

Industrial Wind Energy Facility Moratorium Ordinance

Town of Sumner, Maine

Section 1. Authority, Effective Date and Duration

A. Authority

1. This Ordinance is adopted and hereafter amended pursuant to and consistent with Article VIII, Part 2, Section 1 of the State of Maine Constitution, Title 30-A M.R.S.A. §3001 and Title 30-A. M.R.S.A. §4356.
2. This Ordinance shall be known and may be cited as the "Industrial Wind Energy Facility Moratorium Ordinance, Town of Sumner, Maine," hereinafter referred to as moratorium.

B. Effective Date and Duration

The effective date of this moratorium shall be immediately upon adoption by Town Meeting. This moratorium shall be in effect for a period of 180 days from date of passage, or until the effective date of a Town of Sumner comprehensive Industrial Wind Energy Facility Ordinance contemplated by this moratorium, whichever is earlier, unless extended for another 180 days by the Sumner Board of Selectmen pursuant to 30-A M.R.S.A. §4356.

Section 2. Purpose and Necessity

A. Purpose

1. The Purpose of this moratorium is to protect the public health, safety and welfare of the residents of the Town of Sumner by enacting a 180 day moratorium on the development of any industrial wind energy facilities. The moratorium will give Town citizens time to develop regulations to ensure that if such facilities are established, they will benefit and not harm the Town.
2. As used in this moratorium, "industrial wind energy facility" means any wind energy installation consisting of one or more wind turbines with a combined tower and blade height of more than 150 feet (from ground to blade tip at its highest point), and with a nameplate capacity of more than 100 kilowatts of power a year, and not requiring a Site Location of Development permit from the Maine Department of Environmental Protection pursuant to Title 35-A M.R.S.A. §3456, the purpose of which facility is to primarily generate electricity to supply off-site customers, and includes but is not limited to any associated installations such as meteorological towers, substations and any other structures accessory to such facility, cables/wires, access roads and generator lead lines.

3. During the term of this moratorium, development of any industrial wind energy facilities will be prohibited and the Industrial Wind Ordinance Committee, composed of the Town Planning Board and other interested citizens appointed by the Board of Selectmen, will study the development of industrial wind energy facilities and its effects on public health, safety and welfare, examine the laws and experience of other jurisdictions, take testimony and hold at least one public hearing. More public hearings may be held if the Industrial Wind Ordinance Committee deems it appropriate or required. The Industrial Wind Ordinance Committee will also research, develop and recommend ordinances and/or amendments to existing ordinances for the protection of the Town and then present its proposals to the Board of Selectmen who will then develop and post a warrant as expeditiously as possible for a Town Meeting to consider ordinance enactment.

B. Necessity

1. The development of industrial wind energy facilities has been proposed for certain areas within the Town of Sumner. The full impact of such proposed development in the Town of Sumner has not yet been considered or explored adequately. The experience of other towns in areas throughout the United States points to the need to examine the issue carefully. The Town has a duty to ensure that the development of industrial wind energy facilities is accomplished in an orderly and reasonable way to protect the health, safety and welfare of its citizens, protect property values and to maintain and enhance the quality of natural resources in the Town.

2. The Town of Sumner has no comprehensive ordinance regulating the development of industrial wind energy facilities and finds that (a) its existing land use laws are inadequate to prevent serious public harm from such development within the Town; (b) unplanned development of industrial wind energy facilities could pose serious threats to the public health, safety and welfare of the Town; (c) suitable sites and methods for such development need to be reviewed and identified; (d) failure to carefully review and plan for such development could reduce options available to the Town, and could result in serious undesirable consequences as detailed in the Appendix to this moratorium.

3. The Town of Sumner finds that (a) its Volunteer Fire Department and the Town's Emergency Management volunteers lack the necessary specialized training, equipment and established procedures to respond effectively to a fire or other emergency that could occur at an industrial wind energy facility; (b) such development, without proper planning and preparation, would overburden the Town's limited public safety resources and thereby endanger lives and property.

4. In the judgment of the Town, therefore, these facts create an emergency within the meaning of 30-A M.R.S.A. §4356(1)(B) and require the enactment of this moratorium as immediately necessary for the preservation of public health, safety and welfare.

Section 3. Enforcement, Appeals, Retroactivity, Construction and Severability

A. Enforcement and Appeals

This moratorium is a “local land use ordinance” adopted pursuant to 30-A M.R.S.A. § 3001, et seq. and § 4356. It shall be enforced by the Town Code Enforcement Officer pursuant to 30-A M.R.S.A. §4452 and all civil penalties therein shall apply. An aggrieved party may appeal the provisions of this moratorium to Superior Court under Rule 80-B of the Maine Rules of Civil Procedure.

B. Retroactivity

Notwithstanding the provisions of 1 M.R.S.A. § 302, and subject to the severability clause in Section 3.C below, and regardless of the date on which it is approved by Town Meeting, this moratorium shall be applied retroactively to the maximum extent of the law to the development of any industrial wind energy facilities for which there are pending proceedings, applications or petitions, commenced on or at any time after the date on which this moratorium is proposed.

C. Construction and Severability

Each provision of this moratorium shall be construed liberally to address the findings and to accomplish the policies established herein. To the extent that any provision of this moratorium is deemed invalid by a court of competent jurisdiction, the invalid portion shall be severable and the balance of the moratorium shall remain valid.

Section 4. Conflicts of Law

Those provisions of the Town's land use ordinances and regulations which are inconsistent or conflicting with the provisions of this moratorium, including, without limitation, the requirements for Site Plan Review by the Planning Board, are hereby repealed to the extent that they are applicable to industrial wind energy facilities for the duration of this moratorium, but not otherwise.

Section 5. Moratorium

During the period of this moratorium, there shall be no receipt, processing, or acceptance of applications for any development permits or licenses pertaining to industrial wind energy facilities and no Town board or official shall approve any application, plan, permit, license, or fee for any such development.

APPENDIX

INDUSTRIAL WIND ENERGY FACILITY MORATORIUM ORDINANCE TOWN OF SUMNER, MAINE

As stated in §2.B.2 above, some possible undesirable consequences of any unregulated industrial development could include loss of property values; higher taxes; excessive noise; light pollution from aviation warning lights and shadow flicker; blight; an effect on public health, safety and welfare; and environmental degradation.

CERTIFICATION

“Industrial Wind Energy Facility Moratorium Ordinance, Town of Sumner, Maine”

We, the Selectpersons of the Town of Sumner, do hereby certify that the attached ordinance “Industrial Wind Energy Facility Moratorium Ordinance, Town of Sumner, Maine” is a true copy of the proposed ordinance to be posted with the Special Town Meeting Warrant and submitted to the voters of the Town of Sumner for their approval. This proposed ordinance was submitted by the Sumner Planning Board to the Sumner Board of Selectpersons on May 25, 2011.

Mary Ann Haxton

Glenn Hinckley

Mark Silber

ATTESTATION OF “Industrial Wind Energy Facility Moratorium Ordinance, Town of Sumner, Maine”

Attest: A true copy of an ordinance entitled “Industrial Wind Energy Facility Moratorium Ordinance, Town of Sumner, Maine” as certified to me by the municipal officers of Sumner on the 25th day of May, 2011.

Susan C. Runes, Clerk of Sumner