

PRIORITY OF BUSINESS SET BY SUPERVISOR PURSUANT TO
CHAPTER §A371 OF THE ALDEN TOWN CODE

- 1. PLEDGE OF ALLEGIANCE – COUNCILWOMAN PAUTLER**
- 2. CALLING THE ROLL OF BOARD MEMBERS BY THE TOWN CLERK**
- 3. OFFER OF THE MINUTES OF THE PROCEEDINGS OF THE REGULAR MEETING OF NOVEMBER 7, 2022 and NOVEMBER 21, 2022**
- 4. APPROVAL OF VOUCHERS**
- 5. BUSINESS FROM THE FLOOR**
- 6. PRESENTATION OF COMMUNICATIONS FROM BOARD MEMBERS AND OTHER TOWN OFFICIALS**
- 7. NEW BUSINESS**
 - A. Resolution to adopt Collective Bargaining Agreement and MOU per S/BS**
 - B. Motion to hire Court Clerk per S/BS**
 - C. Motion to approve use of Community Center per S/BS**
 - D. Motion to set rate of pay for Deputy Dog Control Officer per S/BS**
 - E. Resolution approving the Site Plan and issuing SEQRA NEG DEC(Mulvey) per S/BS**
 - F. Resolution to approve Emergency Shelter Agreement with Townline Lutheran Church per S/BS**
 - G. Resolution in opposition of New York State Actions and Restricting Second Amendment Rights per S/BS**
 - H. Motion to re-introduce LL#1 of 2023 (Small Wireless Technology) per S/BS**
 - I. Resolution declaring Lead Agency for LL#1 of 2023, Small Wireless Technology per S/BS**
- 8. UNFINISHED & TABLED BUSINESS**
- 9. REPORTS OF COMMITTEES, OFFICIALS AND PERSONNEL**
- 10. ANNOUNCEMENTS FROM THE SUPERVISOR**
- 11. NOTICE OF MEETINGS:**

WORK SESSION:	December 12, 2022	@ 7:00 PM
REG. BOARD MEETING:	December 19, 2022	@ 7:00 PM
- 12. MEMORIAL REMEMBRANCE: Gretchen Smith**
- 13. ADJOURNMENT**

NOV. 2022

COUNCILPERSON _____ MOVED AND COUNCILPERSON
_____ SECONDED THAT THE FOLLOWING VOUCHERS BE ALLOWED AND
PAID.

<u>ACCOUNT</u>	<u>AMOUNT</u>		
	ABSTRACT #1	ABSTRACT #2	TOTAL
GENERAL FUND "A"	\$42,765.21	\$19,429.99	\$62,195.20
HIGHWAY FUND "DA/DB"	\$42,355.68	\$568.97	\$42,924.65
PART-TOWN FUND "B"	\$17,119.83	\$1,800.00	\$18,919.83
GRANT "G"			\$0.00
CONSOLIDATED WATER "WR"			\$0.00
SPECIAL FIRE PROTECTION "SF"			\$0.00
SEWER DIST. #1 FUND "SI"			\$0.00
SEWER DIST. #2 FUND "SA"	\$517.33	\$56.91	\$574.24
TRUST & AGENCY "T"	\$18,799.19	\$6,866.06	\$25,665.25
SPECIAL REFUSE FUND "SR"	\$41,973.22		\$41,973.22
STREET LIGHTING FUND "SL"		\$5,898.79	\$5,898.79
PERIWINKLE LTG. DIST."SL1"	\$143.38		\$143.38
ZOELLER RD. WATER DIST."WZ"			\$0.00
WATER DIST. NEWSTEAD "WO"			\$0.00
WATER DIST. EXCHANGE "WX"			\$0.00
WATER DIST. NO. 1 "WA"	\$6,233.73		\$6,233.73
TOTAL	\$169,907.57	\$34,620.72	\$204,528.29

TOWN OF ALDEN

AP GL Distribution Report

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date: 11/22/2022 To: 11/29/2022

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund A					GENERAL FUND						
Dept 1110					TOWN JUSTICES						
A.1110.0408		00001			TOWN JUSTICES, DUES & SUBSCRIPTIONS	11222022	11/29/2022	11/29/2022	11	0.00	125.00
20220997					0000001424 BIELAT, PAULA D						
Total A.1110.0408					TOWN JUSTICES, DUES & SUBSCRIPTIONS					0.00	125.00
Total Dept 1110					TOWN JUSTICES					0.00	125.00
Dept 1220					SUPERVISOR						
A.1220.0104		00001			SUPERVISOR, P/T CLERK	2211014	11/29/2022	11/29/2022	11	0.00	2,762.50
20220991					0000001845 DRESCHER & MALECKI LLP						
Total A.1220.0104					SUPERVISOR, P/T CLERK					0.00	2,762.50
Total Dept 1220					SUPERVISOR					0.00	2,762.50
Dept 1320					AUDITOR						
A.1320.0434		00001			AUDITOR, AUDIT & BUDGET CONS	2211020	11/29/2022	11/29/2022	11	0.00	4,330.00
20220990					0000001845 DRESCHER & MALECKI LLP						
Total A.1320.0434					AUDITOR, AUDIT & BUDGET CONS					0.00	4,330.00
Total Dept 1320					AUDITOR					0.00	4,330.00
Dept 1410					TOWN CLERK						
A.1410.0412		00001			TOWN CLERK, EDUCATION EXPENSES	11175288	11/29/2022	11/29/2022	11	0.00	197.93
20220985					0000002333 LEN-CO LUMBER, CAPITAL ONE TRAI C66120						
Total A.1410.0412					TOWN CLERK, EDUCATION EXPENSES					0.00	197.93
Total Dept 1410					TOWN CLERK					0.00	197.93
Dept 1420					LAW						
A.1420.0402		00001			ADMINISTRATIVE LEGAL FEES	11175288	11/29/2022	11/29/2022	11	0.00	179.40
20220988					0000001574 HODGSON RUSS ATTORNEYS LLP						
Total A.1420.0402					ADMINISTRATIVE LEGAL FEES					0.00	179.40
Total Dept 1420					LAW					0.00	179.40
Dept 1610					INTERNET						

TOWN OF ALDEN

AP GL Distribution Report

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date 11/22/2022 To: 11/29/2022

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund A			GENERAL FUND								
Dept 1610			INTERNET								
A.1610.0400			INTERNET.CONTRACTUAL EXPENSE								
20221000		00001	0000001862	CHARTER COMMUNICATIONS	146018401112122	11/29/2022	11/29/2022	11		0.00	39.99
Total A.1610.0400			INTERNET.CONTRACTUAL EXPENSE							0.00	39.99
Total Dept 1610			INTERNET							0.00	39.99
Dept 1620			BUILDINGS								
A.1620.0406			BUILDINGS.TELEPHONE								
20220981		00001	0000002064	VERIZON	11222022	11/22/2022	11/22/2022	11		0.00	392.71
Total A.1620.0406			BUILDINGS.TELEPHONE							0.00	392.71
A.1620.0407			BUILDINGS.LIGHT								
20220998		00001	0000000111	NYSEG	11172022	11/29/2022	11/29/2022	11		0.00	2,721.56
Total A.1620.0407			BUILDINGS.LIGHT							0.00	2,721.56
A.1620.0408			BUILDINGS.HEAT								
20221007		00001	0000000420	ERIE COUNTY COMPTROLLER'S OFF	1800069462	11/29/2022	11/29/2022	11		0.00	578.86
Total A.1620.0408			BUILDINGS.HEAT							0.00	578.86
A.1620.0409			BUILDINGS.WATER								
20221002		00001	0000000183	ERIE COUNTY WATER AUTH	11292022	11/29/2022	11/29/2022	11		0.00	56.91
Total A.1620.0409			BUILDINGS.WATER							0.00	56.91
A.1620.0438			BUILDINGS.MATERIALS & SUPPLIES								
20221005		00001	00000002939	NAYA SERVICE	3UBH6	11/29/2022	11/29/2022	11		0.00	350.00
20221006		00001	00000002940	COMMERCIAL POWER SYSTEMS	092922KB03	11/29/2022	11/29/2022	11		0.00	427.00
Total A.1620.0438			BUILDINGS.MATERIALS & SUPPLIES							0.00	777.00
A.1620.0439			BUILDINGS.JANITORIAL SUPPLIES								
20220987		00001	0000002880	KALCZNYSKI, LINDA	11282022	11/29/2022	11/29/2022	11		0.00	10.49
Total A.1620.0439			BUILDINGS.JANITORIAL SUPPLIES							0.00	10.49
A.1620.0440			BUILDINGS.ALARM SYS COMM CTR								
20221003		00001	0000001278	DOYLE SECURITY SYSTEMS, INC.	1364301	11/29/2022	11/29/2022	11		0.00	111.99
Total A.1620.0440			BUILDINGS.ALARM SYS COMM CTR							0.00	111.99

