

VILLAGE OF WOODBURY
INTRODUCTORY LOCAL LAW NO. 9 OF THE YEAR 2018

A LOCAL LAW CREATING AN NEW CHAPTER 270 OF THE VILLAGE CODE, TO
REGULATE DEVICES IN PUBLIC STREETS, RIGHTS-OF-WAY AND EASEMENTS

Be it enacted by the Village Board of Trustees of the Village of Woodbury by authority of Article 7 of the Village Law and Article 10 of the Municipal Home Rule Law, as follows:

Section 1. Chapter 270, Devices In Public Streets, Rights-Of-Way and Easements. The Village Code of the Village of Woodbury is hereby amended by inserting the following new chapter:

Chapter 270
Devices In Public Streets, Rights-Of-Way and Easements

A. Legislative purpose and intent.

- (1) The Village Board of the Village of Trustees, Village of Woodbury, New York ("Village") finds that certain uses and activities in and about public streets, rights-of-way, easements, and other non-private property areas (collectively the "Areas") impacting upon the traveling and residential public within the Village must be lawfully regulated to protect the public health, safety, and welfare of all residents as well as those traveling and otherwise using the Areas.
- (2) The Village also finds that there have been unregulated and unmonitored non-utility devices ("Non-Utility Devices") in place within the Areas for more than thirty (30) days being attached to utility poles owned by Transportation Corporations and/or utility companies as classified and/or defined by the New York State Transportation Corporation Law and/or New York State Public Service Law (the "Utility Poles") and located in such Areas by utility entities and utility companies (collectively the "Utility Entities") as well as others.
- (3) The Village also finds that certain Utility Entities have instituted their own process by which they have permitted various Non-Utility Devices on Utility Poles in the Areas throughout their location of operations and have applied these processes in a manner that has not been consultative or not sufficiently consultative with all municipal authorities in Areas within the Village itself.
- (4) The Village Board of Trustees also finds that Utility Entities have permitted and/or continue to permit or otherwise allow the placement of various Non-Utility Devices, inclusive of private security cameras, in Areas throughout the Village, and that such private security cameras on Utility Poles present issues dealing with potential unlawful surveillance as well as likely invasion of any right or expectation of privacy to individuals residing within, traveling in or

about the Areas and that regulation of such security cameras and Non-Utility Devices is essential to secure the public health, safety, and welfare of the Village's inhabitants and visitors.

- (5) The Village Board of Trustees also finds that certain Utility Devices attached to Utility Poles by Utility Entities are used to provide important and necessary public uses for the transmission of electrical or other services (collectively the "Utility Devices"), which, if not properly protected, could present a public health, safety, or welfare concern to those who may come in contact with such wires or other devices and therefore the regulation of such wires or other devices used for Utility Devices must be distinguished from any wires or devices being utilized only for Non-Utility Devices purposes.
- (6) This Regulation is additionally intended to be certain that all uses of the public spaces owned or controlled by the Village only within the scope of this Local Law are properly assessed and documented at all times under the Real Property Tax Law of the State of New York.
- (7) This Regulation is further intended also to protect public safety, enhance and protect the physical appearance of the community by avoiding excess unregulated Non-Utility Devices in the public space, and promote consistence in the installation of any Non-Utility Devices as set forth herein.
- (8) Nothing herein this Regulation shall preempt any law, rule or regulation of the Public Service Commission or any provision of the New York State Transportation Corporation Law or the New York State Public Services Law.
- (9) Nothing herein this Regulation shall authorize the Village to regulate or require its approval for the content or viewpoint of expression involving any Non-Utility Device within the Village.
- (10) Nothing herein this Regulation shall apply to a security camera or Non-Utility Device located solely on private property with the consent of the private property owner.

B. Definitions. For the purposes of this Section, the following definitions shall apply:

ASSESSOR:

This refers to the applicable Office of Assessor pursuant to law and who is in charge of determining the fair market value of all utility and other similar easements, rights-of-way or other property interests in the Village that are subject to taxation pursuant to the Real Property Tax Law of New York State.

CODE ENFORCEMENT OFFICER:

This refers to the Village's Code Enforcement Officer, Building Inspector or any Assistant Code Enforcement Officer or Assistant Building Inspector having jurisdiction over the enforcement of any Zoning Codes, Building Codes or other Codes in the Village.

EASEMENT:

An easement is a non-corporeal interest in real property.

