



COMMON COUNCIL MEETING

PLANNING, ECONOMIC DEVELOPMENT AND LAND USE COMMITTEE

Cathy Fahey, Chair

DATES: Tuesday, August 24, 2021

TIME: 5:30 p.m.

LOCATION: CITY HALL, COMMON COUNCIL CHAMBERS 2ND FLOOR

TOPIC(S) OF DISCUSSION/CONSIDERATION:

RESOLUTION 37.42.21R

A RESOLUTION AUTHORIZING A RIGHT-OF-WAY FRANCHISE AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT ON CITY-OWNED RIGHTS-OF-WAY

RESOLUTION 38.42.21R

A RESOLUTION AUTHORIZING A RIGHT-OF-WAY FRANCHISE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC FOR INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT ON CITY-OWNED RIGHTS-OF-WAY

ORDINANCE 13.21.21 (As Amended 08/16/2021)

AN ORDINANCE AMENDING CHAPTER 323 (STREETS AND SIDEWALKS) OF THE CODE OF THE CITY OF ALBANY BY ADDING A NEW ARTICLE VII, ENTITLED "SMALL CELL WIRELESS FACILITIES IN CITY RIGHTS OF WAY"

PUBLIC COMMENT PERIOD: YES

Council Member Anane introduced the following:

RESOLUTION 37.42.21R

A RESOLUTION AUTHORIZING A RIGHT-OF-WAY FRANCHISE AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT ON CITY-OWNED RIGHTS-OF-WAY

WHEREAS, Cellco Partnership d/b/a/ Verizon Wireless seeks to deploy small cell wireless facilities within rights-of-way owned by the City of Albany; and

WHEREAS, federal law provides that the regulation of the placement, construction, and modification of personal wireless service facilities by any local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services, and shall not prohibit or have the effect of prohibiting the provision of personal wireless services; and;

WHEREAS, under federal law, a local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request; and

WHEREAS, the City of Albany is authorized under section 82-4 of the Albany City Code and section 20 of the New York General City Law to grant and renew non-exclusive franchises for the installation, operation, and maintenance of telecommunications infrastructure on, beneath, above, and within public rights-of-way within the City; and

WHEREAS, it is the practice of the City of Albany to permit such use of public rights-of-way for the provision of telecommunications service providers, subject to the duty of and authority for the City to manage its streets, public property, and rights-of-way for public use, and to require fair and reasonable compensation for the use thereof in a manner consistent with applicable law; and

WHEREAS, Cellco Partnership d/b/a Verizon Wireless is licensed by the Federal Communications Commission to operate throughout the State of New York to provide telecommunications services

WHEREAS, Cellco Partnership d/b/a Verizon Wireless desires to obtain from the City a non-exclusive license to access, use, and occupy public rights-of-way within the City for the purpose of constructing, installing, maintaining repairing, operating, replacing, and removing equipment and facilities related to the placement of small cell wireless facilities in a manner consistent with law; and

WHEREAS, state and local law require approval by the Common Council of franchise agreements regarding proposed installation and use of telecommunications in City of rights-of-way;

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Albany hereby authorizes the Mayor of the City of Albany to enter into a Small Wireless Facilities Rights-of-Way Access Agreement with Cellco Partnership d/b/a Verizon Wireless its successors and assigns, granting Cellco Partnership d/b/a Verizon Wireless a franchise to construct, install, operate and maintain telecommunications equipment in the City of Albany.

To: Danielle Gillespie, City Clerk

From: Brett Williams, Senior Assistant Corporation Counsel

Re: Request for Common Council Legislation
Supporting Memorandum

Date: April 2, 2021

Sponsor(s): Anane

RESOLUTION NUMBER 37.42.21R

TITLE

A RESOLUTION AUTHORIZING A RIGHT-OF-WAY FRANCHISE AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT ON CITY-OWNED RIGHTS-OF-WAY

GENERAL PURPOSE OF THE LEGISLATION

Telecommunications companies sometimes seek to install telecommunications equipment in municipally owned and maintained rights-of-way. At least one such company already has an agreement to do so in the City of Albany.

Cellco Partnership d/b/a Verizon Wireless now wishes to install small cell wireless equipment in or on City-owned rights-of-way. These installations will expand access to 5G and otherwise improve the existing cellular and telecommunications infrastructure in the City of Albany.

This resolution authorizes the Mayor to enter into a “Small Wireless Facilities Rights-of-Way Access Agreement” on the City’s behalf with Cellco Partnership d/b/a Verizon Wireless.

The proposed agreement is included herewith.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

Pursuant to state law and City code, the Common Council must authorize the use of City rights-of-way for franchises.

FISCAL IMPACT

The City may charge fees established by federal regulation and laid out more fully in Section VIII, “Fees and Charges” of the annexed agreement.

Council Member Fahey introduced the following:

RESOLUTION 38.42.21R

A RESOLUTION AUTHORIZING A RIGHT-OF-WAY FRANCHISE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC FOR INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT ON CITY-OWNED RIGHTS-OF-WAY

WHEREAS, New Cingular Wireless PCS, LLC seeks to deploy small cell wireless facilities within rights-of-way owned by the City of Albany; and

WHEREAS, federal law provides that the regulation of the placement, construction, and modification of personal wireless service facilities by any local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services, and shall not prohibit or have the effect of prohibiting the provision of personal wireless services; and;

WHEREAS, under federal law, a local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request; and

WHEREAS, the City of Albany is authorized under section 82-4 of the Albany City Code and section 20 of the New York General City Law to grant and renew non-exclusive franchises for the installation, operation, and maintenance of telecommunications infrastructure on, beneath, above, and within public rights-of-way within the City; and

WHEREAS, it is the practice of the City of Albany to permit such use of public rights-of-way for the provision of telecommunications service providers, subject to the duty of and authority for the City to manage its streets, public property, and rights-of-way for public use, and to require fair and reasonable compensation for the use thereof in a manner consistent with applicable law; and

WHEREAS, New Cingular Wireless PCS, LLC is licensed by the Federal Communications Commission to operate throughout the State of New York to provide telecommunications services

WHEREAS, New Cingular Wireless PCS, LLC desires to obtain from the City a non-exclusive license to access, use, and occupy public rights-of-way within the City for the purpose of constructing, installing, maintaining repairing, operating, replacing, and removing equipment and facilities related to the placement of small cell wireless facilities in a manner consistent with law; and

WHEREAS, state and local law require approval by the Common Council of franchise agreements regarding proposed installation and use of telecommunications in City of rights-of-way;

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Albany hereby authorizes the Mayor of the City of Albany to enter into a Small Wireless Facilities Rights-of-Way Access Agreement with New Cingular Wireless PCS, LLC, its successors and assigns, granting New Cingular Wireless PCS, LLC a franchise to construct, install, operate and maintain telecommunications equipment in the City of Albany.

To: Danielle Gillespie, City Clerk

From: Brett Williams, Senior Assistant Corporation Counsel

Re: Request for Common Council Legislation
Supporting Memorandum

Date: April 2, 2021

Sponsor(s): Fahey

RESOLUTION NUMBER 38.42.21R

TITLE

A RESOLUTION AUTHORIZING A RIGHT-OF-WAY FRANCHISE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC FOR INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT ON CITY-OWNED RIGHTS-OF-WAY

GENERAL PURPOSE OF THE LEGISLATION

Telecommunications companies sometimes seek to install telecommunications equipment in municipally owned and maintained rights-of-way. At least one such company already has an agreement to do so in the City of Albany.

New Cingular Wireless PCS, LLC an entity associated with AT&T now wishes to install small cell wireless equipment in or on City-owned rights-of-way. These installations will expand access to 5G and otherwise improve the existing cellular and telecommunications infrastructure in the City of Albany.

This resolution authorizes the Mayor to enter into a “Small Wireless Facilities Rights-of-Way Access Agreement” on the City’s behalf with New Cingular Wireless PCS, LLC.

The proposed agreement is included herewith.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

Pursuant to state law and City code, the Common Council must authorize the use of City rights-of-way for franchises.

FISCAL IMPACT

The City may charge fees established by federal regulation and laid out more fully in Section VIII, “Fees and Charges” of the annexed agreement.

Council Member Fahey introduced the following:

ORDINANCE 13.21.21 (As Amended 08/16/2021)

AN ORDINANCE AMENDING CHAPTER 323 (STREETS AND SIDEWALKS) OF THE CODE OF THE CITY OF ALBANY BY ADDING A NEW ARTICLE VII, ENTITLED “SMALL CELL WIRELESS FACILITIES IN CITY RIGHTS OF WAY”

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. Chapter 323 (Streets and Sidewalks) of Part II (General Legislation) of the Code of the City of Albany is hereby amended to add a new Article VII, to be entitled “Small Cell Wireless Facilities in City Rights of Way,” to read as follows:

§ 323-100 Purpose and scope.

- A. The purpose of this Article is to establish uniform standards for the deployment and installation of Small Wireless Facilities in rights-of-way within the City’s jurisdiction, 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 that 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
 - (6) Facilitate rapid deployment of Small Wireless Facilities to provide the benefits of reliable access to wireless telecommunications technology, broadband, and emergency services to homes, businesses, schools, and other uses within the City.
- B. The City recognizes the importance of Small Wireless Facilities to provide high-quality communications and internet access to residents and businesses within the City. The City also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of Small Wireless Facilities within the City's rights-of-way, including, without limitation, the federal Telecommunications Act, as codified at 47 U.S.C. §§ 253 and 332(c), and the federal Spectrum Act, as codified at 47 U.S.C. § 1455, and this Article shall be interpreted consistent with those provisions.
- C. To the extent that this Article may conflict with other sections of the Code of the City of Albany, this Article shall be controlling to the extent of such conflict.
- D. In establishing the rights, obligations, and conditions set forth in this Article, it is the intent of the City to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situations, and legal status of each applicant or request for use of the right-of-way.

§ 323-101 Definitions.

Aesthetic Standards

Shall mean such standards as may be published from time to time by the CPO, as consistent with this Article, which shall set forth rules and regulations for the siting and construction of Small Wireless Facilities within the City ROW.

Agreement

Shall mean the uniform Master License Agreement to be executed by each Applicant seeking to deploy Small Wireless Facilities in the City ROW, as described and laid out in section 323-102 of this Article.

Applicable Law or Law

Shall mean all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

Applicant

Shall mean any person or entity who applies to the City of Albany for a license to deploy Small Wireless Facilities.

Carrier

Shall mean any person or entity engaged in or who seeks to engage in the provision of a commercial mobile service in the City of Albany.

CPO

Shall mean the Chief Planning Official of the City of Albany, as that term is defined in the City of Albany Unified Sustainable Development Ordinance.

Collocate

Shall mean to attach, install, mount, maintain, modify, operate, and/or place one or more Facilities on an existing support structure.

Commissioner

Shall mean the Commissioner of the Department of General Services, or the Commissioner's designee.

Deployment

Shall mean the construction, repair, replacement, maintenance, attachment, installation, removal, reattachment, reinstallation, relocation, and/or operation of Facilities within the City ROW.

Equipment

Shall mean the radios, antennas, transmitters, and other wireless transmission or transport devices attached, mounted, or installed in the City ROW, including but not limited to control boxes, fiber optic and other cables, wires, conduit, power sources, grounding equipment, battery backup and other equipment, structures, and appurtenances which may be installed, maintained, operated and/or used for the purpose of Small Wireless Facilities Deployments. This definition shall include new types of telecommunications equipment that are substantially similar to Small Wireless Facilities existing as of the Effective Date of this Agreement, or that have reduced or less adverse impacts on the City ROW with respect to size, coverage/spacing requirements, and general physical characteristics.

Facility or Facilities

Shall mean any and all Equipment and installations of any kind owned and/or controlled by Carrier that are reasonably necessary and appropriate for the provision of Services.

FCC

Shall mean the Federal Communications Commission of the United States.

FCC Wireless Infrastructure Order

Shall mean the Declaratory Ruling issued by the FCC on September 27, 2018 in WT Docket Nos. 17-79 and 17-84 (FCC 18-133, 33 FCC Rcd 9088).

License

Shall mean a non-exclusive right granted by the City to an Applicant to deploy Small Wireless Facilities on, over, under, upon, across, and/or along the City ROW.