TOWN OF ALDEN

AP GL Distribution Report

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date: 11/22/2022 To: 11/29/2022

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund A					GENERAL FUND						
Dept 7140					RECREATION						
A.7140.0417					RECREATION.ADULT PROGRAMS						
20220992		00001		0000002938	BUCK, CARLY	001	11/29/2022	11/29/2022	11	0.00	144.00
Total A.7140.0417					RECREATION.ADULT PROGRAMS					0.00	144.00
A.7140.0434					RECREATION.RECREATION SUPPLIES						
20220983		00001		0000001862	CHARTER COMMUNICATIONS	146009001110722	11/22/2022	11/22/2022	11	0.00	119.69
Total A.7140.0434					RECREATION.RECREATION SUPPLIES					0.00	119.69
Total Dept 7140					RECREATION					0.00	263.69
Dept 8389					HYDRANT						
A.8389.0400					WATER DISTRICT #5 EXPENDITURES 10% MATCH						
20220989		00001		0000001144	METZGER CIVIL ENGINEERING, PLLC *****		11/29/2022	11/29/2022	11	0.00	712.50
Total A.8389.0400					WATER DISTRICT #5 EXPENDITURES 10% MATCH					0.00	712.50
A.8389.0401					WATER DISTRICT CAYUGA CREEK WATER DISTRICT						
20220989		00001		0000001144	METZGER CIVIL ENGINEERING, PLLC *****		11/29/2022	11/29/2022	11	0.00	3,570.60
Total A.8389.0401					WATER DISTRICT CAYUGA CREEK WATER DISTRICT					0.00	3,570.60
Total Dept 8389					HYDRANT					0.00	4,283.10
Total Fund A					GENERAL FUND					0.00	19,429.99

Date Prepared: 11/29/2022 02:10 PM

Report Date: 11/29/2022

Account Table:

Alt. Sort Table:

TOWN OF ALDEN

AP GL Distribution Report

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date: 11/22/2022 To: 11/29/2022

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund B					PART TOWN FUND						
Dept 6989					OTHER ECONOMIC OPPORTUNITY & DEVELOPMENT						
B.6989.0411					OTHER ECONOMIC OPPORTUNITY & DEVELOPMENT.CONTRACTUAL SERVICES						
20220984		00001		0000002805	ROTELLA GRANT MANAGEMENT	2022162	11/22/2022	11/22/2022	11	0.00	1,800.00
Total B.6989.0411					OTHER ECONOMIC OPPORTUNITY & DEVELOPMENT.CONTRACTUAL SE					0.00	1,800.00
Total Dept 6989					OTHER ECONOMIC OPPORTUNITY & DEVELOPMENT					0.00	1,800.00
Total Fund B					PART TOWN FUND					0.00	1,800.00

TOWN OF ALDEN

AP GL Distribution Report

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date: 11/22/2022 To: 11/29/2022

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund DB					HIGHWAY FUND - PART TOWN						
Dept 5130					MACHINERY						
DB:5130.0424					MACHINERY,REPAIRS AND MAINTENANCE						
20220993		00001		0000002705	CYNCON EQUIPMENT	56017	11/29/2022	11/29/2022	11	0.00	328.97
20220995		00001		0000002877	UNICORN SPECIALTIES	8008	11/29/2022	11/29/2022	11	0.00	240.00
Total					MACHINERY,REPAIRS AND MAINTENANCE					0.00	568.97
Total Dept 5130					MACHINERY					0.00	568.97
Total Fund DB					HIGHWAY FUND - PART TOWN					0.00	568.97

Date Prepared: 11/29/2022 02:10 PM

Report Date: 11/29/2022

Account Table:

Alt. Sort Table:

TOWN OF ALDEN

AP GL Distribution Report

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date: 11/22/2022 To: 11/29/2022

PUR4130 1.0

Page 7 of 9

Prepared By: CLERK 4

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund SA					SEWER ALAURA DRIVE						
Dept 8130					SEWAGE TREATMENT AND DISPOSAL						
SA.8130.0409					SEWAGE TREATMENT AND DISPOSAL.WATER						
20221001		00001		0000000183	ERIE COUNTY WATER AUTH	11292022	11/29/2022	11/29/2022	11	0.00	56.91
Total SA.8130.0409					SEWAGE TREATMENT AND DISPOSAL.WATER					0.00	56.91
Total Dept 8130					SEWAGE TREATMENT AND DISPOSAL					0.00	56.91
Total Fund SA					SEWER ALAURA DRIVE					0.00	56.91

Date Prepared: 11/29/2022 02:10 PM

Report Date: 11/29/2022

Account Table:

All. Sort Table:

TOWN OF ALDEN

AP GL Distribution Report

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date: 11/22/2022 To: 11/29/2022

Prepared By: CLERK 4

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund SL					CONSOLIDATED LIGHTING						
Dept 5182					STREET LIGHTING						
SL.5182.0411					STREET LIGHTING.LIGHTING CONTRACTS						
20220998		00001		0000000111	NYSEG	11172022	11/29/2022	11/29/2022	11	0.00	5,898.79
Total SL.5182.0411					STREET LIGHTING.LIGHTING CONTRACTS					0.00	5,898.79
Total Dept 5182					STREET LIGHTING					0.00	5,898.79
Total Fund SL					CONSOLIDATED LIGHTING					0.00	5,898.79

Account Table:
 Alt. Sort Table:

TOWN OF ALDEN

AP GL Distribution Report

Prepared By: CLERK 4

Fiscal Year: 2022 Period From: 1 To: 12 Pay Due Date 11/22/2022 To: 11/29/2022

Account No.	PO No.	Check ID	Check No.	Vendor Code	Vendor Name	Invoice No.	Invoice Date	Pay Due	Period	Enc. Amount	Expense Amount
Fund T											
Dept 0000					TRUST & AGENCY						
T.0000.0052.0013					SITE PLAN FEES..6161 BROADWAY, LLC						
20220982		00001		0000001144	METZGER CIVIL ENGINEERING, PLLC 8862		11/22/2022	11/22/2022	11	0.00	62.50
Total T.0000.0052.0013					SITE PLAN FEES..6161 BROADWAY, LLC					0.00	62.50
T.0000.0602.2000					AMBULANCE.AMBULANCE SERVICES						
20220986		00001		0000002550	LANCASTER VOLUNTEER AMBULANC 11282022		11/29/2022	11/29/2022	11	0.00	6,803.56
Total T.0000.0602.2000					AMBULANCE.AMBULANCE SERVICES					0.00	6,803.56
Total Dept 0000										0.00	6,866.06
Total Fund T					TRUST & AGENCY					0.00	6,866.06
Grand Total										0.00	34,620.72