INSTALLER:

This refers to any individual, entity, company, corporation or others who are hired, volunteer or otherwise are involved with the installation and maintenance of any Non-Utility Devices as defined herein. Said installer shall be appropriately licensed as required by the County of Orange so that all appropriate insurance and other protections for the public are in place and duly filed with the Village Clerk before any installation, maintenance, and/or other work can be done herein. All such documents with regard to the installer shall be attached to any application for a prior Permit herein.

NON-UTILITY DEVICES:

A permanent Non-Utility Device is any thing, object or other physical apparatus to affix to or between a pole or poles, structure or other places, by any nails, clips, fasteners, wire, string or other such object, including but not limited to, plastic strips, metal, wooden or other material that is used and/or intended to be used for more than 31 consecutive days. This definition excludes Security Cameras and Utility Devices as defined herein.

NON-UTILITY DEVICE - SECURITY CAMERA:

Any equipment affixed in any manner to a Utility Pole or Utility Device that is used or intended to be used to observe, record, transmit or otherwise monitor the activities of anyone within public rights-of-way or public easement areas in which any member of the public can be recorded, photographed or otherwise have any image captured which equipment has not been authorized and approved by the local Police Department for law enforcement security purposes.

PERSON:

"Person" means any individual, corporation, partnership, limited liability corporation, joint venture, profit or not-for-profit entity or other person, firm, owner, leasee, agent or employee whether corporate or otherwise.

PERMIT HOLDER:

Permit holder shall include the person or entity making the application, the person or entity to whom the permit is granted, and the owner of the Non-Utility Devices as defined herein.

PUBLIC ROAD:

Public roads means any road, street, or thoroughfare or other place (whether a

thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access.

RIGHT-OF-WAY:

Any recorded or non-recorded instrument, document or other tangible compilation of data that purports to provide certain rights to utilize any public areas within the streets, highways, sidewalks or other similar areas where the public or others may travel upon or utilize at any time, including but not limited to, public and private utility easements.

ROAD:

The term "road" shall be construed the same as the word "street" as defined herein.

SECURITY CAMERA:

The term "security camera" refers to any electronic, internet, video, mechanical, WiFi, or other means or equipment used to record, or transmit, or store, or any combination of the foregoing, any activities, or actions, or scenery, or people, or places or things, or any combination of the foregoing.

STREET:

The term "Street" as used herein also includes a highway, road, avenue, roadbeds, lane or alley which the public have a right to use in whole or in part. The term "pavement" includes a macadam, asphalt, brick, concrete or other similarly improved roadbed, and is only applied to the portion of the street between the sidewalks or established curb lines.

UTILITY COMPANY:

This refers to any public or private utility company or other entity that has obtained any rights-of-way or easements to construct, erect or otherwise place utility and/or Utility Devices along any rights-of-way or easement areas within streets or roads of the Village. This shall also refer to any entity that has received a Permit or franchise pursuant to a Village Law and is a "utility company" as defined by the New York State Public Service Law; and, "transportation corporation" as classified by the New York State Transportation Law.

UTILITY ENTITIES:

This refers to any Utility Entities that acts in concert or by agreement with any other Utility Company.

UTILITY POLE:

This refers to utility poles owned by a Utility Company as defined herein and located in public streets, easements and/or right of ways.

UTILITY DEVICES:

Any material or compilation or flexible or rigid materials used and/or installed by a Utility Company to provide services pursuant to the New York State Transportation Corporation Law and New York State Public Service Corporation Law.

C. REGULATION OF ANY SECURITY CAMERA

This Section applies exclusively to Security Cameras as defined herein and not located solely on private property.

No Security Camera shall be erected, maintained, installed or otherwise placed or kept in place on any Utility Pole or in any public right-of-way and easement areas unless said placement and maintenance is pursuant to the approval by Resolution of the Village Board of Trustees. The approval of said Village Board shall only be provided if any such Security Camera will when operating not interfere with current or likely law enforcement purposes and not unreasonably interfere with lawful concerns regarding the protection of personal privacy.

D. REGULATION OF NON-UTILITY DEVICES

This Section applies exclusively to Non-Utility Devices as defined herein and not located solely on private property.

No Non-Utility Devices as defined herein shall be installed, maintained, placed, or otherwise continue to exist except as set forth herein:

(1) Permit required for Non-Utility Devices.

- (a) Except as provided herein, it shall be unlawful for any person to install, erect, move, alter, redesign, enlarge or reconstruct any Non-Utility Devices or cause to be erected, moved, altered, redesigned, enlarged, relocated or reconstructed any Non-Utility Devices within any right-of-way or street without first having obtained a permit from the Village Building Department to do so. Any such Non-Utility Devices that are to be erected or placed on a pole, building, structure or other location within any right-of-way or street by any person shall be required to first have a permit approved by the Village Code Enforcement Officer before any such activity can be commenced. If proposed in connection with a Site Plan Application, such Non-Utility Devices shall also be reviewed and approved by the Planning Board under the applicable lawful criteria.
- (b) No requirement for a Permit herein shall authorize the Village to take any property either on a temporary or permanent basis; nor unlawfully restrict any right to sublicense.

(2) Permit application for Non-Utility Devices.

(a) An Application for a Non-Utility Device shall be made on a form provided by the Village which application shall be only for identification purposes and shall include at least the following information:

- (i) The name, physical and e-mail address and telephone number and all other

contact information of the applicant.

(ii) The location of the pole, building, structure or other place to which or upon which such Non-Utility Devices are to be placed, erected or otherwise attached.

(iii) A color photo of the areas where any such Non-Utility Devices are to be erected or attached.

(iv) All dimensions of any such Non-Utility Devices, and details of its Devices and hanging or method of securing to any place.

(v) Any visual or other message, text, copy or content on or of such Non-Utility Devices.

(vi) Written consent and/or a copy of any agreement made with the owner of the property or property interest upon which such Non-Utility Devices are to be erected.

(viii) Any and all documents by which the owner of the property and property interest referenced herein claims a right to occupy space in areas owned or controlled by the Town.

(vii) The names, address and other information as well as documents of any Utility Company that allows, licenses, permits or otherwise consents to the placement of any such Non-Utility Devices in its claimed right-of-way prior to the filing of an application herein.

(x) The name, address and all contact information of the Installer as defined herein.

(xi) Any other such information as the Building Department or reviewing Board may reasonably and lawfully require to ensure compliance with this Regulation.

(b) The fees for such application are to be determined from time to time by Resolution of the Village Board of Trustees and said fees shall reflect the actual administrative costs for issuance of any Permit and compliance with this Regulation.

(3) Filing of Non-Utility Device Permit Application with Assessor.

Upon the filing of an application for Non-Utility Devices permit under this Section with the Village, contemporaneous with said application being filed, an applicant for such Non-Utility Devices permit must also simultaneously file copies of the application with the Tax Assessor, the Village Clerk and the Mayor of the Village. In addition to the contents of the application set forth previously herein, the application shall also contain all documents that confirm the right to have such Non-Utility Devices established or erected in over or under areas owned or controlled by the Village or such other Areas as claimed by

the applicant. Said documentation shall also include the identification of any rights that are claimed by the applicant or any owner of the property or property interests upon which such Non-Utility Devices are to be erected to place such Non-Utility Devices in any street or other Areas. Said application shall also include a fair market value determination of the existing rights of the owner of the property or property interest upon which such Non-Utility Devices is to erect and the fair market value of the rights of the Non-Utility Devices permit application if granted. The application shall also include any prior challenges that the owner of the property or property interest upon which such Non-Utility Devices are to be erected previously filed against any Tax Assessor having jurisdiction to review the fair market value of the rights of the owner of the property or property interest upon which the Non-Utility Devices are to be erected.

(4) Non-Utility Device Permit procedure.

(a) Upon the filing of a completed application, the Village Code Enforcement Officer shall examine the plans, specifications or other information submitted, as well as the Area or Areas where any Non-Utility Devices are to be erected or as the case may exist. If such Non-Utility Device is in compliance with all the requirements contained in this Regulation, the Code Enforcement Officer shall, within 15 days after completion or his or her review of the permit application, either (a) advise the applicant in writing of any incomplete aspect of the application; (b) issue a permit for the erection of the Non-Utility Devices or; (c) deny the application. (The issuance of a permit shall not excuse the applicant from conforming to the other laws, rules and regulations of the municipality.) If the placement of said Non-Utility Devices so authorized pursuant to this regulation has not completed within three (3) months from the date of permit issuance, the permit shall become null and void.

(b) §7-712(a) Appeal from any permit decision. In accordance with New York Village Law an appeal to the Village Zoning Board of Appeals may be taken by any person aggrieved by the Code Enforcement Officer's decision to approve or deny or otherwise act regarding a permit within thirty (30) days from the date of any such decision or action.

(5) General Installation Regulations for Non-Utility Devices.

Installation guidelines. The following guidelines are to be followed with regard to any installation of a Non-Utility Device pursuant to this Regulation, in addition to any such other lawful directions or requirements of the Code Enforcement Officer for the Village:

(a) Any Non-Utility Device must be installed entirely within the owner's property or other Area and outside of any such Village right-of-way or any other right-of-way unless a written consent for use by such applicant is on file with the Village Clerk.

(b) Any such Non-Utility Device must be located as close as permitted by law, rule or regulation to any other existing wire in the immediate location of such Non-Utility Device.

(c) Any Non-Utility Device must be of translucent material and/or be or made the same color as the pole to which it is attached so that such Non-Utility Devices is not readily visible to the public.

(d) No illumination of any non-utility device shall be permitted

(e) No markings, including symbols, letters, materials and any colors of such Non- Utility Devices shall be permitted.

(f) Any Non-Utility Device shall be otherwise made to be non-distinguishable in appearance from that of the Utility Pole or other structure upon which the Non-Utility Device is placed.

(g) Prior to installation of any Non-Utility Device, a Utility Company mark-out is required with the applicant in the permit application having documented to the Village the 811 call to have this done as well as the results of that call.

(h) No such Non-Utility Device or extension thereof may be attached or fastened to any tree, bush or plant or other vegetation.

(i) No such Non-Utility Device can cross over or under or on any public street or municipal right-of-way unless in compliance with this section.

(j) All Non-Utility Devices attached to any Utility Pole must receive written permission from Utility Company or other entity or person from which permission is given and said written permission must be attached to any permit application and thereafter submit written proof of continuing permission to Code Enforcement Officer annually by January 15 of each year after which the permit is issued.

(k) All Non-Utility Devices shall be grounded in accordance with National Electrical Code.

k) Any Non-Utility Device on a pole shall be placed at a minimum of 8ft high and a maximum of 20 ft. high unless otherwise permitted or required by law.

(6) Maintenance for Non-Utility Devices.

(a) The permit holder is responsible at all times to maintain their Non-Utility Device in good working order at all times, and in such manner to prevent any deterioration in the physical appearance. The Permit Holder shall also provide

at all times for the safety of such Non-Utility Device from any adverse impact on persons or places nearby such Device.

- (b) Any such unsafe, damaged, or deteriorated Non-Utility Device that in danger of falling, shall be put in order or removed with fifteen (15) days as required in any written notice by the Village Code Enforcement Officer to the permit holder. If safety conditions so require in special circumstances, then and in that event upon notice to the permit holder immediate compliance is required for the repair or removal of same. If compliance is not achieved within the time period specified in such notice, such Device shall be repaired or removed by the Village and the costs shall be levied and collected against the permit holder in the same manner and under the same penalties as enforcement of any Village Law, code, rule or regulation.
- (c) All Non-Utility Devices shall maintain all clearances from electrical conductors in accordance with the New York State Public Service Commission's Orders and Regulations as well as the National Electrical Safety Code and from all communications equipment or lines located within the Village. Any such Non-Utility Device and any supporting structures shall maintain appropriate clearance and must not interfere with any surface or underground facilities and conduits for water, sewage, gas, electricity or communications equipment or lines.

(7) Abandoned Non-Utility Devices.

- (a) Except as provided in this Regulation, any such Non-Utility Device that does not meet the standards herein for a period of 90 days or more shall be deemed to have been abandoned. Such abandoned Non-Utility Device is prohibited and shall be removed immediately by the permit holder and/or Utility Company.
- (b) Upon notification by the Village to the permit holder and/or Utility Company of any such abandoned Non-Utility Device, said permit holder and/or Utility Company shall have 30 days to remove such abandoned Devices. Upon failure to remove the Non-Utility Device within this time period, the Village may remove the Non-Utility Device at the expense of the permit holder and Utility Company. The cost of such removal paid by the Village shall be levied and collected in the same manner and under the same penalties as any other Village Law, code, rule, or regulation regarding assessment of a public improvement.

(8) Existing Non-Utility Devices and Nonconforming Non-Utility Devices

- (a) Any such Non-Utility Devices except Non-Utility Devices placed across any public street or right-of-way not in compliance with any provision of this Regulation upon its effective date shall be deemed nonconforming.

- (b) Any such nonconforming Non-Utility Devices (except for Non-Utility Devices placed across any public street or right-of-way) shall be permitted to remain in place where currently located, but such device cannot be replaced or repaired without compliance with this Regulation. If not in compliance after enactment of this regulation due to wear and tear or damage to said device, the Non-Utility Device shall be removed forthwith by the said Device Owner or in default thereof by the Village and the expense of the same shall be paid by the said Device Owner. Any and all Non-Utility Device placed across any public street or right-of-way shall be removed within ninety (90) days after enactment of this Local Law by the said Device Owner or in default thereof by the Village and the expense of same shall be paid by the said Device Owner.

