

ORDINANCE NUMBER 204

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA, AMENDING THE TOWN'S LAND DEVELOPMENT CODE BY ADDING ARTICLE III, DIVISION I, OF CHAPTER 94 OF THE TOWN OF CINCO BAYOU CODE OF ORDINANCES, WHICH ESTABLISHES SUBSTANTIVE AND PROCEDURAL REQUIREMENTS FOR TELECOMMUNICATIONS TOWERS AND ANTENNAS; PROVIDING FOR AUTHORITY; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR PURPOSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN OF CINCO BAYOU, FLORIDA ("TOWN"), AS FOLLOWS:

**SECTION 1: AUTHORITY.**

The authority for the enactment of this Ordinance is Chapter 163, Part II, *Florida Statutes*; and Sections 166.021 and 166.041, *Florida Statutes*.

**SECTION 2: FINDINGS OF FACT.**

**WHEREAS**, the Town has amended its Comprehensive Plan to provide for telecommunication towers; and,

**WHEREAS**, this Ordinance amends Chapter 94 of the Town of Cinco Bayou Code of Ordinances, providing for "Supplemental Regulations for Specific Uses, Division 1, Telecommunications Towers"; and

**WHEREAS**, a public hearing has been conducted after due public notice by the Cinco Bayou Town Council sitting as the Local Planning Agency with its recommendations reported to the Town Council; and

**WHEREAS**, a public hearing has been conducted by the Town Council after due public notice; and

**WHEREAS**, the Town Council has determined that this Ordinance is consistent with the adopted Comprehensive Plan and is in the best interests of the Town and its citizens.

**SECTION 3: PURPOSE.**

The purpose of this Ordinance is to amend the Code of Ordinances to provide land development regulations for telecommunications towers and antennas. The amendments are set forth herein.

**SECTION 4: AMENDMENT TO CHAPTER 94, TOWN OF CINCO BAYOU CODE OF ORDINANCES.**

The Code of Ordinances, Town of Cinco Bayou, Florida, is hereby amended by adding a new Article to Chapter 94 to be numbered, Article III, which Article is adopted as set forth below:

**Article III. Supplemental Regulations for Specific Uses.**

**Division 1. Telecommunication Towers and Antennas.**

**Section 94-130. Generally.**

- (a) *Purpose and Intent.* It is the intent of the Town to allow telecommunications towers and/or antennas in compliance with State and federal regulations. It is further the intent of the Town to protect the public health, safety, and welfare through regulating the placement and design of allowable telecommunications towers. The regulations in this Division are designed to meet the following purposes:
- (1) To protect residentially zoned areas and residential development from potential adverse impacts of telecommunications towers that are placed in inappropriate locations;
  - (2) To minimize visual impacts of telecommunications towers through site design requirements, location requirements, and innovative camouflage techniques, in accordance with acceptable engineering and planning principles; and
  - (3) To allow telecommunications towers that meet State, federal, and local requirements for location, site design, and appearance.
- (b) *Collocation.* Telecommunications towers proposed within the Town shall provide for collocation consistent with State and federal regulations.
- (c) *Consistency with the Cinco Bayou Comprehensive Plan.* Applications for telecommunications towers and antennas shall be consistent with all provisions of the Cinco Bayou Comprehensive Plan.

**Section 94-131. Definitions.**

The following definitions apply to terms used within this Division.

- (a) *Antenna* – means a transmitting or receiving device used in telecommunications that radiates or captures electromagnetic waves.