Dept. No.	Name	Enc. Amount	Exp. Amount
0000	0000	0.00	6,866.06
1110	TOWN JUSTICES	0.00	125.00
1220	SUPERVISOR	0.00	2,762.50
1320	AUDITOR	0.00	4,330.00
1410	TOWN CLERK	0.00	197.93
1420	LAW	0.00	179.40
1610	INTERNET	0.00	39.99
1620	BUILDINGS	0.00	5,071.27
1670	CENTRAL MAILING	0.00	35.11
5130	MACHINERY	0.00	568.97
5132	HIGHWAY GARAGE	0.00	776.56
5182	STREET LIGHTING	0.00	5,898.79
6989	OTHER ECONOMIC OPPORTUNITY & DEVELOPI	0.00	1,800.00
7110	PARKS	0.00	1,365.44
7140	RECREATION	0.00	263.69
8130	SEWAGE TREATMENT AND DISPOSAL	0.00	56.91
8389	HYDRANT	0.00	4,283.10
Grand Total:		0.00	34,620.72

A

RESOLUTION TO ADOPT COLLECTIVE BARGAINING AGREEMENT AND MOU

**THE FOLLOWING RESOLUTION WAS OFFERED
BY _____ WHO MOVED ITS
ADOPTION, SECONDED BY _____**

WHEREAS, the Town of Alden Highway Employees are subject to a Collective Bargaining Agreement with the Town of Alden;

WHEREAS, The Town Board after full and careful review and consideration of the proposed Collective Bargaining Agreement, finds that it is in the public interest to enter into the proposed Agreement with the Highway Employees as well as the Memorandum of Understanding;

WHEREAS, the Town of Alden and the Town of Alden Highway Workers have agreed upon the terms of a Collective Bargaining Agreement for a term through December 31, 2024, said Agreement is currently on file in the Office of the Town Supervisor.

NOW THEREFORE BE IT RESOLVED A FOLLOWS:

1. That the Town Board does hereby authorize Supervisor Sitzman to enter into and execute all necessary documents to effectuate the Collective Bargaining Agreement and MOU with the Town of Alden Highway Employees through December 31, 2024; and
2. This Resolution shall take effect immediately.

The above Resolution was duly put to a roll call vote at a regular meeting on December 5, 2022, the results of which were as follows:

Councilwomen Waiss	AYE	NAY
Supervisor Sitzman	AYE	NAY
Councilwomen Pautler	AYE	NAY



B

Motion to Hire Court Clerk

Motion to hire Wendy Rath, as part time Court Clerk at a rate of \$16.00 per hour, not to exceed 19.5 hours per week. Subject to successful completion of all pre-employment checks.

10

C

Motion to Approve Use of Community Center

Motion to approve the request of the Alden Middle School to use the Community Center from 12/5/2022 through 12/23/2022 Mondays through Fridays from 8.00 am until 10.00 am for daily student tutoring.



A large, handwritten capital letter 'D' in the top right corner of the page.

Motion to Set Rate of Pay for Deputy Dog Control Officer

Motion to set the hourly pay rate for Deputy Dog Control Officer, Robert Olson at \$15.59 per hour, from 10/24/2022 until 12/31/22.

7

RESOLUTION APPROVING THE SITE PLAN AND ISSUING SEQRA NEGATIVE DECLARATION

THE FOLLOWING RESOLUTION WAS OFFERED BY _____, WHO MOVED ITS ADOPTION, SECONDED BY _____

WHEREAS, the Town Board of the Town of Alden is considering an application, by Mulvey Construction Inc. for site plan approval of a proposed new 23,000 square foot commercial contractor office and shop with at 11061 Walden Avenue, in the Town of Alden, further identified by SBL # 96.00-4-5 (The “Proposed Action”);

WHEREAS, the Town Board has determined that the Proposed Action is an Unlisted Action under SEQRA but has determined that it is in the public interest to conduct a coordinated review;

WHEREAS, the Town of Alden has provided notice to Erie County Planning as required under Section 239-m of the General Municipal Law and to all involved agencies;

WHEREAS, the New York State Environmental Quality Review Act requires the Town Board to determine the Lead Agency status and the Lead Agency making a SEQR determination;

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, the Applicant has prepared the Environmental Assessment Form, which is now on file with the Town Board and the Town’s SEQR Intake Officer; and

WHEREAS, any comments received from the involved agencies have been fully addressed by the Code Enforcement Officer; and

WHEREAS, the Town of Alden Planning Board has recommended the approval of the site plan.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS THAT:

- 1. The Town Board has determined that the Proposed Action is an Unlisted Action under SEQRA and that a proper coordinated review has been conducted;**
2. The Town Board has determined that the Town of Alden should be the lead agency for all environmental review of the Proposed Action;
3. The Town of Alden, as Lead Agency, hereby determines that the unlisted action described in the SEQRA NEGATIVE DECLARATION, NOTICE OF DETERMINATION OF NON-SIGNIFICANCE, on file with the SEQRA Intake Officer, will not have a significant effect on the environment and that an environmental impact statement is not required to be prepared with respect to said Proposed Action;
- 4. The Town Board finds that the Proposed Action is consistent with the Town Code**



and approves the site plan and waives the paving requirement for the area behind the privacy fence and contingent upon all items in the letter of Metzger Civil Engineering, PLLC dated November 28, 2022 being resolved before any building permits are issued; and

5. This Resolution shall take effect immediately.

The above Resolution was duly put to a roll call vote at a regular meeting of the Alden Town Board on December 5, 2022 the results of which were as follows:

Councilwomen Waiss	Aye	Nay
Supervisor Sitzman	Aye	Nay
Councilwomen Pautler	Aye	Nay

F

RESOLUTION TO APPROVE EMERGENCY SHELTER AGREEMENT WITH TOWNLINE LUTHERAN CHURCH

THE FOLLOWING RESOLUTION WAS OFFERED BY _____ WHO MOVED ITS ADOPTION, SECONDED BY _____

WHEREAS, in the even to of an emergency the Town of Alden would like to have the use of an emergency shelter in place.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. That the Town Board does hereby authorize and direct the Town Supervisor to enter into and execute all necessary documents to effectuate an Emergency Shelter Agreement with Town Line Lutheran Church for the period of January 1, 2023 through December 31, 2024; and

2. This Resolution shall take effect immediately.

The above Resolution was duly put to a roll call vote at a regular meeting, on December 5, 2022 as follows:

Councilwomen Waiss	AYE	NAY
Supervisor Sitzman	AYE	NAY
Councilwomen Pautler	AYE	NAY



RESOLUTION IN OPPOSITION TO NEW YORK STATE ACTIONS RESTRICTING SECOND AMENDMENT RIGHTS

G

THE FOLLOWING RESOLUTION WAS OFFERED BY _____, WHO MOVED ITS ADOPTION, SECONDED BY _____

WHEREAS, the Town of Alden has a long, proud tradition of staunchly supporting the Second Amendment of the United States Constitution, and

WHEREAS, the Town of Alden supports and promotes safe and responsible gun ownership rights of residents across the State of New York, and

WHEREAS, in the wake of the evil, heinous actions against defenseless persons at Tops Market in Buffalo, the New York State Legislature, after that terrible tragedy seized the opportunity to rush through 10 new laws that are meant to erode the right of legal gun owners and punish the legal & legitimate businesses in the firearm industry, and

WHEREAS, shortly thereafter, the Bruen Opinion was handed down from the United States Supreme Court striking down the restrictive nature of laws limiting and pertaining to Pistol Permits in New York, and

