

ORDINANCE 02-2021

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING ARTICLE III OF CHAPTER 74 OF THE TOWN OF LAKE PARK CODE OF ORDINANCES PERTAINING TO WIRELESS TELECOMMUNICATION TOWERS AND ANTENNAE; PROVIDING FOR THE AMENDMENT OF SECTION 74-62 TO ADD DEFINITIONS FOR SMALL CELL TOWERS OR FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION AND; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (the Town) is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted regulations pertaining to the location of wireless telecommunications towers and antennae within the Town which have been codified in Chapter 74 of the Lake Park Code of Ordinances (Code); and

WHEREAS, the Town's Community Development Department has recommended amendments to Article III of Chapter 74 pertaining to wireless telecommunications towers and facilities; and

WHEREAS, the Town Commission has determined that the recommended amendments would further the public's health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

Section 2. Chapter 74, Article III, Section 74-61 is hereby amended as follows:

ARTICLE III. - WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAE

Sec. 74-61. - Purpose.

- (a) The purpose of this article is to establish regulations and requirements for the siting of wireless telecommunications towers and antennae. All new towers or antennae in the town shall be subject to these regulations, except where specifically excluded. These regulations shall not apply to any tower or antenna that is installed for the use of a broadcasting facility or is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only purposes. These regulations are intended to accomplish the following:
- (1) Protect residential districts from potential adverse impacts of towers and antennae.
 - (2) Encourage the location of towers in nonresidential areas and to locate them, to the extent possible, in areas where the adverse impact on the town community is minimal.
 - (3) Minimize the total number of towers throughout the town community.
 - (4) Strongly encourage the collocation on new and existing towers as a primary option rather than construction of additional single-use towers.
 - (5) Encourage users of towers and antennae to configure them in a way that minimizes the adverse visual impact of the towers and antennae through careful design, siting, landscape screening, and stealth technology.
 - (6) Facilitate the ability of the providers of telecommunications services to provide such services to the town community through an efficient and timely application process.
 - (7) Consider the public health and safety of telecommunications towers.
 - (8) Avoid potential damage to adjacent properties from tower failure through careful siting of tower structures.
- (b) In furtherance of these goals, the town shall give due consideration to the town's comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennae. The town's small geographic size and compact, planned physical layout are unique among South Florida municipalities. The size and layout of the town result in the close proximity of differing types of land uses which has the potential to create land use conflicts. In order to protect the unique nature of the town and avoid land use conflicts, the town has enacted an article which takes that nature into account in determining separation distances, setback distances and permitting procedures for wireless telecommunication towers and antennae.

Section 2. Chapter 74, Article III, Section 74-62 is hereby amended to add definitions as follows:

Sec. 74-62. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antenna means a transmitting and/or receiving device mounted on a tower, building or structure and used in telecommunications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals. This definition does not include over-the-air reception devices which deliver television broadcast signals, direct broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services, as defined and regulated by 47 CFR 1.4000, as amended.

Backhaul network means the lines that connect towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

Broadcasting facility means any tower built primarily for the purpose of broadcasting AM, FM or television signals.

Cable microcell network means a series of multiple low-power transmitters/receivers attached to existing wirelines systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers. A cable microcell network is assumed to require collocation on existing poles.

Collocated telecommunications facility means the placement of a new telecommunications facility on an existing telecommunications tower, existing building or structure.

Collocated small cell facility means the placement of a new small cell facility on an existing small cell tower, a utility pole, or structure.

Engineer means a registered engineer licensed in the state to provide any information of an engineering nature whether civil, electrical or mechanical.

Essential service means those services provided by the town and other governmental entities that directly relate to the health and safety of its residents, including fire, police and rescue.

Extraordinary conditions means subsequent to a hurricane, flood, or other natural hazard or subsequent to a defective finding on a previous inspection.

FAA means the Federal Aviation Administration.

Fair market value means the price at which a willing seller and willing buyer will trade.

FCC means the Federal Communications Commission.

Guyed tower means a telecommunications tower that is supported, in whole or in part, by guyed wires and ground anchors.

Height means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

Lattice tower means a telecommunications tower that is constructed to be self-supporting by lattice type supports and without the use of guyed wires or other supports.

