

WIRELESS TELECOMMUNICATIONS FACILITIES SITING
ORDINANCE

OF THE

TOWN OF WINDSOR, ME

Adopted at Town Meeting March 10, 2003.

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Section 1. Title.

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of the Town of Windsor, Maine, (herein referred to as the "ordinance").

Section 2. Authority.

This ordinance is adopted pursuant to the enabling provisions of Article VIII, part 2, Sections 1 of the Maine Constitution; provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule) and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 *et seq.*

Section 3. Purpose.

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;

Allow competition in telecommunications service;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and the residents of Windsor;

Permit and manage reasonable access to the public rights of way of Windsor for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within Windsor comply with the ordinances of Windsor;

Ensure that Windsor can continue to fairly and responsibly protect the public health, safety, and welfare;

Require the co-location of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;

Enable Windsor to discharge its public trust with rapidly evolving federal and state regulatory policies, industry standards and technological development;

Protect the scenic and visual character of the community.

Section 4. Definitions.

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

"Antenna Height" Means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall

include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

“Co-location” means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

“Expansion” means the addition of antennas, towers, or other devices to an existing facility.

“FAA” means the Federal Aviation Administration, or its lawful successor.

“FCC” means the Federal Communications Commission, or its lawful successor.

“Height” means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

“Historic or Archaeological Resources” means resources that are:

- 1.) Listed individually in the National Register of Historic Places on the National Register; or
- 2.) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district; or
- 3.) Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior; or
- 4.) Individually listed on a local inventory of historic places in communities with historic reservation programs that have been certified by the Secretary of the Interior through the Maine Historic Preservation Commission; or
- 5.) Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

“Historic District” means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

“Historic Landmark” means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the municipality's comprehensive plan, which have been on the National Register of Historic Places.

“Line of sight” means the direct view of the object from the designated scenic resource.

“Parabolic Antenna” (also known as a satellite dish or parabolic dish) means an antenna which is bowl-shaped,

designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

“Principal Use” means the use other than one which is wholly incidental or accessory to another use on the same premises.

“Public Recreational Facility” means a regionally or locally significant facility, as defined and identified either by State statute, or in municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

“Designated Scenic Resource” means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or Federal agency, that consists of

- 1.) a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
- 2.) lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

“Targeted Market Coverage Area” means the area which is targeted to be served by this proposed telecommunications facility.

“Unreasonable Adverse Impact” means that the proposed project would produce an end result which is:

- 1.) excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resources, and
- 2.) would significantly diminish the scenic value of the designated scenic resource.

“Viewpoint” means that location which is identified either in the municipally adopted comprehensive plan or by a Federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

“Wireless Telecommunications Facility” or **“Facility”** means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications services (PCS) or pager services.

Section 5. Applicability.

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 5.1.

5.1 Exemptions.

The following are exempt from the provisions of this ordinance:

- A.) **Wireless Telecommunications Facility.** Permanent wireless communications facilities of less than 35 feet in antenna height.

B.) Emergency Wireless Telecommunications Facility. Temporary or permanent wireless communications facilities for emergency communications by public officials and public safety personnel.

C.) Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).

D.) Parabolic Antenna. Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.

E.) Maintenance or repair. Maintenance and repair of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

F.) Temporary wireless telecommunications facility. Temporary wireless telecommunications facilities in operation for a maximum period of one hundred eighty (180) consecutive days.

G.) Antennas as Accessory Uses. An antenna that is an accessory use to a residential dwelling unit.

Section 6. Permits Required.

A.) All new telecommunications facilities which exceed 35 feet in height must apply for and conform to the requirements of a permit issued by the CEO upon approval from the Planning Board.

B.) All telecommunications facilities below those threshold heights shall be considered a permitted accessory use, and shall need only to apply for and receive a building permit from the Code Enforcement Officer if such telecommunications facility is necessary to a principal use on the lot and is used for the communications of the owner of a business location on the lot.

C.) All telecommunications facilities proposing to locate on existing towers or alternative tower structures below the threshold heights as set forth above shall apply for and conform to the requirements of a building permit from the Code Enforcement Officer.

D.) All other telecommunications facilities below the threshold heights as set forth above shall apply for and conform to the requirements of a building permit from the Code Enforcement Officer.

Section 7. Review and Approval Authority.

