

# STATE OF NEW YORK

6071

2019-2020 Regular Sessions

## IN SENATE

May 16, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to small wireless facilities development

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general municipal law is amended by adding a new article 13-E to read as follows:

### ARTICLE 13-E

#### SMALL WIRELESS FACILITIES DEPLOYMENT

##### Section 300. Definitions.

2 301. Use of right of way.

3 302. Collocation of small wireless facilities and micro wireless facilities.

4 303. Access to municipal corporation structures.

5 304. Local authority

6 305. Dispute resolution.

7 306. Indemnification.

8 § 300. Definitions. For the purposes of this article, the following terms shall have the following meanings unless the context indicates otherwise:

9 1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

10 2. "Applicable codes" means the New York State uniform fire prevention and building code as adopted, and as may be amended, pursuant to article eighteen of the executive law.

11 3. "Applicant" means any person or entity that files an application with a municipal corporation to install or modify wireless facilities on behalf of a communications service provider or wireless provider.

12 EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD11422-01-9

1 4. "Application" means a request submitted by an applicant to a local  
2 government for a permit to collocate small wireless facilities; or to  
3 approve the installation or modification of a utility pole or wireless  
4 support structure.

5 5. "Application fee" means the one time fee charged to an applicant by  
6 a municipal corporation for review of an application. The application  
7 fee may not exceed the actual reasonable costs incurred by the municipal  
8 corporation in connection with its review of the application.

9 6. "Pole" means: (i) a utility pole, other than a utility pole for  
10 designated services, owned or operated by a municipal corporation in the  
11 right of way, including a utility pole that provides lighting or traffic  
12 control functions, including light poles, traffic signals, and struc-  
13 tures for signage; and (ii) a pole or similar structure owned or oper-  
14 ated by a municipal corporation in the right of way that supports only  
15 wireless facilities.

16 7. "Base station" means wireless facilities or a wireless support  
17 structure or utility pole that currently supports wireless facilities.  
18 The term does not include a tower, as defined in 47 C.F.R. § 1.  
19 40001(b)(9), or associated wireless facilities.

20 8. "Collocate" means to install, mount, maintain, modify, operate, or  
21 replace wireless facilities on or adjacent to a wireless support struc-  
22 ture or utility pole. The term "collocation" has a corresponding mean-  
23 ing.

24 9. "Communications service provider" means a cable operator, as  
25 defined in 47 U.S.C. § 522(5); a provider of information service, as  
26 defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined  
27 in 47 U.S.C. § 153(51); or a wireless provider.

28 10. "FCC" means the Federal Communications Commission of the United  
29 States.

30 11. "Fee" means a one-time charge.

31 12. "Law" means federal, state, or local law, statute, common law,  
32 code, rule, regulation, order, or ordinance.

33 13. "Micro wireless facility" means a wireless facility that meets the  
34 following qualifications: (i) is not larger in dimension than twenty-  
35 four inches in length, fifteen inches in width, and twelve inches in  
36 height; and (ii) any exterior antenna is no longer than eleven inches.

37 14. "Permit" means a written authorization required by a municipal  
38 corporation to perform an action or initiate, continue, or complete a  
39 project relating to the installation or modification of wireless facili-  
40 ties.

41 15. "Person" means an individual, corporation, limited liability  
42 company, partnership, association, trust, or other entity or organiza-  
43 tion.

44 16. "Rate" means a recurring charge.

45 17. "Right of way" or "ROW" means the area on, below, or above a  
46 public roadway, highway, street, sidewalk, alley, utility easement, or  
47 similar property, but not including a federal interstate highway.

48 18. "Small wireless facility" means a wireless facility that meets  
49 both of the following qualifications: (i) each antenna is located inside  
50 an enclosure of no more than six cubic feet in volume or, in the case of  
51 an antenna that has exposed elements, the antenna and all of its exposed  
52 elements could fit within an imaginary enclosure of no more than six  
53 cubic feet; and (ii) all other wireless equipment associated with the  
54 facility is cumulatively no more than twenty-eight cubic feet in volume.  
55 The following types of associated ancillary equipment are not included  
56 in the calculation of equipment volume: electric meter, concealment

1 elements, telecommunications demarcation box, ground-based enclosures,  
2 grounding equipment, power transfer switch, cut-off switch, and vertical  
3 cable runs for the connection of power and other services.

