

TOWN OF WOODBURY

INTRODUCTORY LOCAL LAW NO. ____ OF 2021

A LOCAL LAW CREATING A NEW CHAPTER 249 OF THE TOWN CODE OF THE TOWN OF WOODBURY, NEW YORK ENTITLED "REMOVAL OF UTILITY POLES", REQUIRING UTILITY COMPANIES TO REMOVE INACTIVE, BROKEN OR REPLACED UTILITY POLES WITHIN THE TOWN

Be it enacted by the Town Board of Woodbury, County of Orange, State of New York, as follows:

Section 1. New Law Created. New Chapter 249 of the Town Code entitled "**Removal of Utility Poles**" shall be and hereby is created by this Local Law as follows:

Chapter 249. Removal of Utility Poles

§ 1 - Findings: legislative intent.

A. The Town Board hereby finds and determines that public utility companies place poles on highways, streets, roads and rights-of-way within the Town of Woodbury to facilitate the delivery of electric, telephone, cable television, and other telecommunications services to the residents of the Town.

B. The Town Board hereby finds and determines that local governments have the authority to regulate their highways, streets, roads and rights-of-way to protect the public.

C. The Town Board hereby finds and determines that utility poles are damaged from time to time.

D. The Town Board hereby finds and determines that public safety can be compromised when utility lines and equipment remain affixed to utility poles that are weathered or otherwise damaged.

E. The Town Board hereby finds and determines that when a new pole is installed, a utility's delay in removing lines and equipment from the old pole also delays the removal of the pole itself, which causes a proliferation of aesthetically unpleasant double poles along highways, streets, roads, and rights-of-way, and sometimes obstructs the paths of pedestrians.

F. The Town Board hereby finds and determines that the interest of the public is best served by cooperation and communication between public utilities and the Town Board.

G. In enacting this chapter, the Town Board deems this chapter to be an exercise of the police power of the Town of Woodbury for the preservation and protection of public safety and

is enacted pursuant to the authority contained in the Highway Law, Town Law, and Municipal Home Rule Law of the State of New York.

H. The purpose of this chapter is to require utilities that use highways, streets, roads and rights-of-way within the Town to promptly remove their plants, cables, lines, equipment, and terminals from old and damaged poles and to further require the prompt removal of double poles once all plants, cables, lines, equipment, and terminals have been removed.

§ 2 - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ENFORCEMENT OFFICER

The Town of Woodbury Town Board, or the department or individual it designates, from time to time, for the enforcement of this local law.

DANGEROUS/DAMAGED POLE

Any utility pole that is structurally compromised due to weather, a traffic incident, and/or age and poses a potential threat to public safety.

DOUBLE POLE

Any utility pole which is attached or in close proximity to a new utility pole.

PLANT

The cables, terminals, conductors and other fixtures necessary for transmitting electric, telephone, cable television or other telecommunications service.

PUBLIC UTILITY

Any corporation, authority, or other entity that provides electric, telephone, cable television, or other service, including telecommunications service, to the residents of the Town of Woodbury.

REMOVE, REMOVAL

Extrication of an entire utility pole including any of its moorings and appurtenances or, where necessary, the cutting of a utility pole flush to the ground, and the filling and grading of any hole or opening left after such extrication or cutting in a manner that leaves a level grade safe for vehicle and pedestrian travel.

UTILITY POLE

A column or post used to support service lines for a public utility.

WRITTEN NOTIFICATION/WRITTEN NOTICE

A writing directed to a representative of a public utility, who may be designated by the utility to receive such notice, sent by regular mail, facsimile transmission or electronic mail.

§ 3 - Notification requirements.

No person, firm or corporation subject to the jurisdiction and regulation of the New York State Public Service Commission ("PSC") shall place or erect any pole for any purpose on any highway, street, road or right-of-way within the Town, or change the location of any existing pole on any highway, street, road or right-of-way within the Town, without first having provided notification to the Town through the PSC's required electronic notification system being utilized by said utilities.

§ 4 - Department notification; time frame for removal.

A. When the Enforcement Officer is properly notified of the pending installation of a utility pole which is directly next to or in close proximity to another utility pole on a highway, street, road, or right-of-way within the Town, the Enforcement Officer will provide written notice to the public utility which has the top plant on the double pole that the plant must be removed within 30 days or be subject to penalty. Upon the removal of each plant, the Enforcement Officer shall provide written notice to the public utility that owns the subsequent plant on the pole that the plant must be removed within 30 days or be subject to penalty. The last utility to remove its plant is responsible for removing the double pole within an additional 30 days. Failure to comply with the requirements of this provision may result in penalties as provided for in section 6 of this chapter.

B. When the Enforcement Officer determines that a utility pole on a highway, street, road or right-of-way within the Town, is damaged and poses a potential threat to public safety, the Enforcement Officer shall provide written notice to any public utility with a plant on the damaged pole that it must remove its plant from the pole within 15 days or be subject to a penalty as provided for in section 6 of this chapter. The last utility to remove its plant is responsible for removing the double pole. Failure to comply with the requirements of this provision may result in penalties as provided for in section 6 of this chapter. The effected utility may present documentary evidence to the Town in the form of a report from a licensed engineer certifying that the plant and/or pole is not a threat to public safety within ten days (10) from the date of the Enforcement Officer's notification. In the event that the Enforcement Officer is satisfied that the plant and/or pole no longer poses a threat to public safety, he shall have the discretion to withdraw the removal notice.

C. When the Enforcement Officer determines that a double pole is on a highway, street, road or right-of-way within the Town, the Enforcement Officer will provide written notice to the public utility which has the top plant on the double pole that the plant must be removed within 30 days or be subject to penalty. Upon the removal of each plant, the Enforcement Officer shall provide written notice to the public utility that owns the subsequent plant on the pole that the plant must be removed within 30 days or be subject to penalty. The last utility to remove its plant is responsible for removing the double pole within an additional 60 days. Failure to comply with the requirements of this provision may result in penalties as provided for in section 6 of this chapter.

§ 5 - Extensions authorized; temporary emergency suspension.

A. Notwithstanding any provision of this chapter to the contrary, the Enforcement Officer may extend the time frame of any written notice provided under this chapter for an additional period not exceeding the original statutory time frame set forth in this chapter. The public utility shall make a request for an extension in writing to the Enforcement Officer prior to the expiration of the time frame contained in the original written notice, together with the basis for the request. The Enforcement Officer shall determine whether the request for extension should be granted or denied, and provide a written response to the public utility. In such instances where the request is granted, the Enforcement Officers shall issue another written notice, which shall then be applicable instead of the previously issued notice.

B. In the event of an emergency that affects the repair, replacement, removal, or installation of utility poles or plants, the Town Supervisor may temporarily suspend the deadlines in sections 4 and 6 of this chapter for periods not exceeding 30 days.

§ 6 - Penalties for offenses.

A. Any public utility that fails to remove its plant from a damaged pole within 15 days of receiving notification from the Town, shall be punished by a fine of up to \$250 for each such violation. Each day that the violation continues shall be deemed a separate violation. Notwithstanding anything to the contrary contained in this Chapter, no such fines or penalties shall be assessed for violations of this Chapter that occur within six (6) months as a result of natural disasters, major weather events and similar circumstances affecting the Town.

B. Any public utility that fails to remove a double pole within 90 days of receiving notification from the Town, shall be punished by a fine of \$1,000 per full calendar month that the violation continues.

C. Any person, firm, corporation or public utility convicted of a violation of the provisions of this chapter, other than those set forth in Sections A or B above, shall be guilty of a violation for a first conviction, punishable by a fine not exceeding \$1,000; for a second or subsequent conviction, punishable by a fine not exceeding \$2,000. Every day that the violation continues shall be deemed a separate violation.

D. If a person, firm, corporation or public utility violates the provisions of this chapter, the Town Attorney may commence an action in the name of the Town of Woodbury in a court of competent jurisdiction seeking any remedy provided by law or equity, including any civil and/or injunction proceeding necessary to enforce compliance and/or enjoin noncompliance with this chapter. Such action may seek to remove damaged poles and/or double poles, or to remove plants from such poles, the imposition of civil penalties as authorized by this chapter, the recovery of costs of the action and such other remedies as may be necessary to prevent or enjoin a dangerous condition from existing on a highway, street, road, or right-of-way within the Town.

§ 7 - Applicability.

A. This chapter shall apply to all utility poles located on any highway, street, road or right-of-way within the Town, and to all utility poles installed hereafter.

B. The provisions of this chapter shall be deemed to supplement applicable state and local laws, ordinances, codes and regulations; and nothing in this chapter shall be deemed to abolish, impair, supersede or replace existing remedies of the Town, county or state or existing requirements of any other applicable state or local laws, ordinances, codes or regulations. In case of conflict between any provision of this chapter and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail.

Section 2. Separability

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Woodbury hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 3. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 4. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.