Microwave dish antenna means a dish-like antenna used to link telecommunications sites together by wireless transmission.

Monopole tower means a telecommunications tower consisting of a single freestanding pole or spire self-supported on a permanent foundation, constructed without guyed wires, ground anchors, or other supports.

Operator means an individual, partnership, association, joint-stock company, trust, or corporation engaged in control and maintenance of all instrumentalities, facilities and apparatus incidental to wireless telecommunication transmission, including, but not limited to, a tower, antennae, associated buildings, cabinets and equipment. For the purposes of this article, an "operator" may or may not hold a sublease, license or title to the lot on which a tower is sited

Personal wireless services means commercial mobile services, unlicensed wireless services, and common carrier wireless services, and common carrier wireless exchange access services.

Preexisting towers and *preexisting antennae* mean any tower or antenna for which a building permit has been properly issued prior to the effective date of the ordinance from which this article is derived, including permitted towers or antennae that have not yet been constructed so long as such approval is current and not expired.

Provider means an individual, partnership, association, joint-stock company, trust, or corporation, holding a license of the proper class, as prescribed and issued by the FCC, and authorized to offer telecommunications services to the public through radio transmission. A provider is not necessarily an "operator" as defined in this article, though a provider may obtain a license or lease space or equipment from telecommunications facilities operators.

Public right of way means any public street, highway, sidewalk, easement, parkway, pathway or alley which has been dedicated for public access by pedestrians or vehicles.

Site plan means, for the purposes of this article, a proposal, submission or request to install an antenna or tower that includes:

- (1) A description of the method of installation;
- (2) A description of a maintenance plan for the structure or facility;
- (3) Name and address of the owner of such structure/facility; and
- (4) A legal description of the parent tract and leased parcel;

if applicable, on-site and adjacent land uses, comprehensive plan land use classification of the site, a visual impact analysis and photo digitalization of the tower or antenna and all attachments including associated buildings and equipment containers at the property line, as well as at a distance of 250 feet and 500 feet from all properties within that range, or at other points agreed upon in a pre-application conference.

Small cell facility shall mean a low-powered wireless facility which is interworked with other low-powered wireless facilities to create a grid of cellular or wireless internet coverage across a limited geographic area, including all towers, support structures, antennae, radio transmitting devices, and associated facilities used to transmit telecommunications signals, excluding amateur radio transmitting towers and broadcasting facilities.

Small cell tower shall mean a structure in the public right of way supporting one or more small cell facilities.

Stealth facility means a ~~state of the art~~ tower or antenna that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure in a manner that makes it not readily identifiable as a telecommunications facility. A stealth facility may or may not have a secondary function (e.g., bell tower, spire, flag pole, etc.).

Telecommunications facility means a facility that includes cables, wires, lines, wave guilds, antennae and any other equipment or facility that is used or associated with the provision of one or more telecommunications services, including, without limitation, antenna towers, radio transmitting towers other supporting structures, and associated facilities used to transmit telecommunications signals, excluding amateur radio transmitting towers and broadcasting facilities. An open video system is not a telecommunications facility to the extent that it only provides video services a cable system is not a telecommunications facility to the extent that it only provides cable service.

Telecommunications tower means any structure and support thereto, designed and constructed primarily for the purpose of supporting one or more antennae for intended to provide telecommunications services, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes personal wireless service facilities used for the provision of commercial mobile services, unlicensed wireless services (telecommunications services using duly authorized devices which do not require individual licenses), and common carrier wireless exchange access services. The term "telecommunications tower" does not include radio and television transmission towers, amateur radio transmitting towers and broadcast facilities.

Whip antenna means a cylindrical antenna that transmits signals in 360 degrees.

(Ord. No. 18-1998, § I, 10-7-1998; Code 1978, § 7.1-52)

Section 3. Chapter 74, Article III, Section 74-63 is hereby amended as follows:

Sec. 74-63. - Applicability.

(a) *Permitted uses.* Permitted uses shall include:

~~(1) Telecommunications facilities located on property owned, leased, or otherwise controlled by the town provided that a license or lease authorizing a telecommunications facility has been approved by the town commission and that the requirements for indemnification and insurance of section 74-70 have been met.~~

(12) Telecommunications facilities on properties in zoning districts where telecommunications facilities are either permitted or special exception uses. property located within the CLIC-1 Campus Light Industrial Commercial or C-4 Commercial zoning district.