4 19. "Substantial modification" means a proposed modification to an  
5 existing wireless support structure or base station which will substan-  
6 tially change the physical dimensions of the wireless support structure  
7 or base station under the objective standard for substantial change  
8 adopted by the Federal Communications Commission pursuant to 47 C.F.R. §  
9 1.40001.

10 20. "Utility pole" means a pole or similar structure that is used in  
11 whole or in part by a communications service provider or for electric  
12 distribution, lighting, traffic control, signage, or a similar function.  
13 Such term shall not include structures supporting only wireless facili-  
14 ties.

15 21. "Utility pole for designated services" means a utility pole owned  
16 or operated in the ROW by a municipal corporation, a public utility  
17 district, an electric membership corporation, or a rural electric coop-  
18 erative that is designed to, or used in whole or in part for the purpose  
19 of carrying electric distribution lines or cables or wires for telecom-  
20 munications, cable, or electric service.

21 22. "Wireless facility" means equipment at a fixed location that  
22 enables wireless communications between user equipment and a communi-  
23 cations network, including: (i) equipment associated with wireless  
24 communications; and (ii) radio transceivers, antennas, coaxial or  
25 fiber-optic cable, regular and backup power supplies, and comparable  
26 equipment, regardless of technological configuration. The term includes  
27 small wireless facilities and micro wireless facilities. The term does  
28 not include the structure or improvements on, under, or within which the  
29 equipment is collocated. The term does not include: (i) the structure or  
30 improvements on, under, or within which the equipment is collocated; or  
31 (ii) coaxial or fiber-optic cable that is between wireless structures or  
32 utility poles or that is otherwise not immediately adjacent to or  
33 directly associated with a particular antenna.

34 23. "Wireless infrastructure provider" means any person, including a  
35 person authorized to provide telecommunications service in the state,  
36 that builds or installs wireless communication transmission equipment,  
37 wireless facilities or wireless support structures, but that is not a  
38 wireless services provider.

39 24. "Wireless provider" means a wireless infrastructure provider or a  
40 wireless services provider.

41 25. "Wireless services" means any services, whether at a fixed  
42 location or mobile, provided using wireless facilities.

43 26. "Wireless services provider" means any person or entity that  
44 provides wireless services.

45 27. "Wireless support structure" means a freestanding structure, such  
46 as a monopole; tower, either guyed or self-supporting; billboard; or,  
47 other existing or proposed structure designed to support or capable of  
48 supporting wireless facilities. Such term shall not include a utility  
49 pole.

50 § 301. Use of right of way. 1. Applicability. This section shall only  
51 apply to the activities of a wireless provider within the right of way.

52 2. Exclusive use prohibited. A municipal corporation may not enter  
53 into an exclusive arrangement with any person for use of the right of  
54 way for the construction, operation, marketing, or maintenance of wire-  
55 less facilities or wireless support structures or the collocation of  
56 small wireless facilities or micro wireless facilities.

1 3. Right of way rates and fees. A municipal corporation may only  
2 charge a wireless provider a rate or fee for the use of the right of way  
3 with respect to the construction, installation, mounting, maintenance,  
4 modification, operation, or replacement of a wireless facility or wire-  
5 less support structure in the right of way, including collocation in  
6 such right of way, if the municipal corporation charges other communi-  
7 cations service providers or publicly, cooperatively, or municipally  
8 owned utilities for the use of the right of way. If a municipal corpo-  
9 ration is authorized by applicable law to charge a rate or fee to those  
10 persons or entities, and does so, any such rate or fee for a wireless  
11 provider must be: (i) limited to no more than the direct and actual cost  
12 of managing the right of way; and (ii) competitively neutral with regard  
13 to other users of the right of way, including investor, municipal corpo-  
14 ration, or cooperatively owned entities. No rate or fee may: (i) result  
15 in a double recovery where existing rates, fees, or taxes already  
16 recover the direct and actual costs of managing the rights of way; (ii)  
17 be in the form of a franchise or other fee based on revenue or customer  
18 counts; (iii) be unreasonable or discriminatory; (iv) violate any appli-  
19 cable law; or (v) exceed an annual amount equal to twenty dollars times  
20 the number of utility poles or wireless support structures in the munic-  
21 ipal corporation's geographic jurisdiction on which the wireless provid-  
22 er has collocated a small wireless facility antenna. Notwithstanding the  
23 foregoing, in recognition of the public benefits of the deployment of  
24 wireless services, a municipal corporation is permitted, on a nondiscri-  
25 minatory basis, to refrain from charging any rate or fee to a wireless  
26 provider for the use of the right of way.