- (b) *Collocation* – means the mounting or installation of an antenna on an existing tower, building, or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (c) *Parent parcel* – means the entire parcel, whether platted or described by metes and bounds, which is under unified ownership. A portion of the parent parcel may be defined as a telecommunications tower lot as described in section 94-131(f).
- (d) *Stealth facility* – means any telecommunications tower that is designed to blend into the surrounding environment. Examples of stealth facilities include architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to look like trees.
- (e) *Telecommunications tower* - means any structure designed and constructed for the purpose of supporting one or more communication antennas, including camouflaged towers, conventional wireless towers, and low impact or stealth towers. The term includes towers to support antennas for transmitting or receiving personal wireless services and cellular telephone communications towers. The term includes equipment fundamental to the operations of the tower. The term does not include broadcast towers, amateur radio towers, or those towers used solely for private use dispatch services.
- (f) *Telecommunication tower lot* – means the leased parcel on which the telecommunications tower is installed. This definition does not mean the parent parcel.

**Section 94-132. Applicability.**

All new telecommunications towers and antennas proposed to locate in the Town shall be subject to the regulations in this Division, except as provided in section 94-137(c).

**Section 94-133. Allowable Locations for Telecommunications Towers.**

Telecommunications towers and/or antennas are permissible in the following zoning districts: C-1, C-2, and on lands designated by the Cinco Bayou Comprehensive Plan for Commercial use, Recreation or Conservation use, or Public lands.

**Section 94-134. Requirements for Telecommunications Towers and Antennas.**

- (a) All telecommunications towers and antennas shall be maintained in good condition and in accordance with all standards in this Division. No additions, changes, or modifications shall be made except in conformity with the standards and procedures of this Division.
- (b) At all times each telecommunications tower shall be insured for liability in an amount of not less than \$5,000,000.00.

- (c) In the event that a telecommunications tower or antenna is abandoned, the owner of the telecommunications tower or antenna shall restore the property to its condition prior to the installation of the tower or antenna. For each telecommunications tower or antenna, the owner shall provide to the Town a bond or other security in an amount sufficient to ensure that the telecommunications tower lot and parent parcel, or the structure on which an antenna is mounted, are restored to the condition existing prior to installation. Restoration shall be complete not later than six (6) months after abandonment.

### **Section 94-135. Design Requirements for Telecommunications Towers.**

The following site design and appearance regulations apply to telecommunications towers that are installed on the ground. Where the provisions of the underlying zoning district differ from the following provisions, the following provisions apply.

- (a) All telecommunications towers shall be located in a manner that minimizes the effect on environmental resources.
- (b) A new telecommunications tower shall be permissible only if the applicant demonstrates that collocation is not available.
- (c) *Lot size.* The minimum area devoted to the telecommunications tower lot and the equipment essential to the operation of one (1) telecommunications tower shall be fifty (50) feet by fifty (50) feet. The maximum area shall be 100 feet by 100 feet.
- (d) *Measurement of required setbacks.* Setbacks required by this Division shall be measured from the base of the tower to the property line of the parent parcel on which it is located.
- (e) *Setbacks from property lines.* Telecommunications towers shall be setback a minimum of fifty (50) feet from front, side, and rear property lines of the parent parcel.
- (f) *Separation.* A new telecommunications tower shall be located a minimum of 1,500 feet from any existing telecommunications tower.
- (g) *Height limitations.* The maximum height of telecommunications towers shall not exceed 150 feet. The measurement of telecommunications tower height shall include the tower, antennas, and base pad, and shall be measured from the finished grade at the tower pad location.
- (h) *Illumination.* Telecommunications towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration.
- (i) *Structural design.*



