

## LOCAL LAW NO. 11 OF 2023

A LOCAL LAW amending Chapter 158 (Struck through below) (Streets and Sidewalks) of the Village Code to establish standards and a formal permit process for work in Village Streets.

BE IT ENACTED by the Board of Trustees of the Village of Quogue as follows:

**SECTION 1.** Amendment. Chapter 158 (Streets and Sidewalks) of the Village Code is amended by deleting the existing Article I (§158-1 - §158-3) (struck through below), and substituting the new Articles I-III (§158-1 - §158-13), as follows:

### **Article I** **Encroachments**

~~§158-1 Encroachments and projections not allowed. No encroachment or projection upon, into or over any public road or street in the Village of Quogue shall be made or maintained.~~

~~§158-2 Definitions. As used in this article, the following terms shall have the meanings indicated:~~

~~**ENCROACHMENT**—Any private use of any portion of a public right of way through any structure or device, whether upon, above or under said right of way; but nothing herein contained shall be construed to apply to any vehicle or any easement now legally owned by any public service corporation. The term "encroachment" also includes any private use of any portion of a public right of way for the display and sale of any products, goods, wares or merchandise.~~

~~**PROJECTION**—Any part of any building, structure or device erected upon private property or attached to any structure or device erected upon private property.~~

~~**PUBLIC ROAD OR STREET**—The area between the extreme lines of any public right of way in this Village, including any state or county road or highways as well as a Village road or street.~~

~~§ 158-3 Penalties for offenses:~~

~~A.—Any person committing an offense against any provision of this article shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.~~

~~B.—For each and every violation of this article, the person or persons responsible for, causing, permitting, assisting in or refusing to abate or correct such violation shall be subject to a civil penalty not exceeding \$1,000 for each and every such violation. The continuation of a violation of this article shall constitute, for each day the violation is continued, a separate and~~

~~distinct violation hereunder.~~

## **Article I**

### **Definitions**

**§158-1** Definitions. As used in this Chapter, the following terms shall have the meanings indicated:

**DOUBLE POLE** Any utility pole that is located directly next to or in close proximity to another utility pole.

**ENCROACHMENT** Any private use of any portion of a public right-of-way through any structure or device, whether upon, above or under said right-of-way; but nothing herein contained shall be construed to apply to any vehicle or any easement now legally owned by any public service corporation. The term "encroachment" also includes any private use of any portion of a public right-of-way for the display and sale of any products, goods, wares or merchandise.

**EXCAVATION AND/OR CONSTRUCTION** Includes any introduction by any means of any alteration or improvement of any kind within the boundaries of a street, whether above or below ground.

**PERSON** Includes any individual, firm, partnership or corporation.

**PLANT** Any attachment to a utility pole, including but not limited to cables, terminals, conductors, and other fixtures necessary for transmitting electric, cable television, or other telecommunication services.

**PROJECTION** Any part of any building, structure or device erected upon private property or attached to any structure or device erected upon private property.

**PUBLIC STREET OR ROAD** Includes any public road, highway, avenue, street, lane or way, inclusive of its entire width, including the paved portion, the sidewalk area, the entirety of each shoulder and unimproved portions to extreme lines of the public right-of-way in this Village.

**UTILITY** Any corporation, authority, or other entity that provides utility services to the residents of the Village of Quogue, including but not limited to electric, water, gas, telephone, cable television or other telecommunications service.

## **Article II**

### **Notification of Defects in Streets and Sidewalks**

**§158-2 Liability of Village; prior notice required.** No civil action shall be maintained against the Village of Quogue or its employees for damages or injuries to person or property sustained by reason of any street, highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such street, highway, bridge or culvert was actually given to the Village Clerk and there was a failure or neglect within a reasonable time after the giving of such notice to repair or

remove the defect, danger or obstruction complained of; and no such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge or culvert unless written notice thereof, specifying the particular place, was actually given to the Village Clerk and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

**§158-3 Liability of Village; prior notice required.** No civil action shall be maintained against the Village of Quogue or its employees for damages or injuries to person or property sustained by reason of any sidewalk being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such sidewalk was actually given to the Village Clerk and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of, and no such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any sidewalk unless written notice thereof, specifying the particular place, was actually given to the Village Clerk and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

### **Article III Public Streets and Roads, and Abutting Lands**

**§158-3 Encroachments and projections not allowed.** No encroachment or projection upon, into or over any public street or road in the Village shall be made or maintained.