(23) Antennae that will be collocated on existing telecommunications towers in any zoning district. Such antennae may be approved by the town manager or the town manager's designee.

- (b) *Special exception uses.* A special exception use on privately owned property located within any zoning district other than those listed in subsection (a)(2) of this section. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- (c) *New telecommunications facilities, towers and antennae.* All new telecommunications facilities, towers or antennae in the town shall be subject to these regulations, except as provided in subsections (d) and (e) of this section, inclusive.
- (d) *Broadcasting facilities amateur radio station operators receive only antennae.* This article shall not govern any tower, or the installation of any antenna, that is for the use of a broadcasting facility or is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antenna purposes.
- (e) *Preexisting towers or antennae.* Preexisting towers and preexisting antennae shall not be required to meet the requirements of this article, other than the requirements of sections 74-65(12), (14), and (20). However, should any FAA or FCC regulation or standard require retroactive application, then the facility must comply with such standard or regulation within six months of the effective date of such standard or regulation, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to comply within the specified time period shall constitute grounds for removal at the operator's expense.

Section 4. Chapter 74, Article III, Section 74-64 is hereby amended as follows:

Sec. 74-64. - Application and review process.

- (a) *Pre-application conference.* Any applicant for an antenna or tower siting permit may request a pre-application conference with the town. Such request shall be submitted with a nonrefundable fee as established in the Town's most recently adopted fee schedule of \$250.00 to reimburse the town for the cost and fees incurred by the conference.
- (b) *Review of applications for permitted uses.* Any application for any new antenna or tower shall be accompanied by a nonrefundable fee as established in the Town's adopted fee schedule of \$500 to cover the administrative costs of the review and be subject to the following:
 - (1) *Applications for new telecommunications or small cell towers.*
 - a. Applications for a new telecommunications tower siting permit ~~must shall include a site plan and information which satisfies~~ satisfy the requirements of section 74-65 (a)., of this article. The town shall act on any application within a reasonable period of time after the request is duly filed with the town taking into account the nature and scope of such request. However, if the town does not accept the application as provided as complete and accurate, or if the town deems it necessary to make a reasonable request for ~~additional information,~~ the time in which an application is processed pursuant to this article ~~shall be tolled pending the receipt of the requested information and evaluation thereof.~~
 - b. All applications for a new telecommunications tower shall require approval by the town commission, at a public hearing ~~to be held within 45 days~~ after receipt of a completed tower siting application, following a recommendation ~~for approval~~ by the planning and zoning board. All applications for new tower siting shall require review and

~~recommendation for approval by the planning and zoning board and approval of the town commission.~~

c. Applications for a new small cell tower or facilities shall satisfy the requirements of section 74-65 (b).

d. Applications for a new small cell tower or facilities shall require approval by the town manager or the town manager's designee.

(2) *Applications for collocation of facilities, cable microcell networks, small cell facilities and microwave dish antennae.*

a. Applications for the collocation of telecommunications facilities, small cell facilities, cable microcell networks and microwave dish antennae ~~must~~ shall register with the town and pay applicable building permit and telecommunications tower co-location fees. Additionally, the application shall ~~must~~ include information which satisfies section 74-65 (a) (4) e, regarding structural strength, and section 74-65 (a) (4) f, regarding electromagnetic/radio interference. Small cell facilities must additionally comply with section 74-65 (b).

b. Applications for the collocation of telecommunications facilities, small cell facilities, cable microcell networks and microwave dish antennae ~~must~~ shall be approved by ~~administrative review~~ by the town manager or the town manager's designee not more than 30 days following the filing of a completed application as provided in this article. ~~If not so approved, it shall be submitted to the town commission for review.~~

c. Applications ~~must certify~~ shall demonstrate that the collocated antennae, small cell facilities, cable microcell networks and microwave dish antennae comply with all applicable FCC and FAA regulations, the general requirements listed in ~~section 74-65~~ this article and all applicable building codes.

