

ORDINANCE NO. 2019- 03

AN ORDINANCE OF THE TOWN OF LEE OF MADISON COUNTY, FLORIDA, AMENDING THE TEXT OF THE LAND DEVELOPMENT CODE OF THE TOWN OF LEE, AS AMENDED; PURSUANT TO AN APPLICATION, LDC 19-01, BY THE LEE TOWN COUNCIL; PROVIDING AN AMENDMENT TO THE LAND DEVELOPMENT CODE BY ADDING SECTION 4.13.36 COMMUNICATION ANTENNAS AND COMMUNICATION TOWERS. REPEALING ALL ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 125.01, Florida Statutes, as amended, empowers the Town Council of Lee, hereinafter referred to as the Town Council of Lee, to prepare, adopt, and enforce land development regulations;

WHEREAS, Sections 163.3161 through 163.3217, Florida Statutes, as amended, the Local Government Comprehensive Planning and Land Development Regulation Act, empowers and requires Town Council of Lee to prepare and adopt regulations concerning the use of land and water;

WHEREAS, an application for an amendment, as described below, has been filed with the Town Council of Lee;

WHEREAS, the Planning and Zoning Board of the Town of Lee of Madison County, Florida, hereinafter referred to as the Planning and Zoning Board, has been designated as the Local Planning Agency of Lee, Florida, hereinafter referred to as the Local Planning Agency;

WHEREAS, pursuant to Section 163.3174, Florida Statutes, as amended, and the Land Development Code, as amended, the Planning and Zoning board, serving also as the Local Planning Agency, held the required public hearing, with public notice having been provided, on said application for amendment as described below, and at said public hearing, the Planning and Zoning Board, serving also as the Local Planning Agency, reviewed and considered all comments received during said public hearing concerning said application for an amendment, as described below, and recommended to the Town Council of Lee approval of said application for an amendment, as described below;

WHEREAS, pursuant to Section 125.66, Florida Statutes, as amended, the Town Council of Lee held a public hearing, with public notice having been provided, on said application for an amendment as described below, and at said public hearing, the Town Council of Lee reviewed and considered all comments received during the public hearing, including the recommendation of the Planning & Zoning Board, serving also as the Local Planning Agency, concerning said application for an amendment, as described below;

WHEREAS, the Town Council of Lee has determined and found said application for an amendment, as described below, to be compatible with the Future Land Use Element objectives and policies, and those of other affected elements of the Comprehensive Plan;

WHEREAS, the Town Council of Lee has determined and found that a need and justification exists for the approval of said application for an amendment, as described below;

WHEREAS, the Town Council of Lee has determined and found that approval of said application for an amendment, as described below, is consistent with the purposes and objectives of the comprehensive planning program and the Comprehensive Plan;

WHEREAS, the Town Council of Lee has determined and found that approval of said application for an amendment, as described below, will further the purposes of the Land Development Code and other ordinances, regulations and actions designed to implement the Comprehensive Plan;

WHEREAS, the Town Council of Lee has determined and found that approval of said application for an amendment, described, below, would promote the public health, safety, morals, order, comfort, convenience, appearance, prosperity or general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL FO LEE OF MADISON COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Pursuant to an application, LDC 19-01, by the Planning and Zoning Board, Section 4.13.36 entitled Communication Antennas and Communication Towers,

**Section 4.13.36: Communication Antennas and Communication Towers**

**A. Applicability; use of existing structures.**

1. All new communication antennas and communication towers in the Town of Lee shall be subject to these land development regulations and all other applicable building and construction codes. In the event of any conflict between other land development regulations and the regulations contained in this Section, the provisions of this Section shall override and supersede such other regulations unless otherwise specifically set forth herein.
2.
  - (a) All communication towers existing prior to the effective date of this ordinance shall be allowed to continue to be used as they presently exist. Routine maintenance or minor modifications to accommodate the collocation of an additional user or users shall be permitted on such existing towers subject to the criteria in (b) below. New construction, other than routine maintenance and modifications to accommodate collocation on an existing communication tower, shall comply with the requirements of this Section.
  - (b) For communication antennas, replacement of antennas on a structure with different antennas shall be considered routine maintenance or a

minor modification to accommodate the collocation of an additional user or users so long as the replacements antenna(s) does not increase the height of any structure other than a communication tower on which it is placed by more than twenty-five (25) feet.

