

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. 3 of the year 2022**

A local law adding Chapter 189A, to the Code of the Town of Colonie to be titled “Small Cell Wireless Facilities Law”, the purpose of which is to recognize the need to ensure widespread availability of telecommunications services in order to promote commerce, public safety and otherwise further the public interest.

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: Definitions

Chapter 189A shall adopt the definitions from Chapter 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
- **Antenna location permit** – a permit issued by the Department of Public Works in accordance with the requirements of Chapter 189A for the placement of small cell wireless facilities.
- **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** – any tower, pole, structure or base station as defined in this section that exists at the time an application is filed with the Town for a small wireless facility.
- **Existing Pole** – any pole, utility pole, Town pole or structure in the Town’s ROW that is in existence prior to any license or right-of-way agreements executed pursuant to this Chapter.
- **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 subdivision, 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** – the replacement of an existing pole, support structure or tower shall be substantially similar in design, size, height, scale and location to the existing structure and in conformance with this Chapter and any other Town regulations. A replacement pole shall have the same height circumference as the pole that it is replacing and shall conform to the surrounding area and neighborhood so as to blend seamlessly and be camouflaged.
- **Right-of-Way or “ROW”** – any right-of-way owned or maintained by the Town of Colonie
- **Small Cell Wireless Facility or Small Cell** – a wireless telecommunications facility that meets each of the following conditions:
 1. The facilities:
 - a) Are mounted on structures that are 50 feet or less in height, including their antennas; or
 - b) Are mounted on structures no more than 10% taller than other adjacent structures; or
 - c) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10% above its preexisting height as a result of the location of new antenna facilities; and
 2. Each antenna (excluding associated antenna equipment) is no more than 3 cubic feet in volume; and
 3. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
 4. The facility does not require antenna structure registration under applicable federal regulations; and
 5. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b)
- **Small Cell Network** – one or more small cell facilities connected by a fiber to a carrier switching system or other means of interconnection for provision of wireless service within a limited geographic area or structure.
- **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 3. §189A-3: Controlling Authority

The Federal Communications Commission (FCC) issued a Declaratory Ruling and Third Report and Order, adopted on September 26, 2018 which provides the legal background, regulations, and guidance on small cell wireless facility deployment and collation.

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

A. Provider shall request permission from the Town of Colonie Town Board to enter into a right-of-way agreement expressly authorizing the provider's non-exclusive use of the public ROW for the sole purpose of deploying small cell communications facility(ies). A ROW agreement shall be in effect prior to the provider deploying any facilities in the Town's right of way.

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. 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. The Town shall be provided with copies of any and all applications for the deployment of small cell wireless facilities in the Town of Colonie that are in the right of way of the State of New York or County of Albany.

C. The annual right of way occupancy fee, as established by the FCC, 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.

SECTION 5. §189A-5: Highway Work Permits.

A. Highway work permit applications.

1. An application for a small cell wireless facility shall require review and approval by the Town of Colonie Department of Public Works (DPW).
2. No person, business, corporation or other entity may construct, maintain or perform any other work in the public ROW related to telecommunications facilities, poles built for the sole or primary purpose of supporting said facilities or towers without first receiving a highway work permit to the extent required in this Chapter, and any other permit or authorization required by applicable laws.
3. The Town shall only issue a highway work permit where the applicant, or provider on whose behalf the applicant is constructing facilities, has executed a license/ROW agreement as required by this Chapter, and has paid all applicable fees. The Applicant must provide the Town with proof of proper structure and emissions of each facility to be deployed in the Town's right of way.
4. Any telecommunications provider that wishes to deploy a small cell facility within the Town's Right of Way must follow all provisions of this Chapter.

B. The provider shall submit an application to DPW for a highway work permit. The application shall include:

1. The applicant's name, address, telephone number(s) and email address, including emergency contact information for the applicant.
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 sufficient, and necessity for the location/placement of the facility to demonstrate compliance with the provisions of this Chapter.
 4. 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, if not included in the construction drawings.
 - 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 highway work permit.
 7. Insurance as required by Chapter 189A-6(G);
 8. Performance bond as required by Chapter 189A-6(G); and
 9. Applicable fees as required by the DPW fee schedule.
- C. DPW shall review applications within the following time frames:
1. 10 days to review a small cell wireless facility application to deploy a small cell wireless facility using an existing pole or structure. DPW shall notify the applicant of missing documents or information within the 10-day time frame. When the applicant resubmits the application, the clock restarts;
 2. 10 days to review a resubmission and notify the applicant of any missing documents or information. This notification shall toll the shot clock until all missing information is submitted.
- D. A highway work 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 complete construction is a result of circumstances beyond the applicant's control.
- E. An applicant may submit one (1) consolidated application for up to five (5) small cell wireless facilities, provided that the proposed communications facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Town. If the

applicant files a consolidated application, the applicant shall pay the application fee calculated as though each facility were a separate application. No applicant shall submit more than one consolidated application in a six-month period, but may submit applications for individual facilities. Priority shall be given to providers who seek to deploy small cell wireless facilities on existing poles, towers or support structures in the public ROW.

