

DRAFT LOCAL LAW NO. ____ OF 2018

**CITY COUNCIL
CITY OF BEACON**

**PROPOSED LOCAL LAW TO
AMEND SECTION 223-24.5 OF THE CODE OF THE
CITY OF BEACON**

A LOCAL LAW to
amend Section 223-
24.5 of Code of the
City of Beacon,
concerning Wireless
Telecommunication
Services Facilities.

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

SECTION 1. Section 223-24.5 of the Code of the City of Beacon entitled “Wireless telecommunication services facilities” is amended as follows:

A. Statement of intent and objectives.

- (1) The City Council has determined that the establishment of zoning provisions to institute minimum standards for wireless telecommunications services facilities shall be among the legislative purposes of the Zoning Law of the City of Beacon and is in accordance with the goals, objectives and policies of the City's Development Plan.
- (2) The purpose of these special regulations is to reasonably control the location, construction and maintenance of wireless telecommunications services facilities in order to encourage the siting of said facilities in nonresidential areas and to protect, to the maximum extent practicable, aesthetic impacts, the open space character of portions of the City of Beacon, the property values of the community, and the health and safety of citizens, while not unreasonably limiting competition among telecommunication providers.

B. Use. Except as provided hereinafter, no wireless telecommunication services facility shall be located, constructed or maintained on any lot, building, structure or land area in the City of Beacon unless a special use permit has been issued in conformity with the requirements of this chapter and all other applicable regulations.

C. Exemptions. The provisions of this section shall not apply to (1) wireless telecommunication facilities that obtain a small cell permit from the Planning Board pursuant to § 223-26.4, or (2) unlicensed wireless telecommunication services facilities installed wholly within a principal or accessory building, such as but not limited to baby monitors, garage door openers and burglar alarm transmitters, and serving only that building.

D. Location and access.

(1) Subject to the City Council's review and evaluation of technological, structural, safety and financial considerations associated with alternative locations for the siting of wireless telecommunication services facilities, 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) Location of small cell facilities shall comply with the locational priorities set forth in § 223-26.4D.

(b) Locational priorities for all other wireless telecommunication service facilities

~~(a) On City-owned or City Housing Authority-owned sites, buildings and structures.~~

~~(b) Co-location Collocation on an existing wireless telecommunication services facility or radio tower in nonresidential zoning districts, as identified on an inventory of existing facilities which shall be maintained by the City (the "existing facilities inventory"). Co-location Collocation shall be required unless it has been demonstrated to the satisfaction of the City Council that:~~

~~[1] None of the sites identified on the existing facilities inventory within the service area can accommodate the proposed wireless telecommunication services facility in a reasonable financially and technologically feasible manner consistent with the wireless communications service carrier's system requirements;~~

~~[2] None of the sites identified on the existing facilities inventory within the service area can accommodate the proposed wireless telecommunications services facility with respect to structural or other engineering limitations, including frequency incompatibilities; or~~

~~{3}(c)~~ ~~The owners of the sites identified on the existing facilities inventory within the service area lawfully refuse to permit the applicant's use of the site.~~

~~(e)(i)~~ On sites, buildings and structures located in the HI and LI Zoning Districts.

~~(d)(ii)~~ On sites, buildings and structures in the PB, HB, OB, LB and GB Zoning Districts.

~~(e)(iii)~~ On sites, buildings and structures in the CB Zoning District.

- (2) Except for collocation on an existing wireless telecommunication services facility or radio tower identified on the existing facilities inventory and except for location on a building (and the premises thereof) which is at least nine stories in height, new wireless telecommunication services facilities shall not be located in the WD, WP and Residential Zoning Districts, nor in the Historic District and Landmark Overlay Zone.
- (3) Wherever possible, new wireless telecommunication services facilities shall be in the form of antennas attached to an existing building or structure and/or shall be in the form of stealth structures. Lattice towers shall be the structures of last resort.
- (4) All new wireless telecommunication services facilities and premises shall be of proper size, location and design to accommodate ~~co-location~~ collocation of other service providers' facilities, unless otherwise permitted by the City Council. To the maximum extent practicable, existing roadways shall be used to provide access to the site of a wireless telecommunication services facility.
- (5) If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking 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.
- (6) An applicant may not bypass a site of higher priority by stating the site presented is the only site leased or selected. An application shall address collation as an option and, if such option is not proposed, the applicant must explain why collocation is commercially or otherwise impracticable.
- (5)(7) Notwithstanding the above, the City Council may approve any site located within the City, provided the City Council finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants.

