

Fwd_ Adoption and Amendment of Initiative Ordinance...
Sent from my iPad

On Jul 18, 2013, at 3:31 PM, "Gailey, James"
<JGAILEY@southportland.org> wrote:

Good Afternoon,

A number of questions were posed by Natalie West of the WPO. Please read the string of emails from the bottom up to gain a full understanding of the context of this email.

Thanks.

Jim

From: Sally J. Daggett [mailto:SDaggett@JBGH.com]
Sent: Thursday, July 18, 2013 3:27 PM
To: Gailey, James
Subject: Adoption and Amendment of Initiative Ordinance

Hi Jim,

I am writing in response to the questions posed below.

.If the City Council acts to adopt the proposed Waterfront Protection Ordinance ("WPO"), it can be amended (or repealed) by the City Council pursuant to the usual procedures set forth in the Charter and Chapter 27 of the Code of Ordinances regarding amending or repealing the Zoning Ordinance. However, if the City Council does not adopt the proposed WPO and it is subsequently adopted by the voters, Section 1113 of the Charter applies, which provides that an ordinance proposed by petition and adopted by the voters can only be amended or repealed by the voters.

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.The citizen initiated version of the WPO is in final form, and the City Council (and Planning Board) cannot make changes to it (even to correct typographical errors). If the City Council acts to amend the proposed WPO in any way and then to adopt the amended WPO, the original, citizen initiated version of the WPO must go to the voters pursuant to Section 1108 of the Charter, because the City Council will have passed the WPO in a form

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different than that set forth in the citizen petition. (Note too that one or more petitioners or circulators of the petition cannot amend the initiative petition now that it has been submitted to the City Clerk. See *La Fleur ex rel. Anderson v. Frost*, 80 A.2d 407 (Me. 1951) (once voters have signed a petition, they have acquired some right to consideration of the petition [if the petition is otherwise valid] that can't be withdrawn or cancelled by the circulators)).

.A majority vote of the City Council is required to send the proposed WPO to the voters (see Section 1107 of the Charter), but if the proposed WPO is not adopted by the City Council, the proposed WPO must be sent to the voters. In other words, the City Council has no discretion in the matter if it does not adopt the WPO or adopts it in a form different than in the citizen petition.

.Pursuant to Section 27-115 of the Zoning Ordinance, a 2/3 vote of the membership of the City Council (i.e., at least 5 votes) is required for the City Council to adopt the proposed WPO because it includes proposed amendments to the Zoning Ordinance.

Please call with any questions. Thanks, Sally

Sally J. Daggett, Esq.

JENSEN BAIRD GARDNER & HENRY

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Portland, ME 04112

(207) 775-7271

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<image001.jpg>

From: Gailey, James [mailto:JGAILEY@southportland.org]
Sent: Thursday, July 18, 2013 11:49 AM
To: Sally J. Daggett
Subject: FW: Adoption and Amendment of Initiative Ordinance

Sally,

Can you weigh in on this one. Read from the bottom up.

Jim

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From: TEBlake@aol.com [mailto:TEBlake@aol.com]
Sent: Thursday, July 18, 2013 11:36 AM
To: nataliewest2013@gmail.com; Gailey, James; Mooney, Susan
Subject: Re: Adoption and Amendment of Initiative Ordinance

Hello all,

It is a good idea to receive Council's opinion on these questions. I believe I have an understanding of the questions but to have legal opinion is wise.

Relative to questions number 1, I would like to request that the question be expanded. Can the Council insert the word "petroleum" in one paragraph (sentence) of the Waterfront Protection Ordinance, in order to clarify the intent of the measure,

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with the consent of Concerned Citizens of South Portland, without triggering the need to place two measures on the ballot? Two measures would be very confusing to the voters.

I ask this question because there are members of the community who seem confused by the wording of paragraph 27-922.5(b) of the Initiative, which reads "No new or expanded facility shall be constructed..." The Concerned Citizens of South Portland have assured me that the Initiative is intended to apply only to petroleum activities. I agree that the paragraph, when read in the context of the entire Initiative clearly applies only to petroleum activities, but I continue to hear from residents who are taking the phrase out of context and will probably continue to do so. If the Council has the authority to change the wording to "No new or expanded petroleum facility" it would help clarify this measure for our citizens. I do believe that the CCSP would fully support the insertion of this additional word.

Thanks and please let us know if Sally needs any additional clarification. I am on my cell all afternoon at 650-8972 should you need to reach me.

Tom

In a message dated 7/17/2013 4:11:04 P.M. Eastern Daylight Time, nataliewest2013@gmail.com writes:

As we approach the City Council hearing on August 5, it

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is in everyone's interest to have a clear understanding of the legal framework that the City intends to apply. Therefore, we request that the City obtain, and share with us, City Attorney opinions on the following issues:

1. If the City Council were to adopt the ordinance, could the ordinance be amended by vote of council? Section 1113 of the Charter provides, in part, that "No ordinance proposed by petition and adopted by vote of the people

Fwd_ Adoption and Amendment of Initiative Ordinance... shall be repealed or amended except by vote of the people...." Are there any restrictions on amendment of the Waterfront Protection Ordinance if the Ordinance were adopted by Council or is the Council free to amend and/or repeal it at any time?

2. Clarification regarding votes required:

2.1. How many votes of Council are required to place the Waterfront Protection Ordinance on the ballot?

2.2 How many votes of Council are required if the Council decides to adopt the WPO instead of placing it on the ballot?

Thank you for your attention to this request.

Natalie E. West, Attorney at Law

MSBN 9995

207-400-1782

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you that

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