

**SOUTH PORTLAND CITY COUNCIL**  
*POSITION PAPER OF THE INTERIM CITY MANAGER*

***SUBJECT:***

***ORDER #41-16/17 – Directing the City Clerk to place an amendment to Charter §1101 and 1103, “Power of initiative and Form of petitions...” on the November ballot. Passage requires majority vote.***

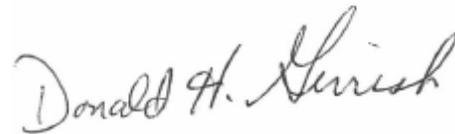
***POSITION:***

Passage of this order would direct the City Clerk to place an amendment to Charter §1101 and 1103, regarding Power of initiative and Form of petitions on the November 2016 ballot for voter approval.

Attached is a position paper from the City Clerk concerning this item.

***REQUESTED ACTION:***

Council approval of Order #41-16/17.



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INTERIM CITY MANAGER

## **SOUTH PORTLAND CITY COUNCIL**

### *POSITION PAPER OF THE CITY CLERK*

***SUBJECT: ORDER #41-16/17 – Directing the City Clerk to place an amendment to Charter §1101 and 1103, “Power of initiative and Form of petitions...” on the November ballot. Passage requires majority vote.***

#### ***POSITION:***

At the City Council meeting on August 1 and workshop on August 8, members of the Council suggested the City's Charter be amended to include a specific deadline for the return of issued petitions for citizen initiatives. With consultation from Corporation Counsel, staff drafted a proposed amendment to be put forward to the voters of the City as a referendum question of the November 8, 2016 ballot. At the August 15 meeting of the City Council, the date for public hearing of this proposed Charter amendment was set for the meeting of September 7.

The proposed Charter amendment contains changes to Sec. 1101 (Power of initiative) setting a 45 calendar day time frame from the time a citizen initiative petition is issued from the Clerk's office to the time it must be returned, and clarifies the form of the petition outlined in Sec. 1103. If approved by Council and approved by the voters, the changes to the Charter would take effect November 9, 2016.

It was brought to Council and staff's attention after the August 15 meeting that Sec.1115 of the City Charter gives authority to the Council to make further regulations to those outlined in the City Charter's Article XI ("Initiative and Referendum") by ordinance. Legal opinion from Corporation Counsel was sought on this matter and is attached for Council consideration.

City Council must decide whether to move forward with the proposed drafted amendment to the Charter to be placed on the November ballot, or to move forward with a Council ordinance addressing citizen initiative petitions. If the Council's intention is to move forward via ordinance, then ORDER #41-16/17 should be postponed indefinitely.

#### ***REQUESTED ACTION:***

This item is in order for Council action.

  
CITY CLERK



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

DON GERRISH  
Interim City Manager

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

EMILY F. SCULLY  
City Clerk

**IN CITY COUNCIL**

**ORDER #41-16/17**

District One  
CLAUDE V. Z. MORGAN

\_\_\_\_\_

District Two  
PATRICIA A. SMITH

\_\_\_\_\_

District Three  
EBEN C. ROSE

\_\_\_\_\_

District Four  
LINDA C. COHEN

\_\_\_\_\_

District Five  
BRAD FOX

\_\_\_\_\_

At Large  
MAXINE R. BEECHER

\_\_\_\_\_

At Large  
THOMAS E. BLAKE

**ORDERED**, that the City Clerk be and hereby is directed to place the attached amendments to Sections 1101 and 1103 of the South Portland City Charter on the November 8, 2016 ballot; and

**BE IT FURTHER ORDERED**, that, because it is not practical to print the proposed amendments on the ballot and a summary will not misrepresent the subject matter of the proposed amendments, the City Clerk be and hereby is directed to prepare a summary of the proposed amendments in accordance with 30-A M.R.S.A. § 2105(3)(C) and to include the summary on the ballot instead of the full text of the proposed amendments; and

**BE IT FURTHER ORDERED**, that, the City Clerk be and hereby is directed to, at least 2 weeks before the election, (1) have the proposed amendments and the summary of the amendments prepared under this section printed; (2) make copies available to the voters in the City Clerk's office; and (3) post the amendments and the summary of the amendments in the same manner that proposed ordinances are posted.

Fiscal Note: Less than \$1,000

Dated: September 7, 2016

**PROPOSED CHARTER AMENDMENTS**

**Shall the City of South Portland approve the proposed Charter amendments printed below?**

[Note: Proposed deletions are ~~struck through~~; additions are underlined.]