- (1) Telecommunications towers shall be monopole structures.
  - (2) Telecommunications towers shall be designed to accommodate collocators. The number of collocators shall be included in the design specifications.
  - (3) Telecommunications towers shall include one (1) emergency generator of sufficient size to accommodate the needs of all collocated antennas. The application for the tower shall include documentation to ensure that future collocators shall be required to use the existing generator.
  - (4) Telecommunications towers shall be constructed in accordance with the standards in the latest edition of the following publications:
    - i. Construction standards for telecommunications towers, published by the Electronic Industries Association.
    - ii. "Minimum Design Load for Buildings and Structures," published by the American Society of Civil Engineers.
    - iii. "Guide to the Use of Wind Load Provisions," published by the American Society of Civil Engineers.
    - iv. Florida Building Code.
- (j) *Fences.* A fence, not to exceed eight (8) feet in height, shall be installed on the perimeter of the telecommunications tower lot. The fence may be installed inside the perimeter of the telecommunications tower lot in order to accommodate landscaping located at the perimeter of the telecommunications tower lot. The fence may be wood, masonry, or vinyl. Wood or masonry fences shall be painted to blend with the surrounding environment. Vinyl fences shall be of a color to blend with the surrounding environment. Barbed wire or other materials shall be installed at the top of the fence to prevent unauthorized access to the tower. Such materials shall not exceed two (2) feet in height above the fence.
- (k) *Vegetation protection.* Existing vegetation shall be retained to the maximum extent possible, except for exotic invasive vegetation. Exotic invasive vegetation shall be removed and replaced with landscape materials that comply with section 94-135(l).
- (l) *Landscaping required.*
- (1) Telecommunications towers shall be required to provide landscaping outside the fence enclosing the tower and at the property line of the parent parcel. Perimeter landscaping shall be required only on property lines that are within 150 feet of the telecommunications tower lot line. Where landscaping is provided at the property line of the parent parcel, a recorded easement shall be provided to ensure the continued provision and maintenance of the

landscaping so long as the telecommunications tower is in operation.

- (2) Plants shall be selected in consideration of the site soils, moisture, and salt conditions. All plant materials shall be evergreen.
  - (3) Trees for perimeter landscaping shall be selected from the following list: Southern Red Cedar; Live Oak; Laurel Oak; Dahoon Holly; East Palatka Holly; and American Holly. Six (6) trees per 100 linear feet are required. At least two (2) species of trees shall be used.
  - (4) Perimeter landscaping is intended to provide an opaque screen between adjacent properties and the telecommunications tower. Trees shall be planted in a double staggered row and placed in an irregular pattern so as to appear more natural. Tree spacing may vary, but shall not exceed an average of fifteen (15) feet, center to center.
  - (5) The minimum tree size shall be twelve (12) feet high at the time of installation. Tree trunk caliper shall be appropriate to the selected species natural growth habits.
  - (6) Shrubs shall be required outside the fence. Shrubs shall be selected from the following list: Wax Myrtle; Thorny Elaeagnus; or Saw Palmetto.
  - (7) The minimum shrub size shall be thirty-six (36) inches high at the time of installation.
  - (8) Shrubs shall be planted in irregular groups. Staggered rows of shrubs are encouraged to produce a more natural appearance. There shall be a minimum of twenty-five (25) shrubs planted 100 linear feet of fence.
  - (9) Existing on-site vegetation may be counted toward meeting the minimum requirements for vegetation.
  - (10) All landscape materials shall meet Florida No. 1 standards, as defined in "Grades and Standards for Nursery Plants," published by the Florida Department of Agriculture and Consumer Services.
  - (11) There shall be no irrigation system installed. However, a watering plan shall be provided to ensure that all installed vegetation will thrive and will be well established one (1) year after installation. Any materials that die shall be replaced within six (6) months.
- (m) Access. An access driveway shall meet the following standards:
- (1) A recorded easement shall be provided to ensure continuing availability of access.



- (2) The access driveway may be either paved or unpaved. The driveway shall be stabilized and have a structural value of two (2) or greater.
  - (3) The access drive shall be a maximum of twelve (12) feet in width.
  - (4) The access drive shall be designed to provide adequate turn-around space, and may be designed as a hammerhead or T-type turn-around.
- (n) *Parking.* One (1) parking space shall be provided.
- (1) The space may be paved or unpaved, shall be stabilized, and shall have a structural value of two (2) or greater.
  - (2) The space shall be a minimum of ten (10) feet wide and eighteen (18) feet long.
  - (3) The space may be located on the parent parcel. An easement or recorded agreement shall be required to ensure that the parking space is provided and maintained as long as the telecommunications tower is in operation.
  - (4) Where parking for other purposes exists on the parent parcel, one (1) space may be dedicated to use by the telecommunications tower. The availability of this parking space shall be ensured through a recorded agreement.
- (o) *Stealth techniques required.* The telecommunications tower shall be designed and painted to resemble natural objects, such as trees that are typical of the surrounding area.