~~(e) Review of applications for special exception uses. The review and approval of any application for the siting of special exception uses as defined in section 74-66 shall be governed by the requirements in section 74-66(b).~~

~~(d) Denial of application. Any denial of an application to place, construct, or modify any telecommunications tower or antenna regulated by this article shall be issued by the town commission or the town manager or the town manager's designee, as required herein, and shall be in writing and supported by substantial evidence contained in a written record.~~

Section 5. Chapter 74, Article III, Section 74-65 is hereby amended as follows:

Sec. 74-65. - General requirements.

(a) The following general requirements shall apply to all new telecommunications towers and facilities, ~~whether a permitted use or a special exception use:~~

(1) *Information required.*

- a. A scaled site plan clearly indicating the location, type and height of the proposed telecommunications facility, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), comprehensive plan future land use designation of the site and all properties within the applicable separation distances set forth in subsection (9) of this section, adjacent roadways, proposed means of access, setbacks from property lines set forth in subsection (8) of this section, elevation drawings of the proposed telecommunications facility, topography, parking, and other information deemed by the community development director to be necessary to assess compliance with this article.
 - b. The setback distance between the proposed telecommunications facility and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
 - c. The separation distance from other telecommunication facilities described in the inventory of existing sites submitted pursuant to subsection (3) of this section shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing telecommunication facilities and the operator of the existing tower, if known.
 - d. A landscape plan which meets the requirements of chapter 78, article VIII of this Code, regarding landscaping and vegetation protection.
 - e. Method of providing security enclosure and finished color and the method of providing stealth design and illumination.
 - f. A description of compliance with all applicable federal, state or local laws including all provisions within the zoning ordinance set forth in chapter 78.
 - g. A notarized statement by the applicant's engineer that the telecommunications facility will accommodate the collocation of additional antennae for future users.
 - h. Identification of the entities providing the backhaul network for the telecommunications facility described in the application and other telecommunication facilities owned or operated by the applicant in the town.
 - i. A description of the suitability of the use of existing towers, buildings and other structures to provide the services to be provided through the use of the proposed new tower in order to avoid the siting of new towers or structures. This description shall address the requirements of subsection (4) of this section.
 - j. A description of the feasible alternative location of the proposed tower or antenna within the town based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower or antenna is erected.
- (2) *Inventory of town-owned property.* The town shall prepare and provide an inventory of town-owned property to applicants for telecommunications facilities.
- (3) *Inventory of existing sites.* Each applicant for an antenna and/or tower shall provide to the community development director an inventory of its existing towers, antennae, or sites approved for towers or antennae, that are either within the jurisdiction of the town or

within one mile of the border thereof, including specific information about the location, height, and design of each tower.

- (4) *Availability of suitable existing towers, other structures, or alternative technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the town commission that no reasonable alternative technology exists that can accommodate the applicant's proposed antenna. An applicant shall submit information related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- a. An affidavit demonstrating that the applicant made diligent efforts for permission to install or collocate the applicant's telecommunication facilities on towers or usable antenna support structures located within a one-mile radius of the proposed tower site.
 - b. Affidavit demonstrating that the applicant made diligent efforts to install or collocate the applicant's telecommunication facilities on towers or usable antenna support structures owned by other persons located within a one-mile radius of the proposed tower site.
 - c. An affidavit demonstrating that existing towers or structures located within the geographic search area as determined by a state licensed professional engineer do not have the capacity to provide reasonable technical service consistent with the applicant's technical system, including but not limited to, applicable FCC requirements.
 - d. Written technical evidence from a state licensed professional engineer that existing towers or structures are not of sufficient height to meet applicable FCC requirements.
 - e. Written technical evidence from a radio frequency engineer that existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - f. Written technical evidence from a certified radio frequency engineer that the applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures and that the antennae on the existing towers or structures cannot be relocated on the structure to accommodate additional users, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna and that the antenna on the existing towers or structures cannot be relocated to accommodate additional users, or that the applicant's proposed antenna would otherwise interfere with public safety communications or the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and nonresidential properties.
 - g. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

