

1 CITY OF BELEN

2 ORDINANCE 2022-__

3 REMOVAL OF INACTIVE, BROKEN OR DOUBLE UTILITY POLES

4 The Removal of Inactive, broken, or double Utility poles ordinance is enacted pursuant to the
5 statutory authority conferred upon the City to provide for the safety, preserve the health, preserve
6 peace and order of the City and protect its inhabitants (NMSA 1978 Section 3-18-1 (2021).

7 1. Purpose

8 The purpose of the removal of inactive, broken or double utility poles ordinance is to protect the
9 public safety by having weathered or otherwise damaged utility poles removed, to improve the
10 aesthetics of the City, and to keep clear pedestrian paths throughout the City, by requiring a utility’s
11 prompt removal of plants, cables, lines, equipment, and terminals from old and damaged poles and to
12 further require the prompt removal of double poles once all plants, cables, lines, equipment and
13 terminals have been removed.

14 2. Definitions

15 As used in the ordinance, the following terms shall have the meanings indicated:

16 **Dangerous/Damaged Pole**-Any utility pole that is structurally compromised due to weather, a
17 traffic incident, and/or age and poses a potential threat to public safety.

18 **Double Pole**-Any old utility pole which is attached or in close proximity to a new utility pole.

19 **Person**-Any natural person or any firm, partnership, association, corporation, company or
20 organization of any kind.

21 **Plant**-The cables, terminals, conductors and other fixtures necessary for transmitting electric,
22 telephone, cable television, or other telecommunications service.

23 **Public Utility**-Any corporation, authority or other entity that provides electric, telephone, cable
24 television, or other service, including telecommunications service, to the residents of the City of
25 Belen.

26 **Department**-The City’s Code Enforcement Department, and its authorized representatives,
27 including the planning and zoning manager, code enforcement officers, the emergency services
28 personnel.

29 **Utility Pole**-A pole, column or post used to support service lines or a plant for a public utility.

30 **Written Notification/Written Notice**-A writing directed to a representative of a public utility,
31 who may be designated by the utility to receive such notice, sent by regular mail, facsimile
32 transmission, or electronic mail.

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34 3. Permit/Franchise requirements

35 No person shall place or erect any pole for any purpose in or upon any City road or right-of-way in
36 the City of Belen, or alter or change the location of any existing pole on City Street, road or right-of-way
37 of the City of Belen, without first having obtained a permit or franchise from the Department.

38 Application for a permit or franchise under this section shall be made upon a form to be provided by
39 the department.

40 The Department shall include in all permit/franchise agreements for the installation of utility poles
41 on City streets, roads or rights-of-way the following provision:

42 The permittee/franchisee must utilize a mechanical devise to secure utility poles, and shall have
43 seven (7) days to remove a double pole following the installation of a new pole. Removal shall include
44 the pole and all supporting structures, including, but not limited to, wires and anchors, whether located
45 on the public right-of-way or private property. Failure to do so may result in penalties as provided for in
46 Section 7 ordinance.

47 **4. Department Notification; Timeframe for removal or dangerous/damaged pole**

48 When the Department determines that the utility pole on a City street, road or right-of-way
49 constitutes a dangerous/damaged pole, the Department shall provide written notice to any public utility
50 with a plant on such pole that it must remove its plant from the pole within seven (7) days of receipt of
51 such notice or be subject to a penalty as provided herein under. The owner of such dangerous/damaged
52 pole shall remove such pole within seven (7) days of the removal of the last plant from such pole,
53 including all supporting structures, including, but not limited to, wires and anchors, whether located on
54 the public right-of-way or private property. Failure to comply with this provision may result in penalties
55 as provided for under this ordinance. As an alternative, the affected utility may present documentary
56 evidence to the City in the form of a report from a licensed engineer certifying that the plant and/or
57 pole is not a threat to public safety within five (5) days from the date of the Department notification. In
58 the event that the Department is satisfied that the plant and/or pole no longer poses a threat to the
59 public safety, he shall have the discretion to withdraw the removal notice.

60 Notwithstanding any provision of this Ordinance to the contrary, the Department may extend the
61 time frame of any deadlines provided under this Ordinance upon a demonstration of good cause by the
62 utility, taking into account the potential for injury to the public. The public utility shall make a request
63 for an extension in writing to the Department prior to the expiration of the time frame contained in the
64 original written notice, along with the basis for its request. The Department shall determine whether
65 the request for extension should be granted or denied, and provide a written response to the public
66 utility. In such instances where the request is granted, the Department shall issue an amended notice
67 with the new deadline for compliance.

68 **5. Enforcement**

69 The City of Belen Code Enforcement Department or any duly authorized and commissioned law
70 enforcement officer shall enforce the provision of this ordinance.

71 **6. Immunity**

72 Nothing in the ordinance creates a cause of action against the City of Belen not already authorized
73 under existing law. Without limitation, the City of Belen is not liable to any person harmed who claims
74 that enforcement of this ordinance may have prevented the harm.

75 **7. Penalty; Injunctive Relief**

76 Any person who places or erects any pole for any purpose in or upon any City street, road or right-
77 of-way in the City of Belen, or alters or changes the location of any existing pole in any City street, road
78 or right-of-way in the City of Belen, without first having obtained a permit from the Department, shall,
79 upon conviction, be subject to a fine not exceeding \$300 or by imprisonment not exceeding 90 days or
80 both.

81 Any person that fails to remove its plant from a dangerous/damaged pole after seven (7) days
82 written notice from the Department shall, upon conviction, be subject to a fine not exceeding \$300 or
83 by imprisonment not exceeding 90 days or both.

84 As owner of a dangerous/damaged pole that fails to remove a dangerous/damaged pole after seven
85 (7) days of the removal of the last plant from such pole, including all supporting structures, including,
86 but not limited to, wires and anchors, whether located on the public right-of-way or private property,
87 shall, upon conviction, be subject to a fine no exceeding \$300 or by imprisonment not exceeding 90 days
88 or both.

89 In addition to and not in lieu of the above, the City of Belen is also entitled to injunctive relief to
90 enforce the provision of this ordinance seeking any remedy provided by law or equity, including any civil
91 penalties and/or injunction to enforce compliance or enjoin noncompliance with this ordinance. Such
92 proceeding may seek to remove and dispose damaged poles, double poles, and service lines and plants
93 from such poles, the imposition of civil penalties, the recovery of fees and costs, including reasonable
94 attorneys' fees and such other remedies as may be necessary to prevent or enjoin a potentially
95 dangerous condition or violation of this ordinance.

96 **8. Savings Clause**

97 If any article, section paragraph, clause, word or phrase of this ordinance is held to be invalid or
98 unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the
99 remaining provisions of this ordinance.

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101 **APPROVED, ADOPTED, AND ORDAINED** on this ____ of _____, 2022.

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Robert C. Noblin, Jr., Mayor

109 ATTEST:

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113 Dorothy Flores, City Clerk

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