Radiofrequency Emissions or RF Emissions

Shall mean electromagnetic energy including radio waves and microwaves that are transmitted or received by Facilities.

Right-of-Way or ROW

Shall mean the space in, upon, above, under, along, across, and over the public streets, roads, highways, sidewalks, and public ways owned or controlled by and under the jurisdiction of the City, as the same now or may hereafter exist. This term shall not include: (a) any county, state, or federal ROW; (b) public utility easements, whether owned by the City or others, except as provided by applicable Laws or pursuant to any agreement between the City and any such person or entity; or (c) any property owned by the City that is not a public street, road, highway, sidewalk, or other public way, such as parks, City buildings, and property on which City buildings are located.

Services

Shall mean any telecommunications service provided by means of the Facilities installed by Carrier in accordance with this Article, for which Carrier holds a valid authorization issued by the FCC; or the leasing, operation, or maintenance of the same by Carrier in accordance with this Article. "Services" do not include cable service or open video services.

Small Wireless Facility

Shall mean a Facility that meets the definition of "Small Wireless Facility" set forth in 47 CFR § 1.6002. The term "Small Wireless Facility" includes associated Equipment and Facilities as those terms are defined in this section, but does not include Support Structures to which such Equipment and Facilities are attached.

Small Wireless Facility Permit

Shall mean the authorization granted after review and approval by the CPO of an application for a Small Wireless Facility.

Support Structure

Shall mean a structure to which a Small Wireless Facility is or may be attached, including, but not limited to, existing support structures, support structures where facilities may be co-located, and support structures to be installed by the Carrier.

§ 323-102 License agreement and permit applications.

- A. The Commissioner shall, in consultation with other City departments, develop and make available a uniform Master License Agreement to be executed by each Applicant seeking

to deploy Small Wireless Facilities in the City ROW. The uniform Master License Agreement shall include all provisions necessary to ensure the overall interests of public health, safety, and welfare, including, but not limited to, the following provisions:

- (1) An acknowledgement that the licensee may not place a Small Wireless Facility in the ROW without first obtaining any and all necessary permits;
 - (2) A requirement that all Small Wireless Facilities and related equipment must comply with FCC safety rules, regulations, and standards for RF emissions;
 - (3) A requirement that the installation, operation, and maintenance of Small Wireless Facilities shall adhere to all provisions of this Code, the aesthetic, safety and operating Standards, and all other applicable laws and regulations;
 - (4) A requirement that Small Wireless Facilities may not obstruct, impede, or hinder the usual travel or public safety of pedestrians or vehicles on or in the ROW, and may not obstruct the legal use of the ROW by lawfully present utility providers;
 - (5) A requirement that Small Wireless Facilities may not be installed or operated in a manner that violates the Americans with Disabilities Act;
 - (6) A requirement that any licensee whose actions cause damage or interfere with the use of the ROW, or any objects located within the ROW, shall be responsible for any necessary repairs and/or restoration at the licensee's sole expense;
 - (7) A requirement that the licensee shall be responsible for the payment of an annual fee for access to the ROW and/or attachment to City-owned structures in the ROW;
 - (8) No exclusive, irrevocable property right or any other interest shall be created by the licensee;
 - (9) The license agreement shall be in the general form as developed by the City;
 - (10) The City, in applying the provisions of this Article, will act in a competitively neutral manner with regard to all other users of the right-of-way.
- B. A permit application for each Small Wireless Facility shall be submitted to the Commissioner for administrative review in accordance with this Article, the Unified Sustainable Development Ordinance, and all other applicable provisions of the Code. This application shall be made on a form promulgated by the Commissioner.
- C. Applicants seeking a Permit or Permits shall:
- (1) Provide, in a format acceptable to the City, notification to all affected property owners within a 250 radius of the proposed installation that an application has been submitted for review. The notification must be post marked within seven (7) days of the submission of the application. Applicants must provide proof of notification to the Commissioner within seven (7) days from the date such notifications are post marked. Such proof of notification shall include:
 - (a) A map showing a 250-foot buffer drawn around the proposed pole, with all parcels even partially within the radius identified;

- (b) A copy of the notification that was mailed out to the owners of the properties identified on the map described in subparagraph (a), above; and
 - (c) A list of mailing addresses of those property owners.
- (2) Submit proof of insurance for the Carrier licensed by the FCC and each contractor that will work on the project for which the application is sought, as follows:
- (a) Proof of Commercial General Liability insurance with completed operations, to which the City of Albany has been added as additional insured;
 - (b) Certificates or affidavits approved by the State Workers' Compensation Board pursuant to Workers' Compensation Law § 57(2), evidencing proof of workers' compensation insurance or proof of Applicant not being required to secure same; and

§ 323-103 Application review process.