3. For purposes of this Section, a communication tower that has received final approval in the form of a building permit for an approved site and development plan or where substantial construction has been completed shall be considered an existing tower so long as such approval is valid and unexpired as of the effective date of this ordinance.
4. No comprehensive plan amendment or variance shall be required to locate a communication antenna on an existing nonresidential structure or multi-family residential structure; provided, however, that the communication antenna does not extend more than (50) feet above the existing structure. Such structures may include, but are not limited to, nonresidential buildings, water towers, existing communications towers, recreational light fixtures and essential service provider facilities.
5. A communication antenna may be attached to an existing nonresidential structure, or multi-family residential structures thirty-five (35) feet in height or greater as identified in subsection A.4 above, upon approval of a building permit and written notice to the Town of Lee Town Manager, or his designee, at least thirty (30) days prior to be installation of the antenna, provided such notice certifies that any such collocation is accomplished in a manner consistent with the following:
  - (a) A communication tower which is modified or reconstructed to accommodate the collocation of an additional communication antenna shall be of the same tower type as the existing tower, unless reconstructed as a monopole.
  - (b) Height
    - (i) An existing communication tower may be modified or rebuilt to a taller height not to exceed forty (40) feet over the communication tower's existing height to accommodate the collocation of an additional communication antenna, but in no case shall the height of the tower and proposed extension be greater than the distance to an existing residential structure.
    - (ii) In order to accommodate more than one additional collocation, an applicant may seek approval for a height increase in excess of the forty (40) feet allowed in Subsection (i) above, but in no case shall the height of the tower and the proposed extension be greater than the distance to an existing residential structure.

- (iii) Whenever modified in accordance with the provisions of this Section, the height of the modified or rebuilt portion of the communication tower shall not exceed the maximum height of 35 feet unless the height restriction is inconsistent with Federal law or the applicant demonstrates to the Town of Lee that a tower height in excess of the maximum height is necessary to provide the proposed telecommunication service(s).
  - (c) Onsite location.
    - (i) A communication tower which is being rebuilt to accommodate the collocation of an additional communication antenna may be moved onsite within fifty (50) feet of its original location, and shall be exempt from the setback requirements of this section.
    - (ii) After the communication tower is rebuilt to accommodate collocation, the existing tower must be dismantled and removed within sixty (60) days after the rebuilding so only one communication tower may remain on the tower site.
- B. All communication towers or antennas proposed in the Town of Lee shall comply with any airport regulations of the Town of Lee Code.
- C. The provisions of this code shall not apply to communications towers or antennas located on property owned by the United States, the State of Florida, or the Town of Lee provided those towers are owned by those public entities and are used exclusively for the provision of fire safety, law enforcement emergency management and/or emergence medical services telecommunications.
- D. Nothing herein shall be construed as regulating or applying to antennas or towers utilized solely by amateur radio operators licensed by FCC, or solely as residential receiving antennas or towers.
- E. **Location.**
  - 1. A communication tower or communication antenna may be located in any land use district so long as it meets the requirements of this Section, and conforms with any historic preservation elements of the Town of Lee's comprehensive plan.
  - 2. A communication tower may be located on a lot used for other principal uses on a parcel smaller than the minimum lot size required in the land use district. This parcel shall be considered as the "tower site." The tower site, but not the entire lot, shall be subject to all the requirements of this Section, except as specifically provided herein.
- F. **Minimum distance of communication towers from other property.**

1. All towers shall be located at least the height of the proposed tower itself from the nearest privately owned property line, unless a waiver is obtained from all property owners within the height of the tower.
2. Distance shall be measured from the center of the base of the communication tower to the nearest residential lot line.
3. Where a communication tower is being proposed on a site with an existing residential structure, the distance of the proposed tower from structure shall not be less than the height of the tower itself and shall comply with the provisions of subsection C.1. above.

