

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**Town of Colonie
Local Law No 1 of the year 2023**

A **local law** amending Chapter 189A, to the Code of the Town of Colonie to clarify the permitting requirements applicable to small cell wireless facilities and conform the law with federal requirements applicable to same.

Be it enacted by the Town Board of the Town of Colonie as follows:

SECTION 1: § 189A-1: Title.

This chapter shall be known and may be cited as the “Town of Colonie Small Cell Wireless Facilities Law”. This law shall be applicable to all small cell facilities deployed within the Town’s right of way.

SECTION 2. § 189A-2: Purpose and Intent

It is the purpose of this chapter to facilitate the deployment of wireless telecommunications infrastructure in accordance with applicable federal law and conform the procedural and substantive requirements contained in the Code with controlling legal authorities, including, but not limited to, federal statutory authority, as well as regulatory authority and administrative guidance promulgated by the Federal Communications Commission.

SECTION 3. § 189A-3: Definitions

Chapter 189A shall adopt the definitions from Chapter 189, Wireless Telecommunications Facilities Siting as set forth in Code § 189-4 and include the following definitions for purposes of this Chapter only:

- **Abandoned facility** – any wireless telecommunication facility which has not been operational for six consecutive months.
- **Agreement** – a license, right-of-way or other contract with a telecommunications provider or wireless service provider for use of the Town’s rights-of-way
- **Applicable law** or “**law**” – any applicable State or Federal law, rule, regulation, tariff, administrative order, certificate, and all applicable laws, codes, rules, regulations and other requirements of the Town, including all applicable judicial decisions.
- **Collocation** – mounting or installing an antenna facility on a structure, pole or tower that already hosts an antenna facility and/or modifying a structure for the purpose of mounting or installing additional antenna facilities on that structure.

- **Deployment** – placement, construction or modification of a personal wireless service facility.
- **Eligible Support Structure** – shall have the same definition as provided in 47 C.F.R. § 1.6100.
- **Existing Pole** – any pole, utility pole, Town pole or structure in the Town’s ROW that is in existence prior at the time an applicant submits its application for small cell wireless facility permit.
- **Facility or Facilities** – any tangible component of the telecommunications system, including, but not limited to, an antenna, pole, wire, cable, electrical conductor, conduit, equipment enclosure, cabling, manhole, handhole, junction box and terminal block, fixture, appliance and apparatus or other device that is used to provide telecommunication service.
- **Noncompliant structure or noncompliant use** – a structure or use that does not conform to the regulations of the Town or area in which it is situated.
- **Pole** – a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the public right-of-way. For purposes of this Chapter, a pole does not include a tower or structure.
- **Provider** – a telecommunications service provider or a wireless services provider, including any person who owns and/or operates any communications facilities, wireless facilities, poles built for the sole or primary purpose of supporting communications facilities or towers within the public ROW.
- **Replacement Pole** – a pole designed as an in-kind replacement of an existing pole, support structure or tower that is substantially similar in design, size, height, scale and location to the existing structure and in conformance with this Chapter and any other Town regulations, including the aesthetic requirements contained in this Chapter.
- **Right-of-Way or “ROW”** – any right-of-way owned or maintained within the Town of Colonie, including Town-owned rights-of-way and those rights-of-way owned by New York State or Albany County
- **Small Cell Wireless Facility or Small Cell** – shall have the same definition as provided in 47 CFR § 1.6002
- **Small Cell Wireless Facility Permit** – a permit issued by the Department of Public Works allowing a provider to deploy a small cell wireless facility.
- **Structure or Tower** – any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antenna(s) 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. Street light poles, public utility and traffic light poles without an attached approved wireless telecommunications facility or right-of-way structures shall not be considered a tower.

SECTION 4. §189A-4: Access to Public ROW

A. Any provider seeking to install small cell facilities within any Town-owned ROW shall enter into a right-of-way agreement with the Town expressly authorizing the provider’s non-exclusive use of the public ROW for the sole purpose of deploying small cell communications facilities. Any ROW agreement required hereunder shall be approved by the Town of Colonie Town Board and such approval must be obtained prior to the provider filing any application hereunder.

