

MEMORANDUM

TO: Steven Buck, Caribou City Manager
FROM: Richard D. Solman
RE: Telecommunications Towers

At your request, I have prepared a draft Moratorium Ordinance with respect to the erection and location of telecommunications towers for consideration by the Council should the Council find that a moratorium is necessary and advisable.

Please note the following:

- (A) Any moratorium adopted by the City on the processing or issuance of development permits must meet the following requirements:
 - (1) The Council must find that the moratorium is necessary because the existing comprehensive plan and land use ordinances are inadequate to prevent serious public harm from the development of telecommunication towers;
 - (2) The moratorium must be for a definite term not to exceed 180 days.
- (B) In order for the moratorium ordinance to take immediate effect, the Council must find that an emergency exists affecting life, health or property and comply with the requirements of Sec. 2.13 of the Code. Please note that emergency ordinances expire as of the 61st day following the date on which it was adopted.
- (C) Under no circumstances should the Council's decision be based on the alleged health affects of radio frequency (RF) emissions. RF admissions are strictly regulated by the federal government and any action by the Council based on RF emissions would be struck down by the courts.

I have gathered extensive materials on telecommunication towers including the Model Wireless Telecommunications Facilities Ordinance put out by the Maine Planning Office and several Fact Sheets from the FCC.

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MORATORIUM ORDINANCE

Regarding Wireless Telecommunications Towers

Whereas, it appears to the Council that federal legislation related to the communications industry has produced significant demand for new cellular and other telecommunication towers; and

Whereas, the Council finds that the current Land Use Ordinances for the City of Caribou lacks adequate and appropriate regulations and controls of telecommunication towers, such as construction standards, siting criteria and safety standards which would ensure that such towers are placed only in locations where they will be compatible with neighboring land uses and will not have adverse visual impacts or negative effects on property values; and

Whereas, the uncontrolled siting of such telecommunication towers could have significant adverse effects and cause irreparable harm; and

Whereas, long delays and uncertainty of the permit process due to lack of clear siting and development standards is an unreasonable limitation upon communications companies seeking to provide cellular and other telecommunication service; and

Whereas, the Telecommunications Act of 1996 authorizes municipalities to regulate the number and placement of telecommunications facilities, including telecommunications towers, through local zoning; and

Whereas, it is necessary for the City to act carefully in a field of rapidly evolving technology and undertake a deliberative public process to establish policy, standards and procedures related to the siting of telecommunication antenna/towers; and

Whereas, the City requires time to study the feasibility of requiring co-location of wireless telecommunication towers and facilities within the limited number of acceptable sites within the City; and

Whereas, amendments to the Land Use Ordinances for the City of Caribou require a public hearing and vote of the Planning Board and City Council; and

Whereas, it would be detrimental to the public health, safety and welfare to allow the uncontrolled and unregulated location and construction of telecommunication towers until the Planning Board can complete its work of developing adequate regulations;

Now, therefore, the City Council of the City of Caribou does Ordain as follows:

- Section 1. That the above recitals are adopted as Findings of Fact which clearly indicate that an emergency exists and thereby justify the imposition of a moratorium pursuant to Title 30-A M.R.S. Section 4356 on the siting of cellular telephone or other similar type telecommunication towers in the City of Caribou;
- Section 2. During the period of this moratorium ordinance, the City will develop appropriate siting criteria and limitations to govern future cellular telephone and similar type telecommunication towers. These will at a minimum include potential number and density limitations for such towers in all zone districts and on public property. During this moratorium, the City will develop an appropriate permitting process for considering siting requests. The Planning Board will conduct at least one public hearing on the criteria or limitations and permitting process and make recommendations to the City Council.
- Section 3. That during the period of time this moratorium ordinance is in effect, no person shall erect, construct or locate any telecommunication tower in the City of Caribou, except as otherwise provided herein.
- Section 4. That during the time this ordinance is in effect, no officer, official, employee, office, board or agency of the City of Caribou shall act upon any application or issue any permit, permission or approval to erect or locate any telecommunication tower in the City of Caribou, except as herein provided.
- Section 5. Definitions: A Telecommunication Tower means a freestanding or guyed structure on which transmitting and/or receiving equipment for use of providers of commercial telecommunications, radio and television services may be located. The term 'telecommunication tower' does not include legally conforming towers used solely for 'ham' radio operation or governmental use.
- Section 6. Applicability: Notwithstanding anything to the contrary in Title 1 M.R.S. Section 302, this ordinance shall apply to any applications or requests to erect, construct or locate a telecommunication tower submitted to the City of Caribou on or after _____, 2011.
- Section 7. Effective Date and Duration. This ordinance shall be in effect from _____, 2011 until _____, 20____ unless sooner repealed or extended pursuant to Title 30-A M.R.S. Section 4356.

- Section 8. Wireless communication providers who have applied for permits prior to the effective date of this moratorium, will have their permits processed during the time of this moratorium and can assist local officials by furnishing studies, reports and data requested by the Planning Board.
- Section 9 This Moratorium shall not apply for applications for an amateur radio antenna tower for use in connection with Amateur Radio Facilities as defined in federal law. In addition, nothing herein shall be construed to prohibit the placement of antennas on existing structures, including telecommunication towers.
- Section 10 EMERGENCY CLAUSE - In view of the emergency cited in the preamble, this Moratorium Ordinance shall take effect immediately upon passage by the City Council.