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September 30, 2026

Town Clerk, Aaron Zufelt
16 Danforth Road
Haynesville, ME 04497

RE: Temporary Moratorium Ordinance

Dear Aaron:

You asked me to review the Citizens' Initiative presented to the Town to give an opinion on the legality of the proposed ordinance and the process the Town must follow to process the initiative. In short, I believe the provisions dealing with Electrical Substations and New Transmission Lines are unenforceable. However, the provisions dealing with Utility-Scale Solar Facilities, Utility-Scale Wind Energy Facilities, and Large-Scale Data Centers are likely enforceable, although I would recommend making some changes to the format of those provisions prior to final enactment.

I believe the provisions regarding Electrical Substations and New Transmission Lines are unenforceable because the power to regulate Electrical Substations and New Transmission Lines has been designated to the Maine Public Utilities Commission in 35-A M.R.S. §3132. Given that, I believe the State's control over these issues preempts the Town's ability to enact an ordinance regulating the same issues and the Maine Public Utilities Commission is the only entity with authority to approve or disapprove of proposed Electrical Substations and New Transmission Lines. Because the authority on these issues lies with the Maine Public Utilities Commission, I recommend that the initiative be set for a vote at the next Town Meeting and that Select Board decline to enact the proposed Ordinance.

If the citizens and the Select Board wish to pursue the proposed moratorium on the installation of Utility-Scale Solar Energy Facilities, Utility-Scale Wind Energy Facilities, and Large-Scale Data Centers, I believe the Town has the authority to do so. However, it would be in the Town's best interest to propose those moratoriums as separate ordinances. One should deal with the Utility-Scale Solar and Wind Energy Facilities and the other should deal with Large-Scale Data Centers. This will give the Town more flexibility in responding to these issues and presenting possible solutions. By enacting two separate moratoriums, the Town can focus on resolving one of the issues first. If it becomes necessary to extend the moratorium on the other issue, the Select Board would then be able to do so by simply voting to extend the moratorium using the procedure outlined in the Moratorium Ordinance.

Sincerely,

Jacob Flewelling

Jacob T. Flewelling, Esq.

§3002. Enactment procedure

Unless otherwise provided by charter or law, a municipality must enact ordinances by the following procedure.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Posted. The proposed ordinance must be attested and posted in the manner provided for town meetings. If a proposed ordinance or comprehensive plan exceeds 10 pages in length, it is sufficient to satisfy this posting requirement that the warrant and the warrant article related to the adoption of the ordinance or plan includes a statement that copies of the text of the ordinance or plan and map, if any, are available from the town clerk.

[PL 1993, c. 374, §1 (AMD).]

2. Certification. The municipal officers shall certify one copy of the proposed ordinance to the municipal clerk at least 7 days before the day of meeting. The clerk shall keep that copy as a public record and shall make copies available for distribution to the voters from the time of certification. Copies shall be made available at the town meeting.

A. No ordinance of any municipality subject to this subsection may be held invalid due to the municipality's failure to comply with this subsection unless the plaintiff is prejudiced or harmed by that failure. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

3. Question. The subject matter of the proposed ordinance shall be reduced to the question: "Shall an ordinance entitled ' ' be enacted?" and shall be submitted to the town meeting for action either as an article in the warrant or a question on a secret ballot.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

4. Application. Subsections 1 (../30-A/title30-Asec3002.html), 2 (../30-A/title30-Asec3002.html) and 3 (../30-A/title30-Asec3002.html) do not apply to ordinances which may be enacted by the municipal officers.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1993, c. 374, §1 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes (mailto:webmaster_ros@legislature.maine.gov) · 7 State House Station · State House Room 108 · Augusta, Maine 04333-0007

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