

## Moratorium Ordinance

### Regarding Radio/Television/Telephone Towers, Monopoles and Antennas, and Wind Towers

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The **TOWN OF MOUNT DESERT** (Maine) adopts a Moratorium Ordinance as follows:

**WHEREAS**, areas of the Town of Mount Desert (hereinafter the “Town”) are under threat of increased development pressure from radio/television/telephone towers and antennas and towers for the generation of power by wind turbines (so-called “wind towers”) that are in excess of forty (40) feet in height (hereinafter “Towers” shall mean any structure, antennae, monopole, tower or other device that is, whether free standing or as part of a structure, in excess of forty (40) feet in height and that is used for the generation of electricity from the wind, or that provides radio or television transmission, commercial mobile wireless services, unlicensed wireless services, cellular telephone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services, but “Towers” shall not mean any structure, antennae, monopole, tower or other device that by itself is less than ten (10) feet in height, that is attached to a residential use structure or a commercial use structure existing as of the applicable date of this ordinance and that is customarily associated with the reception of radio or television or the afore-mentioned services by the occupants of that residential use structure or commercial use structure, and “Towers” shall not mean any structure, antennae, monopole, tower or other device that by itself is less than twenty-five (25) feet in height, that is attached to a fire station existing as of the applicable date of this ordinance); and

**WHEREAS**, this development pressure was unanticipated and has not been adequately provided for in the Town's current Land Use Zoning Ordinance, or in other ordinances of the Town; and

**WHEREAS**, there is a likelihood that some areas of the Town may be affected by this development pressure due to the arguable nonexistence of any regulations or restrictions on the location of such Towers, and the possible demand for sites for such Towers; and

**WHEREAS**, development of such Towers pursuant to the current Land Use Zoning Ordinance could pose serious threats to the public health, safety and welfare of the residents of the Town through the construction of such Towers without adequate provisions for issues of safety, setback distances, land use compatibility, and visual access to view corridors; and

As amended May 5, 2009 Annual Town Meeting

**WHEREAS**, after public hearing, there is strong support for this Moratorium Ordinance; and

**WHEREAS**, the Town will need at least one hundred eighty (180) days to develop and implement the necessary amendments to the Land Use Zoning Ordinance and other ordinances of the Town to accommodate these development pressures; and

**WHEREAS**, amendments to the Land Use Zoning Ordinance require a public hearing by the Planning Board and the Board of Selectmen, and then must be voted upon at a Town Meeting; and

**WHEREAS**, in the JUDGMENT of the Town, these facts require the following Moratorium Ordinance as needed within the meaning of Subsection 4356(1) of Title 30-A of the Maine Revised Statutes (30-A M.R.S.A. § 4356(1)) because the application of the existing Comprehensive Plan, Land Use Zoning Ordinance and other applicable Town ordinances are inadequate to prevent serious public harm from the construction of such Towers within the Town;

**NOW, THEREFORE**, the Town of Mount Desert hereby **ordains** that a **MORATORIUM** is hereby imposed, on any new construction or use of such Towers that are not currently permitted (by written permit received from the Town), approved and/or under construction; and

**BE IT FURTHER ORDAINED**, that the Planning Board, Board of Appeals, the Building Inspector/C.E.O., all Town agencies and all Town employees shall neither accept nor approve applications, plans, permits, licenses, and/or fees for any new construction or uses governed by this Moratorium Ordinance for such Towers for the period of time described below; and

**BE IT FURTHER ORDAINED**, that any provisions of the Town's ordinances that are inconsistent or conflicting with the provisions of this Moratorium Ordinance are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained; and

**BE IT FURTHER ORDAINED**, that this Moratorium Ordinance may be extended by the Board of Selectmen of the Town of Mount Desert, after notice and hearing, for additional 180-day periods if the Board of Selectmen finds that:

1. the problem giving rise to the need for this Moratorium Ordinance still exists; and
2. reasonable progress is being made to alleviate the problem giving rise to the need for this Moratorium Ordinance.

#### **SEVERABILITY CLAUSE**

To the extent any provision of this Moratorium Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Moratorium Ordinance shall remain valid.

As amended May 5, 2009 Annual Town Meeting

**EFFECTIVE DATE and RETROACTIVITY CLAUSE:**

In view of the facts cited in the preamble, this Moratorium Ordinance shall take effect immediately and notwithstanding the provisions of 1 M.R.S.A. § 302, be applicable, to the maximum extent permitted by law and subject to the severability clause above, to all proceedings, applications and petitions not pending (within the meaning of 1 M.R.S.A. § 302) as of **February 9, 2009**, the date upon which this Moratorium Ordinance was first discussed by the members of the Mount Desert Board of Selectmen, until the effective date of the necessary amendments to the Land Use Zoning Ordinance and other applicable ordinances of the Town, or until **August 8, 2009**.