

# Council Business Meeting

July 16, 2019

<b>Agenda Item</b>	Confirmation of Mayoral Appointment of David Shepherd as Fire Chief.	
<b>From</b>	John Stromberg	Mayor
<b>Contact</b>	John@council.ashland.or.us	

## **SUMMARY**

The City Council is being asked to approve the appointment of David Shepherd to serve as the Ashland Fire Chief and authorize the Mayor to sign the accompanying Employment Agreement.

## **POLICIES, PLANS & GOALS SUPPORTED**

Ashland Municipal Code Section 2.28.150 creates the position of Fire Chief.

## **PREVIOUS COUNCIL ACTION**

N/A

## **BACKGROUND AND ADDITIONAL INFORMATION**

On May 20, 2019, Mike D’Orazi resigned as the Ashland Fire Chief. Since that time David Shepherd, previously the Deputy Fire Chief, has been serving as the Acting Fire Chief.

Over the past month, my experience and that of the City Administrator with David acting as Chief has been nothing but positive. David is a thoughtful and progressive leader and a team player with the other department heads. He understands the challenges ahead and has provided suggestions that attempt to balance the needs of the City at-large and his department. I believe the Fire Department needs stability and certainty in their leadership and David Shepherd can provide that. Fire staff believe that as well, as recently the City Administrator received a letter from the Fire Union stating that the members of the Fire Department support David as the permanent Chief.

## **FISCAL IMPACTS**

There is adequate funding in the 2019-2021 biennial budget to support the Fire Chief’s position.

## **MAYOR AND CITY ADMINISTRATOR RECOMMENDATION**

The Mayor and the City Administrator recommend the appointment of David Shepherd to serve as the City of Ashland’s Fire Chief.

## **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move to appoint David Shepherd to serve as the City of Ashland’s Fire Chief and authorize the Mayor to sign the accompanying Employment Agreement between the City of Ashland and David Shepherd.

## **REFERENCES & ATTACHMENTS**

Attachment 1: Employment Agreement between the City and David Shepherd

**CITY OF ASHLAND  
Employment Agreement**

**Fire Chief**

THIS AGREEMENT, made and entered into this **16th** day of **July 2019**, by and between the City of Ashland ("City") and David Shepherd ("Employee").

**R E C I T A L S**

- A. City desires to employ the services of Employee as the Fire Chief of the City of Ashland; and,
- B. It is the desire of the City to establish certain conditions of employment for Employee; and,
- C. It is the desire of the City to (1) secure and retain the services of Employee and to provide inducement for Employee to remain in such employment, (2) to make possible full work productivity by assuming Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee; and, (4) to provide a just means for terminating Employee's services at such time as Employee may be unable fully to discharge Employee's duties due to disability or when City may otherwise desire to terminate Employee's services; and,
- D. Employee desires to accept employment as the Fire Chief of the City of Ashland, and to begin his employment retroactive to May 20, 2019.

**City and Employee agree as follows:**

**Section 1. Duties.**

The City hereby agrees to employ David Shepherd as the Fire Chief of the City of Ashland to perform the functions and duties specified in the City Charter, City Ordinances, and the job description for the position, and to perform such other legally and ethically permissible and proper duties and functions as the Mayor, City Council, and/or City Administrator shall from time to time assign. The Fire Chief shall devote full time to the performance of his duties.

**Section 2. Term.**

- A. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Mayor, with the consent of the City Council in accordance with the City Charter, from terminating the services of the Fire Chief at any time, subject only to the provisions set forth in the section titled "Severance pay" of this agreement. Except as specifically provided in this Agreement, Employee shall serve at the pleasure of the City, without any requirement to demonstrate cause for dismissal.

- B. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the City, subject only to the provisions of this agreement.
- C. Employee agrees to remain in the employ of the City until November 1, 2020 and neither to accept other employment nor to become employed by any other employer until this termination date, unless the termination date is affected as otherwise provided in this agreement. This provision shall not restrict Employee from using vacation or personal leave for teaching, consulting or other activities provided these activities do not conflict with the regular duties of the Employee and are approved in writing by the Mayor, with the consent of the City Council.
- D. In the event written notice is not given by either party to terminate this agreement at least ninety (90) days prior to the termination date, this agreement shall be extended for successive three-year periods on the same terms and conditions provided herein.
- E. In the event Employee wishes to voluntarily resign the position during the term of this agreement, Employee shall be required to give the City thirty (30) days written notice of such intention, unless such notice is waived by the Mayor, with consent of the City Council. Employee will cooperate in every way with the smooth and normal transfer to the newly appointed individual.

### **Section 3. Salary**

Retroactive to May 21, 2019, the City agrees to pay Employee a monthly salary at step 7 of the salary schedule (\$11,269.36/month). Employee will advance to the next step after one year of successful performance as determined by the City Administrator. The City agrees to annually increase the monthly salary and/or benefits in the same percentage as may be accorded other department heads.

### **Section 4. Performance Evaluation.**

The City Administrator shall review and evaluate the performance of the employee at least once annually. Employee shall receive a written copy of the performance evaluation and be provided an adequate opportunity for the employee to discuss the details of the evaluation.