(9) Other Requirements.

- (a) Any Permit Holder or Utility Company shall restore and repair any and all damage that may occur in connection with the installation, maintenance or removal of any Non-Utility Devices.
- (b) The Permit Holder or Utility Company shall indemnify and hold harmless the Village, its Officials, employees, agents, and others from any claims for personal injury or property damage arising from (or allegedly arising from) or in connection with such installation, use, maintenance, or removal of any Non-Utility Devices.
- (c) The Permit Holder and the Utility Company shall provide a Certificate of Insurance evidencing liability insurance in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregated listing the Village, its Officials, employees and agents as additional insureds prior to the issuance of a permit for any Non-Utility Device. Such insurance shall be maintained and each and every Certificate of Insurance shall be on file with the Village Clerk at all times that a Non-Utility Device remains in place.
- (d) In the event any Permit Holder becomes liable to the Village for any fees, expenses, and/or penalties under this Regulation and fails to remit full and complete payment of said fees, expenses, and/or penalties within 30 days, the owner of the Utility Pole where the Non-Utility Device is located shall be held liable to the Village for any and all amounts remaining due. By permitting, facilitating, and/or licensing Non-Utility Devices to be installed within the Areas, the owner of the Utility Pole shall be strictly liable for any amounts due to the Village pursuant to this Regulation.

E. Code Enforcement Officer.

- (1) The provisions of this Regulation shall be administered and enforced by the Village Code Enforcement Officer who shall have the power to undertake any Non-Utility Devices inspections.
- (2) No Non-Utility Devices permit shall be approved by the Village Code Enforcement Officer except in full compliance with the provisions of this Regulation.

F. Appeals.

- (1) In accordance with New York State Village Law § 7-712-a, any order, requirement, decision, interpretation, or determination of the Code Enforcement Officer may be appealed within thirty (30) days of the date of the determination by filing an appeal with the Village Zoning Board of Appeals by any person aggrieved, or by an Officer, Department, Board or Bureau of the Village.
- (2) Upon filing an appeal, the Village Zoning Board of Appeals may grant a variance from the terms of this Regulation, following the procedure for granting any variance as set forth in Village Law.
- (3) Any person aggrieved by a Decision of the Village Zoning Board of Appeals may have that Decision reviewed by the Supreme Court of the State of New York in the manner and within the time provided as by applicable law under Article 78 of the CPLR.

G. Penalties for Offenses.

- (1) In the event of a breach of any of the provisions of this Regulation, the Code Enforcement Officer shall notify the permit holder and Utility Company in writing to remove, repair, or otherwise bring the Non-Utility Device into conformance within 30 days of the date of such notice. Upon failure to comply with any such notice within the prescribed time, the Code Enforcement Officer may remove or cause the removal, repair, or conformance of Non-Utility Devices at the expense of the permit holder and Utility Company. All costs and expenses shall become a lien upon the premises upon which the Non-Utility Device is or was located and shall be levied and collected in the same manner and under the same penalties as any other Village Law, code, rule or regulation.
- (2) Any person who violates any of the provisions of this Regulation or who fails to comply with any order or regulation made herein, or who erects, moves, or alters any Non-Utility Device in violation of any statement or plans submitted by the applicant to the Village and approved under provisions of this Regulation, shall be guilty of a violation as the same is defined in the Penal Law and shall be fined up to \$1,500 for each and every violation and also be

subject to imprisonment of a term of not more than ten (10) days. Each day that such violation is permitted to exist shall constitute a separate violation. If any Non-Utility Device is erected, altered, or moved in violation of the provisions of this Regulation, any Village Official may, in addition to other remedies, take appropriate other actions to prevent such unlawful condition from continuing to exist.

- (3) All costs and expenses incurred by the Village in causing the removal or repair of any Non-Utility Device as specified in this section and the enforcement of this Regulation, including but not limited to reasonable attorneys' fees, costs, disbursements shall be collected from the permit holder and Utility Company. Payment shall be made in not less than five days after transmittal to the permit holder and the Utility Company of a written demand for payment. Upon failure to make such payment, such costs and expenses shall be assessed against said permit holder and the Utility Company and shall be paid and collected as part of the Village tax next due and payable. In addition, the Village may commence any other action or proceeding to collect such costs and expenses with all said reasonable attorney's fees and costs incurred by the Village being paid by the Permit Holder and the Utility Company.

Section 3. Effective Date. This local law shall become effective immediately upon filing with the Secretary of State.