7.1 Approval Required.

No person shall construct or expand a wireless telecommunication facility without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

A.) Expansion of an Existing Facility and Co-location. Approval by the CEO is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; accessory use, or co-location on an existing wireless telecommunications facility

B.) New Construction. Approval of the Planning Board is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by over twenty (20)feet.

7.2 Approval Authority.

In accordance with Section 7.1 above, the CEO or Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

Section 8. Approval Process.

8.1 Site Plan Review Application.

Wireless telecommunications facilities including expansion of existing facilities shall include the following information:

- 1.) Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
- 2.) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility shall comply with the current FCC regulations.
- 3.) A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities up to 195 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
- 4.) A facility site map plan:
 - a.) prepared and certified by a professional engineer registered in Maine indicating the location, type and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines. The site plan must include certification by a professional engineer registered in Maine that the proposed facility complies with all applicable American National Standards Institute (ANSI) technical and structural codes;
 - b.) certification by the applicant that the proposed facility and equipment shall comply with all FCC standards for radio emissions; and
 - c.) a boundary survey for the project performed by a land surveyor licensed by the State of Maine.
- 5.) A scenic assessment, consisting of the following:
 - a.) Elevation drawings of the proposed facility, and any other proposed structures showing height above ground level;
 - b.) A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and

location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

c.) Photo simulations of the proposed facility taken from the perspectives determined by the Planning Board. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

d.) A narrative discussing:

i.) the extent to which the proposed facility would be visible from or within a designated scenic resource,

ii.) the tree line elevation of vegetation within 100 feet of the facility, and

iii.) the distance to the proposed facility from the designated scenic resource's noted viewpoints.

6.) A written description of how the proposed facility fits into the applicant's telecommunications network. The submission requirement does not require disclosure of confidential business information.

7.) Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility. The evidence for which may consist of any one or more of the following:

a.) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

b.) Evidence that the existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,

c.) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

i.) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

ii.) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

iii.) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

d.) For facilities existing prior to the effective date of this ordinance/Site Plan Review and Subdivision Ordinance, the fees, costs or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be

unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance/ Site Plan Review and Subdivision Ordinance or amendment thereto;

e.) Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building or structure, and has been denied access;

8.) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed in the National Register of Historic Places.

9.) A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:

a.) respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

c.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location;

d.) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

10.) A surety bond in the amount of 40% of the project cost to pay for the costs of removing the facility if it is abandoned. This bond must be kept current for the lifetime of the facility and the Town notified of such annually by the bond company.

8.2 Submission Waiver.

The CEO or Planning Board may waive any of the submission requirements based upon written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO or Planning Board finds in writing due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

8.3 Fees.

A.) CEO Application Fee.

An application for CEO approval shall include payment of an application fee of \$500.00. The application shall not be considered complete until this fee is paid. The applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) business days of the date of filing, less all expenses incurred by the Town of Windsor to review the application.

B.) Planning Board Application Fee.

An application for Planning Board approval shall include payment of an application fee of \$1000.00 plus \$10.00 per foot of antenna height. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of the fee if the application is withdrawn within fifteen (15) business days of the date of filing, less all expenses incurred by the Town of Windsor.

1.) Review Fee

An applicant for approval by the Planning Board shall pay in addition all reasonable and customary fees incurred by the municipality that are necessary to review the application. All fees shall be paid in full prior to the start of construction.

That portion of the review fee not used shall be returned to the applicant within fifteen (15) business days of the Planning Board's decision.

C.) Oversight of Application Fee

The CEO or his designee will oversee the construction of a new Wireless Telecommunications Tower in accordance with Section 10 to insure that all requirements of the Town have been met. The fee for this process will be \$750.00 to be paid to the Town of Windsor at the time of application.

Section 9. Standards of Review.

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section.

9.1 CEO Approval Standards.

An application for approval by the CEO under Section 7.1(A) must meet the following standards:

- A.)** The proposed facility is an expansion, accessory use, or co-location to a structure existing at the time the application is submitted.
- B.)** The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C.)** The proposed facility increases the height of the existing structure by no more than twenty (20) feet.
- D.)** The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural; or built environment to the maximum extent practicable.
- E.)** The proposed facility shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

9.2 Planning Board Approval Standards.

A.) **Priority of Locations.** New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

B.) **Public Hearing.** Property owners located within fifteen hundred (1500) feet of the proposed location shall be notified by the applicant by certified mail as to the date, time and place of a public hearing on the application to be held in accordance with M.R.S.A. Title 30-A, Section 5354.

