

Draft: 7/27/18

DRAFT LOCAL LAW NO. \_\_\_\_ OF 2018

CITY COUNCIL  
CITY OF BEACON

PROPOSED LOCAL LAW TO  
CREATE SECTION 223-26.4 AND AMEND SECTION 223-63 OF THE  
CODE OF THE  
CITY OF BEACON

A LOCAL LAW to  
create Section 223-26.4  
and amend Section  
223-63 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 telecommunication facilities (**small cell facility**) 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. **Any installation of a small cell facility shall require either a special permit from the City Council or a small cell permit from the Planning Board.**

B. Special Use Permit approval by the City Council is required under § 223-24.5 for the following uses: All special use permit applications must comply with the requirements set forth in § 223-24.5.

(1) A substantial change to an existing tower or base station, unless the Building Inspector has determined it is a modification to be reviewed by the Planning Board pursuant to § 223-26.4C(2).

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

(3) Installation of a new tower over 50 feet in height.

- (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 on a pole, located at an elevation less than ~~ten~~ 15 feet from the ground.
- (7) Installation of a small cell facility on a pole located within 20 feet of a dwelling unit.

~~A.~~

~~B.C.~~ Small Cell Permit Required from the Planning Board.

- (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 shall issue approve a small cell permit application concerning any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure. An applicant shall assert in writing that its request is considered an eligible facilities request. The Planning Board may require the applicant to provide documentation or information only to the extent reasonably related to determine whether the request meets the requirements of an eligible facilities request.]

Comment [k1]: 47 CFR 1.4001

(2)(3) 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.~~

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

(c)(b) 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.~~

Comment [k2]: Covered by street permit local law.

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

(4) Small cell permit application for Planning Board approval.

- (a) The small cell permit application shall be made by the wireless telecommunications provider or its duly authorized representative and shall contain the following:
- (b) The applicant's name, address, telephone number, and e-mail address;
- (c) 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.
- (d) A general description of the proposed work and the purpose of the work proposed.
- (e) 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 or anticipated to be submitted within a one year one-year period.
- (f) 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.
- (e)(g) 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.

C.A. 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)(1) Any other application for placement, installation or construction of transmission equipment that does not constitute an Eligible Facilities Request.
- (3)(1) Installation of a new tower.
- (4)(1) Placement of new antenna on an existing tower or base station that results in a substantial change to the tower or base station.

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~~(5)(1) Installation of equipment located on sidewalk.~~

~~(6)(1) Installation of equipment located at an elevation less than ten feet from the ground.~~

~~(7)(1) 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)(1) 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)(a) 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.~~

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

~~(d)(a) 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) 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)(h) 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.~~

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

(5)(6) 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.

F.D. Location of small cell facility approved by the Planning Board

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(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
- (f) Location on ~~privately owned~~ 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.E. Small cell facility permit fees Right of Way Fees

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- (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 small cell permit applicants and small cell permit holders ~~seeking to use the public right of way pursuant to this Local Law.~~
- (2) Small Cell Permit Application Fee: shall be ~~\$500~~ \$250.000 (non-refundable) due to the City Building Department upon submittal of a completed application for review.
- (3) Annual Small Cell Permit Right-of-Way Fees:

- (a) For placement on Existing Private Utility Poles -~~\$4,000~~500.00 per year per pole
- (b) For placement on Existing City-owned buildings, utility poles, infrastructure or property - ~~\$4,750~~0.00 per year
- (c) For placement of new poles in the right of way \$21,000 per year per pole
- (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.F. City-Planning Board requirements as to aesthetics and neighborhood impact mitigation for small cell permits.

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- (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, and scenic preservation.
  - (a) New small cell facilities shall not be located in the Historic District and Landmark Overlay Zone, unless the applicant demonstrates to the Planning Board's satisfaction that the selected site is necessary to provide adequate service.
  - ~~(b)~~ Wherever possible, nNew small cell facilities shall include stealth technology designs, unless the Planning Board makes a written determination that such designs are not feasible
  - ~~(b)~~(c) The Planning Board may consider alternative locations for equipment, whether pole mounted or ground mounted.
  - ~~(e)~~(d) All small cells placed on any roof shall be set-back at least 15 feet from the edge of the roof along any street frontage, unless the Planning Board makes a written determination waiving the setback requirement.
  - ~~(d)~~(e) The Planning Board shall consider all impacts to site lines and aesthetic views.
  - ~~(e)~~(f) Except within the public right of way, all proposed poles, pole equipment and enclosures shall comply with the designated setback requirements.
  - ~~(f)~~(g) 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.

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

~~(h)~~(i) 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)~~(j) 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 in height, unless special permit approval is obtained from the City Council pursuant to § 223-24.5. 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)~~(k) 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, unless special permit approval is obtained from the City Council pursuant to § 223-24.5.

~~H.G.~~ [The Secretary of the Planning Board shall forward a copy of the Planning Board decision to the City Tax Assessor to allow the City to better assess the utility infrastructure for wireless telephone facilities.]

**Comment [k3]:** Utilities are assessed based upon the cost basis of the equipment with an adjustment over time for the depreciation of the equipment. This provision will help the City confirm the valuation schedule provided by the utility companies and better assess the utility infrastructure.

~~H.H.~~ Duration. Construction pursuant to a small cell permit issued by the Planning Board 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.

~~J.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.

