



**OFFICE OF THE
CITY CLERK**

EMILY CARRINGTON
City Clerk

JESSICA HANSCOMBE
Deputy City Clerk

KAREN L. MORRILL
Assistant City Clerk

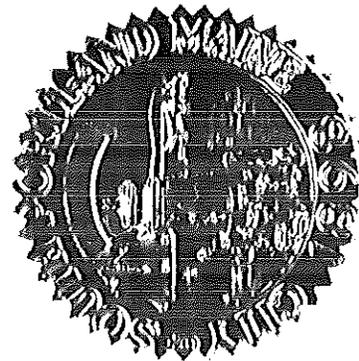
CITY CLERK'S CERTIFICATE OF INSUFFICIENCY OF PETITION

I, Emily Carrington, the duly appointed City Clerk for the City of South Portland, Maine, do hereby certify, pursuant to Section 1105 of the City Charter, that I have examined the petition submitted to me on July 18, 2016 relating to proposed amendment of Chapter 15 of the Code of Ordinances of the City of South Portland; that the names of 905 of the foregoing petitioners appear on the City of South Portland voting list as registered voters, which represents less than 5% of the registered voters of the City; and that the petition is insufficient because it lacks the signatures of at least 5% of the registered voters of the City (*i.e.*, at least 944 valid signatures). Specific deficiencies of the petition are as follows: (i) 90 signatories do not appear on the City of South Portland voting list as registered voters; (ii) 15 signatures are duplicates; and (iii) 39 signatories [page 36 of the 37 pages] appear on a petition paper that was not signed by the circulator.

A handwritten signature in cursive script, appearing to read "Emily Carrington".

Emily Carrington, City Clerk
City of South Portland, Maine

July 29, 2016





MEMORANDUM

TO: Emily Carrington, City Clerk

CC: Donald H. Gerrish, Interim City Manager

FROM: Sally J. Daggett, Esq.

RE: Citizen Initiative Petition re Chapter 15 of the Code of Ordinances

DATE: July 29, 2016

I am writing in response to your inquiry regarding the citizen initiative petition seeking to amend Chapter 15 of the Code of Ordinances pursuant to Article XI of the City Charter.

As I understand the facts, the petition was submitted to your office on July 18, 2016 and contains 37 pages. Following review by your office, you have determined that the petition contains the valid signatures of 905 registered voters. You have certified to the City Council pursuant to Section 1105 of the Charter that the petition is insufficient because it lacks the signatures of at least 5% of the registered voters of the City (*i.e.*, it does not have at least 944 valid signatures; it lacks 39 valid signatures). (One petition page was not signed by the circulator as required by the Charter, but if it had been, it would have contained 30 valid signatures, reducing the number of additional signatures required to meet the 944 requirement to 9 signatures.) In light of your certification of insufficiency of the number of voter signatures, you have inquired whether the petition may be supplemented by the filing of additional petition pages after the July 18 submittal.

I have listed below relevant provisions contained in the Charter:

- “The signatures to petitions need not all be affixed to one petition....” Art. XI, Sec. 1104.
- “All petition papers comprising an initiative or referendum petition shall be assembled and filed with the city clerk as one instrument.” Art. XI, Sec. 1105.
- “Within 20 days after a petition is filed, the city clerk shall determine whether each paper of the petition has a proper statement of the circulator and

whether the petition is signed by a sufficient number of qualified electors.” Art. XI, Sec. 1105.

- “After completing his examination of the petition, the city clerk shall certify the result thereof to the council at its next regular meeting.” Art. XI, Sec. 1105.
- “If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective.” Art. XI, Sec. 1105.

The Charter is silent on the issue of whether a petition may be supplemented by the filing of additional petition pages after the City Clerk has made a determination that the petition lacked the required number of signatures. State law governing citizen initiatives on the state-wide level is similarly silent on this question.

While we are not aware of any Maine cases directly on point, the Maine Law Court has noted that it “liberally construe[s] grants of initiative and referendum powers so as to facilitate, rather than to handicap, the people’s exercise of their sovereign power to legislate.” *Friends of Congress Square Park v. City of Portland*, 2014 ME 63, ¶ 9, 91 A.3d 601 (citation omitted); *see also McGee v. Secretary of State*, 2006 ME 50, ¶ 27, 896 A.2d 933 (“The process of collecting the number of signatures required to initiate a petition can be arduous. There may be fits and starts along the way. There may be unforeseen delays. Thus, allowing the circulators reasonable flexibility in completing the process is not only consistent with the constitutional right at issue, we conclude it is an integral component of the constitutional scheme.”); *Allen v. Quinn*, 459 A.2d 1098 (Me. 1983) (holding that, although the Maine Constitution expressly imposes a deadline by which an initiative petition must be filed (within 50 days of the start of the first session of the Legislature), it does not bar the early filing of an initiative petition even though the Legislature to which it is addressed has yet to convene); *Opinion of Justices*, 275 A.2d 800, 803 (Me. 1971) (“Our primary consideration, therefore, must be that by the initiative amendment the people, as sovereign, have retaken unto themselves legislative power and that a particular undertaking by them to exercise that power shall be liberally construed to effectuate the purpose.”).