WHEREAS, with the ink barely dry on New York's newest gun laws, the New York State Senate and Assembly, in response to the Bruen Opinion, rushed to pass s.51001 & a.41001 during an Extraordinary Session that essentially gutted the Second Amendment rights of citizens across New York State to carry their concealed firearm in public, and

WHEREAS, the New York State Sheriffs' Association recognized, these new laws as "punitive licensing requirements that aim only to restrain and punish law-abiding citizens who wish to exercise their Second Amendment Rights", and

WHEREAS, as Town Board members in the Town of Alden, we take an oath of office to uphold the Constitution and this is clearly a flagrant violation of the Constitutional rights of our citizens, taking away their ability to protect themselves and their loved ones and creating a bureaucratic boondoggle that ultimately seeks to disarm our residents, **now therefore, be it**

RESOLVED, that the Alden Town Board is committed to pursuing all legislative and legal remedies, either alone or in concert with other like-minded municipalities, counties and organizations, to overturn the assault on our Constitutional rights and;

RESOLVED, that copies of this resolution be sent to all Erie County local governments with hope that we can join to overturn these wrong-headed laws;

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded to Honorable Governor Kathy Hochul, Honorable Senate Majority Leader Andrea Stewart-Cousins, Honorable Senate Minority Leader Robert Ort, Honorable Speaker of the Assembly Carl E. Heastie, Honorable Majority Leader of the Assembly Crystal Peoples-Stokes; Honorable Minority Leader of the Assembly William A. Barclay, and the Western New York Delegation and Erie County Executive Mark Poloncarz and the Erie County Legislature, The Association of Towns, and New York State Conference of Mayors.

The above Resolution was duly put to a roll call vote at a regular meeting of the Alden Town Board on December 5, 2022 the results of which were as follows:

Councilwomen Waiss	Aye	Nay
Supervisor Sitzman	Aye	Nay
Councilwomen Pautler	Aye	Nay

4

Motion to re-introduce Proposed Local Law # 1 of 2023 (formerly known as Local Law # 2 of 2022) Small Wireless Technology in the Public Right of Way, as approved by the Planning Board on November 7, 2022 with minor edits made by the Town Board.



Chapter 172A

Small Wireless Technology in the Public Right-Of-Way

§ 172A-1 Purpose and intent.

- A. The Town has an interest in minimizing the number and height of small wireless facilities, wireless support structures, technology, and all of their related parts that are located within its borders given the fact that the Town is predominately a low-rise developed municipality with a largely rural character.
- B. Aesthetics are an important consideration in the quality of life in the Town, and the small wireless facilities, wireless support structures, technology, and all of their related parts are determined to be aesthetically detrimental to the Town and have a negative impact upon surrounding properties, especially residential properties and rural areas with significant open space. It is the Town's objective to minimize wireless support structures in and adjacent to residential districts and commercial districts.
- C. In many cases, small wireless facilities can be mounted on existing structures and can provide the same level of commercial mobile service with minimal or no aesthetic impacts upon neighboring uses.
- D. Where the construction of new wireless support structures is necessary in order to provide small wireless technology, often it is possible to house more than one such provider on a given structure, thus reducing the proliferation of new wireless support structure construction. Additionally, construction of wireless support structures in commercial or business districts is generally favored over construction in residential and rural districts, if appropriate coverage can be obtained. Therefore, the construction of more than one wireless support structure on a commercial or business site may be preferred over construction on a residential or rural site, where feasible and within the criteria of this chapter.

§ 172A-2 Definitions.

- A. General use of terms.
 - (1) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.
 - (2) Words not defined shall be given their common and ordinary meaning.
- B. Defined terms.

ABANDONED

Any small wireless facilities or wireless support structures that are unused for a period of 365 days

without the operator otherwise notifying the Town and receiving the Town's approval.

ANTENNA

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location for the provision of personal wireless service and any commingled information services.

APPLICANT

Any person applying for a small wireless permit hereunder.

CO-LOCATION or CO-LOCATE

To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.

DECORATIVE POLE

A pole, arch, or structure other than a streetlight pole placed in the right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: a) electric lighting; b) specially designed informational or directional signage; or c) temporary holiday or special event attachments.

FACILITY or PERSONAL WIRELESS SERVICE FACILITY

An antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

OPERATOR

A wireless service provider, cable operator, or a video service provider that operates a small wireless facility and/or provides wireless service. "Operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the Telecommunications Act of 1996, 110 Stat. 59, 47 U.S.C. § 153(2), and services that are fixed in nature or use unlicensed spectrum.

ORNAMENTAL POLE

A pole or structure placed in the right-of-way to support traffic signals and/or streetlights which has been specifically designed and placed for aesthetic purposes. Ornamental poles often include appurtenances or attachments for flags, planters and/or other aesthetic features.

PERSON

Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit.

RIGHT-OF-WAY

The surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk,

public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the Town of Alden.

SMALL WIRELESS FACILITY (SWF), ALSO KNOWN AS SMALL CELL FACILITY

Encompasses facilities that meet each of the following conditions:

- (1) The facilities:
 - (a) Are mounted on structures 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%, whichever is greater. Such measurement to include the antennas of the installation.
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.
- (4) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards.

SMALL WIRELESS PERMIT

The nonexclusive grant of authority issued by the Town of Alden to install a small wireless facility and/or a wireless support structure in a portion of the right-of-way in accordance with this chapter and other applicable law.

STRUCTURE

A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services).

UTILITY POLE

A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service.

WIRELESS SUPPORT STRUCTURE

A pole, such as a monopole, streetlight pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small wireless facilities.

§ 172A-3 General requirements.

- A. No person shall occupy or use the right-of-way except in accordance with law.

- B. The permitting procedures and authorizations set forth in this chapter shall apply only to small wireless facilities and wireless support structures in the right-of-way.
- C. Nothing in this chapter precludes the Town from applying its generally applicable health, safety, and welfare regulations when granting consent for a small wireless facility or wireless support structure in the Town's right-of-way or the right-of-way of any Erie County or NYS highway subject to the regulations of those entities.
- D. All small wireless facilities and wireless support structures shall be designed, constructed, operated and maintained in compliance with all generally applicable federal, state, and local health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions. (See § 172A-7. Safety and liability requirements.)
- E. Notwithstanding anything to the contrary within this Code, this Chapter controls all activities that relate to small wireless facilities within the public right-of-way.
- F. The Town may deviate from any requirement within this chapter where strict application of this chapter would prohibit or have the effect of prohibiting the provision of wireless service to the area referenced within the small wireless application.

§ 172A-4 Application and approval process.

- A. Small wireless permit required. Prior to installation, modification, or relocation of a small wireless facility, or wireless support structure, installation of a new wireless support structure, or co-location on an existing wireless support structure in the right-of-way, the operator/applicant shall apply to the Town Building Department and receive approval from the Town Board as evidenced by the grant of a small wireless permit issued after Town Board approval.
- B. Removal of a small wireless facility or wireless support structure shall not require a small wireless permit, but will require prior written notice to the Building Department of the small wireless facility(ies) or wireless support structure(s) that are being removed.
- C. Application materials and supporting documents. The following information shall be submitted in support of an application for a small wireless permit. This information is required in addition to any other information or documents required under Chapter 365, Zoning.
 - (1) Full application on a form supplied by the Town and the truthfulness attested to by a professional engineer:
 - (a) Environmental assessment form (EAF).
 - (b) The name, address and contact information of the applicant, operator, owner, and/or lessee(s) to the application.
 - (c) New erection of SWF or co-location on existing poles and type of installation (e.g., 4G or 5G) and fiber network plans.

