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BARNSTABLE COUNTY  
In the Year Two Thousand and Seventeen

PROPOSED ORDINANCE 17-04

WHEREAS, the Barnstable County Home Rule Charter requires that all contracts be presented to the Assembly of Delegates for approval by the Assembly before they are signed by the Board of Regional Commissioners. [See: Charter, §§ 2-8 (b), and §§ 3-3 (g)]; and

WHEREAS, the Barnstable County Home Rule Charter requires that all decisions to “establish, alter or abolish **any** department, office or agency ...” be undertaken only by ordinance approved by the Assembly of Delegates. [See: Charter §§ 2-8 (d) (i)]; and

Whereas, the Assembly of Delegates has not by ordinance or otherwise participated in, nor have they approved the terms of the contract for “Termination and Transition” of the Cape Light Compact (Compact); and

WHEREAS, beginning in 1997, Barnstable County provided all start up funds, including continuing financial support and assistance and other direct funding, as well as personnel, equipment, office space, technology in the form of telecommunications and computer equipment, and other goods and services, tangible and intangible, from the outset of the Compact to the present; and

WHEREAS, according to the “termination agreement” put forward by withdrawing members, the withdrawing members seek to claim all assets generated by the intergovernmental entity which funds do not belong to individual withdrawing towns but rather belong to the rate payers, the taxpayers of Barnstable County and Barnstable County; and

WHEREAS, the Barnstable County Commissioners have entered into an agreement for the withdrawal of members (i.e. cities and towns of Barnstable County) of the intergovernmental entity known as Cape Light Compact without any accounting or identification of assets; and

WHEREAS, the proposed conveyance of all of the assets held by Barnstable County as the fiscal agent for the intergovernmental entity known as Cape Light Compact is an unlawful and *ultra vires* conveyance which is not authorized by M.G.L. c. 40 Section 4A or any other authority; and

WHEREAS, Barnstable County has at all material times been the fiscal agent for the entity known as Cape Light Compact and has at all material times been responsible for the books and records of said entity and for the proper safeguarding of its assets; and

WHEREAS, the Barnstable County Commissioners and the County Administrator appear to have negotiated an agreement, without any public hearing, notice to ratepayers, accounting or other financial disclosure, that conveys all assets used by the Compact to it, without any reimbursement for personnel, benefits (such as health insurance and retirement), lease of county space, technological equipment and supplies, even including automobiles, provided to the Compact by Barnstable County; and

WHEREAS, the contract for "termination" is *ultra vires*, that is, beyond the authority of the Barnstable County Commissioners and the County Administrator, and should be held to be *void ab initio*, unenforceable from the beginning, negotiated as it was without approval of or participation by the Assembly and as it conveys away assets purchased with Barnstable County, taxpayer and ratepayer funds and never reimbursed; and

WHEREAS, the County of Barnstable as fiscal agent at all material times has a fiduciary duty under the intergovernmental agreement; and

NOW THEREFORE, Barnstable County hereby ordains, effective immediately,

1. The Cape Light Compact, and the Barnstable County employees involved in its operation and all other employees of other entities working pursuant to the existing inter municipal agreement or otherwise having access to the offices, equipment, and furnishings used for the work of the Compact are directed and prohibited from removing any property of any kind from the premises at Barnstable County complex;

2. An audit will be commenced under the control of auditors chosen by the Assembly with consultation with the Barnstable County Commissioners to determine, *inter alia*, the amount of the county investment from the inception of Cape Light to the present and the amount of money owed the county; as part of that review, the Compact and its employees and participating (now departing) members shall agree to reopen the "termination agreement" to ensure that the county is fairly and adequately compensated for its investment, to the present,

3. The auditors examining the books and records of the Compact shall be charged with identifying (a) how much money and property, including intellectual property was used by the Compact without payment, (b) which member(s) benefitted, and (c) how much is owed to the Barnstable County;

4. Barnstable County shall appropriate such funds as may be necessary to hire counsel to oversee the investigation of the finances of Cape Light Compact from its inception to the present, to ensure the safety of rate payer and county funds during the course of the dissolution of the entity known as Cape Light Compact, and to ensure the proper arrangements for reimbursement of funds owed to the County and/or to the ratepayers.

Dated March 1, 2017

Submitted by:

Truro Delegate Deborah L. McCutcheon,



Wellfleet Delegate, Lilli-Ann Green



Provincetown Delegate, Brian O'Malley, MD Brian O'Malley

Orleans Delegate, Christopher W. Kanaga Christopher W. Kanaga

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Eastham Delegate, Edward F. Atwood \_\_\_\_\_

Sandwich Delegate, James Killion \_\_\_\_\_