

# NON-UTILITY ATTACHMENTS

## INTRODUCTORY LOCAL LAW NO. \_\_ OF 2018 VILLAGE OF

### A LOCAL LAW TO REGULATE NON-UTILITY DEVICES IN PUBLIC RIGHTS-OF-WAY AND EASEMENTS

BE IT ENACTED by the Board of the Village of \_\_\_\_\_, New York as follows:

*[Chapter \_\_ of the Village Code shall be amended to add section \_\_]*

#### **Section 1. Legislative Intent.**

It is the intent of this local law to regulate devices in public right-of-ways and easements.

#### **Section 2. Title.**

This Local Law shall be entitled “Regulation of Devices in Public Right-of-Ways and Easements.”

#### **Section 3. Provisions.**

##### **A. Legislative purpose and intent.**

- (1) The Village Board of the Village of Tuxedo Park, New York (the “Village”) finds that uses in the public right-of-ways, 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 the Village is a historic site recognized and listed on the federal and state Registers of Historic Places and the Village has enacted legislation that protects the aesthetic qualities of the Village and its environs.
- (3) The Village also finds that while utility poles are intended primarily for establishing and maintaining wired transmission facilities, utilities enter into agreements in the region for temporary and permanent attachments to utility poles that are not related to the purposes of utility transmission and include non-utility third-party devices (“Non-Utility Devices”) being attached to utility poles owned by utility entities as defined by the New York State Transportation Corporation Law and located in such Areas (“Utility Poles” and “Utility Entities”).
- (4) The Village also finds that permitting Non-Utility Devices to be placed on Utility Poles within the Village without regulation by the Village presents substantial public safety concerns and is contrary to the public welfare of the Village in that such Non-

Utility Devices would be located on and adjacent to the Village's roadways and could significantly alter the historic character and aesthetic beauty of the Village.

- (5) The Village also finds that in balancing the public safety and welfare concerns and the necessity of Non-Utility Devices on utility poles in the Village, the public safety and welfare must take precedence, absent compelling circumstances.
- (6) This local law is additionally intended to be certain that all uses of the public spaces owned, controlled or within the jurisdiction of the Village are properly assessed and documented at all times under the Real Property Tax Law of the State of New York.
- (7) This local law is intended also to protect property values, maintain the physical appearance of the community, preserve the scenic, historic and natural beauty of the community, make a more enjoyable and pleasing community, and promote consistency in the installation of any Devices as set forth herein.

B. Definitions. For the purpose of this Section, the following definition shall apply:

**ASSESSOR:**

This refers to the Village's Assessor who is in charge of determining the fair market value of all utility and other similar easements, right-of-ways 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 Office of Building, Zoning and Planning Administration and Enforcement pursuant to Chapter 36 of the Village Code and any 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 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 State of New York and Orange County 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 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 fastening method for more than 31 consecutive days. A Non-Utility Device does not include a Utility Device or any thing, object, or other physical apparatus attached to a utility pole by the Village Police Department or Village Department of Public Works to promote public safety

**PERSON:**

“Person” means any individual, corporation, partnership, limited liability corporation, joint venture, profit or not-for-profit entity or other person, firm, owner, lessee, 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 also the owner of the right-of-way or easement or other right or interest within to which any Non-Utility Devices as defined herein is or is proposed to be attached.

**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, side-walks 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.

**STREET:**

The term “Street” as used herein also includes a highway, road, avenue, roadbeds, lane, parkway 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 right-of-ways 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 Village Law Section 4-406 and utility entities as defined by the New York State Transportation Corporation Law.

**UTILITY POLE:**

This refers to utility poles owned by Utility Companies as defined by the New York State Transportation Corporation Law and located in streets, easements and/or right of ways.

**UTILITY DEVICES:**

Any material or compilation of flexible or rigid materials that is utilized to actually carry electrical current no matter what voltage and such definition of wire shall also include any protective outer covering that is utilized in connection with such activity. The word

“wire” shall also include any devices used to attach the wire or otherwise convert to the existing wire or wires in the Area and as used and/or installed by a Utility Company.

### **C. REGULATION OF NON-UTILITY DEVICES**

This Section applies exclusively to Non-Utility Devices.

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

#### **A. Permit required for Non-Utility Devices.**

(1) Except as provided herein, it shall be unlawful for any person to install, attach, erect, move, alter, redesign, enlarge or reconstruct any Non-Utility Devices or cause to be erected, attached, moved, altered, redesigned, enlarged, relocated or reconstructed any Non-Utility Devices on any utility pole, tower or similar utility device without first having obtained a permit from the Code Enforcement Officer to do so. If proposed in connection with a Site Plan Application, such Non-Utility Devices shall also be reviewed and approved by the Village Planning Board (as defined by Chapter 1 of the Village Code) under the applicable criteria.

#### **B. Permit application for Non-Utility Devices.**

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

(a) The name, physical and e-mail address and telephone number and all other contact information of applicant.

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

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

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

(e) The method(s) of illumination including, but not limited to lights or decorative features used to light or causing the brightening of light, of all Non-Utility Devices, if any are naturally or purposefully caused to be illuminated.

(f) Any markings, including symbols, letters, materials and colors of such Non-Utility Devices.

(g) Any visual content on or of such Non-Utility Devices.

(h) 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.

(i) 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 Village.

(j) The names, address and other information 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.

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

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

(m) A copy of any agreement with a utility company authorizing the installation of such non-utility device on the utility company's pole or device.

(2) The fees for such application are set forth in Chapter \_\_\_ of this Code.

C. 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 Assessor, the Village Clerk and the Mayor of the Village as defined by Chapter 1 of the Village Code. 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. If any property interest is claimed, 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 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.

D. Non-Utility Device Permit procedure.

(1) Upon the filing of a completed application, the Code Enforcement Officer shall examine the plans, specifications or other information submitted, as well as the area

or areas where the Non-Utility Devices are to be erected or as the case may exist. If such Non-Utility Devices are 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 parts 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 any other laws, rules and regulations of the municipality.) If the placement of said Non-Utility Devices authorized pursuant to this regulation has not occurred within three (3) months from the date of issuance of the permit, the permit shall become null and void.

- (2) Appeal from permit decision. In accordance with New York Village Law § 7-712-a (4), an appeal to the Village Board of Zoning Appeals may be taken by any person aggrieved by the Code Enforcement Officer's decision to approve or deny a permit within thirty (30) days from the date of any decision.

E. General Installation Regulations for Non-Utility Devices and Utility Devices.

- (1) Installation guidelines. The following guidelines are to be followed with regard to any installation of a Non-Utility Devices pursuant to this Regulation:
  - (a) Any Non-Utility Devices shall not be installed outside any public right of way or public area unless a written consent for use by such applicant is submitted with the permit application and on file with the Village Clerk.
  - (b) Any such Non-Utility Devices must be located in a manner consistent with the regulations and agreement provisions of the Utility owning the pole or device.
  - (c) Any Non-Utility Devices must be of completely transparent material or be designed so that such Non-Utility Devices is not visible to the public and blends into the pole or device to which it is attached.
  - (d) Prior to installation of any Non-Utility Devices, the installer must comply with any Utility Company mark-out requirements whether imposed by the Utility or by regulation.
  - (e) No such Non-Utility Device or extension thereof may be attached or fastened to any tree, bush or plant or other vegetation regardless of where such tree, bush, plant or vegetation is located.
  - (f) No such Non-Utility Device shall cross over or under or on a Village roadway or Village right-of-way.
  - (g) Any renewal of any agreement with a Utility Company for any Non-Utility Devices attached to any Utility Pole or Utility device must be provided to the Code Enforcement Officer within 30 days of such renewal.

- (2) Installer guidelines. The installer shall follow all guidelines set forth above and shall also follow any such other directions or requirements of the Code Enforcement Officer of the Village.

F. Maintenance for Non-Utility Devices.

- (1) The permit holder is responsible at all times to maintain their Non-Utility Devices in a neat and orderly condition, in good working order at all times, and in such manner to prevent any deterioration in the physical appearance or safety of such Devices that could impact on of persons or places nearby such Devices or impact on the historic and scenic nature of the Village.
- (2) Any such unsafe, unsightly, damaged, or deteriorated Non-Utility Devices, that in danger of falling, shall be put in order or removed with fifteen (15) days as required in any written notice by the Code Enforcement Officer to the permit holder. If compliance is not achieved within the time period specified in such notice, such Devices 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, rule or regulation.
- (3) 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 Code and from all communications equipment or lines located within the Village. Any such Non-Utility Devices 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.

G. Abandoned Non-Utility Devices.

- (1) Except as provided in this Regulation, any such Non-Utility Devices that does not meet the standards herein for a period of 30 days or more shall be deemed to have been abandoned. Such abandoned Non-Utility Devices are prohibited and shall be removed immediately by the permit holder and/or Utility Company.
- (2) Upon notification by the Village to the permit holder and/or Utility Company of any such abandoned Non-Utility Devices, said permit holder and/or Utility Company shall have 30 days to remove such abandoned Devices. Upon failure to remove the Non-Utility Devices within this time period, the Village may remove the Non-Utility Devices upon 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, rule or regulation assessment of a public improvement.

#### H. Existing Non-Utility Devices and Nonconforming Non-Utility Devices and/or Utility Devices

- (1) Any such Non-Utility Devices not in compliance with any provision of this Regulation upon its effective date shall be deemed nonconforming.
- (2) Any such nonconforming Non-Utility Devices shall be removed or brought into conformity with the requirements of this Regulation within ninety (90) days of the date of enactment of this Regulation. If not in compliance within ninety (90) days from the enactment of this regulation, the Non-Utility Devices shall be removed forthwith by the Village and the expense of the same shall be paid by the permit holder and Utility Company.
- (3) Additionally, any such nonconforming Non-Utility Devices related to any existing use shall be removed or made conforming prior to the issuance of a subsequent permit for such use.

#### I. Other Requirements.

- (1) 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 and/or Utility Devices.
- (2) 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 and/or Utility Devices.
- (3) 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.
- (4) 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 shall be held liable to the Village for any and all amounts remaining due plus 9% interest per annum on said amount. By permitting, facilitating, and/or licensing Non-Utility Devices to be installed within the Areas, the owner of the Utility Pole waives all appeals and agrees to be strictly liable for any amounts due to the Village pursuant to this Provision and Regulation.



J. Code Enforcement Officer.

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

K. 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 Board of Zoning Appeals by any person aggrieved, or by an Officer, Department, Board or Bureau of the Village.
- (2) Upon filing an appeal, the Board of Zoning Appeals may grant a variance from the terms of this Regulation, following the procedure set forth in Village Law.
- (3) Any person aggrieved by a decision of the Board of Zoning Appeals may have that decision reviewed by the Supreme Court of the State of New York in the manner and within the time provided by law.

L. Penalties for Offenses.

- (1) In the event of a breach of any of the provisions of this local law, the Code Enforcement Officer shall notify the permit holder and Utility Company in writing to remove, repair, or otherwise bring the Non-Utility Devices 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 shall 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 wire is or was located and shall be levied and collected in the same manner and under the same penalties as any other Village Law, 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 Devices in violation of any statement or plans submitted by the applicant 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 \$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 Devices are 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 Devices as specified in this section and the enforcement of this Regulation, including but not limited to reasonable attorneys' fees, shall be collected from the permit holder and Utility Company. Payment shall be made 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 incurred by the Village being paid by the Permit Holder and the Utility Company.

#### **Section 4. State Environmental Quality Review Act.**

Pursuant to 6 NYCRR 617 this Local Law is classified as a \_\_\_\_\_ action and has been determined to have no negative adverse impact on the environment under the State Environmental Quality Review Act, and the promulgated regulations thereunder.

#### **Section 5. Severability.**

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

#### **Section 6. Repeal**

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

#### **Section 7. Effective date.**

This Local Law shall become effective immediately upon being filed with the Secretary of State.