- A. All applicants shall initiate an informal pre-application meeting with the Commissioner to expedite the application review and permitting process by identifying and preliminarily addressing any significant issues or concerns the City or the applicant may have. Participation in a pre-application meeting shall not commence the applicable review period.
- B. An applicant may combine into a single batch application up to ten (10) individual applications for permits for new Small Wireless Facilities to be located in the City ROW, provided that the proposed Small Wireless Facilities are of substantially the same design and style and are located within a single two (2) mile radius.
- C. The Commissioner shall review each application to determine whether it is complete and whether it complies with all terms and conditions of the Agreement and this Article, including the Aesthetic, Safety, and Operating standards laid out in § 323-104 of this Article, as well as all other applicable rules, regulations and guidelines promulgated pursuant to this Article.
- D. The Commissioner shall review each application on an expedited basis so as to comply with the "shot clocks" set forth in the FCC Wireless Infrastructure Order and all other requirements of the federal Telecommunications Act, as codified at 47 U.S.C. § 253 and 332(c), and the federal Spectrum Act, as codified at 47 U.S.C. § 1455.
- E. The Commissioner shall review the permit application and shall prepare any findings and proposed conditions. The Commissioner shall, upon receipt of an application, forward copies to, and coordinate with, all other impacted City departments and agencies.
- F. Within the time allowed under the "shot clocks" for approval or denial of a permit application, the Commissioner shall issue a decision that either approves, approves with conditions, or denies the requested permits, with the reasons for such decision set forth in writing and supported by specific findings of substantial evidence.
- G. In the event that an application is denied, the applicant may appeal such denial within thirty (30) days to the Board of Zoning Appeals of the City of Albany, pursuant to section 375-504(12)(b) of the City's Unified Sustainable Development Ordinance.

§ 323-104 Regulatory authority.

- A. The City shall have the authority to adopt regulations governing the placement, modification, and maintenance of small wireless facilities in the City ROW in addition to but consistent with the requirements of this Article, including regulations related to collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards. The Commissioner shall have the authority to develop forms and procedures for submission of applications for small wireless facilities permits.
- B. The City shall have the power to establish reasonable and non-discriminatory limitations on the deployment of new or additional Small Wireless Facilities within the City ROW if there is insufficient space to accommodate all of the requests of providers or other persons or entities seeking to occupy and use the City ROW. In making such decisions, the Commissioner shall accommodate, to the extent possible, all existing Small Wireless Facilities and those for which an application has been submitted but not yet determined. In determining priority beyond those applicants with vested interests, the City shall be guided by the following criteria, but may consider any other relevant criteria not here enumerated:
- (1) The width and physical condition of the City ROW;
 - (2) The time of year with respect to essential utilities;
 - (3) The protection of existing city facilities, utility infrastructure, and Small Wireless Facilities in the City ROW;
 - (4) The availability of Services and any gaps in service;
 - (5) Established plans for public improvements and development projects that have been determined to be in the public's interest; and
 - (6) Consistency with the purposes of this Article and the Aesthetic, Safety and Operational Standards set forth in section 323-106 of this Article, and the rules, regulations and guidelines promulgated thereunder.
- E. In addition to obtaining a Small Wireless Facility Permit, applicants may be required to obtain additional permits including, but not limited to, building permit(s), electrical permit(s), grading permit(s), tree trimming application(s), street opening permit(s), sidewalk barricade permit(s), and/or certificate(s) of appropriateness.

§ 323-105 Permit fees and charges.