- E. Setbacks. Wireless telecommunication services facilities, except those structurally mounted to an existing building or structure, shall be located not less than two times the otherwise applicable setback requirements for principal structures for the district in which the property is located, or not less than the height of the facility plus the otherwise applicable setback requirements for principal structures for the zoning district in which the property is located, whichever shall be greater. Wireless telecommunication services facilities structurally mounted to the roof of an existing building or structure shall be set back from the side of the building or structure so as to minimize its visibility, but in no case less than 10 feet unless a stealth design is proposed, in which case the City Council may waive or modify this requirement.
- F. Height limitations. Notwithstanding the following height limitations, in no case shall a wireless telecommunication services facility exceed the minimum height reasonably necessary to accomplish the purpose it is proposed to serve.
- (1) The height of any antennas, or other associated equipment, structurally mounted as part of a wireless telecommunication services facility shall not exceed by more than 15 feet above the highest point of the existing structure on which such antennas or equipment is affixed.
 - (2) The height of any monopole or tower utilized in a wireless telecommunication services facility shall not exceed 150 feet in height measured from the highest point of such facility to the finished grade elevation of the ground immediately adjacent to the structure.
 - (3) Applicants must submit documentation justifying the total height.
- G. Visual mitigation. The applicant/provider shall prepare a visual impact assessment of the proposed wireless telecommunication services facility based upon appropriate modeling, photographic simulation and other pertinent analytical techniques as required by the City Council.
- (1) Landscaping and/or other screening and mitigation, including but not limited to architectural treatment, stealth design, use of neutral or compatible coloring and materials, or alternative construction and transmission technologies, shall be required to minimize the visual impact of such facility from public thoroughfares, important viewsheds, vantage points and surrounding properties to the extent practicable, as determined by the City Council.
 - (2) No signs shall be erected on any wireless telecommunication services facility except as may be required by the City Council for security or safety purposes.
 - (3) All equipment enclosures and storage buildings associated with the wireless telecommunication services facilities shall be consistent or compatible with

adjacent buildings in terms of design, materials and colors and shall be appropriately landscaped.

- ~~G.~~(4) All special use permit applications for wireless telecommunication facilities shall contain a demonstration that the facility is sited as to have the least adverse visual effect on the environment and its character, on existing vegetation on the residences in the area of the wireless telecommunication facilities.
- H. Materials. A wireless telecommunication services facility shall be of galvanized finish or painted gray or another neutral or compatible color determined to be appropriate for the proposed location of such facility in the reasonable judgment of the City Council. The mountings of wireless telecommunication antennas shall be nonreflective and of the appropriate color to blend with their background.
- I. Lighting. The wireless telecommunication services facility shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority.
- J. Operational characteristics. Unless otherwise superseded by the Federal Communications Commission (FCC), the design and use of the proposed wireless telecommunication services facility, including its cumulative impact with other existing and approved facilities, shall be certified to conform to the maximum NIER exposure standards promulgated by the FCC, as amended. Said certification shall include a report by a licensed professional electrical engineer with expertise in radio communication facilities and/or health physicist acceptable to the City Council. A copy of such certification report shall be submitted to the City Council prior to commencing operation of such facility and a copy shall be filed with the Building Inspector. The City Council may require annual certification of conformance with the applicable emission standards. Additionally, copies of certification reports shall be submitted to the City Council whenever they are required to be submitted to the FCC. The City Council may hire a qualified professional of its choosing to review and confirm such initial and subsequent certification report(s), the cost of which shall be reimbursed by the applicant in accordance with the escrow account procedures established by the City for the reimbursement of professional review fees for subdivision, site plan and special use permit applications. Any violation of the emissions standards shall require immediate discontinuation and correction of the use responsible for the violation.
- K. Noise. Noise-producing equipment shall be sited and/or insulated to prevent any detectable increase in noise above ambient levels as measured at the property line.
- L. Utility service. Electrical and land-based telephone lines extended to serve the wireless telecommunication services facility sites shall be installed underground. If the wireless telecommunication services facility is attached to a building, and if determined practical and economically feasible by the City Council, all wires from the ground to said facility

shall be located within the building. If permitted to be located outside said building, the wires shall be enclosed in a conduit whose materials and colors are consistent or compatible with the building.

- M. Safety provisions. A wireless telecommunication services facility shall be designed and erected so that in the event of structural failure it will fall within the required setback area and, to the maximum extent possible, away from adjacent development.
- N. Security provisions. A security program shall be formulated and implemented for the site of a wireless telecommunication services facility. Such program may include physical features such as fencing, anti-climbing devices or elevating ladders on monopoles and towers, and/or monitoring either by staff or electronic devices to prevent unauthorized access and vandalism.
- O. Annual structural/safety inspection and report.

(1) A monopole or tower over 50 feet in height shall be inspected annually from a structural and safety perspective at the expense of the service provider by a licensed professional engineer, or at any other time upon a determination by the Building Inspector that the monopole or tower may have sustained structural damage, and a copy of the inspection report shall be submitted to the Building Inspector.

(2) The City of Beacon reserves the right to inspect any wireless telecommunication facility to ensure compliance with the provisions of this section and any other provisions found within the City of Beacon Code, State or Federal Law. The City of Beacon and/or its agents shall have the authority to enter the property upon which a wireless telecommunication facility is located at any time, upon reasonable notice to the operate, to ensure such compliance.

