

July 22, 2013

**BY EMAIL AND HAND DELIVERY**

City of South Portland Planning Board  
c/o Department of Planning & Development  
496 Ocean Street  
South Portland, ME 04106

Re: Citizen Initiative Waterfront Protection Ordinance/  
Issue of Correct Version of Ordinance for Public Hearing

Dear Chair and Members of the Planning Board:

As the Board is aware, this Firm represents Irving Oil Terminals Inc. (“Irving”). We previously submitted written comments regarding the citizen initiative proposed Waterfront Protection Ordinance (“WPO”) regarding consistency with the City’s Comprehensive Plan and land use implications. However, another issue has been raised regarding the WPO which we believe requires comment prior to the public hearing.

We understand that there is a difference between the version of the WPO appended to the petitions signed by citizens and the version submitted to the City that was accepted by the South Portland City Clerk on July 1, 2013 and directed by the South Portland City Council to the Planning Board for public hearing on July 23, 2013.

We understand that the general rule is that the petitioned initiative ordinance, as it appears on the petition signed by the voters, is the document that the City Clerk and City Council are to act upon under Article XI of the South Portland City Charter. However, that version, appended to the citizen petitions, apparently may not be the version of the proposed WPO that the City Clerk certified and that the City Council referred to the Planning Board for tomorrow evening’s public hearing.

The difference between the two versions is a comma in the definition of “expansion” found in Section 4 of the proposed WPO. The version circulated with the petitions lacks a comma after the word “facility” in the next to last line of the proposed new section 27-922.5(c); the version submitted to the City Clerk, accepted by the City Clerk and sent by the City Council to the Planning Board, however, contains this comma. People may wonder whether the absence or presence of a comma truly is meaningful, but many of you may have read the recent bestseller, *Eats, Shoots and Leaves*, which

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begins with a discussion of the difference a comma makes in the meaning of that title. In this case, the presence of a comma in this provision of the WPO may reduce, but not eliminate, the impact of the WPO upon existing marine industries located in South Portland in the Shipyard District and Commercial District. With the comma, the phrase “for loading tankers or other ships instead of unloading ships” can be read to modify all of the items that might otherwise constitute a prohibited expansion of marine petroleum facilities. Without the comma, the definition of a prohibited “expansion” could be far broader and could have more dire consequences for the marine terminals in South Portland.

Irving’s position is that the July 23 public hearing is on the proposed WPO with the wording in the version certified by the City Clerk and referred by the City Council to the Planning Board on July 1, 2013 – the version **with** the comma following the word “facility” in the next to last line of the proposed new section 27-922.5(c) in Section 4 of the proposed WPO. This is the version that was noticed to the public and that still appears on South Portland’s website as of this morning at 9:00 a.m. If the City wishes to change the proposed WPO language at this time to the version without the comma, it must schedule another Planning Board public hearing on that version, if indeed it still can.<sup>1</sup>

Thank you for your consideration of this issue.

Sincerely,



James N. Katsiaficas

JNK/ems

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<sup>1</sup> Under the South Portland City Charter, the City Clerk had 20 days from the date of filing of the petitions to determine whether the petitions had a sufficient number of qualified collectors’ signatures, and that 20-day period has passed. At this point, with the 20-day period for the Clerk to accept the proper language having passed, it is questionable whether the City Council now can even take action on the language of the signed petitions to refer the version without the comma to the Planning Board for another public hearing.