

11.24.010 PLACEMENT OF POLES, WIRES AND TELE-COMMUNICATIONS EQUIPMENT IN, ALONG OR ON PUBLIC WAYS

Updating Section 2

The City of Malden 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.

The City of Malden finds and determines that the interest of the public is best served by cooperation and communication between public utilities and the City Council.

Therefore, the purpose of this is to require utilities that use City highways, streets, roads and rights-of-way 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.

When the Commissioner of Public Works is properly notified of the pending installation of a utility pole which is directly next to or in close proximity to another utility pole on a City highway, street, road, or right-of-way, the Commissioner of Public Works 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 Commissioner of Public Works 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 30 days. Failure to comply with the requirements of this provision may result in penalties as provided of this chapter.

When the Commissioner of Public Works determines that a utility pole on a City highway, street, road or right-of-way is damaged and poses a potential threat to public safety, the Commissioner of Public Works 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 30 days or be subject to a penalty as provided for in 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 this chapter. The affected utility may present documentary evidence to the City in the form of a report from a licensed engineer certifying that the plant and/or pole is not a threat to public safety within 10 days from the date of the Commissioner's notification. In the event that the Commissioner is satisfied that the plant and/or pole no longer poses a threat to public safety, he shall have the discretion to withdraw the removal notice.

When the Commissioner of Public Works determines that a double pole is on a City highway, street, road or right-of-way, the Commissioner of Public Works 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 Commissioner of Public Works 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 this chapter.

Extensions authorized; temporary emergency suspension.

A.

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

B.

In the event of an emergency that affects the repair, replacement, removal, or installation of utility poles or plants, the City of Malden may temporarily suspend the deadlines in section 2 of this chapter for periods not exceeding 30 days.

Adding new Section 3 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 \$300; for a second or subsequent conviction, punishable by a fine not exceeding \$1,000. 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 30 days of receiving notification from the Malden, 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. Notwithstanding anything to the contrary contained in this chapter, no such fines or penalties shall be assessed for violations of this chapter that occur within six months as a result of natural disasters, major weather events and similar circumstances affecting the City of Malden

C.

Any public utility that fails to remove a double pole within 120 days of receiving notification from the City, pursuant to this Chapter, shall be punished by a fine of \$1,000 per full calendar month that the violation continues.

Adding Section 4

Applicability.

A.

This chapter shall apply to all utility poles located on any City highway, street, road or right-of-way, 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 Malden, 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.

If a person, firm or corporation or public utility violates the provisions of this chapter, the City Solicitor may commence an action in the name of the City of Malden 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 City highway, street, road, or right-of-way.