27 4. Rate or fee adjustment. Should a municipal corporation have an  
28 existing rate or fee to construct, install, mount, maintain, modify,  
29 operate, or replace a wireless facility or wireless support structure in  
30 the ROW, including collocation in such ROW, controlled by the municipal  
31 corporation and such rate or fee does not comply with the requirements  
32 in subdivision three of this section, not later than six months follow-  
33 ing the effective date of this article, the municipal corporation shall  
34 implement a revised rate or fee to ensure compliance with such subdivi-  
35 sion three for all affected persons.

36 5. Right of access. Subject to the provisions of this section and  
37 approval of an application, if required, a wireless provider shall have  
38 the right, as a permitted use not subject to zoning review or approval,  
39 but subject to the issuance of a permit by the municipal corporation as  
40 provided in this article, to collocate wireless facilities and  
41 construct, modify, maintain, and operate utility poles, wireless support  
42 structures, conduit, cable, and related appurtenances and facilities  
43 along, across, upon, and under the ROW. Such structures and facilities  
44 shall be so constructed and maintained as not to obstruct or hinder the  
45 usual travel or public safety on such ROW or obstruct the legal use of  
46 such ROW by other utilities. Each new or modified utility pole and wire-  
47 less support structure installed in the ROW shall not exceed the greater  
48 of (i) ten feet in height above the tallest existing utility pole in  
49 place as of the effective date of this article located within five  
50 hundred feet of the new pole in the same ROW; or (ii) fifty feet above  
51 ground level. New wireless facilities in the ROW may not extend (i) more  
52 than ten feet above an existing utility pole or wireless support struc-  
53 ture in place as of the effective date of this article; or (ii) above  
54 the height permitted for a new utility pole or wireless support struc-  
55 ture under this section. Notwithstanding the foregoing:

1 a. Subject to this article, a wireless provider shall have the right  
2 to construct, modify and maintain a utility pole, wireless support  
3 structure, or wireless facility that exceeds these size limits along,  
4 across, upon and under the ROW, subject to review in accordance with  
5 applicable municipal zoning regulations; and

6 b. Applicants shall comply with nondiscriminatory undergrounding  
7 requirements after obtaining prior zoning approval in areas zoned for  
8 single family residential use, provided that such requirements shall not  
9 prohibit the replacement of existing structures or result in an effective  
10 prohibition of services. In all other zoning districts, prior  
11 zoning approval shall not be required for undergrounding new infrastruc-  
12 ture associated with small wireless facilities.

13 6. No discrimination. The municipal corporation, in the exercise of  
14 its administration and regulation related to the management of the ROW  
15 must be competitively neutral with regard to other users of the ROW,  
16 including that terms may not be unreasonable or discriminatory and may  
17 not violate any applicable law.

18 7. Damage and repair. The municipal corporation may require a wireless  
19 provider to repair all damage to the ROW directly caused by the activi-  
20 ties of the wireless provider, while occupying, installing, repairing  
21 or maintaining wireless facilities, wireless support structures, or  
22 utility poles in the ROW and to return the ROW to its functional equiv-  
23 alence before the damage pursuant to the competitively neutral, reason-  
24 able requirements and specifications of the municipal corporation. If  
25 the wireless provider fails to make the repairs reasonably required by  
26 the municipal corporation within a reasonable time after written notice,  
27 the municipal corporation may effect those repairs and charge the appli-  
28 cable party the reasonable, documented actual cost of such repairs.

29 § 302. Collocation of small wireless facilities and micro wireless  
30 facilities. 1. Applicability. The provisions of this section shall apply  
31 to activities of a wireless provider within or outside of the right of  
32 way.

33 2. Except as expressly provided in this article, no municipal corpo-  
34 ration may regulate, prohibit or charge for the collocation of  
35 small/micro wireless facilities.

36 3. Small wireless facilities and micro wireless facilities shall be  
37 classified as permitted uses and not subject to zoning review or  
38 approval if they are collocated: (i) in the right of way in any zoning  
39 district; or (ii) outside the right of way in property not zoned exclu-  
40 sively for single family residential use.

