

LOCAL LAW # 10 OF 2019

A LOCAL LAW ESTABLISHING STANDARDS FOR SMALL CELL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE CITY OF PORT JERVIS

Purpose. The purpose of this local law is to add provisions to the existing Chapter 520 of the City Code of the City of Port Jervis to regulate small cell wireless facilities within the City of Port Jervis.

Legislation:

The following shall be added to Chapter 520 of the City Code of the City of Port Jervis:

Article II: Small Cell Wireless Facilities

-34. Purpose and Scope.

- A. Purpose. The purpose of this Chapter is to establish uniform policies and procedures for the deployment and installation of small wireless facilities in rights-of-way within the City's jurisdiction and owned by the City, which will provide a public health, safety, and welfare benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.
- B. Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:
1. prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 2. prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 3. prevent interference with existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
 4. ensure reasonable efforts are made to preserve the character of neighborhoods in which facilities are installed;
 5. protect against environmental damage, including damage to trees; and facilitate rapid deployment of small wireless facilities to provide the benefits of reliable access to wireless telecommunications technology, broadband and 9-1-1 services to homes, businesses, schools within the City.

-35. Definitions.

- A. Small Wireless Facility or Small Cell – a wireless telecommunications facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.
- B. Wireless Telecommunications Provider – a wireless telecommunications infrastructure provider or a wireless telecommunications services provider.

-36. **Permitted Use; Application and Fees.**

- A. Permitted Use: Collocation of a small wireless facility or a new or modified utility pole or wireless support structure for the collocation of a small wireless facility shall be a permitted use not requiring discretionary zoning approvals subject to the restrictions in contained herein.
- B. Permit Required. No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a small cell building permit therefore, except as otherwise provided in this Chapter.
- C. Permit Application. All small wireless facility applications for small cell building/work permits filed pursuant to this Chapter shall be on a form set by the Building Department of the City of Port Jervis. The Building Department shall review the application for a small cell building permit in light of its conformity with applicable regulations of this Chapter and all applicable building and safety codes. If the application is denied, the basis of denial shall be provided to the applicant in writing.
- D. Routine Maintenance and Modifications. An application shall not be required for: (i) routine maintenance; and (ii) like-kind modifications to any existing small wireless facility that do not materially change the appearance of the small wireless facility or exceed the structural capacity of the supporting structure.
- E. Information Updates. Any amendment to information contained in a small cell building permit application shall be submitted in writing to the Building Department within thirty (30) days after the change necessitating the amendment.
- F. Application Fees. All applications for small cell building permits pursuant to this Chapter shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the City related to processing the application.
- G. Violations. A permit shall be revoked for any violation of the provisions of this Chapter.

- 37. **Maximum Height; Other Requirements.**
- A. **Maximum Size of Permitted Use.** Small wireless facilities, and new or modified utility poles and wireless telecommunications support structures for the collocation of small wireless facilities may be placed in City rights-of-way as a permitted use subject to the following requirements:
 - 1. Each new or modified utility pole or wireless telecommunication support structure installed in the rights-of-way shall not exceed the greater of:
 - a. Ten (10) feet above the tallest existing utility pole in the rights-of-way in place as of the effective date of this Chapter located within 500 feet of the new pole; or,
 - b. Fifty (50) feet above ground level.
 - 2. New small wireless facilities in City rights-of-way shall not exceed the greater of:
 - a. More than ten (10) feet above an existing utility pole or wireless telecommunications support structure in the rights-of-way in place as of the effective date of this Chapter; or
 - b. Fifty (50) feet above ground level.
 - B. **Design Requirements.** Small wireless facilities must be designed so as to avoid unsightly or out-of-character deployments and subject to the approval of the Building Department
 - C. **Zoning.** Any wireless telecommunications provider that seeks to construct or modify a utility pole, wireless telecommunication support structure or wireless telecommunications facility that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements. In all other instances, no discretionary zoning approvals shall be required for projects which comply with the terms of this Chapter and a small cell building/work permit shall be issued.
- 38. **Removal, Relocation or Modification of Small wireless facility in the ROW.**
- A. **Notice.** Following written notice from the City, wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-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 rights-of-way.
 - B. **Emergency Removal or Relocation of Facilities.** The City retains the right to cut or move any small wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify

the wireless telecommunications provider and provide the wireless telecommunications provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless telecommunications provider after cutting or removing a small wireless facility.

- C. Abandonment of Facilities. Upon abandonment of a small wireless facility within the rights-of-way of the City, the wireless provider shall notify the City within ninety (90) days. Following receipt of such notice the City may direct the wireless provider to remove all or any portion of the small wireless 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.
- 39. **Fees.**
- A. ROW Administration Fee. A wireless telecommunications provider authorized to place small wireless facilities in the rights-of-way shall pay to the City an annual administration rate to be set by resolution of the Common Council.
- B. Attachment Fee. A wireless telecommunications provider authorized to place small wireless facilities shall pay an annual fee to place to place a small wireless facility on a City-owned pole in a City right-of-way. Such fee shall be set by resolution of the Common Council.

PLEASE TAKE NOTICE TO THE EXTENT THAT THIS LOCAL LAW MAY CONFLICT WITH APPLICABLE PORTIONS OF THE CITY LAW OF THE STATE OF NEW YORK, IT IS THE STATED INTENTION OF THE CITY TO EXERCISE ITS AUTHORITY TO SUPERSEDE AND AMEND, AS GRANTED UNDER THE MUNICIPAL HOME RULE LAW OF THE STATE OF NEW YORK, SECTION 10. THE CITY HEREBY PROVIDES NOTICE THAT IT IS EXERCISING ITS AUTHORITY TO SUPERSEDE AND AMEND PURSUANT TO MUNICIPAL HOME RULE LAW OF THE STATE OF NEW YORK SECTION 22.