

CITY OF BELEN
ORDINANCE 2022-21

REMOVAL OF INACTIVE, BROKEN OR DOUBLE UTILITY POLES

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

1. Purpose

The purpose of the removal of inactive, broken or double utility poles ordinance is to protect the public safety by having weathered or otherwise damaged utility poles removed, to improve the aesthetics of the City, and to keep clear pedestrian paths throughout the City, by requiring a utility's prompt removal of 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.

2. Definitions

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

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

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

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

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

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

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

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

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

3. Permit/Franchise requirements

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

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

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

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

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

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

Notwithstanding any provision of this Ordinance to the contrary, the Department may extend the time frame of any deadlines provided under this Ordinance upon a demonstration of good cause by the utility, taking into account the potential for injury to the public. The public utility shall make a request for an extension in writing to the Department prior to the expiration of the time frame contained in the original written notice, along with the basis for its request. The Department 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 Department shall issue an amended notice with the new deadline for compliance.

5. Enforcement

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

6. Immunity

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

7. Penalty; Injunctive Relief

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

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

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

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

8. Savings Clause

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

PASSED, APPROVED AND ADOPTED on this 5th of Dec, 2022.


Robert Noblin, Mayor



Dorothy Flores, City Clerk