1. If the pole, tower or structure is not owned by the Town, the provider shall provide the Town with proof that it has the license or authority from the pole, tower or structure owner to use an existing pole, tower or structure in the public ROW for a small cell wireless facility. The deployment of a facility on a third-party owned structure must comply with the Town's structural and aesthetic requirement as set forth in this Chapter.
2. A provider deploying facilities within the Town-owned ROW shall pay an annual occupancy fee to the Town, the amount of which shall be determined by the Town of Colonie Department of Public Works (DPW). Such occupancy fee shall be paid per facility and shall be due no later than January 31st of each year for all small cell wireless facilities deployed as of December 31st of the previous year.
3. The terms and conditions set forth in this Chapter are not exclusive and the Town reserves the right to require additional terms and conditions in the ROW agreement.

B. Any provider seeking to install small cell facilities within any ROW located within the Town, but not owned and/or maintained by the Town shall obtain any requisite permissions from the owner of the ROW and provide proof of same to DPW prior to the start of construction. If the owner of the ROW requires any sort of regulatory approval for use of the ROW, the provider shall furnish copies of any application made therefore or permit issued by the owner of the ROW to DPW prior to the start of construction.

SECTION 5. §189A-5: Small Cell Wireless Facility Permits.

A. Small Cell Wireless Facility Permit Applications.

1. Any application to deploy a small cell wireless facility or facilities within any ROW within the Town shall require review and approval by DPW.
2. No person, business, corporation or other entity may construct, maintain or perform any other work within any ROW within the Town related to the deployment of small wireless facilities without a small cell wireless facility permit duly issued by DPW in accordance with this Chapter.
3. No small cell wireless facility permit shall be issued for deployment of small cells unless the applicant has obtained necessary access permissions as required by this Chapter and paid all applicable fees.

B. To obtain a small cell wireless facility permit, an applicant must submit an application to DPW that includes the following:

1. The applicant's name, address, telephone number(s) and email address.
2. Emergency contact information for the provider where the provider may be reached in the event of an emergency after construction is completed.
2. The names, addresses, telephone numbers and email addresses of all representatives acting on behalf of the applicant with respect to the filing of the application.

3. A description of the proposed work, the purpose and intent of the proposed facility, and an analysis detailing the facility's compliance with this Chapter.
4. Documentation demonstrating that the applicant and/or provider has permission to access the ROW as required by this Chapter.
5. If applicable, a copy of the authorization for use of the property from the pole, tower or support structure owner on which the facility will be placed or attached.
5. Stamped drawings completed by a professional engineer:
 - i. Containing a certification that the pole, tower or support structure upon which the proposed facility is to be located is, and shall remain, structurally sound after the deployment of the facility.
 - ii. A detailed summary of the radio frequency power transmitted from each proposed facility and the actual radiated power. These numbers shall comply with the guidelines adopted by the FCC and the National Council on Radiation Protection and Measurements (NCRP) for safe human exposure to radio frequency emissions.
 - iii. For any new facilities or structures, accurate visual depictions or representations of the facility or facilities at full build out.
 - iv. If new construction, a plan demonstrating the pole, tower or support structure would be possible for other providers who may wish to deploy small cell technology in the geographic area of the subject application.
 - v. A comprehensive plan of any and all maintenance that shall be performed by the provider on an annual basis to ensure that the small cell wireless facility is properly and safely functioning.
6. Proposed location(s) for each small cell wireless facility to be deployed including the numbers of poles, towers or structures, or, if numbers are not available the metes and bounds of each location. Each proposed location of a facility must be reviewed and approved by DPW prior to the issuance of a small cell wireless facility permit.
7. Insurance as required by this Chapter;
8. Performance bond as required by this Chapter; and
9. Applicable fees as required by the DPW fee schedule.

C. DPW shall review applications to install all small cell wireless facilities within the time frames as established by federal law.

D. A small cell wireless facility permit is valid for 180 days after issuance and may be extended for an additional 180 days upon written request of the applicant if the failure to timely complete construction is a result of circumstances beyond the applicant's control. An applicant that fails to begin construction under a validly issued small cell wireless facility permit within 180 days of issuance and fails to qualify for extension thereof as provided herein shall forfeit such small cell wireless facility permit and must apply for a new small cell wireless facility permit.