- (d) Site plan (showing location of all proposed SWF and wireless support structures), including photo(s) of existing pole(s) or location(s) and closest address(es) to the SWF, and if installing on existing pole(s), existing attachments on poles(s)/structure(s).
- (e) Detailed description of the project and of the facility and equipment, including elevations/renderings of the proposed infrastructure.
- (f) The applicant's/owner's maintenance and inspection schedule.
- (g) A safety analysis and certification by a licensed professional engineer that the proposed facility will be in compliance with all applicable FAA and FCC laws and regulations, including RF emissions (RFE) letters for each small wireless facility proving that the SWF is in compliance with all RFE regulations.
- (h) Pole numbers and proof of the site or pole owner's consent, if the applicant is not the owner of the site or pole on which the applicant seeks to locate a small wireless facility.
- (i) Passing structural analysis of any wireless support structure by a licensed NY State professional engineer.
- (j) For initial applications, inventory of existing towers, antennas and small wireless facilities sites within the Town and within 750 feet of the border of the Town, including specific information regarding the tower and/or antenna height and the location, street address, tax parcel, latitude and longitude and mean sea level height of the tower base.
- (k) Proposed construction schedule.
- (l) Removal bond for cost of removal. (See § 172A-7.)
- (m) Details showing compliance with these regulations.
- (n) As-built drawings, within 60 days after completion of the construction, if already submitted as part of application and no changes made, certification that the submitted plans are to be considered as-built drawings.
- (o) A copy of the right-of-way permit granted by the Erie County Department of Public Works or the New York State Department of Transportation to ensure compliance with the indemnity requirements set forth within this chapter.
- (p) Applicable fees. (As defined in the Town Fee Schedule.)
- (2) The operator/applicant must submit all required materials, fees and documentation to the Building Department. Upon receipt, the Building Department will review the submitted application for compliance with the requirements set forth in this chapter. If an application is deemed incomplete, the Building Department will notify the applicant of the absence of the required information necessary to render a final determination within 10 days of submission and will allow the applicant to cure the

defects of an incomplete submission. Once the application is deemed complete, the Building Department will proceed with the necessary level of review for the requested action and will either issue or deny a small wireless permit to the operator/applicant.

- D. **Administrative review.** Co-location on existing or replacement of wireless support structures in all districts shall be subject to an administrative review process to be performed by the CEO. Upon conclusion of review, the CEO may grant or deny an application based on compliance or noncompliance with the objective criteria required by this chapter for a complete and satisfactory application. In the event that the application requires a deviation in any way from the specific guidelines and co-location requirements of this chapter, the application for co-location must be submitted to the Town Planning Board for review, who will make a recommendation to the Town Board for final approval after this review. Additionally, the CEO may require an application to be sent to the Planning Board for further review in his or her sole discretion in instances where unique circumstances are present within the application that require further review in order to ensure compliance with the Town Code generally. Approval will be contingent upon the recommendation of the Planning Board and final approval by the Town Board for all applications that require a deviation from the co-location requirements and guidelines set forth in this chapter.
- E. **Planning Board review.** The erection of all new wireless support structures within the Town will be subject to review by the Planning Board and approval by the Town Board following a recommendation by the Planning Board. This heightened level of review is required due to the increased level of disruption to the public right-of-way necessary for the erection of a new wireless support structure and the need to avoid possible congestion of the public right-of-way. Additionally, the erection of a new wireless support structure is more likely to negatively alter the character of the surrounding areas than those applications for co-location. Approval of an application is contingent upon a satisfactory showing that the specific negative effects that the erection of a new wireless support structure will have on the surrounding area have been satisfactorily mitigated and that compliance with this chapter has been achieved.
- F. **Equipment maintenance, repairs and modifications.** The operator may maintain, repair, replace and make like-kind modifications to any small wireless facility that do not materially change the size, height and weight of the small wireless facility or exceed the structural capacity of the wireless support structure without requiring a new small wireless permit. The operator/applicant must give prior written notice to the Building Department prior to performing any maintenance repairs and/or modifications.

§ 172A-5 Fees.

All fees related to small wireless facilities are listed in the Town of Alden Fee Schedule.

§ 172A-6 Small wireless design guidelines.

- A. **Purpose.** The purpose of these guidelines is to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation, co-location, modification, relocation, operation and removal of small wireless technology within the Town's right-of-way. The goals of these guidelines are to:
 - (1) Provide standards, technical criteria and details for small wireless facilities in the Town's right-of-way

to be uniformly applied to all applicants and owners of small wireless facilities or support structures for such facilities.

- (2) Enhance the ability of wireless communications carriers to deploy small wireless technology in the Town quickly, effectively and efficiently so that residents, businesses and visitors benefit from ubiquitous and robust wireless service availability.
 - (3) Preserve the character of the Town's neighborhoods, districts and corridors.
 - (4) Ensure that small wireless facilities and support structures are in conformance with all applicable health and safety regulations and will blend into their environment to the greatest extent possible.
 - (5) Comply with, and not conflict with or preempt, all applicable state and federal laws.
- B. Requirement to comply. Placement, modification, operation, relocation and removal of a small wireless facility and/or wireless support structure shall comply with the specifications of this section: at the time the permit for installation, modification, relocation or removal is approved and as amended from time to time.
- C. Locations of small wireless facilities, related ground equipment, and wireless support structures.
- (1) Most preferable zone locations: Industrial areas (if not adjacent to a municipal park or residential area); highway right-of-way areas (if not adjacent to a municipal park or residential area); and retail and commercial areas (if not adjacent to a municipal park or residential area).
 - (2) Least preferable zone locations. Residential or rural districts are the least preferred areas for new small wireless facilities.
 - (3) Duration of permit validity.
 - (4) Co-location preference. It is the Town's strong preference that whenever an applicant proposes to place a new wireless support structure with a small wireless facility within 250 feet from an existing wireless support structure, the applicant either co-locate with the existing facility or demonstrate that a co-location is either not technically feasible or space on the existing facility is not potentially available.
 - (5) Order of preference for wireless support structures. The following list indicates the order of preference for wireless support structures for small wireless facilities, from most preferential to least preferential locations:
 - (a) Existing utility poles.
 - (b) Light poles.
 - (c) Ornamental municipal service poles.
 - (d) New wireless support structures.

D. Consideration of alternate locations.

- (1) In instances where an applicant seeks to co-locate, the Town reserves the right to propose an alternate wireless support structure to the one proposed in the application, which the applicant shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose substantial technical limits or substantial additional costs.
- (2) Where the applicant seeks to erect a new wireless support structure, the Town reserves the right to propose a different location than the location proposed within the application. The applicant shall use the Town's proposed location unless the new proposed location has the effect of or prohibits the provision of wireless service to the particular location sought by the applicant.

E. Guidelines on placement and location of support equipment.

- (1) Facility maintenance and placement. Generally, an applicant shall construct and maintain small wireless facilities and wireless support structures in a manner that does not:
 - (a) Obstruct, impede or hinder the usual travel or public safety on a right-of-way.
 - (b) Obstruct the legal use of a right-of-way by other utility providers.
 - (c) For new wireless support structures, create an unreasonable obstruction to property sight lines.
- (2) Preferred placement. Preferred placement for new small wireless facilities and wireless support structures is generally on an extension of the side-yard property line at the intersection with the line of streetlights, utility poles, or trees in the right-of-way, to avoid interference with building faces, views, business signage, pedestrian flow, etc. Small wireless facilities and wireless support structures shall not be installed between the perpendicular extension of the primary street-facing wall plane of any single- or two-family residence and the street. When located adjacent to a commercial establishment, small wireless facilities and wireless support structures shall not be located in front of store windows, primary walkways, primary entrances or exits, or in such a way that would impede a delivery to the building
- (3) Antennas on existing or replaced utility poles. The antenna(s) associated with co-location on existing or replaced utility poles must have concealed cable connections, antenna mounts and other hardware. The maximum dimensions for antennas shall not be more than three cubic feet in volume, including any enclosure for the antenna.
- (4) Height above ground.
 - (a) Small wireless facilities: Small wireless facilities shall be installed at least eight feet above the ground. If a small wireless facility attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the Town may require the attachment to be installed no less than 16 feet above the ground.
 - (b) New wireless support structures in residential or rural districts: In areas where there are no wireless

support structures or utility poles taller than 30 feet in height above ground level and the maximum allowable height for building construction in the underlying zoning district is 35 feet in height above ground level, the overall height of a new wireless support structure and any co-located antennas shall not be more than 35 feet in height above ground level.