- (5) *Fair market value for collocation.* A tower operator shall not charge a provider seeking to collocate on a tower in excess of the fair market value for the space, as determined at the time of its request for collocation. In the event of a dispute as to the fair market value of the space, the parties shall select an independent appraiser to determine fair market value. If the parties cannot agree on a selection of an appraiser, the town shall select one. All appraisals shall be performed at the expense of the parties.
- (6) *Aesthetics.* Towers and antennae shall meet the following requirements:
- a. To minimize adverse visual impacts associated with unnecessary proliferation of antenna towers, the location of antennae on existing structures shall take precedent over the construction of new antenna towers.
 - b. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be, to the maximum extent possible, of stealth design.
 - c. To minimize adverse visual impacts, the antenna has been selected based upon the following priority: 1. Stealth; 2. Panel; 3. Whip; and 4. Dish. If the first priority is not selected, the applicant shall demonstrate in a manner acceptable to the town, why each higher priority cannot be used for a particular application.
 - d. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a color so as to reduce visual obtrusiveness.
 - e. At a tower or antenna site, the design of the telecommunications facility shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings. The proposed telecommunications facility design shall be included in the application and shall be required to be recommended for approval by the planning and zoning board to the town commission for its approval.
 - f. The facilities must comply with all applicable landscaping requirements of this Code. The town may require landscaping in excess of those requirements in order to enhance compatibility with adjacent uses or zoning districts.
 - g. For collocated facilities, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure to minimize the visual impact and enhance compatibility with surrounding development.
- (7) *Height.*
- a. Applications to install antennae on any preexisting commercial, industrial, professional, or institutional structure, including utility or light pole, must certify that the antennae do not extend more than 20 percent above the original height of the structure.
 - b. Towers shall not be constructed to any height in excess of those provided below:
 1. For a single user, up to 90 feet in height;
 2. For two users, up to 120 feet in height;

3. For three or more users, up to 150 feet in height.
- (8) *Setback distances.* The following setback requirements shall apply to all telecommunications facilities:
 - a. Towers and accessory buildings must be set back a distance equal to at least 110 percent of the height of the tower from any adjoining property lot line.
 - b. Accessory buildings must satisfy the minimum zoning district setback requirements.
 - (9) *Separation.* All towers shall be separated by a distance of one-half of one mile. A new tower shall not be permitted in a location within one-half of one-mile distance of an existing tower.
 - (10) *Measurement.* Measurement of tower setbacks and separation distances shall be calculated and applied in relation to all adjacent facilities whether located inside or outside the boundaries of the town.
 - (11) *Security fencing.* Telecommunications facilities shall be enclosed by security fencing not less than six feet in height and towers shall be equipped with anticleimbing devices or apparatuses.
 - (12) *Lighting.* Towers/antennae shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. ~~(13) — Prohibition of antennae mounted on utility poles or light poles. Antennae shall be prohibited on utility poles, telephone poles or light poles. Cable microcell network transmitters/receivers shall be exempt from this prohibition.~~
 - ~~(13)~~ *State or federal requirements.* All towers/antennae must meet or exceed current standards and regulations of the FAA, the FCC (including emissions standards), and any other agency of the state or federal government with the authority to regulate towers and antennae. If such standards and regulations are changed and the promulgating authority requires retroactive application of such standards, then the operators of the towers and antennae governed by this article shall bring such towers and antennae into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennae into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
 - ~~(14)~~ *Building codes; safety standards.* Prior to the issuance of a building permit to construct an antenna or tower, the owner/applicant shall provide the town with all applicable licenses and certifications from federal, state and county agencies. To ensure the structural integrity of towers, the operator of a tower shall ensure that it is maintained in compliance with standards contained in applicable federal, state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the town engineer or the town engineer's designee concludes that a tower fails to comply with such codes and standards, then upon notice being provided to the operator of the tower, the operator shall have 30 days to bring the tower into compliance with such standards. Failure to bring a

tower into compliance within 30 days shall constitute grounds for the removal of the tower at the operator's expense.

(156) *Not essential services.* Towers and antennae shall be regulated and permitted pursuant to this article and shall not be regulated or permitted as an essential service, public utility or private utility.

(167) *Franchises.* Owners and/or operators of towers or antennae shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the town have been obtained and shall file a copy of all required franchises with the community development director.

