

**§ 223-26.4. Small cell wireless telecommunications facilities.
[Added 8-7-2018 by L.L. No. 13-2018]**

- 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 antenna equipment on a pole, located at an elevation less than eight feet from the ground. **[Amended 2-19-2019 by L.L. No. 2-2019]**
 - (7) Installation of a small cell facility on a pole located within 20 feet of a dwelling unit.
- C. Small cell permit from the Planning Board.
- (1) No person shall install a small cell facility without first filing a small cell facility application and obtaining a small cell permit from the Planning Board.

- (2) The Planning Board shall 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.
- (3) The Planning Board may issue a permit for the following:
 - (a) Collocation of a small cell facility or DAS facility on an existing tower, utility pole or streetlight not exceeding 50 feet in height on public or private property. 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.
 - (b) Collocation on existing buildings within the City of Beacon.
 - (c) Installation of a monopole or utility pole for small cell or DAS facility in the public right-of-way that does not exceed 50 feet in height.
- (4) Small cell permit application for Planning Board approval. The small cell permit application shall be made by the wireless telecommunications provider or its duly authorized representative and shall contain the following: **[Amended 2-19-2019 by L.L. No. 2-2019]**
 - (a) A site development plan showing applicant's entire property and adjacent properties and streets, at a convenient scale. The site development plan shall also describe any new proposed structure and antenna(s) and all related fixtures, antenna equipment, appurtenances and apparatus, including but not limited to height above preexisting grade, materials, color and lighting;
 - (b) The location, size, and height of all existing and proposed structures on the property which is the subject of the application;
 - (c) The applicant's name, address, telephone number, and e-mail address;

- (d) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - (e) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
 - (f) The location of the nearest residential structure;
 - (g) 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;
 - (h) 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; and
 - (i) The operator of the wireless telecommunication services facility 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.
 - (j) 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.
 - (k) The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
- (5) Small cell wireless facility fees. **[Amended 2-19-2019 by L.L. No. 2-2019]**
- (a) Application fee. At the time an applicant submits an application for a small cell facility, such applicant shall pay a nonrefundable application fee in an amount as determined by the City Council and set forth in the City of Beacon fee schedule, in addition to any other fee required by law.
 - (b) Reimbursement for the use of the public right-of-way. In addition to permit application fees, every wireless

telecommunication services facility located in the public right-of-way is subject to the City's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way. The annual fee for use of the public right-of-way shall be set forth in the City of Beacon fee schedule.

- (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.

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

- (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 existing City-owned utility poles.
 - (d) Location on City-owned infrastructure on private poles.
 - (e) Location on City-owned property, where there is no existing pole.
 - (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 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 was not granted for the proposed use.

E. Structural/safety inspection and report. The City of Beacon reserves the right to inspect any wireless telecommunication services facility to ensure compliance with the provisions of this section and any other provisions found within the Federal Communications Commission (FCC) regulations and City of Beacon Code, state and federal law. The City of Beacon and/or its agents shall have the authority to enter the property upon which a wireless telecommunication services facility is located at any

time, upon reasonable notice to the operator, to ensure such compliance. **[Amended 2-19-2019 by L.L. No. 2-2019]**

F. Planning Board requirements as to aesthetics and neighborhood impact mitigation for small cell permits.

(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. **[Amended 2-19-2019 by L.L. No. 2-2019]**

- (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 wireless services, including but not limited to, filling a gap in coverage, densifying a wireless network, introducing a new service or otherwise improving service capabilities.
- (b) New small cell facilities shall include stealth technology designs, unless the Planning Board makes a written determination that such designs are not feasible.
- (c) The Planning Board may consider alternative locations for equipment, whether pole-mounted or ground-mounted.
- (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.
- (e) The Planning Board shall consider all impacts to site lines and aesthetic views.
- (f) Except within the public right-of-way, all proposed poles, pole equipment and enclosures shall comply with the designated setback requirements.
- (g) Up to three 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.

- (h) No small cell placement shall be allowed on ornamental streetlighting poles as determined by the Building Inspector.
 - (i) No small cell facilities shall obstruct pedestrian or vehicular traffic in any way.
 - (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 with the neighborhood as determined by the Planning Board.
 - (k) Each new small cell facility, including antennas or other associated equipment, installed in the public right-of-way shall not exceed more than 10 feet above the existing utility pole or wireless telecommunications support structure on which it is being located.
 - (l) Antennas shall be mounted so that the bottom of the antenna is at least 20 feet above the grade at the base of the pole.
- 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.
- H. Duration. Construction pursuant to a small cell permit issued by the Planning Board under this section must be commenced within 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 facility with another small cell facility that is same as or smaller in size 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 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 facility in the public right-of-way.

- (1) Notice. Within 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 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) Abandonment of facilities. Upon abandonment of a small facility within the public rights-of-way of the City, the wireless provider shall notify the City within 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.