[1] In all other areas, the overall height of a new wireless support structure and any co-located antennas shall not be more than 50 feet in height above ground level.

- (c) Existing wireless support structures: For an existing wireless support structure, the antenna and any associated shroud or concealment material are permitted to be co-located at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure to a height of more than 50 feet or by more than 10%, whichever is greater.
- (5) Protrusion. No protrusions from the outer circumference of the existing structure or pole shall be more than 30 inches. The Town, at its option, may waive the requirement to limit the protrusion to no more than 30 inches on a case-by-case basis.
- (6) Location of equipment - general. Small wireless facilities and related equipment shall not impede pedestrian or vehicular traffic in the right-of-way. If any small wireless facility or wireless support structure is installed in a location that is not in accordance with the plans approved by the Town, impedes pedestrian or vehicular traffic and/or does not comply or otherwise renders the right-of-way noncompliant with applicable laws, including the Americans with Disabilities Act, then the operator shall promptly remove the small wireless facilities and/or wireless support structure. If the operator does not complete removal in a reasonable time frame, the Town will remove it and bill the operator for the cost of the removal. The operator must remove it within 30 days from receipt of notice.
 - (a) Utility lines: Service lines must be underground whenever feasible to avoid additional overhead lines. For new metal poles, underground cables and wires must transition directly into the pole base without any external junction box. If pulling power from existing overhead utility lines, all wiring must be placed in a conduit colored to match or complement the pole. If compliance with this section is not technically feasible, this section may be deviated from with approval from the Town.
 - (b) Spools and coils: To reduce clutter and deter vandalism, excess fiber optic or coaxial cables for small wireless facilities shall not be spooled, coiled or otherwise stored on the pole except within the approved enclosure such as a cage or cabinet. If compliance with this section is not technically feasible, this section may be deviated from with approval from the Town.
 - (c) Aboveground conduit: On wood poles, all aboveground wires, cables and connections shall be encased in the smallest section or smallest diameter PVC channel, conduit, U-Guard™, or shroud feasible, with a maximum dimension of four-inch diameter. Such conduit shall be grey or brown PVC, colored to complement the wood poles.
 - (d) Noise suppression: The applicant is required to incorporate ambient noise suppression measures and/or required to place the equipment in locations less likely to impact adjacent residences or businesses to ensure compliance with all applicable noise regulations.

- (7) Ground-mounted equipment. Ground-mounted equipment shall not be permitted unless the applicant demonstrates that no other feasible options for containing the necessary equipment are available. When allowed, ground equipment should be as minimally intrusive as possible. The equipment shroud or cabinet must contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment must be concealed from view, routed directly through the metal pole (with the exception of wood power poles) and undergrounded between the pole and the ground-mounted cabinet.
- (8) Pole-mounted equipment. All pole-mounted equipment and cabinets must be installed as flush to the pole as possible. Equipment attached to metal poles must be installed using stainless steel banding straps or other mounting methods that reduce the likelihood of creating negative visual effects on the surrounding area. Equipment attached to wood poles may be bolted to the pole or installed using stainless steel banding straps. When the straps are attached to a metal pole, they must match or complement the color of the pole. All pole-mounted equipment shall be located as close together as technically possible and, if possible, on the same side of the pole, and in the smallest possible equipment box, cabinet, or other unit that may include ventilation openings.
 - (a) Pole-mounted equipment: When pole-mounted equipment is either permitted or required, all equipment other than the antenna(s), electric meter and disconnect switch must be concealed within an equipment cabinet. Equipment cabinets, including cabinets for telephone and/or fiber optic utilities, may not extend more than 30 inches from the face of the pole. The Town's general preference is for the equipment cabinet to be nonreflective, colored to match the existing pole if attached to a metal pole, and in the color of grey or tan if attached to a wood pole. The Town retains discretion over such aesthetic requirements, including camouflaging, and shall determine whether to deviate from said general preference.
 - (b) Electric meter: The Town strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. When a meter is necessary, site operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the Town's general preference is for the electric meter base to be painted to match the pole; however, the Town retains discretion over such aesthetic requirements, including camouflaging, and shall determine whether to deviate from said general preference on a case-by-case basis.
- (9) Undergrounded equipment vaults. Equipment in an environmentally controlled underground vault may be required in some areas where technologically feasible and appropriate for the location.
- (10) New wireless support structures.
 - (a) Spacing: The Town strongly discourages more than one new wireless support structure per block and will not approve more than one per 250 feet on each side of the street to minimize the hazard of poles adjacent to roadways and minimize visual clutter and distractions to vehicular traffic. Wireless support structures shall be spaced apart from utility poles or wireless support structures supporting small wireless facilities at the same spacing between utility poles in the immediate proximity. An exemption may be granted if the applicant can demonstrate that this spacing restriction prohibits or has the effect of

prohibiting wireless service to the proposed location.

- [1] If multiple requests are received to install two or more poles that would violate the spacing requirement or to co-locate two or more small wireless facilities on the same wireless support structure, priority will be given to the first request received that meets these guidelines.
- (b) General restrictions on new wood poles: In all locations, the Town reserves the right to require a metal pole rather than a wood pole based on the build and/or natural environmental character of the proposed site location.
- (c) Wood pole footings and foundations: In the event that the Town allows for the erection of new wood poles, all poles must be direct buried to a depth determined, stamped, sealed and signed by a professional engineer licensed and registered by the State of New York, and subject to the Town's review and approval.
- (d) Metal pole footings and foundations: All new metal poles must be supported with a reinforced concrete pier or other self-supporting means. The design, including the pier, footings and anchor bolts, shall be stamped, sealed and signed by a professional engineer licensed and registered by the State of New York, and subject to the Town's review and approval. All anchor bolts must be concealed from public view with an appropriate pole boot or cover, subject to the Town's prior approval.
 - [1] The use of guyed towers is prohibited. Towers must be self-supporting without the use of wires, cables, beams or other means. The design should utilize a monopole configuration.
- (e) Metal pole material: All metal poles must be constructed from hot-dip galvanized steel or other corrosion-resistant materials approved by the Town and finished in accordance with these guidelines to avoid rust stains on adjacent sidewalks, buildings or other improvements.
- (f) Lighting, planters, flags, banners: The Town may require the applicant to install functional streetlights and/or brackets to hold hanging flower planters, flags and/or banners when technically feasible and when the Town determines that such additions will enhance the overall appearance and usefulness of the proposed facility that are necessary to match the character of the immediate streetscape. The Town may install hanging flower planters, flags and/or banners utilizing the brackets.
- (11) Town-owned wireless support structures.
 - (a) Required load analysis: Installations on all Town-owned poles shall have an industry standard pole load analysis completed, sealed, and signed by a professional engineer licensed and registered by the State of New York and submitted to the Town, with each permit application indicating that the Town-owned pole to which the small wireless facility is to be attached will safely support the load.
 - (b) Power source: A small wireless facility on a Town-owned wireless support structure may not use the same power source that provides power for the original purpose of the wireless support structure.
 - (c) Installations on traffic signals and streetlights: Installations on all traffic signal structures or streetlights

must not interfere with the integrity of the facility in any way that may compromise the safety of the public. The installation must not interfere with other existing uses on the pole such as traffic signals, streetlights, hanging flower planters, flags, and/or banners. Installation of small wireless facilities on any traffic signal structure or street light shall a) be encased in a separate conduit than the traffic light electronics; b) have a separate electric power connection than the traffic signal/streetlight structure; and c) have a separate access point than the traffic signal/streetlight structure.