(178) *Signs.* No signs, including commercial advertising, logo, political signs, flyers, flags, or banners, but excluding warning signs, shall be allowed on any part of an antenna or tower. Any signs placed in violation of this section shall be removed immediately at the operator's expense. Notwithstanding any contrary provisions of the town's zoning code, the following warning signs shall be utilized in connection with the tower or antenna site, as applicable:

- a. If high voltage is necessary for the operation of the tower or any accessory structures, "HIGH VOLTAGE DANGER" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than 40 feet apart; "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than 40 feet apart;
- b. The height of the lettering of the warning signs shall be at least 12 inches and the signs shall be installed at least five feet above the finished grade;
- c. The warning signs may be attached to freestanding poles if the content of the sign may be obstructed by landscaping.

(189) *Multiple antenna/tower plan.* So as to lessen proliferation, the town encourages tower applicants to submit a single application for approval of multiple providers on a single site. Applications for approval of multiple providers on a single site shall be given priority in the review process.

(1920) *Inspections; reports; fees.*

- a. Telecommunications facilities operators shall submit a report to the town certifying structural and electrical integrity. The reports shall be due to the town every two years on the anniversary date of the issuance by the town of the approval for siting of the facility. The report shall be accompanied by a nonrefundable fee ~~\$200.00~~ in the amount specified by the town's most recently adopted fee schedule to reimburse the town for the cost to review the report.
- b. The town may conduct periodic inspection of telecommunications facilities, at the operator's expense, to ensure structural and electrical integrity and compliance with the provisions of this article. There shall be a maximum of one inspection per year unless there is an emergency, extraordinary conditions or other reason to believe that the structural and electrical integrity of the facility is jeopardized.

(b) Applications for small cell towers and facilities.

(1) Information required.

- a. A scaled site plan clearly indicating the location, type and height of the proposed telecommunications tower or facility. The site plan shall identify any potential sight line conflicts and demonstrate that there are clear view sheds for persons operating vehicles, pedestrians, or necessary to meet other public safety purposes.
- b. A statement confirming that a proposed new small cell tower or facility which is proposed for collocation would not interfere with the safe operation of any traffic control equipment within the right-of-way.
- c. The site plan shall demonstrate that the proposed new small cell tower or facility which is to be collocated does not interfere with the sight lines or clear zones of vehicles or, pedestrians.
- d. The site plan shall demonstrate that the proposed small cell tower or facility shall not encroach upon any sidewalks or bike paths and complies with all applicable regulations of the American with Disabilities Act (ADA)
- e. The site plan shall demonstrate that the proposed small cell that the proposed tower or facility complies with the Florida Department of Transportation's Utility Accommodation Manual.

(2) Aesthetic requirements.

- a. New small cell towers or new small cell towers that replace existing utility poles shall be of a substantially similar style or decorative design, material, and color to other utility poles that are located in the same right-of way. If there are utility poles of two or more different styles or designs within the same right of way the new small cell tower shall substantially conform with the style or decorative design, material, and color precedents of the most recently installed utility pole or poles.
- b. All small cell facility components shall be reasonably spaced from the location of the small cell tower, at a distance not exceeding 15 feet.

(3) Height requirements. Small cell facilities shall not exceed 10 feet above the utility pole or structure upon which it is placed. The height for any new utility pole upon which a small cell facility is attached shall not exceed the height of the tallest existing utility pole in the same right of way.

(4) Alternative locations for small cell facilities. The town may request that an applicant consider placing the small cell facility at an alternative location, on an alternative utility pole or structure, or be placed on a new utility pole within the same right of way.

(5) *Permitting fees.* Applicants for new small cell towers or facilities in the public right of way shall pay the telecommunication tower application fee established by the town.

Section 6. Chapter 74, Article III, Section 74-66 is hereby amended as follows:

Sec. 74-66. - Special exception uses.