### **Section 5. Hours of Work.**

It is recognized that Employee must devote a great deal of time outside the normal office hours to the business of the City, and to that end Employee will be allowed to take compensatory time off as Employee shall deem appropriate during normal office hours, so long as the business of the City is not adversely affected. Work in excess of forty (40) hours per week is deemed part of the professional responsibility for which the Employee shall not be paid overtime. In recognition of the extra hours required of the Fire Chief, Employee shall receive forty (40) hours of administrative leave each year to be used before June 30<sup>th</sup> or deemed forfeited. Employee will receive additional administrative leave if granted by the City Council in the Management Resolution adopted each year.

## **Section 6. Automobile.**

The City shall provide an automobile for use by the Fire Chief.

## **Section 7. Health, Welfare and Retirement.**

Except as modified by this agreement, Employee shall be entitled to receive the same retirement, vacation, sick leave benefits, holidays, and other fringe benefits and working conditions as they now exist or may be amended in the future, as apply to any other department head, as spelled out in the City's Management Resolution in addition to any benefits enumerated specifically for the benefit of Employee as provided in this agreement.

## **Section 8. Dues and Subscriptions.**

City agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for the continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for Employee's continued professional, growth and advancement, and for the good of the City.

## **Section 9. Professional Development**

The City hereby agrees to annually budget and allocate sufficient funds to pay necessary travel and living expenses of the Fire Chief while he represents the City at conferences, trainings, official business meetings or professional organizations that serve the City's interest and/or are reasonably necessary to provide for the professional advancement of the Fire Chief. Membership on any national or state commission or committee shall be subject to the approval of the City Administrator.

## **Section 10. Professional Liability**

The City agrees that it shall defend, hold harmless, and indemnify the Fire Chief from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the Fire Chief in his individual capacity or in his official capacity, provided the incident arose while the Fire Chief was acting within the scope of his employment. If in the good faith opinion of the Fire Chief, conflict exists as regards to the defense of any such claim between the legal position of the city and the Fire Chief, he may engage counsel in which event, the City shall indemnify the Fire Chief for the cost of legal counsel.

## **Section 11. Severance Pay**

- A. In the event Employee is dismissed during the term of this Agreement, and Employee is not being dismissed for any reason set forth in paragraphs B or C of this section, the City agrees to offer Employee a severance agreement. The amount of severance pay to be offered to Employee in the severance agreement shall be equal to the employee's monthly base salary at the time of dismissal; times the number of months that employee has been employed up to a maximum of six (6) months.

In addition, the severance agreement offered to the employee will require the City to continue to pay the employer portion of the premium for medical and dental insurance coverage through the end of the month the Employee's severance pay is intended to cover or until the last day of the month in which Employee obtains employment with alternative insurance whichever occurs earlier.

As a condition of the severance offer, the Employee will be required to release the City, its officers, representatives, insurers, and employees from claims arising from employment with the City and separation of employment.

- B. Employee will not be eligible to receive the severance offer described in Paragraph A of this section if this Agreement is not renewed by the City, as provided in Section 2, above. Employee also will not be eligible to receive the severance agreement offer if Employee breaches any provision of this agreement, or if Employee engages in any act of misconduct in the performance of duties on behalf of the City. The term "misconduct" includes misappropriation, dishonesty, breach of trust, insubordination, neglect of duty, failure to perform duties in a manner that is consistent with applicable law, failure to correct performance deficiencies identified in writing by the City Council after a reasonable opportunity, as determined by the City, to correct the deficiencies; committing any violation of City policies or standards that the City deems a serious violation; or engaging in other action demonstrating a disregard for the interest of the City. The term "misconduct" also includes engaging in criminal acts or other off-duty behavior that the City views as impairing the Employee's ability to effectively perform the Employee's duties or jeopardize the reputation of the City.
- C. Employee will not be eligible to receive the severance offer described in Paragraph A of this Section if Employee, in accordance with applicable law, is dismissed due to a disability that prevents Employee from performing the duties of the position.

## **Section 12. Other Terms and Conditions of Employment**

City shall by amendments to this agreement, fix such other terms and conditions of employment from time to time, as it may determine, relating to the performance by Employee with the agreement of Employee, provided such terms and conditions are not inconsistent or in conflict with the provisions of this agreement.

## **Section 13. Severability.**

In any part, term, or provision of this agreement is held by the courts to be illegal or in conflict with the laws of the State of Oregon, the validity of the remaining portions of the agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular part, term, or provision.

## **Section 14. Other Terms and Conditions of Employment**

The Employee is subject to all personnel policies of the City of the City and the City's Management Resolution except to the extent that they are inconsistent with an expressed term of this agreement.

**Section 15. PERS Pick-up**

Employee contributions to the Public Employees' Retirement system (PERS) shall be "picked up" by the City. Employee shall not have the option of receiving money designated for retirement contributions and directly making the contribution to PERS. Employee's reported salary for tax purposes shall be reduced by the amount of the employee's contribution to PERS.

**Section 16. Complete Agreement**

This agreement shall constitute the entire agreement between the City and Employee and supersedes all prior agreements, representations and understandings between them. No supplement, modification or amendment of this Agreement shall be binding on the City unless it is set forth in a writing that is signed by the Mayor and approved by the City Council. Likewise, no waiver or any provision of this Agreement shall be valid unless set forth in writing that is signed by the Mayor and approved by the City Council.

Dated this 16th day of July 2019.

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Melissa Huhtala  
*City Recorder*

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John Stromberg  
*Mayor*

Accepted this 16th day of July 2019.

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David Shepherd