**Section 94-136. Design Requirements for Antennas Installed on Existing Above-ground Structures.**

The following site design and appearance regulations apply to one (1) or more antennas that are installed on existing buildings or structures, except for an exempt antenna pursuant to section 94-137(c). Where the provisions of the underlying zoning district differ from the following provisions, the following provisions apply.

- (a) *Height limitations.* The measurement of height shall include the existing building or structure, any structure to support the antennas, and the antennas. Height shall be measured from the finished grade of the building or structure on which the antennas are located to the uppermost point of the building or structures, support structure, or antenna. The maximum height shall not exceed 150 feet.
- (b) *Structural design.* Antennas attached to, or supported by, an existing building or structure shall not impose any undue stress on the building or structure. Structures to support antennas on existing buildings shall be constructed in accordance with

the standards in the latest edition of the following publications:

- (1) Construction standards for telecommunications towers, published by the Electronic Industries Association.
  - (2) "Minimum Design Load for Buildings and Structures," published by the American Society of Civil Engineers.
  - (3) "Guide to the Use of Wind Load Provisions," published by the American Society of Civil Engineers.
  - (4) Florida Building Code.
- (c) *Stealth techniques required.* The structure and antennas shall be screened with architectural elements or integrated into architectural elements. Examples of appropriate stealth techniques include elements such as chimneys, spires, steeples, or cupolas. Screening or other elements may be proposed, so long as the result is an integration of the antenna and any supporting structure into the existing building design features.

**Section 94-137. Procedures.**

- (a) *New Wireless Tower or Antenna -- No Collocation.* An application for a new wireless tower or antenna shall be processed as a major development. The applicant shall comply with the following requirements:
- (1) The applicant shall schedule a pre-application conference with the Town Manager/Clerk. The pre-application conference shall be conducted in accordance with the requirements of section 54-156.
  - (2) The applicant shall comply with the submittal requirements set forth in sections 54-164 and 94-138.
  - (3) The Town Manager/Clerk shall notify the applicant within seven (7) working days after the date on which the applicant submits an application whether the application is properly completed and has been properly submitted. Such notification shall indicate, with specificity, any deficiencies which, if cured, would make the application properly completed.
  - (4) The determination of completeness is not a determination of compliance with substantive standards and criteria.
  - (5) Once an application is deemed complete, the Town Manager/Clerk shall schedule the application for review by the Technical Review Committee.



(6) Within five (5) days of the completeness determination, the applicant shall submit a complete application for a building permit to the County and to the Town. The applicant shall provide written verification to the Town Manager/Clerk of such submittal to the County within five (5) days thereafter.

(7) Members of the Technical Review Committee shall receive copies or otherwise obtain information pertinent to their functional areas prior to the scheduled review meeting.

(8) The Technical Review Committee shall review the application in accordance with the requirements of section 54-158(5).

(9) The Planning and Zoning Board shall review the application in accordance with the requirements of section 54-158(6). The Town Manager/Clerk shall prepare a summary of the Planning and Zoning Board's recommendation.

(10) The Town Council shall conduct a quasi-judicial hearing in accordance with the requirements of section 94-139. At the conclusion of the quasi-judicial hearing, the Town Council shall approve or deny the application.

(11) The Town Council shall render its decision within eighty (80) working days after the date on which the applicant submits a properly completed application to the Town.

(12) Within five (5) working days of the Town Council's approval of an application for a Final Development Order, the Town Manager shall issue a Final Development Order and a letter of authorization to the County to issue the necessary construction permits.