**§158-4 Private use restricted.** No person shall utilize the lands within the bounds of any public street or road for private use, including but not limited to the construction of a driveway, apron, drainage, landscaping, fence, wall, berm, lighting or signage, except with the written permission of the Building Inspector in accordance with the procedures set forth in this Chapter.

**§158-5 Depositing dirt or soil.** No person shall permit any soil, loam, dirt, gravel or sand from any source whatsoever, including lands under the control of said person, to be deposited, placed, tracked or washed upon the bounds of any public street or road.

**§158-6 Flooding.** No person shall cause any lands adjacent to the bounds of any public street or road to be excavated or regraded in a manner that would impede drainage or cause flooding on any public street or road.

**§158-7 Barbed-wire fencing prohibited.** Barbed-wire fencing along the property line of any public street or road shall be prohibited.

**§158-8 Obstructions prohibited.** No person shall do or cause to be done any act or thing which shall cause or contribute to a condition in, within or upon any street, road, sidewalk, side-path, passageway or other public way of this Village or maintained by it which shall be dangerous to the health, safety or welfare of persons using the same or impair the public use

thereof or obstruct or tend to obstruct or render the same dangerous for passage.

**§158-9 Removal of damaged or double utility poles.** When the Building Inspector determines that a utility pole in a Village street or road right-of-way, which has a plant attached to it, is damaged and/or a double pole, the Building Inspector shall notify any utility with a plant on the damaged or double pole that it must remove its plant from the pole, as well as the pole, within 30 days of written notice or be subject to penalty.

**§158-10. Interfering with protective devices and regulated sites.** It shall be unlawful for any person to remove, displace or in any way interfere with any barrier, guardrail or any other object which shall have been placed along or across any public street or road in this Village for the purpose of preventing any person, animal or vehicle from entering any street which is being or which shall have been recently constructed or repaired or to remove, displace or in any way interfere with any lantern or signal which shall have been placed as a danger sign to warn approaching travelers at any place on any public street or road, or other public place in this Village or to trespass in any way upon any public street or road, or public sidewalk, which is being or has been recently constructed or repaired and which is guarded by any barrier, sign or signal for the purpose of preventing or warning persons from trespassing or in any way interfering in or upon the same.

**§158-11 Removal of vehicles during emergencies.**

A. When any vehicle is parked or abandoned on any street or road within the limits of the Village of Quogue during a snowstorm, flood, fire or other public emergency which affects that portion of the public street or road upon which said vehicle is parked or abandoned, said vehicle may be removed by the Village.

B. When any vehicle is found unattended on any street or road within the limits of this Village where said vehicle constitutes an obstruction to traffic, said vehicle may be removed by the Village.

C. After removal of any vehicle as provided in this section, the Village may store such vehicle in a suitable place at the expense of the owner. Such owner or person in charge of the vehicle may redeem the same upon payment to the agent of the impounding location of the amount of all expense actually and necessarily incurred in affecting such removal, together with any charge for storage.

D. The Village shall, without delay, report the removal and the disposition of any vehicle removed as provided in this section to the Village Police Department and request the Village Police Department to ascertain the owner of the vehicle or person having custody of the same and to notify him/her of the removal and disposition of such vehicle and of the amount which shall be required to redeem the same.

#### **Article IV Road Opening Permits**

**§158-12 Written consent of the Building Inspector required.** No person, firm or corporation shall utilize the lands within the bounds of any public street or road for private use, change or

alter the grade of any public street or road or of any sidewalk upon or in a Village street or road, or in any manner alter or change the line or height of any curb in any Village street or road, or open, disturb, break, mar, injure, remove or deface, or cause to be disturbed, broken, marred, injured, removed or defaced, the surface of any Village street or road, or make any excavation under the surface thereof for any purpose, or place or erect any utility or pole for any purpose in or upon any Village street or road, or alter or change the location of any existing utility or pole in any Village street or road, or introduce, erect or construct a driveway, apron, drainage, landscaping, fence, wall, berm, lighting or signage without first having obtained the written permission of the Building Inspector in the form of a Road Opening Permit.

A. Application for a Road Opening Permit from the Building Inspector under this Chapter shall be made upon a form to be provided by the Building Department.

B. The application for a Road Opening Permit shall state and include, among other information, the following:

(1) the street or road whereon the use, change, opening or alteration of the street or road, curb or sidewalk is to be made;

(2) the exact location on said street or road where the use, change, opening or alteration of the street or road, curb or sidewalk is to be made; the width, length and depth of such use, change, opening or alteration of the street or road, curb or sidewalk;

(3) the exact purpose for which the use, change, opening or alteration of the street or road, curb or sidewalk is sought;

(4) the quantity or number of the changes, openings or alterations of the street or road, curb or sidewalk requested;

(5) plans and specifications of the changes, openings or alterations of the street or road, curb or sidewalk requested.

C. The application for a Road Opening Permit shall also contain an affirmative representation that the applicant shall not cause any unreasonable or unnecessary obstruction or impediment of vehicular and pedestrian traffic, shall assume full responsibility to take every care and precaution to protect persons and property from injury or damage and shall, at his sole cost and expense, promptly restore said change, opening or alteration of the street or road, curb or sidewalk with the same type of materials and workmanship existing when said street was first opened by him, for all of which later the applicant shall remain liable and responsible to the Village for a period of one year from the date when he/she shall have first restored and completed the change, opening or alteration of the street or road, curb or sidewalk.

D. The fee for the issuance of said for a Road Opening Permit shall be a sum established by the Board of Trustees as amended by resolution from time to time and set forth on a fee schedule on file at the Village Clerk's office. All fees shall be nonrefundable.

E. Whenever the interest or the protection or the welfare of the Village or its property requires it, the Building Inspector, as a condition precedent to the issuance of the Road Opening Permit and the commencement of work, may require an applicant to file with his/her application sufficient indemnity or a proper completion and performance bond. Said indemnity or bond shall be for a reasonable amount and may cover one or more than one of the acts specified in this Chapter and said indemnity or bond may cover any period of time necessary to include the accomplishment of one or more of the aforesaid acts, all as shall be determined by the Building Inspector. The approval of the Building Inspector 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 Village Clerk's office and said bond shall be so filed before said consent shall be effective.

F. In the event that the applicant does not properly restore a street or road, as required herein, after ten days' written notice requiring him to do so, the Village reserves the right to restore or have restored any street or road or to redo or have redone any improperly or unskillfully restored the street or road in place and stead of the applicant and to charge the applicant for all work, materials, supplies and equipment used to do the same.

G. Except for aboveground utility poles where allowed, no applicant shall place or bury in any street or road any object, equipment or thing whatsoever which shall constitute a peril to person or property or which shall rise above the surface of any street bed for any length.

H. In consideration for the issuance of a Road Opening Permit, each applicant shall agree to hold the Village harmless and to indemnify it for any sum or sums of money charged against it or paid by it or adjudged against it by any court or authority for any act or condition directly or indirectly caused by the applicant and arising from the applicant's opening of any street or the closing or restoration thereof.

I. It shall be the applicant's obligation to give the Village Building Inspector timely notice of the date and time in connection therewith when the street or road will be closed and restored. No action or lack of action taken nor any statement or representation made by the Building Inspector shall in any way relieve or release the applicant of his liability and responsibility otherwise imposed against him herein.

#### **§158-13 Penalties for offenses.**

A. Any person committing an offense against any provision of this article shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$5,000 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this Chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

B. For each and every violation of this Chapter, the person or persons responsible for, causing, permitting, assisting in or refusing to abate or correct such violation shall be subject to a civil penalty not exceeding \$5,000 for each and every such violation. The continuation of a violation

of this Chapter shall constitute, for each day the violation is continued, a separate and distinct violation hereunder.

C. Notwithstanding the provisions of Subsections A and B above, with respect to utility poles, plants, and attachments, in the case of a violation of §158-9 above, a penalty of \$500 shall be assessed for each day the pole, plant, or attachment is left standing beyond the period for removal. If a utility fails to comply with these provisions, the Village may commence an action in a court of competent jurisdiction for necessary relief, which may include the imposition of civil penalties as authorized by this Chapter, an order to remove the pole, plants and/or attachments, the recovery of costs of the action and such other remedies as may be necessary to prevent or enjoin such condition from existing in a Village street or road, or right-of-way.

**SECTION 2.** Authority. The proposed local law is enacted pursuant to Village Law Article 6 and Municipal Home Rule Law §§10(1)(i), 10(1)(ii)(a)(6), (11) & (12) and 10(1)(ii)(e)(2).

**SECTION 3.** Severability. If any section or subsection, paragraph, clause, phrase, or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole, or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

**SECTION 4.** Effective Date. This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.