- (d) Reservation of space for future public safety or transportation uses: An application which relates in any way to space on a Town-owned or -operated wireless support structure that conflicts with space reserved for future public safety or transportation uses documented in an approved plan in place at the time of the application will be denied unless the operator pays for the replacement of the pole or wireless support structure and the replaced pole or wireless support structure will accommodate the future use and the small wireless facility.
- F. Undergrounding requirements. The Town may deny requests to install structures and facilities in the right-of-way in an area where the Town has required all structures and facilities, except those owned by the Town, to be placed underground or elsewhere in the right-of-way or in a utility easement. The Town may deviate from this requirement where strict application would prohibit or have the effect of prohibiting the provision of wireless service to the area referenced within the Small Wireless application.
- G. General aesthetic requirements.
 - (1) Uniformity of appearance. The Town desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials of the adjacent utility poles of the surrounding area adjacent to their location.
 - (2) Concealment.
 - (a) Generally: To the maximum extent possible, as determined by the Town in its sole discretion, on a case-by-case basis: wireless support structures and small wireless facilities shall be designed to blend in with the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where color is dictated by federal or state authorities such as the Federal Aviation Administration; and, every small wireless facility and wireless support structure shall be of neutral colors that blend in with the natural features, buildings, and structures surrounding such small wireless facility and wireless support structure.
 - (b) When underground vaults are proposed, they shall be located to minimize disruption to the placement of street trees. Adequate planting depth shall be provided between the top of the vault and the finished grade to allow plants to grow in a healthy condition. Access to vaults shall not require destruction of decorative plant growth.
 - (3) Signage/lights/logos/decals/cooling fans.

- (a) **Signage:** The operator shall only post signage required for safety purposes as required by the FCC. No other signage shall be permitted unless approved by the Town.
- (b) **Lights:** New small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a streetlight pole.
- (c) **Logos/decals:** operators must remove or paint over unnecessary equipment manufacturer decals. New small wireless facilities and wireless support structures shall not include advertisements or logos and may only display information required by a federal, state or local agency. The operator shall utilize the smallest and lowest visibility radio-frequency (RF) warning sticker required by government or electric utility regulations, and said RF sticker shall be placed as close to the antenna as possible.
- (d) **Cooling fans:** In residential areas, the operator shall use a passive cooling system. In the event that a fan is needed, the operator shall use a cooling fan with a low noise profile.

H. **General provisions.**

- (1) **Tree maintenance.** The operator, its contractors, and its agents shall obtain written permission from the Town before trimming any trees in the right-of-way. When trimming such trees on private property, the operator, its contractors, and its agents shall notify the Town and obtain written permission from the property owner. When directed by the Town, the operator shall trim under the supervision and direction of the Town. The Town shall not be liable for any damages, injuries, or claims arising from the operator's actions under this section.
- (2) **Graffiti abatement.** As soon as practical, but not later than 14 calendar days from the date the operator receives notice thereof, the operator shall remove all graffiti on any of its small wireless facilities and/or wireless support structures located in the right-of-way and restore such facilities/structures to their pre-graffiti appearance. The Town, in its sole discretion, may agree to an extension of time for abatement when necessitated by the need to order replacement equipment when such equipment is ordered in a timely manner.
- (3) **Minor technical exceptions.** The Town recognizes that in some circumstances strict compliance with these guidelines may result in undesirable aesthetic outcomes and that minor deviations should be granted when the need for such deviation arises from circumstances outside the applicant's control.
- (4) **Waivers if requirements have the effect of prohibiting the provision of wireless service to a location.** In the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed small wireless facility, would effectively prohibit the provision of personal wireless services, the Town may grant a limited, one-time exemption from strict compliance.

§ 172A-7 Safety and liability requirements.

- A. **Prevention of failures and accidents.** Any operator of a small wireless facility and/or wireless support structure located in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely

to cause damage, injury, or nuisance to the public.

- B. Compliance with fire safety and FCC regulations. Small wireless facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electrical Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- C. The operator shall provide RF emissions letters for each small wireless facility prior to and as a condition of each and every small wireless permit being issued proving that the site is in compliance with all RFE regulations.
- D. Changes in state or federal safety standards and regulations. If state or federal safety standards and regulations are amended, the owner/operator of the small wireless facilities and/or wireless support structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small wireless facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for revocation of the small wireless permit and removal at the owner's expense.
- E. Insurance. The owner or operator of a SWF shall maintain a current liability insurance policy which will cover the installation and operation of the SWF at all times. As a part of the site plan review process, the Alden Town Board may require proof that the owner or operator is carrying sufficient liability, workers' compensation, or other insurance as determined necessary by the Alden Town Board, during installation and operation of a proposed SWF. Limits for said insurance policies shall be set by the Alden Town Board based on the size and scope of each SWF project.
- F. Removal bond or equivalent financial tool for cost of removal. All operators must procure and provide to the Town a removal bond, or a letter of credit acceptable to the Town, to ensure compliance with all provisions of this chapter. The bond or letter of credit must be maintained for as long as the owner/operator has small wireless facilities and/or wireless support structures located in the right-of-way. The bond or letter of credit must specifically cover the cost of removal of unused or abandoned small wireless facilities and/or wireless support structures or damage to Town property caused by an operator or its agent of each small wireless facility and/or wireless support structure in case the Town has to remove or pay for its removal. The amount of the bond or letter of credit shall be determined by the Town Board with input from the Town Engineer.

§ 172A-8 Installation requirements.

- A. Completion within 365 days. The co-location or erection of a new wireless support structure for which a small wireless permit is granted shall be completed within 365 days after issuance of the small wireless permit unless the Town Board and the applicant agree to extend this period. The Town Board will agree to an extension if the operator has made a timely request within 300 days after the issuance of the small wireless permit. The additional time to complete installation may not exceed a total of 547 days after the issuance of the small wireless permit.

- B. Procedure for request for extension of time. In situations where the applicant requests an extension of time, such request must be completed by a written submission to the Town, which includes the length of time being requested and the reason for the delay.

§ 172A-9 As-built maps and records.

- A. As-built maps. The operator shall maintain accurate maps and other appropriate records, including an inventory, of its small wireless facilities and wireless support structures as they are actually constructed in the right-of-way or any other Town-owned property. The inventory shall include GIS coordinates, date of installation, type of wireless support structure used for installation, wireless support structure owner/operator and description/type of installation for each small wireless facility and wireless support structure.
 - (1) Inactive facilities: Upon the Town's written request, the operator shall provide a cumulative inventory within 30 days of the Town's request. Concerning small wireless facilities and wireless support structures that become inactive, the inventory shall include the same information as active installations, in addition to the date the small wireless facility and/or wireless support structure was deactivated and the date the small wireless facility and/or wireless support structure was removed from the Right-of- Way. The Town may compare the inventory to its records to identify any discrepancies.

§ 172A-10 Liability and signal interference.

