

ORDINANCE NO. 4769

AN ORDINANCE AMENDING CHAPTER 94 OF THE BOSSIER PARISH CODE OF ORDINANCES, "ROADS AND BRIDGES", BY ADDING ARTICLE V "SMALL WIRELESS FACILITIES"

WHEREAS, the Parish of Bossier desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the Parish to promote the management of the right-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the Parish recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses, and schools within the Parish; and

WHEREAS, the Parish recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and

NOW, THEREFORE BE IT ORDAINED by the Bossier Parish Police Jury in regular and legal session on this 20th day of May, 2020, that Chapter 94, "Roads and Bridges", of the Bossier Parish Code of Ordinances, be and is hereby amended to read as follows:

ARTICLE V. SMALL WIRELESS FACILITIES

Section 94-130. Purpose.

(a) Purpose: The purpose of this Section is to establish policies and procedures for the placement of small wireless facilities in the rights-of-way within the Parish's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Parish's rights-of-way and the Parish as a whole.

(b) Intent: In enacting this Section, the Parish is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:

- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) Prevent interference with the facilities and operations of facilities lawfully located in the rights-of-way or public property, as well as public safety vehicles;
- (4) Protect against environmental damage, including damage to trees;
- (5) Preserve the character of the neighborhoods in which facilities are installed; and
- (6) Facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.

(c) Conflicts with Other Sections. This Section supersedes all Sections or parts of Sections adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Section 94-131. Definitions.

The terms below have the following meanings for purposes of this ordinance:

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable Codes means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of a destruction of property or injury to persons to the extent not inconsistent with the terms of this Section.

Applicant means any person who submits an application and is a wireless provider.

Application means a request submitted by an applicant (1) for a Permit to collocate small wireless facilities; or (2) to approve the installation or modification of a utility pole or wireless support structure.

Parish-Owned Pole means (1) a utility pole owned or operated by the Parish in the rights-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (2) a pole or similar structure owned or operated by the Parish in the rights-of-way that supports only Wireless Facilities.

Parish means the Parish of Bossier, Louisiana.

Police Jury means the Bossier Parish Police Jury of the Parish of Bossier, Louisiana.

Parish Engineer means the person appointed by the Administrator as the manager to perform the responsibilities in this Ordinance.

Collocate means to install, mount, maintain, modify, operate or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Collocation" has a corresponding meaning.

Day means calendar day.

Fee means a one-time charge.

Person means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Parish.

Rate means a recurring charge.

Rights-of-way or *ROW* means the area on or below, or above a roadway, highway, street, sidewalk, alley, or similar property, but not including a federal interstate highway, in the Parish.

Small Wireless Facility means a wireless facility that meets both of the following qualifications: (1) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (2) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

Utility Pole means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of

ownership, including Parish owned poles. Such term shall not include structures supporting only Wireless Facilities.

Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (1) equipment associated with wireless communications and (2) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which equipment is collocated.

Wireless Infrastructure Provider means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

Wireless Provider means a wireless infrastructure provider or a wireless services provider.

Wireless Services means any services, whether at a fixed location or mobile, provide using wireless facilities.

Wireless Service Provider means a person who provides wireless services.

Wireless Support Structure means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

Section 94-132. Permitted Use; Application and Fees.

(a) Permitted Use: Collocation of a small cell facility or a new or modified utility pole or wireless support structure for the collocation of a small cell facility shall be a permitted use subject to the restrictions in Section 94-134.

(b) Permit Required. No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a permit therefore, except as otherwise provided in this Section.

(c) Permit Application. All small wireless facility applications for permits filed pursuant to this Section shall be on a form, paper or electronic, provided by the Parish. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.

(d) Application Requirements. The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

- (1) The applicant’s name, address, telephone number, and e-mail address;
- (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
- (3) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
- (4) A small wireless facility shall comply with all applicable codes.

(e) Routine Maintenance and Replacement. An application shall not be required for: (1) routine maintenance; and (2) the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height.

(f) Information Updates. Any amendment to information contained in a permit application shall be submitted in writing to the Parish within thirty (30) days after the change necessitating the amendment.

(g) Application Fees.

- (1) Unless otherwise provided by law, all applications for permits pursuant to this Section shall be accompanied by a fee for actual, direct, and reasonable cost incurred by the Parish related to processing the application, but shall not exceed \$500.00 each for each small wireless facilities addressed in the application and \$1,000.00 per application for each wireless support structure or attachment to a Parish owned pole.
- (2) The amount of actual, direct, and reasonable costs for application fees shall not include costs incurred in relation to third-party legal or engineering review of an application; or direct payment or reimbursement of third-party public right-of-way rates or fees charged on a contingency basis or under a result-based arrangement.

Section 94-133. Action on Permit Applications.

- (a) (1) Review of Small Cell Facility Applications: The Parish shall review the application for a small wireless facility permit in light of its conformity with applicable regulations of this Section and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirement:
 - (i) Within ten (10) days of receiving an Application, the Parish must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the Parish must specifically identify the missing information.
 - (ii) Make its final decision to approve or deny the application within sixty (6) days; and
 - (iii) Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the Parish denies the application. The applicant may cure the deficiencies identified by the Parish and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The Parish shall approve or deny the revised application within thirty (30) days of receipt of the amended application. The subsequent review by the Parish shall be limited to the deficiencies cited in the original denial.
- (2) If the Parish fails to act on an application within the sixty (60) day review period, the applicant may provide notice that the time period for acting has lapsed and the application is then deemed approved.
- (3) An applicant seeking to construct, modify or replace a network of small wireless facilities may, at the applicant's discretion, file a consolidated application and receive a single permit for multiple small wireless facilities. Provided however, the parish's denial of any site or sites within a single application shall not affect other sites submitted in the same application. The Parish shall grant a permit for any and all sites in a single application that it does not deny subject to the requirements of this Section.

