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DRAFT LOCAL LAW NO. ____ OF 2018

CITY COUNCIL
CITY OF BEACON

PROPOSED LOCAL LAW TO ADD SECTION 223-26.4 OF THE CODE OF THE CITY OF BEACON

A LOCAL LAW to create Section 223-26.4 of Code of the City of Beacon, concerning Small Cell Wireless Facilities.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Section 223-26.4 of the Code of the City of Beacon entitled "Small Cell Wireless Telecommunications Facilities" is hereby created as follows:

A. Purpose. The purpose of this Section is to establish uniform policies and procedures for the deployment and installation of small cell wireless telecommunications facilities in the City of Beacon, which will provide a public health, safety, and welfare benefit consistent with the preservation of the integrity, safe usage, and visual qualities in the City.

B. Permit Required.

(1) No person shall install a small cell wireless telecommunications facility without first filing a small cell wireless telecommunications facility application and obtaining a small cell permit from the Planning Board.

(2) The Planning Board may issue a permit for the following:

(a) The modification of an existing tower or base station that does not incur a substantial change to the tower or base station or that otherwise qualifies as an Eligible Facilities Request.

(b) Collocation of a small cell wireless telecommunications facility or DAS Facility on an existing tower, utility pole or streetlight not exceeding 50 feet in height in the public right-of-way.

(c) Collocation on existing buildings within the City of Beacon.

(d) Replacement of a utility pole or street light that does not result in a change from the original dimensions.

(e) Installation of a monopole or utility pole for small cell or DAS Facilities in the public right-of-way that does not exceed 50 feet in height.

C. Special Use Permit approval by the City Council is required under § 223-24.5 for the following uses:

(1) A substantial change to an existing tower or base station.

(2) Any other application for placement, installation or construction of transmission equipment that does not constitute an Eligible Facilities Request.

(3) Installation of a new tower.

(4) Placement of new antenna on an existing tower or base station that results in a substantial change to the tower or base station.

(5) Installation of equipment located on sidewalk.

(6) Installation of equipment located at an elevation less than ten feet from the ground.

(7) Installation of a small cell facility on a pole located within 20 feet of a dwelling unit.

D. Permit Application.

(1) All small cell wireless telecommunications facility applications for small cell permits filed pursuant to this Section shall be on a form provided by the City.

(2) The small cell permit application shall be made by the wireless telecommunications provider or its duly authorized representative and shall contain the following:

(a) The applicant's name, address, telephone number, and e-mail address;

(b) The names, addresses, telephone numbers, and email address of all consultants, if any acting on behalf of the applicant with respect to the filing of the application.

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(c) A general description of the proposed work and the purpose of the work proposed.

(d) Identify and disclose the number and locations of any small cells that the applicant has installed or locations the applicant has considered in the past year for small cell infrastructure within the City and those submitted or anticipated to be submitted within a one year period.

(e) A description of the anticipated maintenance needs, including frequency of service, personnel needs and equipment needs, and the potential traffic safety and noise impact of such maintenance.

(f) Any amendment to information contained in a small cell permit application shall be submitted in writing to the City within 30 days after the change necessitating the amendment.

(3) An application shall not be required for: (i) routine maintenance; and (ii) the replacement or upgrade of a previously permitted small cell wireless telecommunications facility with another small cell wireless telecommunications facility that is the same as or smaller in size, weight, and height at the same location.

(4) A wireless telecommunications provider authorized to install small cell wireless telecommunications facilities shall pay to the City an application fee and administrative fee as set forth in this section.

(5) A wireless telecommunications provider is authorized, after 30 days written notice to the City Building Inspector, to remove its facility at any time from the rights-of-way and cease paying the City the administrative fee.

E. Location

(1) The following locational priorities shall apply in the order specified, consistent with the City's obligation to create the least amount of adverse aesthetic impact and to preserve the scenic values of the City:

(a) On the roof of any City owned or federal, state or local government owned buildings or structures.