E. DPW shall review applications and, if the application conforms with the provisions of this Chapter DPW shall issue the small cell wireless facility permit. In making such determination, DPW shall consider:

1. The compatibility of the proposed facility with the surrounding area;
2. The compatibility of the proposed facility with other uses in the ROW;
3. The impact of the proposed facility on traffic safety;
4. The aesthetic impact of the proposed facility, considering the compliance of the facility with the following criteria:

- i. Every small cell facility shall be installed at the minimum height necessary for deployment of the small cell facility, but in no event shall the height of such facility exceed 50 feet inclusive of the facility.
- ii. Any pole improved with a small cell facility shall be substantially similar in height and diameter to any surrounding poles and shall be consistent with the appearance of any surrounding poles.
- iii. Any replacement pole installed in connection with the deployment of a small cell facility shall be substantially similar in height, diameter and design to the existing pole that it is designed to replace. In no event may the replacement pole exceed 110% the height of the existing pole that it is designed to replace.
- iv. No antenna or any other transmitting or receiving device used in conjunction with a small cell wireless facility may extend more than four (4) feet above the top of the structure upon which it is placed. This height shall be measured from the bottom of the antenna assembly (including any masts, supports, etc., used to affix an antenna to a pole, tower or support structure) to the top of the antenna.
- v. Every small cell facility shall be sited to as to minimize the visual impact to adjacent residential property owners and/or historic or scenic resources.
- vi. Any additional electrical requirements, including, but not limited to, wires, lines, boxes, meters, generators, etc., shall be concealed and camouflaged.
- vii. All small cell wireless facilities must be of a neutral color and similar material that is identical to, or closely compatible with, the color and material of the supporting structure so as to make the facility and antenna as visually unobtrusive as possible. Concealment of facilities and antennas within existing poles, towers or support structures should be used where possible to reduce visual impacts.
- viii. Existing on-site vegetation shall be preserved or improved, and the disturbance of the existing topography shall be minimized.
- ix. Small cell wireless facilities shall not obstruct sight lines to drivers, pedestrians or bicyclists.
- x. No signage or other identifying markings of a commercial nature shall be permitted upon any pole, tower or support structure, except those required by law.
- xi. All cables or wires associated with a facility shall be concealed within a sleeve.

- xii. DPW may, at its sole discretion, attach additional conditions and safeguards to any small cell wireless facility and site development plan as it feels necessary to ensure the initial and continued conformance to all applicable Town standards.

5. To the extent that DPW determines a proposed facility does not meet the criteria set forth herein, the Applicant may apply to the Zoning Board of Appeals for necessary variances.

SECTION 6. §189A-6: General ROW installation requirements

A. The permittee shall employ due care and safety during the installation, maintenance or any other work in the public ROW, and shall comply with all safety and public ROW protection requirements of applicable laws, Town Codes and commonly accepted safety and public ROW protection standards.

B. Unless otherwise specified in the small cell wireless facility permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public through the work zone.

C. The permittee shall not interfere with any existing facilities or structures in the public ROW and shall locate its lines and equipment in such a manner so as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any public ROW.

D. Before beginning any excavation, the permittee shall comply with Dig Safely New York, Inc.

E. Bond, indemnification and insurance

1. No small cell wireless facility permit shall be issued until an adequate performance bond is provided in an amount to be fixed by DPW in its sole discretion. To the extent that any bond is required pursuant to any ROW agreement between the Applicant and the Town, the bond provided shall meet the requirements as stated in that ROW agreement.

2. The telecommunications provider or wireless service provider shall keep and maintain liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each incident and Two Million Dollars (\$2,000,000) annual aggregate for each communication facility in the public ROW. The Town shall be named as an additional insured on each policy on a primary, noncontributory basis. The provider shall provide the Town with proof of insurance together with the submission of its application.

3. The telecommunications provider or wireless service provider shall indemnify, defend and hold the Town, its employees, officers, elected officials, agents and contractors (“indemnified parties”) harmless from and against all injury, loss, damage, liability, costs or expenses arising from any third-party claims resulting from the small cell wireless facility permit holder’s use or breach of the license agreement. The provider’s indemnity shall not apply to any liability resulting from the negligence or willful misconduct of the Town or other indemnified parties. The Town shall give prompt written notice to the provider of any claim for which the Town seeks indemnification. The provider shall have the right to investigate these claims and shall

not settle any claim without the consent of the Town Attorney's office, unless the settlement (i) will be full funded by the provider without seeking reimbursement from the Town, and (ii) does not contain an admission of liability or wrongdoing by any indemnified parties. Neither party will be liable for consequential, special, punitive, or indirect damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

