

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Thompson

Local Law No. 6 of the year 2017

A local law adding Chapter 118 entitled "Double Utility Poles, Removal of" in the Town of Thompson Code

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

**Section 1. New Law Created.** Chapter 118 of the Town Code entitled "**Double Utility Poles, Removal of**" shall be and hereby is created by this Local Law as follows:

### **Chapter 101. Double Utility Poles, Removal of**

#### **§ 118-1. Findings: legislative intent.**

**A.** The Town Board hereby finds and determines that public utility companies place poles on Town of Thompson highways, streets, roads, rights-of-way or any other roadway or right-of-way located in the Town to facilitate the delivery of electric, telephone, cable television, and other telecommunications services to the residents of the Town of Thompson.

**B.** The 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.

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

**D.** The 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.** The 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 rights-of-way, as well as obstructing the paths of pedestrians.

**F.** 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 Board.

**G.** In enacting this chapter, the Town Board deems this chapter to be an exercise of the police power of the Town of Thompson 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 rights-of-way or any other roadway or right-of-way located in 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.

§ 118-2. 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 telecommunications service, to the residents of the Town of Thompson.

**CODE ENFORCEMENT OFFICER (CEO)**

The Town of Thompson Code Enforcement Officer 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.

§ 118-3. Department notification: time frame for removal.

A. When the Code Enforcement Officer (CEO) determines that a utility pole on a Town highway, street, road or right-of-way or any other roadway or right-of-way located in the Town is damaged and poses a potential threat to public safety, the CEO 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 § 118-5 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 § 118-5 of this chapter.

B. When the CEO determines that a double pole is on a Town highway, street, road or right-of-way or any other roadway or right-of-way located in the Town, the CEO 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 CEO 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 § 118-5 of this chapter.

§ 118-4. Extensions authorized: temporary emergency suspension.

A. Notwithstanding any provision of this chapter to the contrary, the CEO 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 CEO prior to the expiration of the time frame contained in the original written notice, together with the basis for the request. The CEO 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 CEO shall issue another written notice, which shall then be applicable instead of the previously issued notice.

§ 118-5. 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 \$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.

B. Any public utility found guilty of violating this Chapter and that fails to remove its plant from a damaged pole within 15 days of receiving notification from the Town, pursuant to this Chapter, 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.

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

D. 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 Thompson 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.

§ 118-6. Applicability.

A. This chapter shall apply to all utility poles located on any Town highway, street, road,

right-of-way or any other roadway or right-of-way located in 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 Thompson 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.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out the matter therein which is not applicable.)

1. (Final adoption by local legislative body only)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 2017 of the Town of Thompson was duly passed by the Town Board on \_\_\_\_\_, 2017 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by Elective Chief Executive Officer\*)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 2017 of the County/City/Town/Town/Village of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 2017 and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 2017, in accordance with the applicable provisions of law.

3. (Final adoption by referendum)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 2017 of the County/City/Town/Town/Village of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 2017 and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on \_\_\_\_\_ 2017, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum, and final adoption because no valid petition filed requesting referendum)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 2017 of the County/City/Town/Town/Village of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 2017 and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 2017 in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 2017 of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of sections 36/37 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at a special/general election held on \_\_\_\_\_ 2017 became operative.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, chairman of the county legislative body, the mayor of a city or village or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

6. (County local law concerning adoption of Charter)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 2017 of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_ 2017, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide the appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

\_\_\_\_\_  
~~Clerk of the county legislative body, city, town,  
village clerk or officer designated by local legislative  
body~~

Date: \_\_\_\_\_, 2017

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality)

STATE OF NEW YORK  
COUNTY OF SULLIVAN

I, the undersigned, do hereby certify that the foregoing local law contains the correct text and that all proper proceeding have been had or taken for the enactment of the local law annexed hereto.

Date: \_\_\_\_\_, 2017

\_\_\_\_\_  
Attorney for Town of Thompson