(b) Location on privately-owned buildings

(c) Location on an existing City owned utility poles

(d) Location on City-owned infrastructure on private poles

(e) Location City-owned property, where there is no existing pole

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(f) Location on privately-owned utility poles.

(2) If the proposed site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of higher priority was not selected. The person seek such an exemption must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed use.

F. Right of Way Fees

(1) In order to ensure that the limited private use of the public right of way authorized herein does not become an additional cost to the City, it is hereby determined by the City Council that the following fees shall be charged to applicants and permit holders seeking to use the public right of way pursuant to this Local Law.

(2) Small Cell Permit Application Fee: shall be $500.000 (non-refundable) due to the City Building Department upon submittal of a completed application for review.

(3) Annual Small Permit Fee:

(a) For placement on Existing Private Utility Poles -$1,000.00 per year

(b) For placement on Existing City-owned buildings, utility poles, infrastructure or property - $1,500.00 per year

(c) For placement of new poles in the right of way $2,000 per year

(d) Fee start date: The annual permit fee shall be payable January 2 of the year following installation. Failure to pay the annual permit fee shall result in the imposition of a 5% penalty fee, additional collection fees if necessary, and suspension or revocation of the permit.

G. City requirements as to aesthetics and neighborhood impact mitigation

(1) In order to preserve the character and integrity of City neighborhoods the City Council finds that the following requirements are essential to protect the public health, safety and welfare.

(a) New small cell facilities shall not be located in the Historic District and Landmark Overlay Zone.

(b) Wherever possible, new small cell facilities shall include stealth technology designs.

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(c) All small cells placed on any roof shall be set back at least 15 from the edge of the roof along any street frontage.

(d) The Planning Board shall consider all impacts to site lines and aesthetic views.

(e) Except within the public right of way, all proposed poles, pole equipment and enclosures shall comply with the designated setback requirements.

(f) Up to three (3) small cells will be allowed per utility pole if technically feasible and if in the determination of the Planning Board there are no safety or aesthetic concerns. Small cells must be designed and placed in an aesthetically pleasing manner to the reasonable satisfaction of the approving agency.

(g) No small cell placement shall be allowed on ornamental street lighting poles as determined by the Building Inspector.

(h) No small cell facilities or associated equipment shall be placed on any sidewalk and shall not obstruct pedestrian or vehicular traffic in any way.

(i) In no event shall any utility pole or wireless telecommunication support structure as of January 1, 2018, installed in the public right of way, exceed 50 feet. A shorter pole may be required if the initial proposal is deemed out of character of with the neighborhood as determined by the Planning Board.

(j) Each new small cell wireless telecommunications facility, including antennas or other associated equipment, installed in the public right-of-way shall not exceed more than ten (10) feet above the existing utility pole or wireless telecommunications support structure on which it is being located.

H. Duration. Construction pursuant to a small cell permit issued under this section must be commenced within twelve (12) months of issuance of the small cell permit and diligently pursued thereafter, or such small cell permit shall expire.

I. Routine Maintenance and Replacement. An application shall not be required for: (i) routine maintenance; and (ii) the replacement or upgrade of a small cell wireless telecommunications facility with another small cell wireless telecommunications facility that is same as or smaller in size, weight and height at the same location.

J. Information Updates. Any amendment to information contained in a small cell building/work permit application shall be submitted in writing to the City within thirty (30) days after the change necessitating the amendment. On an annual basis, the wireless telecommunication provider shall provide a list of existing small cell locations within the City.

K. Removal, relocation or modification of Small cell Wireless Telecommunications Facility in the Public Right-of-Way

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

(2) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any small cell wireless telecommunications facility located within the public right-of-way, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless telecommunications provider and provide the wireless telecommunications provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless telecommunications provider after cutting or removing a small cell wireless telecommunications facility.

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

Section 2. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 223 of the City of Beacon Code is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 3. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 4. Effective Date

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This local law shall take effect immediately upon filing with the Office of the Secretary of State.

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