(13) If the Town Council fails to act within the time-frame mandated by section 94-137(a)(11), the application shall be deemed automatically approved, and the applicant may proceed with placement of the facility without interference or penalty by the Town.

(14) The applicant may voluntarily waive the time-frames set forth in this section.

(15) The Town may require a one-time waiver in the case of a declared local, state, or federal emergency that directly affects the administration of all of the Town's permitting activities. Other than this one-time waiver, the Town may request, but not require, an applicant to waive the time-frames set forth in this section.

- (b) *Collocation of Wireless Communications Facility -- Height Increase.* An application for the collocation of a wireless communications facility, which increases the height of the existing structure, shall be processed as a major development, and the

applicant shall comply with the following requirements:

- (1) The requirements of section 94-137(a)(1) - (8), (10), and (12) - (15).
  - (2) The Town Council shall render its decision within thirty-five (35) working days after the date on which the applicant submits a properly completed application to the Town.
- (c) *Collocation of Wireless Communications Antenna -- No Height Increase.* An applicant who seeks approval to collocate a wireless communications antenna on an above-ground structure, and any related equipment to service the antenna, is not required to obtain a development order, provided the height of the existing structure is not increased. Rather, the applicant shall apply for a building permit in accordance with the requirements of section 58-52.

**Section 94-138. Supplemental Submittal Requirements.**

- (a) Evidence of proper Federal Communications Commission licensure.
- (b) A statement of intent that collocators will be permitted in cases where devices are required or proposed to accommodate more than one (1) provider. The positions of anticipated collocator antennas on the mount and the space provided for collocator equipment shelters shall be shown on all site plans and elevations.
- (c) Certification that, as proposed, the device should not cause harmful electrical interference with any Town-operated radio frequency devices in existence at the time of the application, and certification that the applicant acknowledges its obligation to take all steps necessary to resolve any interference that actually occurs.
- (d) Certification as to compliance with, or exemption from, any federal or State regulations applicable to siting.
- (e) Certification that the proposed mount complies with regulations administered by the FAA, FCC, and any State reviewing authority, or that the mount is exempt from those regulations.
- (f) Description of liability insurance or binding for the device.
- (g) Identification of all existing users (including the applicant) on the support structure to be replaced. This listing shall include existing antennas, types of support structure, and mounting positions for each such user, and shall identify the FCC radio service for each such facility. The applicant shall also identify the proposed location for each such antenna as well as any additional facilities which such user intends to place upon the proposed replacement structure.



- (h) For each such existing user, the applicant shall identify any future loading for which it has been requested to reserve capacity for future use. For any such users for which the applicant is not reserving future space, the applicant shall certify that it has contacted each such user and has been advised that such user does not anticipate requiring any additional support structure capacity at that site in the future.
- (i) The applicant shall identify all prospective users of the support structure, not identified above, for which it has either entered into negotiations or agreed to provide space on the support structure. The applicant shall identify the proposed mounting location for each antenna to be utilized by each such prospective user, identify the proposed mounting location for each antenna to be utilized by each such prospective user, and identify capacity for which the applicant has been requested to reserve future loading capacity.
- (j) The applicant shall identify all additional capacity which will be available for future collocation use at the proposed structure beyond the collocation users identified in sections 94-138(g)-(i).
- (k) A full set of engineering drawings, which drawings shall be stamped by a professional engineer ("PE") licensed in the State, specifying the dimensions of all structural members and mounting facilities to be incorporated into the support structure for all loading identified in sections 94-138(g)-(j), and shall expressly identify each such antenna as having been incorporated into the support structure design. These drawings shall also include the foundation design for the proposed structure. In addition, the PE shall certify compliance with both the then-current EIA/TIA 222 standard as well as the applicable provisions of the Standard Building Code, which includes a 120-mph wind load, as defined by the American Society of Civil Engineers, Publication No. 7 of 1993 (ASCE 7-93), and the 1997 Standard Building Code, or its then-current replacement. Where conflicting standards are set forth in those documents, the more stringent standard shall be utilized in the design.
- (l) An estimate of the cost to remove all structures in the event that the structure is abandoned or discontinued. The cost estimate shall be signed and certified by a general contractor licensed in the State.

