

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #10-13/14 - Amending Chapter 27, "Zoning Ordinance," regarding extension of moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland for an additional 180-day period. First reading. Passage requires majority vote.

Position:

On December 16, 2013, the City Council enacted Ordinance #2-13/14 establishing a moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland. The moratorium is in effect until May 5, 2014. Ordinance #2-13/14 had a retroactive date of November 6, 2013.

A moratorium is a temporary ban on land use activity or development to give City officials time and the opportunity to plan for accommodating or managing development. Development moratoria are specifically authorized by State statute, 30-A M.R.S.A. § 4356, subject to certain substantive and procedural requirements set forth in the statute.

The purpose of the moratorium is to enable the City and its Draft Ordinance Committee time to study its own ordinances to determine the implications of future proposed development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland and to draft an amendment or amendments to the South Portland Code of Ordinances to address the concerns identified in Sec. 27-1601 of the moratorium ordinance. Recall that term "oil sands/tar sands products" is a defined term in the moratorium ordinance, and it means petroleum products derived from oil sands/tar sands that are still in an unrefined state, including bitumen, diluted bitumen, synthetic crude, synbit and dilsynbit. The term "oil sands/tar sands products" does not include refined products, such as gasoline, heating oil or diesel fuel, even if derived from bitumen.

State statute specifically allows the City Council to extend the moratorium so long as it finds that (i) the problem giving rise to the need for the moratorium still exists; and (ii) reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium. See 30-A M.R.S.A. § 4356(2).

The Draft Ordinance Committee members were appointed on January 22, 2014, and the Committee has been meeting regularly since that date.

Because the proposed moratorium extension ordinance involves a temporary ban on certain land use activities, the Planning Board must conduct a public hearing on the ordinance. This is tentatively scheduled for April 8, 2014; the moratorium extension ordinance would then come back to the City Council for a final vote.

The moratorium extension would be effective for 180 days from May 5, 2014, *i.e.*, until November 1, 2014, but it could be terminated early if appropriate (or extended if necessary).

Requested Action:

Council passage of first reading; referral of the ordinance to the Planning Board so it can conduct its public hearing; and set April 23, 2014 as the date for the City Council's public hearing and final action on the moratorium extension ordinance.


City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #10-13/14

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At Large
THOMAS E. BLAKE

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended by the enactment of a new Article XVI as follows (deletions are ~~struck through~~; additions are underlined):

CHAPTER 27

ZONING

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ARTICLE XVI. MORATORIUM ON DEVELOPMENT PROPOSALS INVOLVING THE LOADING OF OIL SANDS/TAR SANDS PRODUCTS ONTO MARINE TANK VESSELS DOCKING IN SOUTH PORTLAND

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Sec. 27-1603. Moratorium extended.

WHEREAS, a moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland was enacted by the City Council on December 16, 2013 for a period of one hundred and eighty (180) days from the date of applicability of this Article, i.e., until May 5, 2014; and

WHEREAS, the moratorium was necessary to provide the City with time to study its own ordinances to determine the implications of future proposed development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland and to draft an amendment or amendments to the South Portland Code of Ordinances to address the concerns identified in Sec. 27-1601; and

WHEREAS, the problems giving rise to the need for the moratorium still exist; and

WHEREAS, the City and its Draft Ordinance Committee have been actively studying those problems since the date of the adoption of the moratorium and drafting amendments to the South Portland Code of Ordinances that will adequately address the same such that reasonable progress is being made to alleviate the problems giving rise to the need for the moratorium, but the City has not yet completed that work;

NOW, THEREFORE, all provisions of Secs. 27-1601 and 27-1602 are hereby extended for an additional one hundred and eighty (180) days from May 5, 2014 to November 1, 2014.

Fiscal Note: Less than \$1,000

Dated: March 17, 2014