It is important to note here that there is no filing deadline for the submission of a citizen initiative petition to the City Clerk. *Compare* Charter Sec. 1101 (no deadline for citizen initiative petition) *with* Charter Sec. 1102 (citizen referendum petition must be filed within 20 days after enactment by the City Council of any ordinance subject to a referendum). There are some cases from other states holding that one cannot cure deficiencies in a petition after the filing deadline. However, those cases are not analogous to the situation here, where there is no “official” deadline for filing the citizen initiative petition that has passed. There is a relatively recent case from the highest court of Maryland involving a filing deadline that is of note. In *Int’l Ass’n of Fire Fighters, Local 1715 v. Mayor of Cumberland*, 407 Md. 1, 962 A.2d 374 (2008), the petitioners submitted an initial petition and then supplemented it with additional signatures within

the deadline for approval of signatures. The city took the position that the supplement was a second petition and therefore rejected both petitions as having insufficient signatures. The Maryland Court of Appeals held that the city should have allowed the supplementation of signatures. In that case, the applicable Maryland statute was silent on whether there could be supplemental signatures filed within the 60-day time frame for approval of signatures, and the court concluded that silence should be construed to be permissive, not prohibitive.

More fundamentally, the U.S. Supreme Court has held that the circulation of an initiative petition is “core political speech” under the First Amendment of the U.S. Constitution. *Meyer v. Grant*, 386 U.S. 414, 421-22 (1988); *see also Cuyahoga Falls v. Buckeye Community Hope Foundation*, 538 U.S. 188, 196 (2003) (praising municipal officials for accepting a referendum, which “enabled public debate on the referendum to take place, thus advancing significant First Amendment interests.”). While governments do have an interest in regulating voting activity, “any burdens upon First Amendment associational and voting rights must be justified by important state interests.” *Stoddard v. Quinn*, 593 F. Supp. 300, 303, n.5 (D. Me. 1984).

In light of the fact that the Charter is silent on the issue of supplemental signatures and does not contain a filing deadline for citizen initiative petitions, plus Maine case law that initiative laws are to be liberally construed, First Amendment considerations and the fairly recent Maryland case, it seems to me that the better answer to your question is that the petitioners should be permitted to supplement the petition with additional signatures (including being permitted to cure the lack of a circulator signature on page 36 of the petition). However, I recommend that you seek input from the City Council on this issue at Monday night’s Council meeting, because, as a practical matter, the City Council ultimately must recognize any additional signatures if a certified initiative petition is to be considered by the City Council pursuant to Section 1107 of the Charter.

If you have any questions, please call me. Thank you.

PETITION TO THE SOUTH PORTLAND CITY COUNCIL

For the Submission to the People of the Question

① JD

Shall the proposed ordinance, a copy of which is reprinted below, be adopted? We, the undersigned voters of the City of South Portland, residing respectively at the South Portland addresses placed opposite our names, hereby petition the City Council to submit the foregoing question to the voters of the City of South Portland.

~~Secs. 15-175-15-179. — Reserved Ocean Street.~~

~~Notwithstanding the foregoing, the section of Ocean Street between "E" Street and "D" Street within the Knightville section of the City shall be one-way traffic with diagonal parking.~~

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~~Sec. 15-209. Parallel and diagonal parking required.~~

~~Except as otherwise provided in this article, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within twelve (12) inches of the right-hand curb, except upon those streets which have been marked or signed for diagonal parking, in which event vehicles shall be parked at a diagonal to the curb indicated by such marks or signs.~~

~~Sec. 15-210. Diagonal parking.~~

~~No vehicle shall stand or be parked diagonally upon any street within the city.~~

