

WIRELESS TELECOMMUNICATIONS FACILITY MORATORIUM ORDINANCE

WHEREAS, areas in the Town of Athens are suddenly under the threat of increased development pressure from wireless telecommunications facilities; and

WHEREAS, the ordinances of the Town of Athens do not include any regulations related to wireless telecommunications facilities;

WHEREAS, the unregulated location and operation of wireless telecommunications facilities within the Town of Athens raises legitimate and substantial concerns about safety and visual impacts of such uses, as well as increasing risk of overburdening of public facilities, impacting property values, and other considerations related to appropriate siting of wireless telecommunications facilities;

WHEREAS, residents of the Town of Athens have expressed concerns about proposals for such developments, including concerns regarding quality of life, adjacent property values, environmental impacts, health and safety concerns, visual impacts, damage to wildlife habitat, overburdening of public facilities, costs to taxpayers, and danger of fires;

WHEREAS, there is a likelihood that other areas of town could be subjected to this development due to the amount of undeveloped land, relatively low land prices, access to electricity corridors, and government subsidies for wireless telecommunications companies to build new facilities for implementing 5G technologies;

WHEREAS, continued development of wireless telecommunications facilities could pose serious threats to the public health, safety and welfare of the residents of Athens through over-development in parts of the town without adequate provisions for issues of land use compatibility, visual impacts, public safety, and impact on public facilities;

WHEREAS, existing zoning and regulations do not adequately provide for mitigation for issues of land use compatibility, visual impacts, overburdening of public facilities, and public safety;

WHEREAS, the Town's current ordinances are insufficient to prevent serious public harm that could be caused by unregulated development of wireless telecommunications facilities;

WHEREAS, the town needs at least 180 days to study the land use implications of these pressures and develop and implement appropriate regulations for development of wireless telecommunications facilities;

WHEREAS, in the judgement of the town, these facts establish that a Moratorium Ordinance in accordance with 30-A M.R.S.A. §4356 is immediately necessary for the preservation of the public health, safety and welfare;

NOW, THEREFORE, be it ordained by the voters of the Town of Athens, Maine, that the following Moratorium Ordinance on Wireless Telecommunications Facilities be, and hereby is, enacted and, in furtherance thereof, the Town Meeting does hereby declare a moratorium on the location, development, operation or licensing of wireless telecommunications facilities within the Town.

I. PURPOSE

The Purpose of this Moratorium is to prevent the processing or issuance of authorization, permits, licenses or approvals for the siting, design, construction, use or operation of wireless telecommunications facilities in the Town of Athens, Maine, in order to provide time for the Town to consider the adoption of ordinances adequate to reasonably regulate to location, construction, and operations of wireless telecommunications facilities in order to protect the health, safety, and welfare of the people of Athens.

II. APPLICATION

This Moratorium Ordinance shall apply to wireless telecommunications facilities that are proposed to be located within the Town on or after the effective date of this Ordinance

Notwithstanding the provisions of 1 M.R.S.A. §302 or any other law to the contrary, this Moratorium Ordinance, when enacted, shall govern any proposed wireless telecommunications facilities for which an authorization, application for a building permit, certificate of occupancy, electrical permit, shoreland zoning approval, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Selectboard, or other Town officials prior to the effective date of this Moratorium Ordinance; and

No person or organization shall develop, construct, modify, or operate a new wireless telecommunications facility within the Town on or after the effective date of this Moratorium Ordinance without obtaining authorization from the Selectboard and without complying with whatever ordinance or amendments to the ordinance the Town meeting may enact as a result of this Moratorium Ordinance; and

During the time this Moratorium Ordinance is in effect, no municipal officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, authorize, or in any other way act upon any application for a license, building permit or any other type of land use approval or permit and/or any other permits or licenses related wireless telecommunications facilities; and

If any wireless telecommunications facility is established in contravention of this Moratorium, each day of any continuing violation shall constitute a separate violation of this Moratorium Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations. Any violation of this Moratorium Ordinance is subject to an enforcement action under 30-A M.R.S.A. 4452.

III. DEFINITIONS

For purposes of this Moratorium Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations, shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions set forth herein shall control and apply to all sections and subparagraphs herein. The terms used in this ordinance shall have the following meanings:

- A. "Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.
- B. "Expansion" means the addition of antennas, towers, or other devices to an existing structure.
- C. "Small Cell Facility" shall have the same meaning as "small wireless facility" in 47 C.F.R. Section 1.6002(l), or any successor provision.
- D. "Telecommunications Act" means The Telecommunications Act of 1996, 47 U.S.C. §332(c)
- E. "Wireless Telecommunications Facility" means any staffed or unstaffed location for the transmission of radio frequency, including commercial mobile services, unlicensed wireless services, wireless broadband

services, small cell facilities, and common carrier wireless exchange access services as defined in the Telecommunications Act. The definition of “Wireless Telecommunications Facility” includes new towers, replacement towers, co-location on existing towers, base stations attached to concealed and non-concealed antennas, dual purpose facilities, concealed towers, and non-concealed towers (monopoles, lattice and guyed), so long as those facilities are used in the provision of wireless services as that term is defined in the Telecommunications Act. The definition of “Wireless Telecommunications Facility” includes all structures related to the transmission of radio frequency signals, whether mounted on a tower, pole or other structure, and includes antennas, towers, base stations, mechanical and/or electronic equipment, conduit, cable, and associated structures, enclosures, assemblages, devices and supporting elements that generate or transmit electromagnetic radiation to produce signals used for communication, including but not limited to all types of communication facilities defined herein.

IV. EXEMPTIONS

The following are exempt from the provisions of this Moratorium:

- A.) Temporary wireless communication facilities for emergency communications by public officials.
- B.) Amateur (ham) radio stations licensed by the Federal Communications Commission.
- C.) Citizens Band (CB) radio transmitters.
- D.) Non-transmitting antennas designed to receive over-the-air broadcast signals.
- E.) Non-commercial unlicensed wireless devices in a home or business (such as routers, security systems, Bluetooth devices, satellite internet or phone services, cordless phones) intended for use by people on the property where the home or business is located.
- F.) Maintenance and repair of wireless telecommunications facilities and related equipment already located and operating in Athens as of the date of enacting this Moratorium, provided that there is no increase in the power output of transmitters or related equipment, increase in height or increase in any other dimension of the facility.

V. RETROACTIVE APPLICATION

Notwithstanding the provisions of 1 M.R.S.A. §302, this Moratorium Ordinance shall be applicable to all pending proceedings, applications and petitions relating to wireless telecommunications facilities commenced after February 8, 2024, which is the date of filing this initiative with the Town Clerk's office of the Town of Athens.

VI. EFFECTIVE DATE AND EXTENSIONS

This Moratorium Ordinance shall take effect immediately upon approval by the voters of the Town of Athens and shall be applicable retroactive to the date specified in Section V above. This Moratorium Ordinance shall remain in effect for a period of one hundred eighty (180) days after said date unless extended, repealed, or modified by the municipal officials of the Town of Athens, or until a new and revised set of regulations is adopted by the Town of Athens, whichever shall first occur.

VII. VALIDITY AND SEVERABILITY.

Should any section or part of a section of this Moratorium Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate this Moratorium Ordinance as a whole or any part thereof other than the part so declared to be invalid.