41 4. A municipal corporation may require an applicant to obtain one or  
42 more permits to collocate a small wireless facility, provided such  
43 permits are of general applicability and do not apply exclusively to  
44 wireless facilities. A municipal corporation shall receive applications  
45 for, process, and issue such permits subject to the following require-  
46 ments: (i) no municipal corporation may, directly or indirectly, require  
47 an applicant to perform services unrelated to the collocation for which  
48 approval is sought, such as in-kind contributions to the municipal  
49 corporation, including reserving fiber, conduit, or pole space for the  
50 municipal corporation; (ii) no applicant shall be required to provide  
51 more information to obtain a permit than communications service provid-  
52 ers that are not wireless providers; (iii) within ten days of receiving  
53 an application, a municipal corporation shall determine and notify the  
54 applicant whether the application is complete. If an application is  
55 incomplete, the municipal corporation shall specifically identify what  
56 information is missing; (iv) an application shall be processed on a

1 nondiscriminatory basis and shall be deemed approved if the municipal  
2 corporation fails to otherwise approve or deny the application within  
3 sixty days of receipt; and (v) a municipal corporation shall approve an  
4 application unless it does not meet the requirements of this article.  
5 The municipal corporation shall document the basis for any denial,  
6 including the specific code provisions on which the denial was based,  
7 and send the documentation to the applicant on or before the day the  
8 municipal corporation denies the application. The applicant may cure the  
9 deficiencies identified by the municipal corporation and resubmit the  
10 application within thirty days of the denial without paying an addi-  
11 tional application fee. The municipal corporation shall approve or deny  
12 the revised application within thirty days. Any subsequent review shall  
13 be limited to the deficiencies cited in the denial; (vi) an applicant  
14 seeking to collocate small wireless facilities within the jurisdiction  
15 of a single municipal corporation shall be allowed, at the applicant's  
16 discretion, to file a consolidated application and receive a single  
17 permit for the collocation of multiple small wireless facilities; (vii)  
18 collocation for which a permit has been granted shall commence within  
19 one year of approval and shall be pursued to completion; and (viii) no  
20 municipal corporation may institute, either expressly or de facto, a  
21 moratorium on: a. filing, receiving, or processing applications; or b.  
22 issuing permits or other approvals, if any, for the collocation of small  
23 wireless facilities.

24 5. Application fees shall be subject to the following requirements:  
25 (i) a municipal corporation may charge an application fee only if such  
26 fee is required for similar types of commercial development within the  
27 municipal corporation's jurisdiction; (ii) a municipal corporation shall  
28 only charge a fee for the actual, direct, and reasonable costs incurred  
29 by the municipal corporation relating to the granting or processing of  
30 an application. Such fees shall be reasonably related in time to the  
31 incurring of such costs. Where such costs are already recovered by  
32 existing fees, rates, or taxes paid by a wireless provider, no applica-  
33 tion fee shall be assessed to recover such costs; (iii) a fee may not  
34 include: a. travel expenses incurred by a third party in its review of  
35 an application; or b. direct payment or reimbursement of third party  
36 rates or fees charged on a contingency basis or a result-based arrange-  
37 ment; (iv) in any controversy concerning the appropriateness of a fee,  
38 the municipal corporation shall have the burden of proving that the fee  
39 is reasonably related to the actual, direct, and reasonable costs  
40 incurred by the municipal corporation; (v) total application fees, where  
41 permitted, shall not exceed the lesser of the amount charged by the  
42 municipal corporation for: a. a building permit for any similar commer-  
43 cial construction, activity, or land use development; or b. one hundred  
44 dollars each for up to five small wireless facilities addressed in an  
45 application and fifty dollars for each additional small wireless facili-  
46 ty addressed in the application.

47 6. No municipal corporation shall require an application for: (i)  
48 routine maintenance; (ii) the replacement of wireless facilities with  
49 wireless facilities that are substantially similar or the same size or  
50 smaller; or (iii) the installation, placement, maintenance, operation or  
51 replacement of micro wireless facilities that are strung on cables  
52 between existing utility poles, in compliance with the national elec-  
53 trical safety code. A municipal corporation may require a permit to work  
54 within the right of way for such activities, if applicable. Any such  
55 permits shall be subject to the requirements of this section.

1 § 303. Access to municipal corporation structures. 1. Collocation of  
2 small wireless facilities on or adjacent to municipal corporation poles  
3 and utility poles for designated services. (i) Exclusive arrangements  
4 prohibited. A person owning or controlling municipal poles or utility  
5 poles for designated services may not enter into an exclusive arrange-  
6 ment with any person for the right to attach to or adjacent to such  
7 poles.