- (a) *Purpose.* The purpose of said special exception shall be to provide for circumstances where, based upon existing or available technology, an applicant is able to demonstrate, based upon verifiable technical evidence, that it is unable to locate a telecommunications facility which is necessary under its service requirements under the terms of the existing provisions of this article, on any available sites (including opportunities for collocation) and that, pursuant to federal law, it has a right to locate a telecommunications facility in a location not permitted under the provisions of this article or in accordance with the terms of this article.
- (b) *Application review and approval.* The following provisions shall govern the review and approval of special exception use applications for towers and antennae by the town:
 - (1) If the tower and antenna is not a permitted use, as defined in section 74-63(a), then special exception approval shall be required.
 - (2) The review of any application for a special exception use under this section shall require approval by the town commission, at a public hearing, following a recommendation for approval by the planning and zoning board.
 - (3) In granting a special exception approval, the town commission may impose conditions to the extent the town commission concludes such conditions are necessary to minimize any adverse effect of the proposed telecommunications facility on adjoining properties.
 - (4) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a state-licensed professional engineer.
 - (5) An applicant for special exception use shall submit the information described in this section and section 74-65. This information shall be accompanied by a nonrefundable fee of \$1,000.00 to cover the administrative costs of the review. Any costs or expenses incurred by the town that exceed \$1,000.00 shall be reimbursed by the applicant upon the applicant's receipt of an invoice from the town setting forth the expenses that exceeded \$1,000.00. Any pre-application conference fee shall accompany the information as provided in section 74-64(a). The application shall be signed in the presence of a notary public and the notary shall affix such notary's seal to the application.
 - (6) The town manager may commission a review by a professional with technical expertise in this area to review the application and information submitted by the applicant. The applicant shall be responsible for the costs of said study. The town shall obtain a cost estimate for the study and shall submit said cost estimate to the applicant who shall be responsible for paying said amount to the town for the sole purposes of compensating the expert who will be conducting the review of the application and information. No action shall be taken upon the application until such payment is made to the town. Upon receipt of the payment as set forth above, the town shall engage the services of an expert to

review the application and to provide expert conclusions, including whether the applicant can co-locate its proposed tower or antenna.

- (7) Within 45 days of receipt of this study, the matter shall be brought before the town commission for a public hearing. Said hearing shall be held as a quasi-judicial hearing subject to the procedures for said hearings as provided in the Code. It shall be the burden of the applicant to make all showings and provide all evidence required for the granting of a special exception.
- (c) *Factors considered in granting special exception approval for telecommunications facilities.* The town commission shall consider the following factors in determining whether to approve a special exception:
- (1) Height of the proposed tower/antenna;
 - (2) Proximity of the tower/antenna to residential structures and residential district boundaries;
 - (3) Nature of uses on adjacent and nearby properties;
 - (4) Surrounding topography;
 - (5) Surrounding tree coverage and foliage;
 - (6) Design of the tower/antenna, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (7) Proposed ingress and egress; and
 - (8) Availability of suitable existing towers, buildings and other structures, in order to avoid the siting of new towers or structures, as discussed in section 74-65(3).

Sec. 74-67. - Buildings or other equipment storage.

Equipment cabinets or structures used in association with antennae mounted on structures or rooftops shall not contain more than 350 square feet of gross floor area or be more than ten feet in overall height. Equipment storage buildings or cabinets shall comply with all applicable building codes. Applicants must provide assurances from a structural engineer that the structural integrity of the structure or rooftop will not be compromised by the cabinet or structure.

Sec. 74-68. - Removal of abandoned antennae and towers.

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the operator of such antenna or tower shall remove the same within 90 days of receipt of notice from the town. Failure to remove an abandoned antenna or tower within said 90 days shall be grounds to remove the tower or antenna at the operator's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

Sec. 74-69. - Nonconforming uses.

- (a) *No expansion of nonconforming use.* Towers that are constructed, and antennae that are installed, in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.
- (b) *Preexisting towers.* Preexisting towers shall be allowed to continue their usage as they presently exist pursuant to chapter 78, article VII of this Code, regarding nonconforming lots, uses of land, structures, and uses of structures and premises. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this article.
 - (1) *Modification to existing site.* Up to 50 percent of the height of an existing tower may be replaced as part of modifications made to provide for collocation of a new facility. Replacement of more than 50 percent shall be considered a new tower and shall meet all of the applicable requirements.
 - (2) *Rebuilding damaged or destroyed existing site.* Existing facilities that are damaged or destroyed may be rebuilt through administrative review and approval, provided the replacement facility is the same as the original in type, location and intensity or brings a previously nonconforming site into greater conformance and that no more than 50 percent of the facility is involved. If more than 50 percent of the facility is involved, it shall be considered a new facility that shall meet all applicable requirements. All replacement shall comply with the then applicable building codes and building permits obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or expires, the facility shall be deemed abandoned.
- (c) *Rebuilding damaged or destroyed nonconforming towers or antennae.* Nonconforming tower and antennae that are damaged or destroyed shall be required to meet the requirements as set forth in chapter 78, article VII of this Code.