~~K.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.

~~L.K.~~ Removal, relocation or modification of ~~Small-small~~ cell ~~Wireless Telecommunication Facility-facility~~ in the ~~pPublic Rright-of-Wway~~

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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)(2)~~ 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.

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**SECTION 2.** Chapter 223, Article VI, Section 63 of the Code of the City of Beacon entitled "Definitions" is hereby amended to add and amend the following definitions:

#### **ACCESSORY EQUIPMENT**

Any equipment servicing or being used in conjunction with a wireless telecommunications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds.

#### **ANTENNA**

A system of electrical conductors that transmits or receives electromagnetic waves or radio frequencies signals. Such waves shall include but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS) and microwave telecommunications. Any system of wires, poles, rods, reflecting discs or similar devices used for the transmission, reception or both of electromagnetic radiation waves, including but not limited to satellite antennas and amateur radio antennas, which are not fully enclosed within a building.

#### **BASE STATION**

A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications

Comment [k4]:

47 CFR 1.40001



network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

- (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- (iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the City of Beacon pursuant to this section, supports or houses equipment described in paragraphs (i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, even if the structure was not built for the sole or primary purpose of providing such support.
- (iv) The term does not include any structure that, at the time the relevant application is filed with the City of Beacon under this section, does not support or house equipment described in paragraphs (i)-(ii) of this section.

#### **COLLOCATION ~~CO-LOCATION~~**

The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. ~~The installation of two or more wireless telecommunication services antennas and related appurtenances on the same monopole or tower. For purposes of this chapter, the installation of two or more structurally mounted wireless telecommunication services antennas on the same building or structure other than a monopole or tower, or the installation of two or more wireless telecommunication services facilities in different locations on the same site, shall not be considered co-location.~~

#### **DISTRIBUTED ANTENNA SYSTEM (DAS)**

A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

#### **ELIGIBLE FACILITIES REQUEST**

Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

**Comment [k5]:** Defined in 47 U.S.C.A. § 1455; 47 CRR1.4001

### **ELIGIBLE SUPPORT STRUCTURE.**

Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City of Beacon.

Comment [k6]: 47 CRR1.4001

### **MONOPOLE**

A tower which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennas and connect appurtenances. A freestanding pole having a single point of location on the ground comprising a part of a wireless telecommunication services facility. For purposes of this chapter, the term "monopole" shall include all other components of the wireless telecommunication services facility.

### **RADIO TOWER**

Any tower, edifice, pole or other structure, other than a wireless telecommunication services facility (as defined herein), designed to be used for the transmission and/or reception of radio signals, television signals or other electronic impulses and having a height at any point greater than 15 feet from the base or lowest point of said tower, edifice, pole or structure and constructed, installed or maintained on or above the ground or on a residential building on private property.

### **SMALL CELL WIRELESS TELECOMMUNICATIONS FACILITY OR SMALL CELL FACILITY**

Small cells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. A small cell facility meets both the following qualifications: (i) 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 element, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 17 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.

### **SUBSTANTIAL CHANGE**

A modification substantially changes the physical dimensions of an eligible support structure (tower or base station) if it meets any of the following criteria:

- a. The mounting of the proposed antenna on existing towers, other than towers in the public rights-of-way, would increase the existing height of the tower by more

Comment [k7]: 47 CRR1.4001

than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater.

- b. the mounting of the proposed antenna would involve the installation of more than the standards number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter;
- c. The mounting of the proposed antenna would involve adding an appurtenance to the body of existing towers, other than towers in the public rights-of-way, that would protrude from the edge of the towers more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet, except that the mounting of the proposed antenna may exceed the size limits herein if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable;
- d. The mounting of the proposed antenna would involve excavation outside the current existing structure site, defined as the current boundaries of the leased or owned property surrounding the existing structure and any access or utility easements currently related to the site;
- e. The modification defeats concealment and/or stealth elements of the support structure; or
- f. The modification does not comply with prior conditions of the approval for the existing structure and/or site; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

#### **TOWER**

Any structure built for the sole or primary purpose of supporting any licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Comment [k8]: 47 CRR1.4001

#### **UTILITY POLE**

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 City-owned poles. Such term shall not include structures supporting only Wireless Telecommunication Service Facilities. Any pole in excess of 50 feet shall be deemed a tower.

## **WIRELESS TELECOMMUNICATION SERVICES FACILITY**

~~Any equipment used in connection with the commercial operation of wireless telecommunication services, as defined herein, and as the term "personal wireless services facility" is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(e)(7)(C), or as hereafter amended, to transmit and/or receive frequencies, including but not limited to antennas, monopoles, towers, equipment, appurtenances and structures. A structure, facility or location designed or intended to be used as, or used to support, antennas. It includes, without limit, freestanding towers, guyed towers, monopoles, small cell telecommunication facilities on utility poles in the public right-of-way or property of the City of Beacon or of another municipal corporation within the City of Beacon and similar structures that employ camouflage technology, including but not limited to structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, personal telecommunications services, commercial satellite services or microwave telecommunications, but excluding those used exclusively for dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.~~

## **WIRELESS TELECOMMUNICATIONS PROVIDER**

~~A wireless telecommunications infrastructure provider or a wireless telecommunications services provider.~~

### **Section 3. 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 4. Numbering for Codification**

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the

numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

**Section 5. 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 6. Effective Date**

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