**G. Tower Permitting.**

1. Feasibility of Co-location. Co-location shall be deemed to be "feasible" for purposes of this Section unless the applicant demonstrates that one or all of the following items cannot be met:
  - a. The owner or person who otherwise controls the communication tower or other structure under consideration for collocation will undertake to charge fair and reasonable market rent or other fair and reasonable market compensation for collocation.
  - b. The site on which collocation is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide sufficient structural support.
  - c. The collocation being considered is technologically reasonable, e.g., the collocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure and antennas.
  - d. The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the Town Manager or his designee, taking into consideration the several standards contained in this Section.
2. New Communication Towers, Antennas and Other Communication Devices.
  - a. A tower permit must be obtained from the Madison County Planning & Zoning Department and Madison County Building Department before any communication tower can be constructed. A permit must also be obtained from the Madison County Building Department before any antenna or other communication device is attached to or collocated on an existing tower. The applicant must submit a non-refundable fee to the Madison County Planning & Zoning Department when the application for a permit is submitted, in the amount set by resolution of the Madison

County Board of County Commissioners per interlocal agreement adopted May 27, 2015. This permit fee will be in addition to the fees required for special exceptions under the Town of Lee's Land Development Regulations.

- b. A tower permit for the location and use of a communication tower shall not be granted unless and until the applicant demonstrates that a feasible collocation, pursuant to Subsection D(1) above, is not available for the coverage area and capacity needs.
- c. All new communication towers shall be designed and constructed so as to accommodate collocation of a least six service providers. The Town of Lee shall maintain a list of all communication tower applicants. No new communication tower shall be permitted unless the applicant demonstrates, in writing, that no existing communication tower or structure can accommodate the applicant's proposed antenna, consistent with the requirements of this Ordinance.
- d. No tower permit will be granted and no communication towers shall be constructed, unless the applicant has a carrier ready for immediate location/occupancy thereon, and presents evidence to the Town of Lee of such.
- e. All applicants receiving a permit must in fact allow for collocation of antennas or other communication devices of at least six service providers, at a reasonable fee, and shall make or allow to be made minor modifications to the tower to accept such collocation.

**H. Tower application and provisions governing the issuance of tower permits.**

- 1. Prior to receiving a building permit for construction of the communication tower, the Town of Lee shall require the posting of security or performance bond, in an amount to be determined by the Town of Lee, not to exceed the cost of removal, to ensure removal of such communication tower(s) if it becomes abandoned as described in subsection O of this section.
- 2. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer, as otherwise required by law.
- 3. An applicant for a tower permit must submit the information described in this Section and a non-refundable fee as established by resolution of the Madison County Board of County Commissioners per interlocal agreement adopted May 27, 2015.
- 4. Information requirements. In addition to any information required by the Land Development Regulations in accordance with the development review

regulations of the Town of Lee code, applicants for a tower permit shall submit the following information:

- a. A scaled site plan clearly indicating the location, type and height of the proposed communication tower, on-site land uses and future land use, adjacent land uses and (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the applicable setback areas, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed communication tower and any other structures, topography, parking, and other information deemed by the Town of Lee to be necessary to assess compliance with this ordinance.
  - b. Legal description of the parent tract and tower site or leased parcel (if applicable).
  - c. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residential zoned properties.
  - d. The location of all communication towers and communication antennas within a one (1) mile radius of the location of the proposed communication tower.
  - e. A landscape plan showing specific landscape materials.
  - f. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
  - g. A description of compliance with the requirements of this Section and all applicable federal, state or local laws.
  - h. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
  - i. A description of the suitability of the use of existing communication towers or other structures to provide the services to be provided through the use of the proposed new tower.
  - j. The location of the proposed communication tower in digital format compatible with the Madison County's GIS System.
  - k. A list of all property owners within 300', or the height of the tower, whichever is greater.
- I. Maximum height. No tower shall be designed to a height greater than 350 feet unless the applicant demonstrates to the Town of Lee that a tower height greater than 350 feet is necessary to provide the proposed telecommunications service(s) or the maximum height restriction is inconsistent with Federal law.

