

NOTICE OF INTRODUCTION OF ORDINANCE

NOTICE IS HEREBY GIVEN that the following entitled ordinance was introduced in writing in the form required for adoption at a meeting of the Parish Council of the Parish of Livingston, State of Louisiana, on October 8, 2020, and laid over for publication of notice:

L.P. ORDINANCE 20-29

AN ORDINANCE TO CREATE AND ENACT CHAPTER 70 "UTILITIES," ARTICLE VII "SMALL WIRELESS FACILITIES", SECTIONS 70-400 THROUGH SECTIONS 70-409, OF THE CODE OF ORDINANCES IN AND FOR THE PARISH OF LIVINGSTON TO ESTABLISH STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE PARISH OF LIVINGSTON.

NOTICE IS HEREBY FURTHER GIVEN that the Parish Council of said Parish will meet on Thursday, October 22, 2020, at six (6:00) o'clock p.m., at the Governmental Building, in the Livingston Parish Council Chambers, 20355 Government Boulevard, Livingston, Louisiana, 70754 at which time there will be a public hearing on the adoption of the aforesaid ordinance.

1/2 *Sandy C. Teal*

Sandy C. Teal, Council Clerk

1/2 *Shane Mack*

Shane Mack, Council Chair

(As per rules of the Council, copies of the proposed ordinance shall be made available for public inspection in the Office of the Livingston Parish Council.)

The following ordinance, which was previously introduced in written form required for adoption at a regular meeting of the Parish Council on October 8, 2020, a summary thereof having been published in the official journal together with a notice of public hearing which was held in accordance with said public notice was brought up for final passage October 22, 2020, on Motion of Maurice “Scooter” Keen and seconded by R.C. “Bubba” Harris:

L.P. ORDINANCE 20-29

AN ORDINANCE TO CREATE AND ENACT CHAPTER 70 “UTILITIES,” ARTICLE VII “SMALL WIRELESS FACILITIES”, SECTIONS 70-400 THROUGH SECTIONS 70-409, OF THE CODE OF ORDINANCES IN AND FOR THE PARISH OF LIVINGSTON TO ESTABLISH STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE PARISH OF LIVINGSTON.

WHEREAS, the Parish of Livingston 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 rights-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 and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the Parish; and

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

WHEREAS, the Parish intends to fully comply with state and federal law to the extent it preempts or conflicts with local municipal control.

NOW, THEREFORE, BE IT ORDAINED by the governing authority of the Parish of Livingston, State of Louisiana: The Code of Ordinances of Livingston Parish, Chapter 70 “Utilities” Article VII “Small Wireless Facilities” Sections 70-400 through 70-409, is hereby created and enacted to read as follows:

ARTICLE VII. SMALL WIRELESS FACILITIES

Section 70-400 – Purpose and Scope

- (A) Purpose. The purpose of this Chapter is to establish nondiscriminatory policies and procedures for use of the rights-of-way and more specifically the placement of small wireless facilities in right-of-way within the Parish’s jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the Parish rights-of-way and the Parish as a whole.
- (B) Intent. In enacting this Chapter, the Parish is establishing uniform standards consistent with federal law to address the placement of small wireless facilities and associated poles in the rights-of-way, 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 rights-of-way or public property;
 - (4) protect against environmental damage, including damage to trees;
 - (5) preserve the character of Historic Districts or areas with Decorative Poles; and
 - (6) facilitate rapid deployment of small cell facilities to provide the benefits of wireless services.
- (C) Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Section 70-401 - Definitions

- (A) “Antenna” means an apparatus designed for the purpose of emitting radio frequency (RF) signals to be operated or operating from a fixed location pursuant to the Federal Communications Commission authorization for the provision of wireless service. For

purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

- (B) “Antenna Equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (C) “Antenna Facility” means an antenna and associated antenna equipment.
- (D) “Applicable Codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes that are of general application, address public safety, and are consistent with this Chapter.
- (E) “Applicant” means any person who submits an application as or on behalf of a wireless provider.
- (F) “Application” means a request submitted by an applicant for a permit to (i) collocate small wireless facilities; or (ii) install, modify, or replace a structure on which to collocate a small wireless facility in the rights-of-way, where required.
- (G) “Parish Structure” means a structure in the rights-of-way owned, managed or operated by the Parish or any subdivision or instrumentality thereof, including municipal electric utilities.
- (H) “Collocate” means 1) mounting or installing an antenna facility on a preexisting structure, and/or 2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. “Collocation” has a corresponding meaning.
- (I) “Day” means calendar day, except for state holidays.
- (J) “Decorative Pole” means a Parish structure that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, lighting, specially designed informational or directional signage, or temporary holiday or special events attachments, have been placed or are permitted to be placed according to nondiscriminatory standards.
- (K) “Director” means the Director of Public Works or designee.
- (L) “Fee” means a one-time, nonrecurring charge.
- (M) “Historic District” means a group of buildings, properties, or sites that are either: 1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, 2) a registered historic district as defined by R.S. 25:731 as of the effective date of this Chapter.
- (N) “Permit” means any and all authorizations, written or otherwise, required by the Parish to perform an action or initiate, continue, or complete a project for the deployment of wireless service at a specified location.
- (O) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Parish.
- (P) “Pole” means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.
- (Q) “Rate” means a recurring charge.

- (R) “Rights-of-Way” or “ROW” means the area on, below, or above a public utility easement, roadway, highway, street, sidewalk, alley, or similar property, but not including a federal interstate highway.
- (S) “Small Wireless Facility” means a facility that meets each of the following conditions:
- (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,
 - (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
 - (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,
 - (4) The facilities do not require antenna structure registration under 47 C.F.R. Part 17;
 - (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and,
 - (6) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b).
- (T) “Structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service.
- (U) “Technically Feasible” means that by virtue of engineering or spectrum usage the proposed placement for a small wireless facility, or its design, concealment measures, or site location can be implemented without a reduction in the functionality of the small wireless facility.
- (V) “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, but that is not a wireless services provider.
- (W) “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.
- (X) “Wireless Services” means any services, using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile, provided to the public.
- (Y) “Wireless Services Provider” means a person who provides wireless services.

Section 70-402 – Permitted Use; Application and Fees

- (A) Permitted Use: The following uses within the rights-of-way shall be a permitted use, subject to administrative review only and issuance of a permit as set forth in this Chapter:
- (1) Collocation of a small wireless facility; and,
 - (2) Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility that does not exceed the maximum height set forth in Section 5(A).
- (B) Permit Required. Except as otherwise provided in this Chapter, no person shall place any small wireless facility, pole or structure described in Section 3(A) in the right-of-way, without first filing an application for the same and obtaining a permit therefor.
- (C) Application Requirements. An application filed pursuant to this Chapter 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 duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
 - (3) A general description of the proposed small wireless facility and associated pole, if applicable. 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 physical work proposed;
 - (4) Site plans and engineering drawings to scale that identify the proposed small wireless facility.
 - (5) A statement that the small wireless facility shall comply with all applicable codes.
 - (6) The applicant shall not be required to provide more information to obtain a small wireless facility permit than is required of other entities who install facilities in the rights-of-way.
- (D) Routine Maintenance and Replacement. An application shall not be required for: (1) routine maintenance; or (2) the replacement of a small wireless facility with another small wireless facility that is the same, substantially similar or smaller in size, weight and height. The Parish may require a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW for such activities. Such a permit must be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person performing similar activities, regardless of technology, in the ROW.
- (E) Information Updates. Any amendment to information contained in an application shall be submitted in writing to the Parish within thirty (30) days after the change.
- (F) Application Fees. Application fees shall not collectively exceed the following:
- (1) \$500 for up to the first five small wireless facilities in the same application, with an additional \$100 for each small wireless facility beyond five in the same application.
 - (2) \$1,000 for the installation, modification or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Chapter

Section 70-403 – Action on Administrative Permit Applications Subject to this Chapter

- (A) The Director shall review an application subject to this Chapter considering its conformity with applicable provisions of this Chapter, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:
- (1) For an initial application, the Director shall notify the applicant in writing on or before the tenth (10) day of submission if the application is materially incomplete. In the written notice that the application is incomplete, the Director must clearly and specifically identifying all the missing documents or information and must specify the related code provision, ordinance, application instruction or otherwise publicly-stated procedures related to missing information; and,
 - (2) If the Director notifies the applicant in writing that the application is incomplete in accordance with subsection (1), the processing deadline in subsection (3) shall restart at zero on the date the applicant submits all the documents and information identified by the Director to render the application complete; and,
 - (3) The Director shall make its final decision to approve or deny a complete application within (i) sixty (60) days of receiving an application for the collocation of a small wireless facility using an existing structure, and (ii) 90 days for an application to collocate a small wireless facility on a new structure. These timelines may be tolled only by mutual agreement between the applicant and the Parish; and
 - (4) The Parish must advise the applicant in writing of its final decision, and if the final decision is to deny the application, the final decision document shall state the basis for a denial, including specific code provisions on which the denial was based, and

send the decision document to the applicant on or before the day the Parish denies the application.

- (B) The Parish must process all applications on a nondiscriminatory basis and may only deny an application subject to this Chapter if the proposed small wireless facility or new, modified, or replaced pole:
- (1) Materially and demonstrably interferes with the safe operation of traffic control equipment;
 - (2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;
 - (3) Materially fails to comply with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (4) Fails to comply with applicable codes; or
 - (5) Fails to comply with the provisions in this Chapter.
- (C) Batch Applications: An applicant may at the applicant's discretion, file a consolidated application for small wireless facilities and related poles; provided, that the denial of one or more small cell facilities in a consolidated application shall not delay the processing of any other small wireless facility or related poles submitted in the same consolidated application. Batch applications shall be collectively processed in accordance with the procedures in subsection (A). A batch application that includes deployments that fall within Section 4(A)(3)(i) and Section 4(A)(3)(ii) shall be subject to a 90-day timeframe for approval.

Section 70-404 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

- (A) Maximum Size of Permitted Use. A new, modified or replaced pole for the collocation of small wireless facilities may be placed in the rights-of-way as a permitted use provided that each new, modified, or replaced pole does not exceed the greater of:
- (1) Ten (10) percent taller than other adjacent structures; or,
 - (2) Fifty (50) feet above ground level.
- (B) Any wireless provider that seeks to install, modify, or replace a pole in the rights-of-way that exceeds the height limits contained in this section, shall be subject to applicable requirements.
- (C) Decorative Poles. A wireless provider shall be permitted to collocate on or replace a decorative pole when necessary to collocate a small wireless facility; provided that any such collocation or replacement pole shall, to the extent technically feasible, conform to the design aesthetics of the original pole.
- (D) Underground District.
- (1) In areas designated solely for underground or buried cable and utility facilities as set forth in section 58-420. "Location and placement", a wireless provider shall comply with written, objective, reasonable and nondiscriminatory requirements that prohibit the installation of poles or structures in the rights-of-way where (i) all such lines are required to be placed underground by a date certain that is three months prior to the submission of the application; (ii) structures that are allowed to remain shall be made available to wireless providers for the collocation of small wireless facilities, and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, in compliance with this Chapter; and (iii) a wireless provider may install a new pole in the designed area that otherwise complies with this Section when it is not able to provide wireless service by collocating on a remaining structure.
 - (2) For small wireless facilities installed before the Parish adopted requirements that communications and electric lines be placed underground, the Parish shall (i) permit a

wireless provider to maintain the small wireless facilities in place, subject to any applicable pole attachment agreement with the pole owner; or (ii) permit the wireless provider to replace the associated pole within 50 feet of the prior location.

- (E) Historic District. The Parish may require design or concealment measures for small wireless facilities and associated structures in Historic Districts. Any such design or concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.
- (F) Color. Applicant shall comply with requirements regarding the color of the small cell wireless facilities.
- (G) New or Modified Pole. Any new or modified pole shall meet the aesthetic characteristic of surrounding utility poles.
- (H) Wiring and Cabling. Wires and cables serving the small wireless facility shall be installed in accordance with all applicable codes.
- (I) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any small wireless facility, unless the small wireless facility is proposed to be attached to an existing pole that incorporated guy wires prior to the date of the small wireless facility application.
- (J) The requirements in (C) – (I) of this section must be: (1) reasonable, meaning they are technically feasible and reasonable directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments; (2) no more burdensome than those applied to other types of infrastructure deployment in the rights-of-way; (3) objective; and, (4) published in advance. The requirements may not prohibit or have the effect of prohibiting wireless service.

Section 70-405 – 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 Chapter 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) Permit Duration.
 - (1) A permit for construction granted pursuant to this Section shall be valid for a period of one year after issuance unless the Parish and applicant agree to extend this period, or delay is caused by the lack of commercial power, communications facilities, or other events outside of the reasonable control of the wireless provider.
 - (2) After construction, the permit does not expire, but is subject to applicable relocation requirements, termination for material non-compliance after notice, reasonable opportunity to cure, and an applicant’s right to terminate a permit at any time.

