

TOWN OF WINDHAM

MORATORIUM ORDINANCE ON DEVELOPMENT WITHIN THE HIGHLAND LAKE WATERSHED

WHEREAS, Highland Lake (“the Lake”) is a 623-acre freshwater lake located in the Towns of Windham, Falmouth and Westbrook which is a natural resource of regional importance;

WHEREAS, the Maine Department of Environmental Protection in 1990 designated Highland Lake as impaired for aquatic life pursuant to Section 303(d) of the Clean Water Act (33 U.S.C. § 1313(d)) due to increased algae and sediment caused by development;

WHEREAS, in the late 1990s and early 2000s the towns of Windham and Falmouth, the Highland Lake Association, private road associations, residents, property owners, and the Cumberland County Soil and Water Conservation District, with the assistance of federal Clean Water Act funds, made substantial improvements to roads and properties to reduce sediment and nutrient-laden runoff to the lake;

WHEREAS, resulting from said improvements, the Department of Environmental Protection removed Highland Lake from its list of impaired water bodies in 2010;

WHEREAS, water quality and clarity have again become an issue of significant concern as Highland Lake has in 2014, 2015, 2016 and 2017 experienced picocyanobacteria (also referred to as blue-green algae) blooms which indicate a heightened level of phosphorous in the Lake;

WHEREAS, pursuant to a Phosphorous Control Action Plan prepared by the Maine Department of Environmental Protection and dated July 9, 2003, heightened levels of phosphorous in Highland Lake were primarily caused by nonpoint source pollution arising from overland runoff from roadways and cleared areas, and from septic systems;

WHEREAS, the problems currently being experienced in Highland Lake are likely also due to nonpoint source pollution, and would likely be worsened by additional development within the Highland Lake Watershed;

WHEREAS, the continued degradation of water quality and clarity in Highland Lake could result in redesignation of the Lake as an impaired water body and cause harmful effects to aquatic life, decreased interest by the public in the Lake as a scenic natural resource, and diminution of value of properties adjacent to the Lake;

WHEREAS, regulation of such development pursuant to existing Town of Windham Ordinances has been insufficient to prevent the increase of phosphorous levels in Highland Lake and the problems in water quality and clarity associated therewith;

WHEREAS, the Town needs time to receive and review the results of studies to be sought from the Department of Environmental Protection and other relevant agencies and consultants in order to develop new ordinance provisions to address nonpoint sources of pollution;

WHEREAS, such review, and the implementation of new ordinances and regulations, are necessary in order to prevent significant public, economic and environmental harm;

WHEREAS, the Town Council, with the professional advice and assistance of the Town Manager, Planning Department, Department of Environmental Protection, Highland Lake Association, Cumberland County Soil and Water District, and other stakeholders, shall study the Town's current Code of Ordinances to determine appropriate land use regulations to reduce the environmental impacts of development within the Highland Lake watershed; and

WHEREAS, it is anticipated that such a study, review, and development of recommended Ordinance changes will take at least one hundred and eighty (180) days from the date the Town enacts this Moratorium Ordinance on Development within the Highland Lake Watershed;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Windham, that the following Moratorium Ordinance on Development within the Highland Lake Watershed (the "Moratorium Ordinance") be, and hereby is, enacted as follows:

1. There shall be a moratorium on the following activities within the Highland Lake Watershed:

- a. Clearing, earth moving or removal of vegetation from any area exceeding 500 square feet total within a lot, which shall be measured cumulatively with any clearing or removal of vegetation undertaken within the same lot during the pendency of this Moratorium Ordinance;
- b. Installation of any new subsurface or other wastewater disposal system or expansion of the capacity of an existing wastewater disposal system, except where such system is intended to replace a system which is experiencing or is likely to experience failure;
- c. Construction or installation of more than 500 square feet in footprint of driveways, parking areas, patios, structures or other surfaces that do not contain vegetation, which shall be measured cumulatively with any other such improvements constructed or installed on the lot within the pendency of this Moratorium Ordinance; and
- d. Construction of any private roadway.

2. This Moratorium shall not rescind or invalidate any municipal approval granted prior to its Enactment Date. "Approval" for the purposes of this section shall mean final approval by the reviewing authority, regardless of whether any appeal is contemplated or pending. An activity set forth in Section 1 of this Moratorium Ordinance shall be subject to an exemption from this Moratorium Ordinance if it was specifically reviewed and permitted in a land use approval issued by the Town of Windham Local Plumbing Inspector, Code Enforcement Officer or Planning Board prior to the Applicability Date of this Moratorium Ordinance. Planned improvements described in a site plan, subdivision plan, shoreland zoning application or other approved development plan shall not be covered by this exemption if any additional approval such as a building permit, subsurface wastewater disposal system permit or other municipal approval is required before the improvement may actually be constructed or installed.

3. This Moratorium Ordinance and the prohibitions set forth in Section 1 shall not apply to any clearing, construction or improvement which is being undertaken for the primary purpose of preventing or reducing erosion and/or nonpoint source pollution.

4. This Moratorium Ordinance shall take effect once enacted by the Town Council, in accordance with the provisions of the Town Charter, but, notwithstanding 1 M.R.S.A. § 302, shall be applicable to applications pending as of September 5, 2017. The moratorium shall remain in effect for one hundred and eighty (180) days from its Enactment Date, unless extended, repealed, or modified by the Town Council, for the express purpose of drafting an amendment or amendments to the Town's current Code of Ordinances to protect against further phosphorous pollution and degradation of water quality and clarity in Highland Lake.

BE IT FURTHER ORDAINED, that from the date of enactment and during the time this Moratorium Ordinance remains in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, permit or any other type of land use approval, permit or license related to the development activities described above.

BE IT FURTHER ORDAINED, that the Highland Lake Watershed shall be defined as depicted on "Figure 1: Highland Lake Watershed" as prepared by the Maine Department of Environmental Protection, which is attached to this Ordinance and incorporated herein by reference.

BE IT FURTHER ORDAINED, that those provisions of the Town's current Code of Ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that if any activities described in Section 1 are conducted in violation of this Moratorium Ordinance, each day of any continuing violation shall constitute a separate violation of this Moratorium Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDAINED, that should any section or provision of this Moratorium Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Emergency Declaration

The Town Council declares the existence of an emergency because the Code of Ordinances is insufficient to prevent serious environmental and public harm that could be caused by further development within the Highland Lake Watershed, thereby necessitating a moratorium to provide an opportunity for the Town to review the extent and causes of nonpoint source pollution within Highland Lake, and to amend its Code of Ordinances to mitigate the potential impact and harm of development within the Highland Lake Watershed.

In accordance with Article II, Section 11(D) of the Town Charter, this Moratorium shall be enacted as an emergency ordinance. It shall stand repealed as of the sixty-first (61st) day following enactment, unless the Town Council shall have acted to reenact it.

Enactment Date: September 12, 2017