C.) **Design for Co-location.** A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future co-location of at least three additional wireless telecommunication facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future co-location.

D.) **Height.** The maximum height of a new or expanded wireless telecommunications facility shall be 195 feet. The facility shall be designed to collapse in a manner that does not harm other property.

E.) **Setbacks.** A new or expanded wireless telecommunications facility must comply with the minimum setback requirements for the respective district, or be set back one hundred five per cent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the area outside the property boundaries if secured by an easement.

F.) **Landscaping.** A new wireless telecommunications facility and related structures must be screened with plants from view by abutting properties.

G.) **Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

H.) **Lighting.** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directed to retain light within the boundaries of the site.

L.) **Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

J.) **Structural Standards.** A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures." The monopole structure is the preferred structure and other options would be left to the discretion of the Planning Board.

K.) **Visual Impact.** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified by a State of Federal agency.

1.) In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider following factors:

- a.) The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource.
- b.) the type, number, height and proximity of existing structures and features within the same line of sight as the proposed facility;
- c.) the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
- d.) the amount of vegetative screening;
- e.) the distance of the proposed facility from the viewpoint and the location within the designated scenic resource; and
- f.) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

L.) Noise. During construction, repair, or replacement, operation of a backup power generator at any time during a power failure, and testing of a backup generator between 8 a.m. and 9 p.m. shall not exceed 85 decibels. Except during construction, repair, or replacement, operation of a backup power generator at any time during a power failure and testing of a backup generator between 8 a.m. and 9 p.m. are exempt from existing noise standards.

M.) Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on the National Register of Historic Places.

9.3 Standard Conditions of Approval.

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the CEO or Planning Board. Where necessary to ensure that an approved project meets the criteria of this Ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approval site plan, and shall include:

- 1.) The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - a.) respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - c.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location.

d.) allow shared use of the wireless telecommunications facility at no charge to public agencies, namely police, fire, and highway.

e.) require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wire telecommunications facility.

2.) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

3.) Documented evidence that no health hazard exists to emanate from transmissions of the telecommunications facility within a 1500 foot radius of that facility.

Section 10. Enforcement

A. Inspections. All new construction of permanent wireless telecommunication facilities, except as provided in section 5.1, shall be subject to periodic oversight by the CEO, to ensure compliance with the specifications in the approved applications. Such oversight shall be performed at least, but not limited to the beginning, middle and end of the construction.

B. Violations. It shall be the duty of the CEO to enforce the provisions of this Ordinance including the specifications in the approved application. If the CEO shall find that a violation has occurred, he or she shall notify in writing the individual listed on the application as responsible for the construction of the telecommunication facility, indicating the nature of the violation and ordering the action necessary to correct the violation with 15 working days of the date of the notification. The CEO shall maintain a record of such notices.

C. Legal Actions. When such notifications of a violation does not result in a correction of the violation in the time specified, the CEO shall notify the Municipal Officers who are hereby authorized and directed to institute any appropriate action necessary to enforce the provisions of this Ordinance.

D. Penalties. Any person or entity found guilty of violating any provision of this Ordinance shall be subject to a fine of one hundred (\$100) dollars a day from the specified date for correction contained in the notification. This penalty shall not be deemed to be exclusive of any other appropriate legal action. Each day in which a violation of this Ordinance continues shall constitute a separate offense under this section.

Section 11. Amendment to an Approved Application.

Any changes to an approved application must be approved by the CEO or the Planning Board, in accordance with Section 7.

Section 12. Abandonment.

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation according to a surety bond issued at the time of permitting.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed by the owner to the satisfaction of the Planning Board.

Section 13. Appeals.

Any person aggrieved by a decision of the CEO or the Planning Board under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed and shall clearly state the reasons for the appeal. A fee of \$100 must be paid at the time of filing the appeal.

Section 14. Conflict and Severability.

14.1 Conflicts with other Ordinances.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

14.2 Severability.

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 15. Effective Date.

This ordinance becomes effective on _____.

Public Hearing held: January 27, 2003

**RETURN OF VOTES CAST
TOWN OF WINDSOR
MARCH 10, 2003**

SHALL AN ORDINANCE ENTITLED "WIRELESS TELECOMMUNICATIONS FACILITIES
SITING IN THE TOWN OF WINDSOR, ME" BE ENACTED?

YES: 110

NO : 104

I hereby certify the results of the ballot question as indicated above



3.11.2003

BRIAN H. MAHANY
Moderator