F. The Town shall review applications either under administrative or discretionary review, and, if the application conforms with the provisions of this Chapter, DPW shall issue the highway work permit subject to the design standard as set forth in §§ 189A-5(F)(5) and 189A-6 of this Chapter.

1. Administrative review

i. The following use within the public ROW shall be permitted, subject to administrative review and issuance of a highway work permit as set forth in this Chapter. This use shall be in accordance with all other applicable provisions of this Chapter. Administrative review will not be available for consolidated applications or simultaneous applications for more than five (5) communication facilities.

a) Modification of a pole, tower or support structure or replacement of a pole for the deployment of a communications facility where the modification or replacement qualifies as an eligible facilities request.

2. Discretionary review and approval

i. DPW shall have the sole discretion to consult with a third-party professional engineer to review specifications within an application. If a third-party engineer is required, DPW shall notify the provider in writing of the need to employ a third-party engineer and the reasons for said employment. The cost of the review shall be the responsibility of the applicant and must be paid before issuance of the highway work permit.

3. Except as otherwise provided by applicable law, the Town shall:

i. Within 10 days of receiving an application, the Town shall notify the applicant if the application is incomplete and identify the missing information. The applicant may resubmit the completed application within 30 days without additional charge, in which case the Town shall have 10 days from the receipt of the resubmitted application to verify the application is complete, notify the applicant that the application remains incomplete, or, in the Town's sole discretion, deny the application; and

ii. Make its final decision to approve or deny the application within 90 days for any new structure, after the application is complete (or deemed complete in the event the Town does not notify the applicant that the resubmitted application is incomplete).

iii. The Town shall advise the applicant in writing of its final decision.

4. In determining the deployment or placement of communication facilities, the Department of Public Works shall consider the following criteria and its impact on the surrounding neighborhood during the site plan review process:

i. The aesthetic standards as set forth in 189A-10 of this Chapter;

- ii. The compatibility of further deployments and their potential impact on the surrounding neighborhood; and
 - iii. The density fulfillment needs of the neighborhood.
5. Aesthetics (height, setback and design requirements)
- i. The Department of Public Works (DPW) shall inspect and approve the aesthetic design of each small cell wireless facility proposed to be deployed in the Town as well as any new or replacement poles, towers or structures.
 - ii. Any replacement poles within the Town shall be substantially similar in height, diameter and design to the poles that they will replace. Replacement poles shall not exceed 34 feet in height inclusive of the installed facilities.
 - iii. 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.
 - iv. Any additional electrical requirements, including, but not limited to, wires, lines, boxes, meters, generators, etc., shall be concealed and camouflaged.
 - v. 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 as determined by DPW.
 - vi. Existing on-site vegetation shall be preserved or improved, and the disturbance of the existing topography shall be minimized.
 - vii. Small cell wireless facilities shall not obstruct sight lines to drivers, pedestrians or bicyclists.
 - viii. No signage or other identifying markings of a commercial nature shall be permitted upon any pole, tower or support structure, except those required by the FCC.
 - ix. All cables or wires associated with a facility shall be concealed within a sleeve.
 - x. 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.

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 highway work 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. If a small cell wireless facility is found to interfere with the Town's public safety communications, or communications of other governmental entities, the provider shall, within forty-eight (48) hours of receiving notice—written or oral—take all steps reasonably necessary to correct and eliminate the interference. If the interference continues for a period in excess of forty-eight (48) hours after the provider attempted to correct the interference, the Town may reduce power to or remove the facility, or require the provider to cease operation of the facility until it can be repaired or replaced. If the facility is unable to be repaired so as to eliminate interference, the facility shall be removed within thirty (30) days of such determination by DPW.

E. Providers shall only install facilities and supporting equipment that is of the type and frequency approved by the FCC so as not to interfere with existing public safety communications or utilities.

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

G. Bond, indemnification and insurance

1. No highway work permit shall be issued until an adequate bond in a sum to be fixed by the Permit Authority, but in no case less than \$1,000,000, is provided by the applicant. The bond shall be conditioned for the payment of all damages which may be caused to a person or persons or to property by reason of the any acts of the permittee, sponsor, operator, or its agents, employees, contractors or subcontractors. Such bond shall run to the Town of Colonie and shall be for the use and benefit of any such person or persons, or any such owner or owners of any property so injured or damaged. Any such person or persons, or such owner or owners are hereby authorized to maintain an action on such bond, which right of action shall also accrue to the heirs, executors, administrators, successors or assigns of such persons or owners.

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 highway work 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 highway work 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 30th 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 for a period of 6 consecutive months or more, the highway work 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 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 time frame 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 Town of Colonie Town Code. 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 (“SEQRA”) 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. 3 of 2022 of the **Town of Colonie** was duly passed by the Town Board on July 21, 2022 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: