

LOCAL LAW NO. ____ OF 2019

TOWN BOARD
TOWN OF NEW CASTLE

PROPOSED LOCAL LAW CREATING
CHAPTER 111, ARTICLE IV
OF THE CODE OF THE TOWN OF NEW CASTLE

A LOCAL LAW to create Chapter 111, Article IV of the Code of the Town of New Castle concerning Double Utility Poles.

BE IT ENACTED, by the Town Board of the Town of New Castle, as follows:

Section 1. Chapter 111, Article IV entitled “Double Utility Poles,” Section 111-30 of the Code of the Town of New Castle is hereby added as follows:

§ 111-30 Findings, purpose and applicability.

- A. The Town Board hereby finds that Double Utility Pole Conditions, as defined herein, are a problem throughout the Town of New Castle. The Town Board finds that the incomplete transfer of utilities and failure to remove old utility poles pose safety and aesthetic concerns for the Town and its residents. Double Utility Pole Conditions clutter and obscure visibility on sidewalks and roadways. They are also unnecessary eyesores on Town streets, obstructions for pedestrians and detriments to local aesthetics.
- B. The Town Board also finds that public safety can be compromised when utility lines and equipment remain affixed to utility poles that weathered or otherwise are damaged. The Town Board finds further that there is often an unreasonable delay of months to years before responsible utility providers relocate their equipment and remove weathered or damaged utility poles.
- C. Town Board finds and determines that local governments have the authority to regulate their highways, streets, roads and rights-of-way to protect the public.
- D. The Town Board finds and determines that the interest of the public is best served by cooperation and communication between public utilities and the Town.
- E. Therefore, the purpose of this Article is to require utilities that use the Town of New Castle highways, streets, roads and rights-of-way 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 from said poles.

§111-31 Definitions.

DANGEROUS/DAMAGED POLE

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

DOUBLE UTILITY POLE CONDITION

Any utility pole which is placed in close proximity to another utility pole.

PLANT

The transformers, terminals, conductors, utility boxes, wires, cables, lights, antennas and any other fixtures used for the transmission of utilities and attached or affixed to a utility pole.

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 New Castle.

§ 111-32 Street opening permit required.

No person, firm or corporation shall place or erect any pole for any purpose on any Town highway, street, road or right-of-way, or change the location of any existing pole on any Town highway, street, road or right-of-way, without first having obtained a street opening permit from the Commissioner of Public Works. Application for a permit under this section shall be made upon a form to be provided by the Commissioner of Public Works and upon payment of a permit fee to be set by resolution of the Town Board.

§111-33 Removal of dangerous/damaged utility poles.

- A. When the Commissioner of Public Works, or his or her designee, determines that a utility pole on a Town highway, street, road or right-of-way is damaged or otherwise poses a potential threat to public safety, the Commissioner of Public Works shall provide written notice to the pole owner and any public utility with a Plant on the damaged pole that the pole must be repaired, replaced or removed within 15 days or such shorter reasonable time period as may be necessary to protect the public safety.
- B. It shall be the joint and several obligation of the pole owner and any other public utility maintaining a Plant on the dangerous/damaged utility to repair, replace or remove the dangerous/damaged pole within 15 days or such other reasonable period designated by the Commissioner of Public Works.

§111-34 Double Utility Pole Conditions Prohibited.

- A. When a public utility installs a utility pole which is directly next to or in close proximity to another utility pole on a Town highway, street, road or right-of-way, the public utility shall, within 30 days of installation of the new pole, provide written notice to all other public utilities maintaining a Plant on the existing pole that a new pole has been installed and that the Plant on the existing pole must be relocated to the new pole within 90 days of the date of the notice. A copy of such written notice shall be simultaneously transmitted to the Commissioner of Public Works.
- B. It shall be the joint and several obligation of the public utility installing the new pole and any other public utility maintaining a Plant on the existing pole to remove the existing pole within 30 days after installation of the new pole.

§111-35 Extensions of time.

- A. Notwithstanding any provision of this article to the contrary, the Commissioner of Public Works may extend the time frame of any action under this article for an additional period not exceeding the original statutory time frame set forth in this Article. The public utility shall make a request for an extension in writing to the Commissioner of Public Works prior to the expiration of the time frame contained in the original written notice, together with the basis for the request. The Commissioner of Public Works shall determine whether the request for extension should be granted or denied, and provide a written response to the public utility.
- B. In the event of an emergency that affects the repair, replacement, removal or installation of utility poles or Plants, the Commissioner of Public Works may temporarily suspend the deadlines described above for periods not exceeding 30 days.

§111-36 Penalties.

- A. Any person, firm, corporation or public utility convicted of a violation of the provisions of this Article shall be guilty of a violation, for a first conviction, punishable by a fine not exceeding \$500; for a second or subsequent conviction, punishable by a fine not exceeding \$1,000. Every day that the violation continues shall be deemed a separate violation. Each location of a double utility pole condition or dangerous/damaged utility pole shall be a separate violation.
- B. Any person, firm, corporation or public utility found guilty of violating this Article and that fails to remove its Plant from a damaged pole, the damaged pole and/or the double utility pole within 15 days from receipt of the order of the court shall be punished by a penalty of up to \$1,000 for each such violation. Each day that the violation continues shall be a separate violation.

C. If a person, firm or corporation or public utility violates the provisions of this article, the Town Attorney may commence an action in the name of the Town of New Castle 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 article. Such action may seek to remove damaged/dangerous poles and/or any double utility pole condition and may be commenced against a third-party Plant owner to remove Plant from such poles, the imposition of civil penalties as authorized by this Article, 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 Town highway, street, road, or right-of-way.

§ 111-37 Applicability.

- A. The provisions of this Article shall be deemed to supplement applicable state and local laws, ordinances, codes and regulations, and nothing in this Article 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, codes or regulations. In case of conflict between any provision of this Article and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail.
- B. This Article shall apply to all utility poles located on any Town highway, street, road or right-of-way as of the enactment of this Article and to all utility poles installed after the enactment of this Article.
- C. Any person, firm, corporation or public utility which maintains a double pole condition as of the date of the adoption of this Article shall fully comply with the regulations set forth herein within 30 days of enactment of this Article. Any failure to timely comply with this Subsection C shall be enforced in accordance with the provisions of this Article.

Section 2. Severability. If any clause, sentence, paragraph, section, article or part of this Local Law shall be adjudicated in any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered, and such invalidity shall not be deemed to affect the remaining portions thereof.

Section 3. This local law will take effect immediately upon filing in the Office of the Secretary of State.