8 (ii) Rates. a. The rates and fees for collocations on or adjacent to  
9 municipal corporation poles or utility poles for designated services  
10 shall be nondiscriminatory regardless of the services provided by the  
11 collocating person; b. the rate to collocate on or adjacent to utility  
12 poles for designated services may not exceed the annual recurring rate  
13 that would be permitted under rules adopted by the FCC under 47 U.S.C. §  
14 224(e) if the rates were regulated by the FCC or twenty dollars per year  
15 per wooden utility pole or two hundred dollars per year per metal,  
16 concrete, or fiberglass utility pole, whichever is less; c. the rate to  
17 collocate on municipal corporation poles shall recover the actual,  
18 direct, and reasonable costs related to the applicant's application for  
19 and use of space on the municipal corporation pole; d. the total annual  
20 rate for collocations and any activities related to such collocations  
21 shall not exceed the lesser of actual, direct, and reasonable costs  
22 related to the collocation on or adjacent to the pole or twenty dollars  
23 per year per wooden utility pole or two hundred dollars per year per  
24 metal, concrete, or fiberglass utility pole, whichever is less; e. in  
25 any controversy concerning the appropriateness of a rate for a municipal  
26 corporation's pole, the municipal corporation shall have the burden of  
27 proving that the rates are reasonably related to the actual, direct, and  
28 reasonable costs incurred for use of space on the pole for such period;  
29 f. should a municipal corporation, municipally-owned or operated-per-  
30 son, public utility district, or cooperative have an existing pole  
31 attachment rate, fee, or other term that does not comply with the  
32 requirements of this section, the municipal corporation, municipally-  
33 owned or operated person, public utility district, or cooperative shall,  
34 not later than six months following the effective date of this article,  
35 reform such rate, fee, or term in compliance with this subdivision.

36 (iii) Rates, fees, and terms to be offered. Persons owning or control-  
37 ling municipal corporation poles and utility poles for designated  
38 services shall offer rates, fees, and other terms that comply with the  
39 provision set forth in this section within the later of six months of  
40 the effective date of this article or three months after receiving a  
41 request to collocate its first small wireless facility on a municipal  
42 corporation pole or a utility pole for designated services owned or  
43 controlled by a municipal corporation.

44 2. Collocation on or adjacent to municipal corporation wireless  
45 support structures and utility poles outside the right of way. A municipi-  
46 pal corporation shall authorize the collocation of small wireless facil-  
47 ities and micro wireless facilities on or adjacent to wireless support  
48 structures and utility poles owned or controlled by a municipal corpo-  
49 ration that are not located within the right of way to the same extent  
50 the municipal corporation permits access to such structures for other  
51 commercial projects or uses. Such collocations shall be subject to  
52 reasonable and nondiscriminatory rates, fees, and terms as provided in  
53 an agreement between the municipal corporation and the wireless provid-  
54 er.

55 § 304. Local authority. Subject to the provisions of this article and  
56 applicable federal law, a municipal corporation may continue to exercise

1 zoning, land use, planning and permitting authority within its territo-  
2 rial boundaries, including with respect to wireless support structure  
3 and utility poles; except that no municipal corporation shall have or  
4 exercise any jurisdiction or authority over the design, engineering,  
5 construction, installation, or operation of any small wireless facility  
6 or micro wireless facility located in an interior structure or upon the  
7 site of any campus, stadium, or athletic facility not otherwise owned or  
8 controlled by the municipal corporation, other than to comply with  
9 applicable codes. Nothing in this article authorizes the state or any  
10 political subdivision, including a municipal corporation, to require  
11 wireless facility deployment or to regulate wireless services.

12 § 305. Dispute resolution. Courts of competent jurisdiction shall have  
13 jurisdiction to determine all disputes arising under this article.

14 § 306. Indemnification. No municipal corporation shall require a  
15 wireless provider to indemnify and hold the municipal corporation and  
16 its officers and employees harmless against any claims, lawsuits, judg-  
17 ments, costs, liens, losses, expenses or fees, except when a court of  
18 competent jurisdiction has found that the negligence of the wireless  
19 provider while installing, repairing or maintaining caused the harm that  
20 created such claims, lawsuits, judgments, costs, liens, losses,  
21 expenses, or fees or to require a wireless provider to obtain insurance  
22 naming the municipal corporation or its officers and employees an addi-  
23 tional insured against any of the foregoing.

24 § 2. This act shall take effect on the thirtieth day after it shall  
25 have become a law.