City) City Council (Council), its boards and commissions, and City employees regarding conflicts of interest, as well as our conclusions and recommendations.

INTRODUCTION

A potential conflict of interest arises when a public official has a *personal interest in a decision the official is authorized to make*. Currently, City officials and employees are governed, to varying extents, by rules and principles addressing conflicts of interest contained in state statutes, case law, and the City's Charter. Additionally, City employees are subject to the City's personnel policy concerning conflicts of interest, which is attached hereto for your reference as Appendix A. We understand that the City does not have a policy in place governing its elected and (non-employee) appointed officials, though such officials remain subject to state law.

An understanding of the current law governing conflicts of interest in Minnesota is necessary to inform the Labor Committee's consideration of possible policies on the subject. Existing law breaks neatly into two categories: the regulations (and case law interpreting them) governing conflicts in contractual matters and the case law governing non-contractual conflicts.

In the former category, the law tends to be more definitive and straightforward in its application than in the latter category, which necessarily hinges on more subjective determinations. This memorandum does not attempt to address every situation that could be considered to fall under the broad "conflict of interest" label,¹ but rather to convey a general understanding of the status of the existing law governing conflicts of interest in Minnesota in order to inform the Labor Committee's consideration of whether its policies are adequate.

¹ In particular, this memorandum does not address prohibited gifts to or political activities by city officials, or incompatibility of offices.

In considering whether to recommend that the City Council enact additional policies or regulations governing conflicts of interest, we recommend that the Labor Committee identify the types of circumstances that have presented, or are likely to present, conflict of interest concerns in the City, and determine whether a new policy (or policies) is required to promote awareness of and compliance with existing law.

ANALYSIS

I. REGULATIONS OF FINANCIAL INTERESTS IN CONTRACTS

A. General Statutory Prohibition and Exceptions

1. General Rule

Under Minnesota statutes, a public officer is prohibited from having a personal financial interest in or from personally benefiting financially from any sale, lease or contract he or she is authorized to make in his or her official capacity. (Minn. Stat. § 471.87.)

This statute does not define the term “public officer”, but according to an interpretation provided by the Minnesota Attorney General, this rule applies to both elected and appointed officials, which would presumably include all members of the Council’s boards and commissions, as well as the City Administrator (and City Attorney). Further, the prohibition applies whether the financial interest is direct or indirect; and the prohibition may *not* be avoided by the interested officer simply abstaining from the decision. *See* A.G. Op. 90-E-5 (Nov. 13, 1969); A.G. Op. 90e-6 (June 15, 1988).

Any official who violates this law is guilty of a gross misdemeanor subject to a fine up to \$3,000 and imprisonment up to one year (*see* Minn. Stat. § 609.0341), and any contract entered into in violation of the law is null and void. Minn. Stat. § 471.87; *City of Chaska v. Hedman*, 53 Minn. 525, 55 N.W. 737 (1893); *Currie v. Sch. Dist. No. 26*, 35 Minn. 163, 27 N.W. 922 (1886); *Bjelland v. City of Mankato*, 112 Minn. 24, 127 N.W. 397 (1910); *Stone v. Bevans*, 88 Minn. 127, 92 N.W. 520 (1902); *City of Minneapolis v. Canterbury*, 122 Minn. 301, 142 N.W. 812 (1913); *Singewald v. Minneapolis Gas. Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966). It is important to emphasize that an interested official’s abstention from voting on (or otherwise participating in the formation of) a contract prohibited by this statute is not sufficient; the prohibition applies even if the interested official abstains.

2. Exceptions

There are currently 21 specific statutory exceptions to the general rule that operate to allow a City to enter into a contract that would otherwise be prohibited under the general rule of § 471.87. *See* Minn. Stat. § 471.88, included in Appendix B hereto. The exceptions reflect the legislature’s judgment that for certain frequently occurring municipal contractual arrangements, the risk of corruption contemplated by the general prohibition is lacking, or outweighed by the municipality’s operational concerns.

Generally, an exception may only be used when the governing body votes unanimously in favor of the (otherwise prohibited) contract and the interested officer discloses his or her interest therein, though some exceptions impose additional requirements. The examples are set forth in Appendix B and are too many, and impose too many specific requirements, to comprehensively cover here, but it should suffice for the Labor Committee's consideration of this issue to understand a few relevant examples of the types of contracts allowed by the exceptions even when a City officer has an interest therein, which are:

1. The City Council's designation of a bank or savings association as an authorized depository for public funds, or its designation of an official newspaper, subject to certain requirements. (Minn. Stat. § 471.88, subs. 1-2.)
2. Any contract that is not subject to competitive bidding requirements (generally, contracts for goods and services of \$100,000 or less (\$50,000 or less for local improvement projects paid for with special assessments), and contracts for professional services), provided that, among other requirements, it is authorized in advance by the Council by unanimous vote and based on a finding that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere. (Minn. Stat. §§ 471.88, subd. 5; 471.89.)
3. A contract pursuant to which a public officer rents space in a public facility at a market rate. (Minn. Stat. § 471.88, subd. 13.)
4. A City Council member's application for a loan or grant administered by a Housing and Redevelopment Authority (HRA) or Economic Development Authority for property owners within city limits, or an HRA board member's application for a loan or grant that is funded with state or federal funds. (Minn. Stat. § 471.88, subs. 14; 19.)
5. An HRA may take an action which affects the financial interests of a member of the HRA as long as the affected member properly discloses the interest in a timely manner and does not take part in the decision. (Minn. Stat. § 469.009.)

The 21 exceptions provided in § 471.88 apply to all cities, notwithstanding the provisions of any other statute or city charter. This means that the City Council may not enact any policy or regulation that would prohibit the City from entering into a contract pursuant to any of the 21 statutory exceptions, provided the applicable requirements imposed in each exception are adhered to.

B. Charter

The City's Charter contains a similar, but not identical, prohibition on personal financial interests in City contracts to the statutory prohibition discussed above, but broadly extends the prohibition to all City employees as well as the elected and appointed officials covered by the statute:

Any City Officials, Council members, board or commission members, or employees, who have a substantial financial interest, direct or indirect or by reason of ownership of stock in any

corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in their capacity as a City officer or employee in the making of such sale or in the making of or performance of such contract. Those who willfully conceal such a substantial financial interest or willfully violate the requirements of this section shall be guilty of malfeasance in the office or position and shall forfeit their offices or positions. Violation of this section with the knowledge express or implied of the person or corporation contract—with or making a sale to the City shall render the contract or sale voidable by the Council.

City Charter, Section 9.02.²

There are several inconsistencies between the respective prohibitions of personal interests in City contracts of the Charter and state statute that require attention. First, though the Charter does not recognize any exceptions to its prohibition of such contracts, Minn. Stat. § 471.88 has preempted local regulations and charter provisions concerning the 21 exceptions to the general statutory prohibition, so the City may enter into any contracts permitted by § 471.88 notwithstanding Section 9.02 of its Charter.

Next, to the extent that the Charter's language could be interpreted to be less restrictive than the statutory prohibition (e.g. "substantial interest" in the Charter compared to (any) "personal interest" in the statute), the statutory prohibition will prevail and apply to the City. Therefore, even though the Charter operates only to give the Council the power to void a contract entered into in violation of its prohibition, any contract entered into by the City in violation of Minn. Stat. § 471.87 is void pursuant to the terms of that statute regardless of whether the Council takes action to void the contract under the Charter provision.

Finally, to the extent that the Charter's language is broader than the statute's, the Charter's language would take precedence (except, as noted above, that the statutory exceptions apply even though the Charter prohibition recognizes no exceptions). Therefore, the Charter's prohibition of all officers and employees from having an interest in a contract with the City applies to the City, even though the statute more narrowly applies only to elected and appointed officials. Similarly, the Charter's language applies to every city officer and employee whether or not the officer or employee plays a role in making contracts, even though the statute only applies when the interested official is authorized to take part in the contracting decision.

II. NON-CONTRACTUAL CONFLICTS OF INTEREST

The laws discussed in the previous section relate only to contracts with interested officials. However, courts in Minnesota follow similar principles to those embodied in such laws in non-contractual situations.

² The recently adopted (but not yet effective) ordinance amending the City's Charter made no changes to Section 9.02.

Any official who has a personal financial interest in an official non-contractual action is generally disqualified from participating in the action. This is especially true when the matter concern's the member's character, conduct or right to hold office, but also applies when an official's own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter.

The Minnesota Supreme Court has listed several factors to consider in determining if a disqualifying conflict of interest exists in a non-contractual setting:

1. The nature of the decision;
2. The nature of the financial interest;
3. The number of interested official(s);
4. The need for the interested official(s) to make the decision; and
5. Whether other means are available to ensure official(s) will not act arbitrarily to further their own interests (e.g. whether an opportunity for independent review of the decision exists).

See Township Bd. of Lake Valley Township v. Lewis, 305 Minn. 488, 234 N.W.2d 815 (1975); *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967).

Whereas a contract that is prohibited due to a conflict of interest is generally void regardless of whether the interested official participated in the contracting decision, in the context of a non-contractual conflict, the official action will typically be valid so long as the disqualified official does not participate in making the decision, and the required number of non-interested members approve the action.

Courts tend to hold public officials to a higher standard in when a governing body acts in a quasi-judicial capacity (as opposed to a legislative capacity). As due process requires an impartial decision making process, no member of a governing body who has a personal interest may take part in a quasi-judicial determination, and the participation of such a member may render the body's decision void.

Given the wide variety of issues that come before city councils, the application of the above-summarized principles to a given situation is highly dependent on the unique facts of each such situation, and is not susceptible of the the type of mechanical analysis characteristic of the contractual conflict of interest regulations discussed in the previous section. Suffice it to say for purposes of the Labor Committee's consideration of this issue that non-contractual disqualifying conflicts of interest seem to arise most frequently in the context of land use and zoning decisions, when a member of the decision making body owns real property that would be affected by a decision of the body, and licensure issues, when a member of a governing body applies for a license issued by that body. In such situations, our experience has been that application of the above principles to any given situation tends to yield a clear answer to whether an official's personal interest is significant enough that the official would be disqualified from participating in the decision. Of course, officials are always free to voluntarily abstain from participating in and/or voting on issues in which there may be a perception that a conflict of interest exists, even if the perceived conflict would not disqualify the official from participation/voting under law.

III. CITY'S EXISTING POLICIES

Section 2.9 of the City's Personnel Policies makes clear to City employees that "(i)t is the responsibility of every employee to be constantly vigilant to perceive the dangers inherent in situations that give rise to a conflict of personal interests with the public interests of the City," and further directs employees to "recognize conflict situations when they occur, disclose them immediately," and "discuss questionable situations with supervisors."

Subsections of this policy prohibit City employees from using or attempting to use their employment for personal gain, engaging in self-dealing, accept gifts from the public, or misappropriate confidential information gained in the course of their employment or City property and resources for personal benefit.

This policy is generally consistent with the statutes, case law and charter provision discussed above, though it could be improved to include a definition of the term "conflict of interest" and to provide more specific guidance on employees' obligations in contractual matters. This policy does not apply to elected or appointed officials (with the exception of officials who are employees).

SUMMARY, CONCLUSION AND RECOMMENDATIONS

The state statutes governing conflicts of interest by city officials in contractual matters are extensive, leave little room for local governments to supplement the state's regulations, and apply to the City without regard to any contradictory charter provision or ordinance. Moreover, the legal principles applied by courts in non-contractual settings appear to be appropriate and sufficiently flexible to be reasonably applied in a wide variety of situations that might confront elected and appointed city officials as they execute the duties of their offices. Therefore, our first recommendation is that any conflict of interest policies ultimately adopted by the City reflect the requirements of state law, as well as the City's Charter.

We have preliminarily reviewed sample conflict of interest policies collected by Chairperson Ahmann from the cities of Brainerd, Minneapolis, San Jose, California and Toronto, Ontario. We note initially that some of these policies apply only to elected officials, others apply only to employees, and some apply to both employees and elected officials. Our experience dealing with these issues is that the role of employees typically play in preparing matters for the consideration of the City Council (or a board or commission) differs significantly from the role of the Council (or other body) in deliberating and making decisions such that separate policies for employees and elected and appointed officials are warranted and would be most practical.

For this reason, we recommend the Labor Committee consider this issue in two steps. First, we recommend the Committee review the City's Personnel Policy 2.9 and determine whether it should be updated, and if so, direct Flaherty & Hood, P.A. to prepare a revisions to the policy consistent with the Committee's direction. As noted above, we recommend that the policy be improved to, at a minimum, include a definition of the term "conflict of interest" and to provide more specific guidance on employees' obligations in contractual matters, though we would of course follow any additional direction from the Committee.

Second, we recommend that the Labor Committee consider whether it would be in the City's interest to develop and adopt a separate conflict of interest policy applicable to elected and appointed officials, and if so, direct Flaherty & Hood, P.A. to prepare a draft policy consistent with the Committee's direction. If the Committee wishes to pursue such a policy, our suggestion would be to use the Brainerd policy as a starting point, as it appears to have been carefully crafted with Minnesota law in mind and, unlike the Minneapolis policy, applies only to elected and appointed officials. If there are specific provisions from the Minneapolis, San Jose, or Toronto (or any other) policies that the Committee feels would be appropriate for Willmar, we can certainly incorporate such provisions into the draft policy as well.

We look forward to continuing to work with the Labor Committee and/or City Council on this issue. In the meantime, should you have any questions or require additional information, please contact us at (651) 225-8840.

RTS-CMH

