

Resolve 7 -05/06

Passage: 2/6/06 7-1 (Suslovic opposed, Leeman absent)

JAMES I. COHEN (MAYOR)(5)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)
EDWARD J. SUSLOVIC (A/L)

**RESOLUTION OPPOSING ENACTMENT OF
LD 1481, AN ACT TO AMEND THE LAWS GOVERNING
THE ENACTMENT PROCEDURES FOR ORDINANCES**

WHEREAS, in Maine and every other state in the country the citizens are the ultimate legislative authority and have reserved to themselves in their state constitutions, local charters and local ordinances the right to not only petition their state and local governments to redress their grievances but also to enact legislation at their own initiative and veto legislation enacted by their elected representatives; and

WHEREAS, the citizens throughout Maine have exercised this right and obligation to enact laws and regulations at the local level to protect their community's quality of life and its many various components including the natural, residential and business environment in the community; and

WHEREAS, at the local level the citizens exercise their legislative authority at town meetings or through citizen initiatives or through their duly elected representatives on city and town councils; and

WHEREAS, development comes in many forms and sizes and can and does impact the quality of life in a community and for that reason municipalities have and will always need to enact and amend local laws and regulations to fairly balance the need for and benefits of development with the impact of development on their community; and

WHEREAS, current state, local and court-made law provides developers with adequate protection against local legislation that improperly or unfairly targets a specific project; and

WHEREAS, the citizens and their elected representatives both at the state and local level have exercised their legislative authority throughout Maine's history in a careful and considerate manner; and

WHEREAS, the State Legislature is now considering a law, LD 1481, an Act to Amend the Laws Governing the Enactment Procedures for Ordinances, which as drafted would apply so that the holder of any building permit, zoning permit, subdivision approval or site plan approval, could proceed with the project regardless of any uncontrolled or unaddressed impacts from the project; and

WHEREAS, it is not possible for municipalities in every circumstance to anticipate every type of development or its proposed location and impact on the communities services, environment

and quality of life, and to adopt appropriate laws and regulations before an application for development is well underway or granted; and

WHEREAS, in certain circumstances it is critical to the effectiveness of a new law or amendment that it apply retroactively to a stated date because the time necessary for the law to be drafted, considered, approved and put into effect is such that if developments were allowed to go forward the purpose of the law could not be served and the municipality and its citizens would experience the uncontrolled and unregulated negative impacts of such a development; and

WHEREAS, in the leading case regarding such retroactive application, namely *City of Portland v. Fisherman's Wharf Associates II*, 541 A.2d, 160 (Me. 1988) the citizens not only properly exercised their right to initiate legislation on a critical public policy, namely the future of Portland's working waterfront and the threat to it posed by residential development, but also provided the developer with notice prior to the beginning of the development that the law would have a retroactive effect back to the date upon which the petitions were filed so that the developer knew well in advance of any significant construction that the ordinance was under consideration and that if enacted it would prohibit or prevent the project as proposed; and

WHEREAS, LD 1481, an Act to Amend the Laws Governing the Enactment Procedures for Ordinances would eliminate the longstanding authority of Maine's municipalities and citizens to respond to unanticipated and uncontrolled negative impacts on their neighborhoods and quality of life,

NOW THEREFORE BE IT RESOLVED, that the Portland City Council strongly opposes LD 1481, an Act to Amend the Laws Governing the Enactment Procedures for Ordinances as both unnecessary and counter to established Maine law and the tradition of Home Rule and request that the Portland legislative delegation and legislators from around the State vote against this Bill.

O:/Orders/Resolutions/LD 1481