- A. The following non-recurring fees are required for each Small Wireless Facility and shall be due upon submission of the application therefor:
- (1) For collocations or facilities mounted on an existing or replacement Support Structure, \$500.00 for an application for up to five Small Wireless Facilities, with an additional \$100.00 for each Small Wireless Facility beyond five.
 - (2) For Small Wireless Facilities placed on new poles, \$1,000.00
- B. The following annual fees are required for each Small Wireless Facility:

- (1) For collocations or Facilities mounted on an existing or replacement Support Structure, \$135.00 per year.
 - (2) For Facilities placed on new poles, \$270.00 per year.
- C. The first year's annual fee shall be due within ninety (90) days of when the installation is complete and shall not be prorated, regardless of the date of such completion. For each subsequent year, the annual fee shall be due on or before January 31.

§ 323-106 Aesthetic Safety, and Operational standards.

The City shall adopt Aesthetic Standards for Small Wireless Facilities consistent with the following requirements:

- A. Small Wireless facilities shall not interfere with pedestrian or vehicle safety, the use of streets, sidewalks, alleys, parkways, and/or other public ways and places, the operation of traffic control equipment or sightlines at intersections, and shall not obstruct or hinder the usual travel use or public safety of the City ROW, or obstruct the legal use of the ROW by utilities.
- B. Small Wireless Facilities shall not violate or materially interfere with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement.
- C. The color of Small Wireless Facilities shall reasonably match the color of the support structure upon which they are attached. Reasonable, technically feasible, nondiscriminatory, and technologically neutral design and stealth concealment measures shall be required. New poles shall match the color and finish of existing decorative lighting or other poles in the area, (or black where no nearby poles exist).
- D. Ground equipment should be minimal and the least intrusive.
- E. The City desires and encourages collocations between multiple wireless service providers on the same support structure whenever feasible. If the applicant chooses to not collocate when options appear available, demonstrative proof must be provided as to why collocation is not feasible.
- F. The following are the most preferred locations for the siting of new Small Wireless Facilities:
 - (1) Non-historic buildings upon which the Small Wireless Facility can be camouflaged to match existing materials and texture;
 - (2) Industrial Zoning Districts that are not adjacent to City parks, residential zones, or historic districts; or
 - (3) Mixed-use Community Highway (MU-CH) zoning districts that are not adjacent to City parks, residential zones, or historic districts.
- G. The following are the least preferred locations for the siting of new Small Wireless Facilities:
 - (1) Residential zoning districts;
 - (2) Historic districts; both local and National Register districts; or

(3) Mixed Use zoning districts.

H. The following list indicates the order of preference for support structures for Small Wireless Facilities:

- (1) Collocations on an existing Small Wireless Facility Support Structure;
- (2) Existing utility poles;
- (3) New poles;
- (4) Non-decorative municipal service poles;
- (5) Sign poles or other structures that are at least fifteen (15) feet tall; or
- (6) Decorative municipal service poles, which are the least preferred option.

§ 323-107 Violations.

Any person or entity who violates this Article or fails to comply with the provisions of this Article shall be subject to a penalty of not less than two hundred and fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00). Each day such violation or failure to comply continues shall be considered a separate offense.

Section 2. This ordinance shall take effect immediately.

**APPROVED AS TO FORM THIS
16TH DAY OF AUGUST, 2021**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: Brett Williams, Esq., Sr. Assistant Corporation Counsel
John-Raphael Pichardo, Esq., Research Counsel

Re: Common Council Legislation
Supporting Memorandum

Date: April 23, 2021

Sponsor: Council Member Fahey

ORDINANCE 13.51.21 (*As Amended 08/16/2021*)

TITLE

AN ORDINANCE AMENDING CHAPTER 323 (STREETS AND SIDEWALKS) OF THE CODE OF THE CITY OF ALBANY BY ADDING A NEW ARTICLE VII, ENTITLED “SMALL CELL WIRELESS FACILITIES IN CITY RIGHTS OF WAY”

GENERAL PURPOSE OF LEGISLATION

The ordinance establishes aesthetic and other standards for small cell wireless facilities installed in the City.

NECESSITY FOR LEGISLATION AND CHANGES TO EXISTING LAW

The City Code currently contains no standards for small cell wireless facilities. This ordinance adds such standards.

FISCAL IMPACT(S)

The ordinance sets application fees, yearly fee, and fine amounts, which will be a source of revenue.