- A. No liability. The Town shall not be liable to the operator by reason of inconvenience, annoyance or injury to the small wireless facilities, wireless support structures, and related ground- or pole-mounted equipment or activities conducted by the operator therefrom, arising from the necessity of repairing any portion of the right-of-way, or from the making of any necessary alteration or improvements in, or to, any portion of the right-of-way, or in, or to, the Town's fixtures, appurtenances or equipment.
- B. Signal interference prohibited. In the event that an operator's small wireless facility interferes with the public safety radio system, or the Town's or State of New York's traffic signal system, then the operator shall, at its cost, immediately cooperate with the Town to either rule out the operator as the interference source or eliminate the interference. Cooperation with the Town may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.

§ 172A-11 Requirements for removal, replacement, maintenance and repair.

- A. Replacement of municipal-owned wireless support structure. When necessary to accommodate small wireless facility, the Town may require, in response to an application to co-locate a small wireless facility on a Town-owned wireless support structure, the replacement or modification of the wireless support structure at the operator's cost if the Town determines that replacement or modification is necessary for compliance with construction and safety standards. Such replacement or modification shall conform to this chapter. The Town may retain ownership of the replacement or modified wireless support structure.
- B. Removal or relocation required for Town project. The operator shall remove and relocate the permitted small wireless facility and/or wireless support structure at the operator's sole expense to accommodate construction of a public improvement project by the Town. To the extent possible, the Town will work

with the operator to provide an alternate location on either a temporary or permanent basis.

- (1) Failure to remove upon request: If the operator fails to remove or relocate the small wireless facility and/or wireless support structure or portion thereof as requested by the Town within 120 days of the Town's notice, then the Town shall be entitled to remove the small wireless facility and/or wireless support structure, or portion thereof, at the operator's sole cost and expense, without further notice to the operator.
 - (2) Reimbursement for removal: The operator shall, within 30 days following issuance of invoice for the same, reimburse the Town for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the small wireless facilities and/or wireless support structure, or portion thereof.
- C. Removal required by Town for safety and imminent danger reasons. The operator shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable small wireless facility and/or wireless support structure within the time frame and in the manner required by the Town if the Town reasonably determines that the disconnection, removal, or relocation of any part of a small wireless facility and/or wireless support structure is necessary to protect the public health, safety, welfare, or Town property.
- (1) Imminent danger. If the Town reasonably determines that there is imminent danger to the public, then the Town may immediately disconnect, remove, or relocate the applicable small wireless facility and/or wireless support structure at the operator's sole cost and expense.
- D. Removal/abandonment of facilities. The operator shall remove small cell facilities and/or wireless support structures when such facilities are abandoned, regardless of whether it receives notice from the Town. Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 60 days of the small wireless facility and/or wireless support structure being abandoned, or within 60 days of receipt of written notice from the Town. When the operator abandons permanent structures in the right-of-way, the operator shall notify the Town in writing of such abandonment and shall file with the Town the location and description of each small wireless facility and/or wireless support structure abandoned. Prior to removal, the operator must make application to the Town and receive approval for such removal. The operator must obtain a right-of-way work permit for the removal. The Town may require the operator to complete additional remedial measures necessary for public safety and the integrity of the right-of-way.
- (1) Transfer of ownership: The Town may, at its option, allow a wireless support structure to remain in the right-of-way and coordinate with the owner to transfer ownership of such wireless support structure to the Town, instead of requiring the owner and/or operator to remove such wireless support structure.
- E. Restoration. The operator shall repair any damage to the right-of-way, any facilities located within the right-of-way, and/or the property of any third party resulting from operator's removal or relocation activities (or any other of the operator's activities hereunder) within 10 calendar days following the date of such removal or relocation, at the operator's sole cost and expense. Restoration of the right-of-way

and such property must be to substantially the same condition as it was immediately before the date the operator was granted a small wireless permit for the applicable location or did the work at such location (even if the operator did not first obtain a small wireless permit). This includes restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Town.

§ 172A-12 Rulemaking authority.

The Town Board is hereby authorized to promulgate additional rules and regulations, including but not limited to the adoption of forms and application submittal requirements, to carry out the purpose and intent of this chapter in order to protect the public health, safety and welfare. Such rules, and amendments thereto, shall be consistent with this Town Code, and shall be subject to the approval of the Town Supervisor.

§ 172A-13 Effect of partial invalidity.

The provisions of this chapter are hereby declared to be severable, and if any section, subsection, or clause of this chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this chapter that can be given effect.

§ 172A-14 Failure to comply.

In addition to any penalties under §172A-15 below, if the operator fails to abide with all provisions of this chapter and obtain all applicable licenses, permits, and certifications, the operator's small wireless permit shall be revoked and the operator, at its sole cost and expense, shall promptly disconnect, remove, and/or relocate its small wireless facility(ies) and/or wireless support structure(s).

§ 172A-15 Penalties for offenses.

Violation of any of the provisions of this chapter shall be a violation punishable by a fine of a minimum of \$250 per day and a maximum of \$1,000 per day, or 15 days in jail, or both. Each day that a violation occurs or is permitted to exist by the operator constitutes a separate offense.

I

RESOLUTION DECLARING LEAD AGENCY FOR LOCAL LAW NO. 1 OF 2023: SMALL WIRELESS TECHNOLOGY IN THE PUBLIC RIGHT OF WAY

THE FOLLOWING RESOLUTION WAS OFFERED BY _____, WHO MOVED ITS ADOPTION, SECONDED BY _____

WHEREAS, the Town Board of the Town of Alden is considering the adoption of Local Law No. 1 of the Year 2023, entitled "Small Wireless Technology in the Public Right of Way" (the "Proposed Action");

WHEREAS, the Town Board of the Town of Alden feels that the Proposed Action is an Unlisted Action under SEQRA;

WHEREAS, the Town of Board of the Town of Alden believes that the Town of Alden is: the agency primarily responsible for undertaking such decisions; is the agency with the broadest governmental powers for investigating the impact of the Proposed Action; and has the greatest capacity for providing the most thorough environmental assessment of the Proposed Action; and is the most local agent with permitting authority; and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS THAT:

- 1. The Town Board has determined that the Proposed Action is an Unlisted Action under SEQRA and that an uncoordinated review shall be conducted.
- 2. The Town of Alden Code Enforcement Officer is directed to send notice of this resolution to Erie County Division of Planning under Section 239m of the General Municipal Law.
- 3. The Town Board has determined that it should be the Lead Agency for all environmental review of the Proposed Action.
- 4. This resolution shall take effect immediately.

The above resolution was duly put to a roll call vote at a regular meeting on December 5, 2022, the results of which were as follows:

Councilwomen Waiss	Aye	Nay
Supervisor Sitzman	Aye	Nay
Councilwomen Pautler	Aye	Nay



Charles Meyer Funeral Home

Gretchen P. Smith

(May 25, 1938 - November 27, 2022)



Smith-Gretchen P. of Alden, NY passed away unexpectedly on November 27, 2022. Beloved wife of Nicholas Smith; dear mother of Theresa (Steven) Subsara, Melissa (Ralph) Gucinski, Amy (Michael) Talluto, Nicholas and Christopher Smith; also survived by 8 grandchildren and one great-grandson; sister of David (late Joyce) Petre, Judith (late Kenneth) Krieger and the late Barbara Moon. Family will be present at the Charles Meyer Funeral Home, 13228 Broadway Wednesday from 2-4 and 6-8 PM. Mass of Christian Burial will be held at St. John's RC Church Alden, NY Thursday at 10 AM. (please assemble at church). Memorials may be made to the Susan G. Komen for the Cure of WNY, PO Box 237 Buffalo, NY 14231. Share your condolences at meyerfuneralhome.com.

