

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #11-17/18 - Consideration of a request from the Civil Service Commission to retain outside legal counsel for review of ordinance changes. Passage requires majority vote.

Position:

Last year, the Police Chief, Fire Chief, and Human Resources Director proposed several changes to the Civil Service ordinance, which were aimed at speeding up the hiring process for public safety employees due to the shrinking available workforce for those positions.

Recently, the Civil Service Commission reviewed these proposed changes and – as outlined in the attached memo – they are requesting outside legal review of these proposed changes as they (unanimously) believe that the City's Corporation Counsel has a conflict of interest.

In order to obtain this outside legal review, the commissioners must make a request of the City Council and outline why they feel it is necessary, the name of the attorney they wish to use, and an estimated cost. Upon meeting with immediate past chair Lee Harvey and new chair Philip LaRou, it appears that Attorney Bob Bower is agreeable to both City staff and the commission. The total not-to-exceed cost would be \$3,500.

Lee Harvey, along with Chiefs Googins and Wilson, will be present at your meeting on Monday night.

Requested Action:

Council passage of ORDER #11-17/18.



City Manager

City of South Portland
Civil Service Commission
PO Box 9422
South Portland ME 04116-9422

June 22, 2017

Phillip LaRou
Chairman

Scott Morelli, City Manager
City of South Portland
PO Box 9422 - 25 Cottage Road
South Portland ME 04116-9422

David Turner
Secretary

Dear Scott,

District One
Kathleen Hanson

Please find enclosed the request from the Civil Service Commission for independent counsel to assist in the review of recommended changes to the Chapter 19 ordinance.

District Two
Caroline Hendry

Given that a waiver of the current process is in place per the request of the Police Department and given that said waiver ends June 30, 2017 and given that the CSC wishes to abide by its responsibilities to uphold the ordinance as required by law, this request is time sensitive.

District Three
Rosemarie DeAngelis

Proposed changes have been presented by the police/fire departments; however commissioners are not attorneys and wish to have guidance to make appropriate and legal responses to the recommended changes.

District Four
Louie Maietta

Section 19-1(f) states: "Retaining outside legal counsel. Legal questions raised by the Civil Service Commission should be directed to the City's Corporation Counsel. In the event of a conflict of interest, an independent counsel will be hired for the Commission at the City's expense. Additionally, there may be times when a particular question will require an extensive time commitment of specialized knowledge and experience and the Commission may request for the city may choose to hire independent additional counsel.

District Five
Phillip LaRou

If the commission believes there is a need for independent or additional counsel, it shall notify the City Manager in writing. Independent or additional counsel will be authorized by order of the Council in consultation with the Commission as to who the independent or additional counsel may be, the duration of the authorization and the amount of money that may be expended.

At Large
David Turner

Independent or additional counsel for the Commission shall be a reputable firm or attorney with experience in municipal, administrative and/or personnel and labor law. Both the Commission and the Council shall consent to the choice of an attorney or firm. Such consent shall not be reasonable withheld. The procurement process for independent or additional counsel shall conform to the requirements of the City's purchasing ordinance, section 2-169.

At Large
Lee Harvey

Once the independent or additional counsel has been selected, an agreement as to the subject matter, duration and fees has been reached, and the City Council has authorized the representation, the commission shall directly contact its counsel, and vice versa, on all representation within the scope of this section. Bills for such authorized services will be the responsibility of the City."

Given this language, the Commissioners unanimously believe that a conflict of interest exists for the following reasons:

1. Proposed changes to the ordinance were made by the police and fire departments, composed of city employees;
2. City's Corporation Counsel serves first to represent the City Council, the City Manager and his/her employees (thus those in the police and fire depts.);
3. The Civil Service Commission represents the public and the public interest;
4. Corporation Counsel cannot reasonably or fairly represent two opposing clients simultaneously (the city and the public interest, via the CSC).

Therefore, use of the city's corporation counsel would represent a conflict of interest.

(cont.)

CSC request (pg. 2)

Our request is that the enclosed order (re-written per your language guidelines) be put before the City Council at its next regularly scheduled meeting.

Thank you for your consideration of this matter.

Sincerely,

Phillip J. LaRou

Phillip J. LaRou
Chairman

Cc: Patti Smith, Mayor of South Portland, 63 Parrott Street, South Portland ME 04106
Commissioners Hanson, Hendry, De Angelis, Maietta, Turner, and Harvey

PROPOSED ORDER: Be it ordered that the City Council approve the use of independent legal counsel to assist the Civil Service Commission in reviewing the proposed Chapter 19 changes.

Maximum expenditure unless further authorization: _____\$_____



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH
Mayor

SCOTT T. MORELLI
City Manager

EMILY F. SCULLY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

**IN CITY COUNCIL
ORDER #11-17/18**

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

ORDERED, pursuant to Code of Ordinances Sec. 2-5, the Civil Service Commission is authorized to seek legal services from Norman Hanson and Detroy to review ordinance changes for Chapter 19, "Personnel Rules and Regulations".

BE IT FURTHER ORDERED, that the City Council hereby authorizes payment of such expenditures incurred during the review of ordinance changes.

Said amount shall be charged to the Legal Services Account #10153062-628800

Fiscal Note: Not to exceed \$3,500

Date: July 10, 2017