#### **Section 94-139. Quasi-Judicial Hearing.**

(a) *Generally.*

- (1) The hearing shall be called to order by the chairman at the time specified on the public notice.
- (2) A quorum of the Town Council must be present.

- (3) Town staff shall confirm that the notice requirements were met.
  - (4) At the beginning of the hearing, the members of the Town Council shall disclose any conflicts and ex parte contacts.
  - (5) The hearing shall be conducted in a manner to protect the due process rights of the applicant and affected parties.
  - (6) All testimony presented by the applicant, any affected party, any witness for a party, or Town staff (other than legal advice given by the Town attorney) shall be given under oath.
  - (7) The applicant, any affected party, and Town staff may cross-examine any person presenting information at the hearing.
- (b) *Presentation by Staff.* Town staff shall present staff's analysis of the pending application.
- (c) *Presentation by Applicant.* The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted.
- (d) *Presentation by Affected Party.* An affected party is entitled to present evidence opposing the application.
- (e) *Comments from the General Public.* Members of the general public may provide comment to the Town Council. Unless such testimony is provided under oath and subject to cross-examination, it shall not constitute competent substantial evidence.
- (f) *Deliberations.*
- (1) Deliberations shall be guided by Robert's Rules of Order and such other rules and procedures as may be adopted by the Town Council.
  - (2) The Town Council may question the applicant, other affected parties, witnesses, and Town staff at any time during the proceedings.
- (g) *Decisions.*
- (1) The Town Council may approve or deny the application.
  - (2) The Town Council's decision to approve or deny the application shall be based upon competent substantial evidence presented during the quasi-judicial hearing.



- (3) The Town Council shall enter a written order which contains findings of fact and conclusions of law in support of its decision.
- (4) The Town Council's written order shall be filed with the Town Clerk.

**Section 94-140. Abandonment.**

- (a) In the event all legally approved use of a telecommunications tower and/or antenna has been discontinued for a period of 180 consecutive days, the telecommunications tower and/or antenna shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Town Manager, who shall have the right to request documentation and/or affidavits from the owner of the telecommunications tower and/or antenna regarding the issue of usage.
- (b) At such time as the Town Manager reasonably determines that a telecommunications tower and/or antenna is abandoned, the Town Manager shall provide the owner of the telecommunications tower and/or antenna with written notice of an abandonment determination by certified mail. Failure or refusal by the owner to respond, within sixty (60) days of receipt of such notice, shall constitute prima facie evidence that the telecommunications tower and/or antenna has been abandoned.
- (c) If the owner of the telecommunications tower and/or antenna fails to respond or fails to demonstrate that the telecommunications tower and/or antenna is not abandoned, the telecommunications tower and/or antenna shall be considered abandoned and the owner of the telecommunications tower and/or antenna shall have an additional 120 days within which to:
  - (1) Reactivate the use of the telecommunications tower and/or antenna;
  - (2) Transfer the telecommunications tower and/or antenna to another owner who makes actual use of the telecommunications tower and/or antenna within the 120-day period; or
  - (3) Dismantle and remove the telecommunications tower and/or antenna.

**SECTION 5: SEVERABILITY.**

If any section, phase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon passage.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF CINCO BAYOU,  
FLORIDA ON THIS 1st DAY OF DECEMBER 2003.

ATTEST:

THE TOWN OF CINCO BAYOU, FLORIDA

BY: Nell Webb  
Nell Webb  
Town Manager/Clerk

BY: Norm Frucci  
Norm Frucci  
Mayor

[SEAL]

The form and legal sufficiency of the  
foregoing has been reviewed and  
approved by the Town Attorney.

C. Jeffrey McInnis  
Town Attorney