PLEASE USE INK TO COMPLETE THIS FORM

SIGNATURE	PRINTED NAME	STREET & NUMBER	DATE
✓ 1. Lisa M. Despres	Lisa M Despres	16 Mussey St #305	5/30/16
✓ 2. Barbara Island	Barbara Island	69 Kaler Rd.	5/30/16
✓ 3. Jody E Mills	JODY E MILLS	34 CRACMORE	5/30/16
✓ 4. Jan Caron	Jan Caron	99 Presle St #412	5/30/16
✓ 5. Margaret Esten	Margaret Esten	2 Beaufort St.	5/30/16
✓ 6. Andrew Spout	Andrew Spout	63 Carignan Ave	6/1/16
✓ 7. Rola T Dowling	Rola T Dowling	80 Brickhill Ave	06-01-2016
✓ 8. Darcel Moulton	Darcel Moulton	7 Fairlawn Ave	06-01-2016
✓ 9. Lily Newton	Lily Newton	170 Hamlet St.	6/2/16
✓ 10. Warren Murray	Warren Murray	87 Pillsbury St.	6/2/16
✓ 11. Amania Card	Amania Card	30 Blueberry Dr.	6/3/16
✓ 12. Rob Friedlander	Rob Friedlander		6/3/16
✓ 13. Alfred Gusto	Alfred Gusto	76 Scott Rd	6/3/16
✓ 14. Neil Axelrod	Neil Axelrod	21 Ripenberry Drive	6/4/16
✓ 15. Jen Tarling	Jen Tarling	40 Boothby Ave, So Po	6/5/16
✓ 16. Gavin Glider	Gavin Glider	14 Brookside Ave	6/5/16
✓ 17. Gloria C. D'Agostino	Gloria C. D'Agostino	11 Hammond St	06-05-16
✓ 18. Kenic Starbuck	Kenic Starbuck	59 Fessenden Ave - So Po	6-05-16
✓ 19. Ed Brown	Ed Brown	43 Walnut St	6-6-16
✓ 20. J.C. Cloonan	J.C. Cloonan	916 Ocean St	6-6-16
✓ 21. Mary Kathryn Hawkins	Mary Kathryn Hawkins	14 Spring St.	6-6-16
✓ 22. Eric Chapman	Eric Chapman	137 McKinley St.	6-7-16
✓ 23. Susan Stidney	Susan Stidney	16 Buft Rd	6-7-2016
✓ 24. Susan Manning	Susan Manning	96 Hawthorne Ln.	6-7-2016
✓ 25. Thomas Cooper	Thomas Cooper	65 Ledgefield Cir	6/8/16
✓ 26. Alexa Cooper	Alexa Cooper	65 Ledgefield Cir	6/8/16
✓ 27. RICK WAKELY	RICK WAKELY	77 DEAKE	6-8-16
✓ 28. Gretchen York	Gretchen York	220 Mussey St	6-9-16
✓ 29. Elizabeth Penny	Elizabeth Penny	129 Boothby Ave	6-10-16
✓ 30. DAVID LAGRAPPE	DAVID LAGRAPPE	357 Cottage Rd.	6-10-16
✓ 31. Brandon Wohl	Brandon Wohl	32 Sterling Ave	6-12-16
✓ 32. Katherine O. Wohl	Katherine O. Wohl	32 Sterling Ave.	6-12-16
34.			
35.			
36.			
37.			
38.			
39.			
40.			

[SEE REVERSE SIDE FOR CIRCULATOR'S AFFIDAVIT]

CIRCULATOR'S AFFIDAVIT

I, Jeanne Dunnigan, being first duly sworn, depose and state as follows:

1. My name is Jeanne Dunnigan, and I am a resident of [street address] 72 Ocean St #303, South Portland, County of Cumberland and State of Maine and a registered voter in Maine. I make the statements herein based upon my personal knowledge.

2. I personally circulated the Petition Form on the reverse side of this Affidavit. There are 38 [number] signatures on the Petition Form on the reverse side of this Affidavit.

3. All of the signatures on the Petition Form on the reverse side of this Affidavit were made in my presence and are the genuine signatures of the persons whose names they purport to be.

4. Each signer of the Petition Form on the reverse side of this Affidavit has signed no more than one petition form, and each signer had an opportunity to read the petition before signing.

DATED at South Portland, Maine this 15th day of June, 2016.

By: Jeanne Dunnigan
Circulator

STATE OF MAINE
CUMBERLAND, ss.

JUNE 15, 2016

Personally appeared the above named JEANNE DUNNIGAN and swore the above statements to be true based upon his/her own personal knowledge.

Before me,
April D Cohen
Notary Public
APRIL D COHEN
Print Name

EXP
2/26/16

CITY CLERK'S OFFICE USE ONLY

Date of Filing of Petition Form: JUL 18 2016

of the above names that appear on the City voting list as Registered Voters: 30

Jeanne Dunnigan