1. Minimum yard requirements. There are no minimum yard requirements for communication towers.
2. Illumination. Communication towers shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration (FAA).
3. Finished color. Communication towers not requiring FAA painting/markings shall have a galvanized finish.
4. Structural design. Communication towers shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard, according to the latest EIA/TIA 222 Standards, to adjoining properties. Communication towers shall be constructed to the latest EIA/TIA 222/Standards, as published by the Electronic Industries Association, which may be amended from time to time, and all applicable building codes. Further, any improvements and /or additions (i.e., antenna, satellite dishes, etc.) to existing communication towers shall require submission of site and structural plans sealed and verified by a professional engineer which demonstrate compliance with the latest EIA/TIA 222 Standards in effect at the time of said improvement or addition. Said plans shall be submitted to and reviewed and approved by the Town of Lee in accordance with its site plan review process.
5. Fencing. A minimum eight foot finished masonry wall or an eight foot fence with not less than 85% opacity shall be required around all communication tower sites. Access to the tower shall be through a locked gate.
6. No advertising. Neither the communication tower nor the tower site shall be used for advertising purposes and shall not contain any signs for the purpose of advertising.
7. Landscaping. The visual impacts of residentially or commercially located communication towers shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures as follows:
  - a. A row of shade trees a minimum of ten (10) feet tall and a maximum of twenty (20) feet apart shall be planted around the perimeter of the leased parcel;
  - b. A continuous hedge at least thirty-six (36) inches high at the time of planting, capable of growing to at least forty-eight (48) inches in height within eighteen (18) months, shall be planted in the landscape buffer;
  - c. All required landscaping shall be of the evergreen variety;
  - d. All required landscaping shall be xeriscape tolerant or irrigated and properly maintained to ensure good health and vitality;
  - e. Required landscaping shall be installed outside the fence or wall; and



- f. Existing vegetation shall be preserved to the maximum extent practicable and may be credited as appropriate toward meeting landscaping practicable. And may be credited as appropriate toward meeting landscaping requirements.
  - g. An applicant may request deviation to the standards in this Section in accordance with applicable The Town of Lee codes.
- J. The Town of Lee shall consider the following factors in determining whether to issue a tower permit.
  - 1. Height of the proposed communication tower.
  - 2. Proximity of the communication tower to residential structures and residential district boundaries;
  - 3. Nature of uses on adjacent and nearby properties, within five hundred (500) feet of the tower site property line;
  - 4. Surrounding topography;
  - 5. Surrounding tree coverage and foliage;
  - 6. Design of the tower, 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 or other structures.
- K. No new communication tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town of Lee that no existing communication tower or structure can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Town of Lee related to the availability of suitable existing communication towers or other structures. The Town of Lee may hire, at the expense of the applicant, an expert to evaluate this information and advise the Town of Lee. Evidence submitted to demonstrate that no existing communication tower or structure can accommodate the applicant's proposed communication antenna may consist of any of the following:
  - 1. No existing communication towers or structures are located within the geographic area which meet applicant's engineering requirements.
  - 2. Existing communication towers or structures are not of sufficient height to meet applicant's engineering requirements, and may not be altered to meet such requirements.
  - 3. Existing communication towers or structures do not have sufficient structural strength to support applicant's proposed communication antenna and relate equipment.

4. The applicant's proposed communication antenna would cause electromagnetic interference with the communication antenna on the existing communication towers or structures, or the communication antenna on the existing communication towers or structures would cause interference with the applicant's proposed communication antenna.
  5. The fees, costs, or contractual provisions required by the owner in order to share an existing communication tower or structure or to adapt an existing communication tower or structure for sharing renders collocation infeasible or unreasonable. Costs exceeding new communication tower development are presumed to be unreasonable.
  6. The applicant demonstrates that there are other limiting factors that render existing communication towers and structures unsuitable.
- L.** The Town of Lee encourages the users of towers and antennas to submit a single application for approval of multiple towers and /or antenna sites, and to utilize existing public facilities owned by the Town of Lee through lease situations as sites.
- M.** Nonconforming communication towers. To the extent set forth herein, the restrictions on nonconforming uses and structures contained in the Town of Lee Land Development Code are modified and supplemented by this Section. Existing nonconforming communication towers may be repaired if the tower has received damage to no more than 50% of its structure. If existing nonconforming communication towers receive damage to more than 50% of its structure, the tower may not be repaired or rebuilt unless it complies with the provisions of this ordinance. Building permits to rebuild the tower shall comply with the applicable Town of Lee codes and shall be obtained within ninety (90) days from the date the tower is damaged or destroyed. If no permit is applied for, or obtained, or if said permit expires, the communication tower shall be deemed abandoned as specified in paragraph O hereinafter.
- N. Abandonment.**
1. In the event the Town Manager or his designee suspects that the use of any communication tower has been discontinued for a period of one hundred twenty (120) consecutive days, the Town Manager or his designee shall send written notice to the addresses provided on the permit application so notifying the owner of the tower and the property owner. Such notices shall be sent by both regular and certified mail return receipt requested. If no written response is received by the Town of Lee within sixty (60) days mailing notice, the tower shall be deemed abandoned as the 60th day set out above.
  2. Upon timely receipt of written response, the Lee Town Council may summarily determine that the tower in question is not abandonment or hold an evidentiary hearing and determine whether the tower is in fact abandoned and if so, the date of abandonment.

