

ARTICLE VI, Utility Pole Regulation

§ 355-44. Legislative findings.

The Common Council for the City of Binghamton hereby finds that unnecessary utility poles within close proximity to one another pose an immediate and serious hazard to motorists and pedestrians by impeding visibility along roadways, particularly at or near intersections, while serving no legitimate need or purposes. In addition, such utility poles constitute a visual eyesore while, again, serving no legitimate need or purpose. The Common Council further finds that it would be in the best interest of the City and would serve to protect and preserve the health, safety and welfare of the community to require the owners of unnecessary utility poles in close proximity to one another to remove all such unnecessary utility poles. The Common Council also finds that it would be in the best interest of the City to inspect all current and proposed utility poles to determine their stability and ensure the safety of all residents. It is the purpose of the Common Council in adopting this chapter to discourage the installation of unnecessary utility poles and to compel the owners of all existing unnecessary utility poles to remove them from City- owned properties and rights-of-way in order to protect and preserve the health, safety and welfare of the community. It is the goal of the Common Council to compel the elimination of all unnecessary utility poles from the City of Binghamton.

§ 355-45. Definitions.

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

CITY ENGINEER — The Engineer for the City of Binghamton

PERMITTED UTILITY POLE — Any pole which is 12 or more feet from all other utility poles.

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

UNNECESSARY UTILITY POLE —

A. Any utility pole which is within 12 feet of another utility pole unless:

- (1) It is necessary to safely carry some or all of the utility service lines which it, and all other utility poles within 12 feet of it, are intended to carry; and
- (2) There is no feasible alternative configuration of utility poles which can safely carry all of the utility service lines in that area using only utility poles 12 or more feet from another.

B. Absent satisfactory evidence of the necessity of the utility pole in question and/or the feasibility of alternative configurations of utility poles, any utility pole which is located within 12 feet of any other utility pole shall be presumed to be an unnecessary utility pole.

UTILITY POLE — A pole made of any material, which is affixed to the ground and which carries overhead utility service lines. The phrase "utility pole" includes the phrases "telephone pole" and "light pole."

UTILITY SERVICE — Electricity; telephone service, including cable telephone service; television service, including cable television service; Internet access, including cable Internet access; and any other telecommunications service.

WRITTEN NOTIFICATION — A writing directed to a representative of a public utility, who may be

designated by the utility, by regular mail, fax transmission or electronic mail.

§ 355-46. Utility pole requirements; guy wires.

All utility poles shall be structurally sound and capable of standing in the vertical position and carrying the utility service lines attached to them without the support, direct or indirect, of any other utility pole. Guy wires may be used to support a utility pole, but no guy wire shall cross any road, street, sidewalk or paved or unpaved pedestrian walkway in such a manner as to pose a hazard to vehicles or pedestrians.

§ 355-47. Installation; existing poles.

A. Installation of an unnecessary utility pole.

- (1) After the effective date of this chapter it shall be unlawful to install or have installed an unnecessary utility pole on City-owned property or within the City's right-of-way unless the owner of any such pole can demonstrate, by a signed engineer's report, to the satisfaction of the City Engineer, that:
 - (a) The utility pole in question is necessary to safely carry some or all of the utility service lines which it and all other utility poles within 12 feet of it are intended to carry; and
 - (b) There is no feasible alternative configuration of utility poles which can safely support all of the utility service lines in that area using only utility poles 12 or more feet from one another.
- (2) Co-location of utility lines on poles and the sharing of poles by different utility companies shall be considered a feasible alternative configuration to installing an unnecessary utility pole.
- (3) An application for permission to install a permitted pole or an unnecessary utility pole, entitled "Permit Application for Street and Sidewalk Openings," shall be submitted to the City Engineer or his designee. The application shall include the required documentary engineering evidence relevant to the necessity of the utility pole in question and the feasibility of alternative configurations of utility poles and payment of an application fee. The subject utility pole shall not be installed unless and until the City Engineer shall approve the application. Emergency installations may be made as necessary but must be followed within 14 days of the emergency installation by the application process as set forth in this article.

B. Existing poles.

- (1) Any unnecessary utility pole existing on the effective date of this chapter shall be removed by the owner within the time specified in a "Notice to Remove Unnecessary Utility Pole" mailed in accordance with § 171-58 below unless the owner of any such unnecessary utility pole can demonstrate, by a signed engineer's report, to the satisfaction of the City Engineer, that:
 - (a) The utility pole in question is necessary to safely carry some or all of the utility service lines which it and all other utility poles within 12 feet of it are intended to carry; and
 - (b) There is no feasible alternative configuration of utility poles which can safely support all of the utility service lines in that area using only utility poles 12 or more feet from one another.
- (2) Collocation of utility lines on poles and the sharing of poles by different utility companies shall be considered a feasible alternative configuration to installing separate utility poles within 12

feet of one another.

- (3) An application for permission to continue to use and maintain an existing otherwise unnecessary utility pole shall be made to the City Engineer within the time provided for removal of the unnecessary utility pole in the "Notice to Remove Unnecessary Utility Pole." The application shall include the required documentary engineering evidence relevant to the necessity of the utility pole in question and the feasibility of alternative configurations of utility poles and payment of an application fee in the amount of \$150 per pole. Upon making such application, removal of the subject utility pole shall be held in abeyance pending a final determination on the application by the City Engineer. If the proof provided does not satisfy the City Engineer that the subject utility pole is, in fact, necessary, the City Engineer or his/ her designee shall notify the owner in writing of the determination and direct that the unnecessary utility pole be removed by a date certain which shall be no less than 14 days after the date of the mailing of that notification.

§ 355-48. Notice to remove unnecessary utility poles.

- A. When the Department or its duly authorized agent determines that a utility pole in a City road right-of-way is damaged and poses a potential threat to public safety, the Department, or its duly authorized agent, shall notify any public utility with a plant on the damaged pole that it must remove its plant from the pole or be subject to a penalty. A public utility must remove its plant from the damaged pole within 15 days of receiving such notification from the Department or its duly authorized agent.
- B. When the Department, or its duly authorized agent, determines that a double pole is in a City road right-of-way, the Department or its duly authorized agent will notify the public utility which has the top plant on the double pole that the plant must be removed within 90 days or be subject to penalty. Upon removal of the top plant, each subsequent public utility with a plant on a double pole will have 90 days to remove such plant from the date it receives notification from the Department or its duly authorized agent.
- C. After all plants have been removed from the double pole, the public utility which owns the double pole shall remove said pole within 60 days after receiving notification from the Department or its duly authorized agent. This provision shall not nullify or limit any private agreement between and among public utilities that assign responsibility for pole removal.

§ 355-49. Notification to pole owner.

The City Engineer or its duly authorized agent shall, for informational purposes, provide notice to the owner of a damaged or double pole when notification is given to a public utility that its plant must be removed from the pole.

§ 355-50. Penalties for offenses.

- A. Any person, firm or corporation or public utility offending or violating this article shall be guilty of this violation.
- B. Any person, firm or corporation or public utility found guilty of a violation under this article shall be liable for a fine which shall not exceed \$1,000 in amount in the discretion of the court. Each day on which any such violation continues shall constitute a separate chargeable offense.
- C. If a person, firm or corporation or public utility violates the provisions of this article, or fails to remove its damaged and/or double pole or plant from a damaged pole in accordance with the

provisions of this article, the Corporation Counsel, upon the request of the City Engineer, may commence an action in the name of the City in a court of competent jurisdiction for necessary relief, which may include the imposition of civil penalties as authorized by this article, an order to remove the plant from a damaged utility pole and/or to remove a damaged pole or double pole, the recovery of costs of the action and such other remedies as may be necessary to prevent or enjoin a dangerous condition from existing in a City roads or rights-of-way.

§ 355-51. Applicability; construal of provisions.

- A. This article shall apply to all utility poles located on City roads or rights-of-way as of the effective date of this article.
- 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 City, 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.

§ 355-52. 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.