

ORDINANCE 11-2017

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING OR APPROVAL OF ANY WIRELESS COMMUNICATION FACILITIES IN THE TOWN'S RIGHTS-OF-WAY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Commission has such powers and authority as is set forth in the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission finds that Section 704(a) of the Telecommunications Act of 1996, entitled "Preservation of Local Zoning Authority," (47 U.S.C. § 332(c) (7)) (the Act) preserves municipal zoning authority over decisions concerning the placement, construction, and modification of "personal wireless service facilities" with certain limitations; and

WHEREAS, the Town is prohibited from imposing regulations that unreasonably discriminate among providers of functionally equivalent services and prohibit, or have the effect of prohibiting, the provision of personal wireless services; and

WHEREAS, the Town is required to act on a request for authorization to place, construct, or modify personal wireless service facilities "within a reasonable period of time" after a request has been filed;

WHEREAS, in the event the Town denies a request for authorization to place or construct personal wireless service facilities in the Town, the Act requires that the denial be in writing and be supported by competent substantial evidence; and

WHEREAS, Chapter 74, of the Town's Code of Ordinances provides the application process for applications for personal wireless service facilities to occupy any Town rights-of-way; and

WHEREAS, new technologies in wireless communications have emerged, which involve the use and placement of smaller, but more numerous poles and related infrastructure to support existing services and emerging "5-G" service; and

WHEREAS, in the 2017 legislative session, the Florida Legislature enacted House Bill 687 (the "Advanced Wireless Infrastructure Deployment Act"), which establishes a process by which wireless providers may place small wireless facilities in the public rights-of-ways under the control of counties and municipalities; and

WHEREAS, the Advanced Wireless Infrastructure Deployment Act became effective July 1, 2017 and as a part thereof the Town is required to allow certain types of wireless facilities within the rights-of-way so long as those facilities meet objective design standards that have been adopted by a Town ordinance; and

WHEREAS, the application requirements in Chapter 74 of the Town Code of Ordinances, do not provide any objective design standards concerning the placement of these types of wireless communications systems on Town's rights-of-way; and

WHEREAS, the Town Commission finds that the Town's rights-of-way are a limited resource that must be properly managed both for current infrastructure needs and for planned or expected future infrastructure expansion, maintenance, aesthetics and safety needs, to the extent authorized by law; and

WHEREAS, the Town's current laws governing the application, placement, enforcement, and maintenance processes of wireless communications systems in the Town's rights-of-way do not adequately address the new requirements and regulations encompassed in the Advanced Wireless Infrastructure Deployment Act; and

WHEREAS, the Town Commission finds that there is a legitimate public purpose in imposing a temporary moratorium on considering and approving personal wireless communications systems in the Town's rights-of-way to allow the Town time to create appropriate land development regulations which balance the new and emerging technology with the Town's needs and requirement, and in accordance with state and federal law; and

WHEREAS, the Advanced Wireless Infrastructure Deployment Act allows the Town until January 1, 2018 to enact land development regulations which may include objective design standards with which to evaluate applications for those wireless facilities regulated by the Act; and

WHEREAS, the Town Commission finds that there is a legitimate public purpose to temporarily prohibit the Town's acceptance and processing of, or final determination on, any applications for rights-of-way permits for personal wireless communications systems in the Town's rights-of-way until the Commission adopts amendments to its Code of Ordinances.

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

Section 1. Legislative Findings, Intent and Purpose. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission. It is the intent of the Commission to undertake an in-depth review of the Town's current laws and to develop such land development regulations as may be necessary to regulate and govern wireless communications facilities, equipment and infrastructure in the Town's rights-of-way. The Town Commission finds that it is necessary to develop and enact land development regulations to address the new and emerging technologies, conform with the requirements of 47 U.S.C. § 332(c)(7) and the Advanced Wireless Infrastructure Deployment Act pertaining to the placement or

construction of wireless communication systems in the Town's rights-of-way and adequately further and protect the public health, safety and welfare.

Section 2. Temporary Moratorium Imposed. The Commission hereby imposes a temporary moratorium on the acceptance, processing or approval of rights-of-way permit applications for personal wireless communication systems in the Town's rights-of-way. This moratorium is imposed pursuant to the Town's police powers to protect the public health, safety and welfare of the community at large and shall remain in effect until December 31, 2017.

Section 3. Effective Date. This Ordinance shall become effective upon execution.

Upon First Reading this 13 day of September, 2017, the foregoing Ordinance was offered by Vice-Mayor Glas-Castro, who moved its approval. The motion was seconded by Commissioner Lynch and being put to a vote, the result was as follows:

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

PUBLISHED IN THE PALM BEACH POST THIS 17 DAY OF September, 2017

Upon Second Reading this 27 day of September, 2017, the foregoing Ordinance, was offered by Vice-Mayor Glas-Castro, 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>	<u> </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u> / </u>	<u> </u>
COMMISSIONER ERIN FLAHERTY	<u> Absent </u>	<u> </u>
COMMISSIONER ANNE LYNCH	<u> / </u>	<u> </u>
COMMISSIONER ROGER MICHAUD	<u> / </u>	<u> </u>

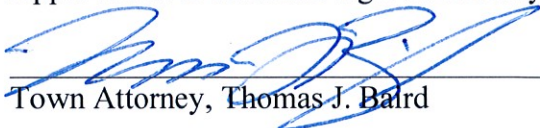
The Mayor thereupon declared **Ordinance No.** 11-2017 duly passed and adopted this 27 day of September, 2017.

TOWN OF LAKE PARK, FLORIDA

BY: 
Mayor, Michael O'Rourke

ATTEST:


Town Clerk, Vivian Mendez
(Town Seal)

Approved as to form and legal sufficiency:

Town Attorney, Thomas J. Baird

FLORIDA