3. To find the tower has been abandoned, the Lee Town Council must determine by the greater weight if the evidence presented at such hearing that the tower had not been used for any communication purpose for sixty (60) days or more prior to the date of mailing the notice set out above. The party asserting the tower is not abandoned shall bear the burden of proof at such hearing.
  4. Upon the determination of such abandonment, the owners/operator of the tower shall have an additional sixty (60) days within which to demonstrate to the Town of Lee that the owner/operator has: (1) reactivated the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower, or (2) dismantled and removed the tower. At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, any exception and/or variance approval for the tower shall automatically expire.
  5. In the event the communication tower is not reactivated or removed as provided for above, the Town of Lee may dismantle and/or remove the communications tower and the owner/operator or owner of real property upon which the tower is located agrees that the Town of Lee may recover the expense of the removal from the owner/operator, or said owner of real property, or both.
    - a. Any abandoned communications. Towers dismantled and/or removed by the Town of Lee shall immediately become the property of the Town of Lee, along with all equipment or other personal attached property attached thereto, and the Town of Lee may retain or dispose of said towers and other personal property as it deems is in the best interest of the Town of Lee.
    - b. In no event shall the Town of Lee be required to dismantle and/or remove any abandoned communication tower. In lieu of or in addition to dismantling and/or removing abandoned communication towers, the Town of Lee may utilize its Code Enforcement powers as set out in Chapter 162, Florida Statutes.
- O.** Certification of Compliance with Federal Communication Commission (FCC) NIER Standards. Prior to receiving final inspection, adequate proof shall be submitted to the Town Manager or his designee documenting that the communication tower complies with all current FCC regulations for nonionizing electromagnetic radiation (NIER). The City Manager or his designee shall indicate on the site plan approval that this certification has been received.
- P.** Ownership marketing. All Communication towers shall be marked with proper indicia of ownership, located at the entry gate.
- Q.** All provisions of this code must be met prior to the issuance of a certificate of occupancy.

Section 3. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 4. Conflict. All ordinances or portions of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

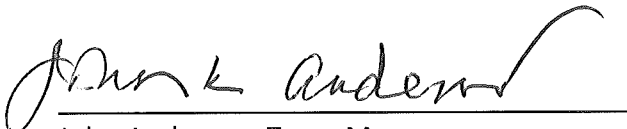
Section 5. Effective Date. Pursuant to section 125.66, Florida Statutes, as amended, a certified copy of this ordinance shall be filed with the Florida Department of State by the Town Manager of the Town of Lee within (10) days after enactment by the Lee Town Council. This ordinance shall become effective upon filing of the ordinance with the Florida Department of State.

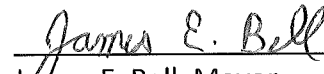
Section 6. Authority. This ordinance is adopted pursuant to the authority granted by Section 125.01, Florida Statutes, as amended, and Sections 163.3161 through 163.3217, Florida Statutes, as amended.

PASSED AND DULY ADOPTED, in regular sessions, with a quorum present and voting, by the Town Council of Lee this 10<sup>th</sup> day of December, 2019.

ATTEST:

TOWN COUNCIL OF LEE  
MADISON COUNTY, FLORIDA

  
\_\_\_\_\_  
John Anderson, Town Manager

  
\_\_\_\_\_  
James E. Bell, Mayor

