



**TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY**

LOCAL LAW MEMO

To: Supervisor and Members of the Town Board
From: Elizabeth D. Botwin, Town Attorney *EB*
Re: Proposed Local Law Establishing Chapter 64A of the Town Code
entitled "Removal of Double Utility Poles"
Date: August 28, 2014

Enclosed is a copy of a proposed Local Law Establishing Chapter 64A of the Code of the Town of North Hempstead entitled "Removal of Double Utility Poles". The purpose of the amendment is to require the removal of double utility poles from Town road right-of-ways.

cc: Wayne H. Wink, Jr.
Cindy Cardinal
Robert Troiano
Aline Khatchadourian
Nick Guariglia
Rachel Brinn



**TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY**

**PROPOSED LOCAL LAW ESTABLISHING
CHAPTER 64A OF THE TOWN CODE ENTITLED
"REMOVAL OF DOUBLE UTILITY POLES"**

LOCAL LAW MEMORANDUM

Purpose of Law:

The purpose of the amendment is to require the removal of double utility poles from Town road right-of-ways.

Budget Implications:

The proposed Local Law will have no direct budgetary implications.

Explanation:

Matter in **bold** is new.

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2014**

**A LOCAL LAW ESTABLISHING CHAPTER 64A OF THE TOWN CODE
ENTITLED "REMOVAL OF DOUBLE UTILITY POLES"**

BE IT ENACTED by the Town Board of the Town of North Hempstead, as follows:

Section 1. Legislative Intent.

The Board finds that it is in the best interest of the Town of North Hempstead to establish Chapter 64A of the Town Code entitled "Removal of Double Utility Poles" in order to require the removal of double utility poles from Town road right-of-ways.

Section 2.

Chapter 64A of the Town Code is hereby established as follows:

§ 64A-1. Findings; legislative intent.

A. This Town Board hereby finds and determines that public utility companies place poles on Town of North Hempstead highways, streets, roads and right-of-ways to facilitate the delivery of electric, telephone, cable television, and other telecommunications services to the residents of the Town of North Hempstead.

B. This Town Board finds and determines that local governments have the authority to regulate their highways, streets, roads and right-of-ways to protect the public.

C. This Town Board finds and determines that utility poles are damaged from time-to-time.

D. This Town Board 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. This Town Board 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 right-of-ways, as well as obstructing the paths of pedestrians.

F. This Town Board 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 local law, the Town Board deems this ordinance to be an exercise of the police power of the Town of North Hempstead 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. Therefore, the purpose of this chapter is to require utilities that use Town highways, streets, roads and right-of-ways 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.

§ 64A-2. Definitions.

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

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 old 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 telecommunication service to the residents of the Town of North Hempstead.

SUPERINTENDENT OF HIGHWAYS --The Town of North Hempstead Superintendent of Highways or his/her designee.

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.

§ 64A-3. Permit requirements.

A. No person, firm or corporation shall place or erect any pole for any purpose on any Town highway, street, road or right-of-way of said Town, or change the location

of any existing pole on any Town highway, street, road or right-of-way of said Town without first having obtained a permit from the Superintendent of Highways.

B. Application for a permit under this section shall be made upon a form to be provided by the Superintendent of Highways and upon payment of a permit fee to be set by resolution of the Town Board.

§ 64A-4. Department notification; time frame for removal.

A. When the Superintendent of Highways issues a permit for the installation of 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 Superintendent of Highways 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 Superintendent of Highways 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 § 64A-9 of this chapter.

B. When the Superintendent of Highways determines that a utility pole on a Town highway, street, road or right-of-way is damaged and poses a potential threat to public safety, the Superintendent of Highways 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 § 64A-9 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 § 64A-9 of this chapter.

C. When the Superintendent of Highways determines that a double pole is on a Town highway, street, road or right-of-way, the Superintendent of Highways 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 Superintendent of Highways 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 § 64A-9 of this chapter.

§ 64A-5. Extensions authorized; Temporary emergency suspension.

A. Notwithstanding any provision of this chapter to the contrary, the Superintendent of Highways may extend the timeframe of any written notice provided under this chapter for an additional period not exceeding the original statutory timeframe set forth in this chapter. The public utility shall make a request for an extension in writing to the Superintendent of Highways prior to the expiration of the timeframe contained in the original written notice, together with the basis for the request. The Superintendent of Highways 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 Superintendent of Highways 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 §64A-4 of this chapter for periods not exceeding 30 days.

§ 64A-6. Indemnity or performance bond.

The Superintendent of Highways shall not give a permit as set forth in § 64A-3 unless there shall have been furnished by the applicant sufficient indemnity or performance bond as determined by the Superintendent of Highways as a condition precedent to the issuance of the permit and the commencement of work. Said bond or indemnity shall be for a reasonable amount and may cover any activities requiring a permit as per § 64A-3 of this chapter, and said bond or indemnity may cover any period of time necessary to include the accomplishment of such activity, all as shall be determined by the Superintendent of Highways. The approval of the Superintendent of Highways as to amount, form, manner of execution and sufficiency of surety or sureties shall be entered on said bond before it shall be filed in the Town Clerk's office, and said bond shall be so filed before said permit shall be effective.

§ 64A-7. Advisory Committee.

There is hereby established a Public Utility Advisory Committee to assist and advise the Town Board on matters related to utility poles. The advisory committee will include representatives from the Supervisor's office, Town Attorney's office, the Highway Superintendent, and public utilities. The advisory committee is authorized to adopt rules and establish procedures insofar as they are not inconsistent with the provisions of this chapter.

§ 64A- 8. Penalties for offenses.

A. Any person, firm, corporation or public utility convicted of a violation of the provisions of this chapter 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 \$1000. Every day that the violation continues shall be deemed a separate violation.

B. In addition to the penalties provided above, any person, firm or corporation or public utility that violates the provisions of this chapter shall be subject to a civil penalty not to exceed \$500 for each such violation. Every day that the violation continues shall be deemed a separate violation.

C. If a person, firm or corporation or public utility violates the provisions of this chapter the Town Attorney may commence an action in the name of the Town of North Hempstead 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 Town highway, street, road, or right-of-way.

§ 64A-9. Applicability.

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

§ 64A-10. Severability.

If any clause, sentence, paragraph, section, word or part of this chapter is adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined in its operation to the clause, sentence, paragraph, section, word or part of this chapter directly involved in the controversy in which judgment is rendered.

§ 64A-11. When effective.

This Local Law shall take effect immediately upon filing with the Secretary of State.

Section 3.

This Local Law shall take effect immediately upon filing with the Secretary of State.