

ORDINANCE NO. 98-5055

AN INTERIM ORDINANCE OF THE CITY OF BILLINGS, MONTANA ADOPTING AN IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR BUILDING PERMITS OR SPECIAL REVIEWS FOR WIRELESS TELECOMMUNICATIONS TOWERS, TO BE EFFECTIVE FOR A PERIOD OF ONE HUNDRED TWENTY (120) DAYS, AND DECLARING AN EMERGENCY.

WHEREAS, the Federal Telecommunications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56, 31-136, hereinafter the "Act") was designed to remove regulatory barriers and encourage competition among all types of communications companies; and

WHEREAS, the Act ratifies the authority of local governments to regulate telecommunications services and carriers but also limits local governments' authority in certain respects; and

WHEREAS, the Act allows the Federal Communications Commission to pre-empt any local governmental regulation which prohibits, or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services (Pub.L. No. 104-104, 110 Stat. 70, Sec. 253 (a)); and

WHEREAS, the City of Billings needs to review its codes and ordinances in a comprehensive fashion to determine whether its existing regulations are consistent with the Act and whether to adopt new regulations; and

WHEREAS, the City should impose a moratorium barring the acceptance of applications for building permits or special reviews for free standing wireless telecommunications towers until the necessary code revisions are complete; and

WHEREAS, the City has published notice and the City Council has conducted a public hearing, all as required by Section 76-2-306, MCA.

NOW, THEREFORE, the City Council of the City of Billings, Montana hereby ordains as follows:

Section 1. **Definitions.**

For the purpose of this interim ordinance, the following definitions shall apply:

- (a) *City*: means the territory within the corporate city limits.

- (b) *Wireless telecommunications tower*: means the privately owned plant, equipment and property above ground including but not limited to cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunication services. This definition does not include wireless telecommunications towers placed on buildings or already existing structures or include wireless telecommunications towers to be co-located upon already existing wireless telecommunications towers. Neither does this definition include any publicly owned wireless telecommunications towers.
- (c) *Telecommunications service*: means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice image, graphic, data and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities with or without benefit of any closed transmission medium.

#### Section 2. **Purpose.**

The purpose of this interim ordinance is to place a moratorium on the construction of free standing wireless telecommunications towers to allow the City County Planning Department adequate time to comprehensively study the new telecommunications Act and determine whether the City's existing ordinance and codes are consistent with the Act and develop new ordinances to eliminate inconsistencies and provide for situations not addressed by existing regulations as well as promote the health, safety and general welfare of the community.

#### Section 3. **Moratorium imposed.**

Pursuant to Section 76-2-306, MCA, the City Council hereby adopts this interim ordinance imposing a moratorium on the establishment, location, permitting or franchising of wireless telecommunications towers within the City of Billings. During the term of this interim ordinance, the City will not accept any applications for building permits or for special review for wireless telecommunications towers within the City. This moratorium shall not apply to building permits or special reviews already applied for regarding the location of wireless telecommunications towers prior to March 9, 1998, the effective date of this interim ordinance nor does this moratorium apply to any agreements for the location of wireless telecommunication towers having prior approval from the City Council of the City of Billings.

Section 4. Duration of the moratorium.

The moratorium imposed by this interim ordinance shall be in effect for a period of one hundred twenty (120) days beginning on the date of the adoption of this interim ordinance. During this period, the City County Planning Department is directed to study the issue of free standing wireless telecommunications towers within the City of Billings as it relates to the unified City County Zoning Code. The Planning Department shall develop recommendations for the City's future action to address the Telecommunications Act of 1996 which may include proposed regulations for free standing wireless telecommunications towers within the City. The City County Planning Department shall return its recommendations to the City Council within 90 days of the effective date of this interim ordinance.

Section 5. Effective date. Pursuant to Section 76-2-306, MCA, this interim ordinance shall be effective upon passage.

Section 6. Severability. If any section, sentence, or clause of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this interim ordinance.

Section 7. Declaration of urgency.

The Billings City Council, to protect the public safety, health and welfare, hereby declares, as an urgency measure, that this interim ordinance shall take effect immediately upon the passage by the members of the City Council. Without an immediate moratorium on the City's acceptance of applications under the building and zoning codes, processing of such applications by the City could occur under regulations that are inconsistent with the Telecommunications Act of 1996 and regulations that could possibly be pre-empted by the Federal Communications Commission. Therefore, the City's moratorium must be imposed immediately to prevent any development rights from vesting and to preserve the City's ability to process applications under valid codes.

PASSED, ADOPTED and APPROVED this 9th day of march, 1998.



CITY OF BILLINGS

By Charles F. Tooley Mayor

ATTEST:

By Marita Hersold City Clerk