H. Annual reporting requirements.

1. Each small cell wireless facility in the public ROW shall be inspected by the provider on an annual basis to ensure that it is properly functioning and safely mounted.
2. A small cell wireless facility permit shall not be required for ordinary maintenance and repair.
3. The provider shall submit a report to the Town each year which shall include the following information:
 - i. Contact information for the person(s) primarily responsible for operating and maintaining the facility;
 - ii. The status of all pending projects involving the ROW, including estimated timetables and completion dates;
 - iii. Summary of all work that was completed in the previous 12-month period, including installation, maintenance, repair or replacements;
 - iv. Proof that all facilities are safely mounted and functioning properly;
 - v. List of the facilities in the Town's right of way and their compliance with Federal emissions regulations;
 - vi. Proposal for any work the provider intends, or deems necessary, to complete;
 - vii. Proof of compliance with insurance and bond requirements; and
 - viii. A list of all active and inactive facilities in the public ROW.
4. The provider shall submit an annual report to the Town no later than January 31st of each calendar year for the prior calendar year. If the provider fails to submit an annual report to the Town, it shall be considered in default and will have sixty (60) days to cure. In the event that the provider does not cure the default, the Town may terminate the provider's access to the Town's right-of-way and terminate any ROW agreement existing between the Town and provider.

I. Abandoned or unsafe facilities

1. If a small cell wireless facility has been abandoned as defined herein, the small cell wireless facility permit for said facility shall be immediately revoked and the telecommunications provider shall remove the facility together with all of its components within 30 days of revocation of the small cell wireless facility permit.
2. If an installed wireless facility no longer supports advancements in wireless technology and is not operational or transmitting wireless signals for the benefit of Town residents, the installed facility shall be considered abandoned and must be removed.

3. If a small cell wireless facility has become unsafe, the Town shall notify the permit holder and the latter shall have 5 days to repair and reinforce the facility or remove the facility and all of its components.
4. In the event that a small cell wireless facility is not removed within the prescribed timeframe stated above, the Town may remove the facility and seek reimbursement from the former permit holder for reasonable costs and fees associated with said removal.

SECTION 7. § 189A-7: Penalties for offenses.

1. Any person, entity or corporation that attempts to erect, construct, deploy or substantially modify a wireless telecommunications facility without having first obtained the necessary work permits or permissions described in this Chapter shall be deemed in violation of this Chapter and the Code of the Town of Colonie. Any responsible party or other persons convicted by a court of competent jurisdiction of having violated any provision of this Chapter shall be punished by a fine not to exceed ten thousand dollars (\$10,000) for the first violation, fifteen thousand dollars (\$15,000) for the second violation and twenty thousand dollars (\$20,000) for each violation thereafter.

2. If any structure is erected, constructed, reconstructed, deployed, altered, repaired, converted or maintained in violation of this chapter, or without obtaining the required permits or permissions, or if any building, structure or land is used in violation of this chapter, the Town Attorney, in addition to any other remedies, may institute proceedings to prevent such unlawful violation or to correct or abate such violations. Each day that such violation continues may be deemed a separate offense.

3. Any other violations of this Chapter shall be punishable with a civil penalty of \$500 for each violation. Each day that a violation occurs or is permitted to exist by the applicant or provider shall constitute a separate offense.

SECTION 8. SEVERABILITY

If any clause, sentence or provision of this local law or the application thereof to any person or circumstance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity thereof shall not affect, impair or invalidate the remainder of the provisions of this local law or the application thereof to other persons and circumstances.

SECTION 9. SEQR DETERMINATION.

The Town Board hereby determines that this amendment is an Unlisted action that will not have a significant effect on the environment and, therefore, no other determination or procedure under the State Environmental Quality Review Act (“SEQR”) is required.

SECTION 10. EFFECTIVE DATE

This local law shall take effect upon its proper filing in the Office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2023 of the **Town of Colonie** was duly passed by the Town Board on February 2, 2023 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer'.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (Town) of was duly passed by the on 20_, and was (approved)(not disapproved)(repassed (Name of Legislative Body) after disapproval) by the and was deemed duly adopted on 20 in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (Town) of was duly passed by the on 20_, and was (approved)(not disapproved)(repassed after (Name of Legislative Body) disapproval) by on 20 Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on I 9 in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (Town) of was duly passed by the (Name of Legislative Body) on 20 and was (approved)(not disapproved)(repassed after (disapproval) by the on 20 Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of 20 in accordance with the applicable provisions of law.

***Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20__, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____, 20__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

Clerk of the Town or officer designated by local legislative body
Date:

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature Town of Colonie Town Attorney
Date: