

South Portland City Council
Position Paper of the Interim City Manager

Subject:

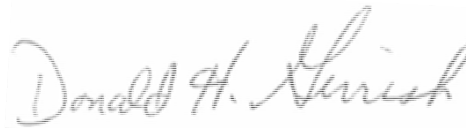
ORDER #129-16/17 - Authorizing the Interim City Manager to sign an agreement with the Town of Cape Elizabeth for Alternate Building Inspector services. Passage requires majority vote.

Position:

I am requesting approval to enter into an inter-local agreement with the Town of Cape Elizabeth to provide the services of an Alternate Building Inspector. With the retirement of Code Enforcement Officer Patricia Doucette, Rich Steller will become acting Code Enforcement Officer on an interim basis until a permanent Code Enforcement Officer is hired. Rich is currently the City's Building and Plumbing Inspector. With Rich focusing on CEO duties, there is a need to provide some backup support for building inspections as-needed. The City of South Portland provided support to Cape Elizabeth when they were in need of a CEO, and they are willing to provide this support reciprocally as a good neighbor and partner. When representing the City, the Alternate Building Inspector will be under the supervision of the Interim Code Enforcement Officer.

Requested Action:

Council passage of ORDER #129-16/17.



Interim City Manager



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH
Mayor

DON H. GERRISH
Interim City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. SCULLY
City Clerk

IN CITY COUNCIL

ORDER #129-16/17

ORDERED, that the Interim City Manager be and hereby is authorized to sign the attached Interlocal Agreement with the Town of Cape Elizabeth to provide Alternate Building Inspector services for the period of February 6, 2017 to April 30, 2017.

Fiscal Note: Less than \$1000

February 6, 2017

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
SUSAN J. HENDERSON

SHARED SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of January, 2017, by and between the **CITY OF SOUTH PORTLAND**, a municipal corporation organized and existing under the laws of the State of Maine and located in the County of Cumberland and State of Maine (the “City”), and the **TOWN OF CAPE ELIZABETH**, a municipal corporation organized and existing under the laws of the State of Maine and located in the County of Cumberland and State of Maine (the “Town”).

WHEREAS, the City is in need of the temporary services of a qualified Alternate Building Inspector due to the recent retirement of the City’s long-time Code Enforcement Officer; and

WHEREAS, the Town employs a certain individual who is qualified to offer the services of an Alternate Building Inspector; and

WHEREAS, the Town has agreed to allow its Code Enforcement Officer to act as the Alternate Building Inspector for the City on an as-needed basis under the supervision of the City’s Interim Code Enforcement Officer; and

WHEREAS, the City and the Town intend, by virtue of this document, to set forth the terms and conditions of this shared services arrangement.

NOW, THEREFORE, in consideration of the promises and other mutual obligations undertaken herein, the parties hereby agree as follows:

1. **Appointment of Alternate Building Inspector.** The City shall appoint Benjamin McDougal, the Town’s Code Enforcement Officer, with the consent of the Town, to be the City’s Alternate Building Inspector for all purposes required under law, but subject to the provision in Section 3 below that he shall at all times remain solely an employee of the Town.

2. **Scope of Services.** Benjamin McDougal shall perform all duties and responsibilities imposed by law on the City’s Alternate Building Inspector. These

services may be provided at the South Portland Planning & Development Office and in the field throughout the City, as appropriate, as well as through telephone and computer e-mail use at the Cape Elizabeth Town Hall when more efficient and timely. These services shall be provided under the supervision of the City's Interim Code Enforcement Officer. The Town shall advise the City of the days and hours that the Alternate Building Inspector proposes to serve in the City in order to complete all duties required during the term of this Agreement, such schedule to be approved by the City in mutual agreement with the Town.

3. **Town as Sole Employer.** Benjamin McDougal shall remain an employee of the Town during the term of this Agreement for all purposes, including, without limitation, pay, benefits and workers' compensation coverage. Nothing herein shall be construed to create a joint employer relationship with the City.

4. **City Responsibility.** The Alternate Building Inspector shall be an agent of the City for the purposes of statutory and ordinance authorization. The City shall provide office space for the Alternate Building Inspector, complete with office space, desk, chair, telephone, cell phone reimbursement per the City of South Portland's Cell Phone Policy, camera, computer and Internet access and related office supplies to use when working in the City. The City shall provide the Alternate Building Inspector with a City-owned vehicle to use while on Alternate Building Inspector business within the City. The City shall also provide office support as needed, as well as printing, mailing and other necessary resources and functions as the City shall deem necessary and prudent for the proper administration of the Alternate Building Inspector function.

5. **Cost.** The Town agrees to make these temporary services of a qualified Alternate Building Inspector available to the City at no charge in consideration of the City's prior provision of assistance to the Town when it was in need of temporary code enforcement services.

6. **Indemnification.** The City shall indemnify and hold harmless, defend or cause to be defended, the Town, its agents, officers and employees, from and against all liability, cost, damage, expense or judgment, on account of the act(s), omission(s) or negligence of the Town arising out of or connected with the performance of services under this Agreement; provided, however, that the City's obligation to indemnify and hold harmless shall not apply to (a) to any liability, cost, damage, expense or judgment to the extent that it is finally determined to be the result of intentional misconduct or gross negligence of the Town, its agents, officers or employees; or (b) to any liability arising out of the willful violation of any statute or ordinance if committed at the direction of the Town, or any of its agents, officers or employees. This section shall not be interpreted to waive the monetary limits or substantive areas of immunity under the Maine Tort Claims Act.

7. **Term & Termination of Agreement.** This Agreement shall be for the period commencing February 1, 2017, and ending April 30, 2017, and it may be sooner terminated upon fifteen (15) days advance written notice by any party to this Agreement. This Agreement may be renewed for an additional sixty (60) days upon the written agreement of the parties.

8. **Notification.** Notices under this Agreement shall be sufficient if sent by first class mail or hand delivered as follows:

TO CITY: City Manager
 City of South Portland
 PO Box 9422
 South Portland, ME 04116-9422

TO TOWN: Town Manager
 Town of Cape Elizabeth
 PO Box 6260
 Cape Elizabeth, ME 04107-0060

9. **Default.** In the event a party defaults under this Agreement, the other party shall have those remedies available to it at law and in equity; provided it shall first give the defaulting party written notice and a reasonable time to cure. Absence due to illness or injury does not constitute a default under this Agreement.

10. **No Assignment.** This Agreement and all rights, duties and obligations contained herein shall not be assigned.

11. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between the City and the Town relating to the subject matter herein and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Town. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement, and the parties agree to meet and negotiate a new clause, section, provision or agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF SOUTH PORTLAND

By: _____
Donald H. Gerrish
Its Interim City Manager

TOWN OF CAPE ELIZABETH

By: _____
Matthew Sturgis
Its Town Manager