



MEMORANDUM

TO: South Portland Planning Board

CC: Charles "Tex" Haeuser, Planning Director

FROM: Sally J. Daggett, Esq.

RE: Role of Planning Board in Review of Citizen Initiated Ordinance

DATE: July 3, 2013

Background of the Citizen Initiative Petition Process

On June 17, 2013, a citizen initiative petition was submitted to the City Clerk's office requesting amendment of the South Portland Code of Ordinances to include a waterfront protection ordinance. The proposed ordinance includes proposed amendments to Chapter 27, the Zoning Ordinance.

Pursuant to Article XI of the City Charter, South Portland voters may propose any ordinance through the initiative process, except an ordinance appropriating money or authorizing the levy of taxes. (There are some other general limitations on the right of initiative not applicable to this proposed ordinance.) Once an initiative petition is submitted to the City Clerk, the Clerk has 20 days to determine whether it contains a sufficient number of valid signatures and whether each paper of the petition has a proper statement of the circulator. The City Clerk determined that the petition contains the required number of valid signatures and forwarded the petition to the City Council on July 1, 2013.

Once a certified initiative petition is received by the City Council, the City Council is required by Section 1107 of the Charter to have the proposed ordinance read and to hold a public hearing on it. On July 1, 2013, the City Council conducted its required initial reading of the proposed ordinance and scheduled its public hearing on the same for August 5, 2013. Because the proposed ordinance includes proposed amendments to Chapter 27, State law requires that the Planning Board also conduct a

public hearing on the proposed ordinance. *See* 30-A M.R.S.A. § 4352(9) (before amending a zoning ordinance, the planning board must conduct a public hearing and post and publish notice of the same in advance). This requirement of a Planning Board public hearing is notwithstanding the proposed ordinance’s attempt to make Planning Board review of it “optional.” The City Council acted to refer the proposed ordinance to the Planning Board on July 1, 2013.

The City Council has the option of adopting the ordinance as proposed by the petitioners. If that is the will of the Council, it could conduct its second reading and take action to enact the ordinance at the conclusion of the public hearing on August 5, 2013. If the City Council does not pass the proposed citizen initiated ordinance as written, the proposed ordinance must be submitted to the voters at least 30 days but not more than 15 months from the date of the City Council’s final vote thereon. Either way, the City Council must take final action on the proposed ordinance within 60 days of the date it receives it from the City Clerk (either by submitting it to the voters or by enacting the ordinance).

Role of the Planning Board in the in Review of a Citizen Initiated Ordinance involving Amendments to the Zoning Ordinance

The proposed ordinance is in final form, and the Planning Board cannot make changes to it (even to correct typographical errors). What is the point of a Planning Board public hearing when the proposed ordinance is already in final form because it was brought forward by citizen petition? Remember that State law requires that the Zoning Ordinance be consistent with the City’s Comprehensive Plan. 30-A M.R.S.A. § 4352(2). Because the Planning Board is the administrative board that is most familiar with the City’s Comprehensive Plan, the Planning Board – with the aid of the public at the public hearing – can best assess whether the proposed ordinance is consistent with the Comprehensive Plan. (Sec. 27-115(g) of the Zoning Ordinance provides that the “Planning Board shall review all requests for zoning amendments and related site plans and make its recommendations to the City Council regarding the land use implications of the proposal and its consistency with the City’s adopted Comprehensive Plan.”) For purposes of developing its recommendation to the City Council as required by State law and Sec. 27-115(g) of the Zoning Ordinance, the Planning Board can make its own determination about the proposed ordinance’s consistency with the Comprehensive Plan (and effectively disregard Section 9 of the proposed ordinance).

I will be present at the July 9, 2013 workshop to discuss procedures for the July 23, 2013 public hearing on the proposed ordinance. However, in fairness to all interested parties, the workshop is not the appropriate time to discuss the merits of the proposed ordinance.