Section 94-134. Small Wireless Facilities in the Right of Way; Maximum Height; Other Requirements.

(a) **Maximum Size of Permitted Use.** Small wireless facilities, and new or modified utility poles and wireless support structures for the collocation of small wireless facilities may be placed in the rights-of-way as a permitted use subject to the following requirements:

- (1) Each new or modified utility pole or wireless support structure installed in the rights-of-way shall not exceed the greater of:
 - (i) Ten (10) feet above the tallest existing utility pole in the rights-of-way in place as of the effective date of this Section located within 500 feet of the new pole; or,
 - (ii) Fifty (50) feet above ground level.
- (2) New small wireless facilities in the rights-of-way shall not exceed the greater of:
 - (i) More than ten (10) feet above an existing utility pole or wireless support structure in the rights-of-way in place as of the effective date of this Section; or
 - (ii) Above the height for a new utility pole or wireless support structure under Section 94-133(a)(1).

(b) **Zoning.** Any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements.

(c) **Undergrounding Provisions.** Application shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way without prior zoning approval in areas zoned for single-family residential use, provided such requirement shall not prohibit the replacement of existing structures.

(d) **Location of Small Cell Facilities.** Applicant shall provide the latitude and longitude coordinates of each small cell facility. If a small wireless facility is to be placed in a residential area, a hearing before the Metropolitan Planning Commission must be held.

Section 94-135. Effect of Permit.

(a) **Authority Granted; No property Right or Other Interest Created.** A permit from the Parish authorizes an applicant to undertake only certain activities in accordance with this Section, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) **Duration.** No permit for construction issued under this Section shall be valid for a period longer than twelve (12) months unless construction has actually begun within that period and is thereafter diligently pursued to completion.

Section 94-136. Removal, Relocation or Modification of Small Wireless Facility in the Right of Way.

(a) **Notice.** Within ninety (90) days following written notice from the Parish, wireless providers shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the Parish has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Parish improvement in or upon, or the operations of the Parish in or upon, the rights-of-way.

(b) **Emergency Removal or Relocation of Facilities.** The Parish retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the Parish, as the Parish may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Parish shall notify the wireless provider and

provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.

(c) Abandonment of Facilities. Upon abandonment of a small wireless facility within the rights-of-way of the Parish, the wireless providers shall notify the Parish within ninety (90) days. Following receipt of such notice, the Parish may direct the wireless provider to remove all or any portion of the small wireless facility if the Parish or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare.

Section 94-137. Right-of-Way Rates.

(a) Annual Rate. A wireless provider authorized to place small wireless facilities in the rights-of-way shall pay to the Parish compensation for the use of the rights-of-way in the amount of \$250.00 annually per small wireless facility.

(b) Cease Payment. A wireless provider is authorized to remove its facilities from the rights-of-way upon providing the Parish with at least thirty (30) days written notice and cease paying the Parish compensation for the use of the rights-of-way after removal of its facilities.

Section 94-138. Attachment to Parish Owned Utility Poles in the Right-of-Way.

(a) Annual Rate. The rate to place a small wireless facility on a Parish owned pole in the right-of-way shall be \$50.00 per year for all Parish owned poles in the rights-of-way. Such compensation together with the application fee and the rights-of-way fee specified in Section 94-132(g)(1) of this Chapter shall be the sole compensation that the wireless providers shall be required to pay the Parish.

(b) Cease Payment. A wireless provider is authorized to remove its facilities from the rights-of-way upon providing the Parish with at least thirty (30) days written notice and cease paying the Parish compensation for the use of the rights-of-way after removal of its facilities.

(c) Make-Ready. For Parish owned utility poles in the rights-of-way, the Parish shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested small wireless facility, including the pole replacement if necessary, within sixty (60) days after receipt of a complete request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the wireless provider.

Section 94-139. Change of Law.

In the event that any legislative, regulatory, judicial, or other action affects the rights or obligations of the Parties or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of small cells on Parish infrastructure or in the right-of-way, that differ, in any material respect from the terms of this Agreement ("New Law"), then either Party may, upon thirty (30) days written notice, require that the terms of this Agreement be renegotiated to conform to the New Law. Such conformed terms shall then apply on a going forward basis for all existing and new small cell installations, unless the New Law requires retroactive application, in which case such new terms shall apply retroactively, as required by the New Law. In the event that the Parties are unable to agree upon new terms within ninety (90) days after notice, then the rates contained in the New Law shall apply from the ninetieth (90th) day forward until the negotiations are completed, or a Party obtains a ruling regarding the appropriate conforming terms from a commission or court of competent jurisdiction.

This Ordinance shall be effective one month following adoption by the Bossier Parish Police Jury.

The provisions of this ordinance are deemed to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

The ordinance was offered by Mr. Salzer, seconded by Mr. Skaggs. Upon unanimous vote,
it was duly adopted on this 20th day of May, 2020.

RACHEL D. HAUSER
PARISH SECRETARY

JIMMY COCHRAN, PRESIDENT
BOSSIER PARISH POLICE JURY