Section 8. Chapter 74, Article III, Section 74-70 is hereby deleted:

- ~~(a) *Indemnification.* The town shall not enter into any lease agreement until and unless the town obtains an adequate indemnity from the tower operator. The indemnity must at least:~~
 - ~~(1) Release the town from and against any and all liability and responsibility in or arising out of the construction, operation or repair of the telecommunications facility. Each telecommunications facility operator must further agree not to sue or seek money or damages from the town in connection with the above mentioned matters;~~
 - ~~(2) Indemnify and hold harmless the town, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the town or any third party arising out of, or by reason of, or resulting from telecommunications facility operator, or provider or its agents, employees, or servants' negligent acts, errors or omissions.~~
 - ~~(3) Provide that the covenants and representations relating to the indemnification provision shall survive the term of any agreement and continue in full force and effect as to the party's responsibility to indemnify.~~

- (b) ~~*Insurance.* The town shall not enter into any lease agreement until and unless the town obtains assurance that such operator (and those acting on its behalf) have adequate insurance. At a minimum, the following requirements must be satisfied:~~
- (1) ~~Telecommunications facility operators shall not commence construction or operation of the facility without obtaining all insurance required under this section and approval of such insurance by the finance director of the town, nor shall a telecommunications or small cell facility operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period that the telecommunications facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the town may order such entities to stop operations until the insurance is obtained and approved.~~
 - (2) ~~Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the finance director of the town. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.~~
 - (3) ~~These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least 30 days prior written notice has been given to the town. Policies shall be issued by companies authorized to do business under the laws of the state.~~
 - (4) ~~In the event that the insurance certificate indicates that the insurance shall terminate or lapse during the term of existence of the tower, then, in that event, the telecommunications facility operator shall furnish, at least 30 days prior to the expiration of such insurance, a renewed certificate of insurance evidencing equal and like coverage for the balance of the period.~~
- (c) ~~*Comprehensive general liability.* A telecommunications facility operator, and its contractors or subcontractors engaged in work on the operator's behalf, shall maintain minimum insurance to cover liability bodily injury and property damage. Exposures to be covered are premises, operations, and certain contracts. Coverage shall be written on an occurrence basis and shall be included, as applicable, in the lease agreement between the town and the telecommunications facility operator.~~

Section 9. **Severability.** If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

Section 10. **Repeal of Laws in Conflict.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 11. **Codification.** The provision of this Ordinance shall become and be made a part of the Code of Ordinances for the Town of Lake Park. The Sections of the Ordinance maybe renumbered or re-lettered to accomplish such.

Section 12. **Effective date.** This Ordinance shall take effect upon execution.

Upon First Reading this 7 day of April, 2021, the foregoing Ordinance was offered by Commissioner Michaud, who moved its approval. The motion was seconded by Commissioner Flaherty and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	_____
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	_____
COMMISSIONER ERIN FLAHERTY	<u>/</u>	_____
COMMISSIONER JOHN LINDEN	<u>/</u>	_____
COMMISSIONER ROGER MICHAUD	<u>/</u>	_____

PUBLISHED IN THE PALM BEACH POST THIS 9 DAY OF May, 2021

Upon Second Reading this 19 day of May, 2021, the foregoing Ordinance, was offered by Commissioner Flaherty, who moved its adoption. The motion was seconded by Commissioner Michaud and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	_____
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	_____
COMMISSIONER ERIN FLAHERTY	<u>/</u>	_____
COMMISSIONER JOHN LINDEN	<u>/</u>	_____
COMMISSIONER ROGER MICHAUD	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No.** 02-2021 duly passed and adopted this 21 day of April, 2021.

TOWN OF LAKE PARK, FLORIDA

BY: [Signature]
Mayor, Michael O'Rourke

ATTEST:

Approved as to form and legal sufficiency:

[Signature]
Town Clerk, Vivian Mendez
TOWN OF LAKE PARK
SEAL
FLORIDA

[Signature]
Town Attorney, Thomas J. Baird