**[Sec.] 1101. Power of initiative.**

The electors of the City of South Portland shall have power to propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as the initiative. Such initiated ordinance may be submitted to the city council by a petition signed by at least 5% of the qualified electors of the City of South Portland at the last regular municipal election. The petition form shall be prepared by the city clerk consistent with Sec. 1103. The petition may be circulated for up to forty-five (45) calendar days from the date of the city clerk's issuance of the petition and must be returned to the city clerk no later than forty-five (45) calendar days from the issuance date. The issuance and return dates shall be noted by the clerk on each blank form.

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**[Sec.] 1103. Form of petitions.**

The petitions used to invoke the initiative or the referendum shall be substantially in the following form:

**PETITION TO THE SOUTH PORTLAND CITY COUNCIL**

For the Submission to the People of the Question

Shall the proposed ordinance, a copy of which is [hereto attached] [printed on the petition], be adopted? We, the undersigned voters of the City of South Portland, residing respectively at the addresses placed opposite our names, hereby petition the city council to submit the foregoing question to the voters of the City of South Portland.

NAMES	RESIDENCES	DATES
_____	_____	_____
_____	_____	_____
_____	_____	_____

NAME \_\_\_\_\_ STREET AND NUMBER \_\_\_\_\_  
being duly sworn deposes and says that he is the circulator of the foregoing petition containing \_\_\_\_\_ signatures and that the signatures appended thereto were made in his presence and are the signatures of the persons whose names

they purport to be.

Signed \_\_\_\_\_

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_  
~~19~~\_\_\_\_\_.

~~Justice of the Peace [or]~~ Notary Public

The effective date of these amendments is November 9, 2016.



*Attorneys at Law*

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OF COUNSEL

RAYMOND E. JENSEN  
(1908-2002)

KENNETH BAIRD  
(1914-1987)

M. DONALD GARDNER  
(1918-2003)

YORK COUNTY  
OFFICE

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August 29, 2016

Donald H. Gerrish  
Interim City Manager  
City Hall  
25 Cottage Road  
South Portland, ME 04106

Re: Proposed City Charter Amendment (Citizen Initiative)

Dear Don:

As requested, I am writing in Sally Daggett's absence to respond to your inquiry whether the currently proposed City Charter amendment on citizen initiatives may instead be enacted by the City Council as an ordinance. The short answer is yes, but, as explained below, the City Council will want to deliberate with care as to whether that is the better approach.

First, as a general matter, the adoption and subsequent amendment of municipal charters in Maine are governed by State statute. See 30-A M.R.S. §§ 2101 to 2109. Note that the statute prescribes a procedure to be followed for the adoption or amendment of a municipal charter and also imposes a minimum voter turn-out requirement for the popular election result to become effective. See 30-A M.R.S. § 2105(4)(total vote count must equal or exceed 30% of the turn-out in the last gubernatorial election). As an aside, note that the statutory procedure also provides a one-time "right to cure" provision for citizen petitions deemed by the municipal clerk insufficient for not having enough signatures. See § 2102(4)(A).

Second, the Maine Constitution expressly provides for the right in Maine cities, such as South Portland, to enact citizen initiative provisions by adoption of an ordinance, as opposed to a charter provision, but with a requirement that any such ordinance would require approval by the electorate to become effective. Me. Const. Art. 4, Pt., 3, Sec. 21. In cities such as South Portland, use of that procedure runs some risk of voter confusion

~ Over 60 Years of Service ~

Jensen Baird  
Gardner Henry

August 29, 2016  
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or uncertainty while having no real practical advantage over simply having a referendum vote on the same provision as a charter amendment.

And third, Art. XI of the existing City Charter already provides not only for the citizens' rights of initiative and referendum generally, but § 1115 expressly allows the City Council, by ordinance, to "make such further regulations as shall be necessary to carry out" the initiative and referendum provisions.

That last consideration provides the short answer to your question: yes, by the plain wording of the existing City Charter, the City Council may adopt the currently-proposed Charter amendment by ordinance. However, there is one further point worth the City Council's consideration. The City Charter serves, in effect, as the City's basic rule of law; in other words, its constitution. Most legal commentators believe that constitutional amendments ought to be considered and voted on only sparingly. The obvious example is the very deliberative process for amending the U.S. Constitution (twenty-six amendments over 240 years). While I was not privy to what Councilor Cohen had in mind when she sked Sally to draft a charter amendment, rather than an ordinance, it may well have been this notion that changes in the basic rights of citizens also ought to reflect that same deliberative process for amending a constitution. After all, what the current City Council wants to see implemented on the underlying issue, may well be different than what next year's City Council prefers and different still from the City Council two years from now. Obviously, this is the City Council's call, but using an ordinance rather than a charter amendment may provide for more fluidity than appropriate for such a fundamental right.

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

Sincerely,



William H. Dale

WHD/gw