- P. Lease agreement. In the case of an application for approval of a wireless telecommunication services facility to be located on lands owned by a party other than the applicant or the City, a copy of the lease agreement with the property owner, absent the financial terms of such agreement, together with any subsequent modifications thereof, shall be provided to the City Council and a copy shall be filed with the City Clerk and the Building Inspector.
- Q. Interference. In the event that the wireless telecommunication services facility causes interference with the radio or television reception within the City of Beacon, the applicant, at the applicant's sole expense, shall thereafter ensure that any interference problems are promptly corrected.
- ~~S. Removal. A wireless telecommunication services facility shall be dismantled and removed from the property on which it is located within 60 days when it has been inoperative or~~

~~abandoned for a period of one year or more from the date on which it ceased operation. The applicant shall provide to the City written notification, including identification of the date the use of the facility was discontinued or abandoned by one or more of the service providers, acknowledgment of the requirement to remove the facility, and identification of plans for the future of the facility. The applicant shall post a bond to ensure that the wireless telecommunication services facility shall be removed upon abandonment as set forth herein at the applicant's sole expense.~~

R. ~~Application procedure~~ Special use permit application.

~~(1)~~ An application for approval of a wireless telecommunication services facility shall be submitted on the relevant forms for special use permit approval and shall be jointly filed by the operator of the wireless telecommunication services facility and the owner of the property on which such facility is proposed to be located.

~~(2)~~ The special use permit application shall contain the following:

a. A site plan drawing showing the location of the proposed facility shall accompany the application for special use permit approval;

b. The applicant's name, address, telephone number, and e-mail address;

c. The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the special use permit application;

d. A general description of the proposed work and the purpose of the work proposed.

e. Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily within the City.

f. Identify and disclose the number and locations of wireless telecommunication facilities that the applicant has installed or locations the applicant has considered in the past year within the City.

g. 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.

~~(1)h.~~ Any amendment to information contained in a special use permit application shall be submitted in writing to the City within 30 days after the change necessitating the amendment. Special use approval by the City Council in accordance with §§ 223-18 and 223-19 of this chapter shall be required. The City may enlist the services of a

~~radio frequency (RF) engineer and/or other relevant consultants, at the applicant's cost, for the review of the application.~~

~~(2)~~(3) The operator of the wireless telecommunication service shall submit a certificate of public utility, unless it can be demonstrated to the satisfaction of the City Council that the operator of such facility is exempt from such requirement pursuant to New York State law. The operator of such facility shall also demonstrate to the satisfaction of the City Council that there is a compelling public need for such facility at the location(s) proposed by the applicant. Such demonstration shall include the preparation of existing and master effective service area plans which:

- (a) Minimize the number of such facilities within the service area(s);
- (b) Maximize ~~co-location~~ collocation of wireless telecommunication service facilities;
- (c) Identify all existing and proposed wireless telecommunication facilities which impact upon the service area covering the City of Beacon, including but not limited to topographic maps of the City with service coverage and service gap grids and all proposed as well as other functionally acceptable locations for such facility(ies); and
- (d) Analyze feasible alternatives to reasonably minimize the visual impacts and exposure levels.

~~(3)~~(4) Where the owner of the property on which a wireless telecommunication services facility is proposed contemplates that such property may be used for the installation of two or more such facilities, the property owner shall submit a conceptual master plan identifying the total number and location of such facilities.

~~(4)~~(5) Any application for a wireless telecommunication services facility shall include a statement and appropriate documentation demonstrating that City-owned sites, buildings and structures and the City's existing facilities inventory have been reviewed to the extent relevant to provide wireless telecommunication services in the area which is the subject of such application and that all reasonable efforts have been made to locate or co-locate such facility on all City-owned sites, buildings and structures and on all sites identified in such existing facilities inventory within the service area.

(6) The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete.

(7) No wireless telecommunication facilities shall be installed, constructed or modified until the application is reviewed and approved by the City Council and the special use permit has been issued.

(5)(8) As a condition of special use permit approval, the applicant shall be required to provide a written agreement, in recordable form suitable for filing and prepared to the satisfaction of the City Attorney, acknowledging that it shall be required to allow the ~~co-location~~ collocation of other future wireless telecommunication service facilities at fair market cost, unless otherwise unreasonably limited by technological, structural or other engineering considerations.

(6)(9) The applicant and all future owners of the premises and the wireless telecommunication services facility shall at all times keep on file in the office of the City Clerk the name, address, and telephone number of the owner and operator of such facility and of at least one individual who shall have authority to arrange for the maintenance of the premises and facility and who shall be authorized to accept service of notices and legal process on behalf of the owner and operator(s) of the premises and facility and to bind the owner to any settlement, fine, judgment, or other disposition (other than incarceration) which may result from any civil or criminal action or proceeding instituted by the City against such owner and/or operator(s).

S. The City Clerk shall forward a copy of the City Council special use permit decision to the City Tax Assessor to allow the City to better assess the utility infrastructure for wireless telephone facilities.

T. Removal, relocation or modification of wireless telecommunication facilities in the public right of way

(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 wireless telecommunication facility 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) Abandonment of Facilities. Upon abandonment of a wireless telecommunication service facility within a public right-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 facility if the City, or any of its departments,

determines that such removal will be in the best interest of the public health, safety and welfare.

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. 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 5. Effective Date

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