Section 70-406 – Removal, Relocation or Modification of Small Wireless Facility in the ROW

- (A) Notice. The Parish shall provide the greatest practical notice possible, but no less than ninety (90) days following written notice from the Parish, the wireless provider 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 in the event of an emergency, as the Parish may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. 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 promptly after cutting or removing a small wireless facility.

- (C) Abandonment of Facilities. A wireless provider is required to notify the Parish at least 30 days prior to abandonment of a small wireless facility. Following receipt of such notice the Parish may direct the wireless provider to remove all or any portion of the small wireless facility that the Parish, or any of its departments, determines would be in the best interest of the public health, safety and welfare to remove. If the wireless provider fails to remove the abandoned facility within 90 days after such notice, the Parish may undertake to do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.
- (D) Damage and Repair. The Parish may require a wireless provider to repair all damage to the rights-of-way directly caused by the activities of the wireless provider and return the rights-of-way to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications. If the wireless provider fails to make the repairs within 120 days after written notice, the Parish may affect those repairs and charge the applicable party the reasonable, documented cost of such repairs.

Section 70-407 – Collocation on Parish Structures in the ROW

- (A) Collocation on Parish Structures. Small wireless facilities may be collocated on Parish structures in the rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement for use of the rights-of-way for the collocation of small wireless facilities or for the installation, operation, modification, maintenance, or replacement of poles for the collocation of small wireless facilities. A person who purchases or otherwise acquires a Parish structure is subject to the requirements of this section.
- (B) Make-Ready. The rates, fees, terms and conditions for the make-ready work to collocate a small wireless facility on a pole owned or controlled by the Parish must be nondiscriminatory, competitively neutral, commercially reasonable, comply with this Chapter and be subject to the following:
 - (1) The Parish or any person owning, managing, or controlling the poles owned by the Parish will provide a good faith estimate for any make-ready work reasonably necessary to make a specific Parish pole suitable for attachment of the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.
 - (2) The Parish or any person owning, managing, or controlling the poles owned by the Parish shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to pre-existing or prior damage and non-compliance. Fees for make-ready work including any pole replacement shall not exceed actual and direct costs, or the amount charged to others for similar work and shall not include any revenue or contingency-based consultant fees or expenses of any kind.

Section 70-408 – Rates for ROW and Collocation on Parish Structures in the ROW

- (A) The recurring rate for use of the ROW and attachment of small wireless facilities to a Parish structure in the ROW shall be subject to the following requirements:
 - (1) Annual Rate. A wireless provider authorized to place small wireless facilities and any related pole in the rights-of-way will pay to the Parish compensation for use of the rights-of-way and collocation on Parish structures in the rights-of-way an aggregate annual rate not to exceed \$270 per small wireless facility. This rate, together with the one-time application fee, shall be the total compensation that the

wireless provider is required to pay the Parish for the deployment of each small wireless facility in the rights-of-way and any associated pole.

- (2) Cease Payment. A wireless provider may remove its facilities at any time from the rights-of-way and Parish structures in the rights-of-way and cease paying the Parish compensation as of the date of removal of the facilities.

Section 70-409 – Effective Date

This Ordinance shall take effect ten (10) days after its passage, approval and publication.

All ordinances or parts of ordinances in conflict herewith are hereby repealed. If any provision of this ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this ordinance are hereby declared to be severable.

This ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: MR. GIRLINGHOUSE, MR. ARD, MR. KEEN, MR. WASCOM, MR. TALBERT, MR. MACK, MR. MCMORRIS, MR. HARRIS

NAYS: NONE

ABSENT: MR. DELATTE

ABSTAIN: NONE

And the ordinance was declared adopted on the 22nd day of October 2020.

Shane Mack, Council Chairman

ATTEST:

Sandy Teal, Council Clerk

INTRODUCED _____ ADOPTED _____
DELIVERED TO PRESIDENT _____, _____ o'clock ____ M.
APPROVED BY PRESIDENT _____
Layton Ricks Date
VETOED BY PRESIDENT _____
Layton Ricks Date
RECEIVED FROM PRESIDENT _____, _____ o'clock ____ M.