

VALENCIA COUNTY, NEW MEXICO

POST OFFICE BOX 1119

444 LUNA AVENUE

LOS LUNAS, NEW MEXICO 87031



VALENCIA COUNTY ORDINANCE

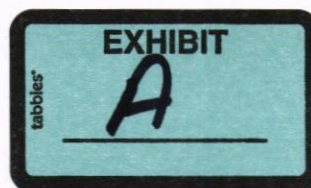
ORDINANCE 2021- 04

Removal of Inactive, Broken or Replaced Utility Poles Ordinance

Adopted by the Board of County Commissioners

On October 20, 2021

Effective on November 20, 2021



VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
ORDINANCE No

REMOVAL OF INACTIVE, BROKEN OR REPLACED UTILITY POLES ORDINANCE

WHEREAS, the Valencia County Board of County Commissioners met upon notice of a regular meeting, duly published, at the Valencia County Administrative Offices, 444 Luna Avenue, Los Lunas, New Mexico 87031, on October 20, 2021; and,

WHEREAS, public utilities place poles on the highways, streets, roads and rights-of-way of Valencia County to facilitate the delivery of electric, telephone, cable television, and other telecommunications services to the residents of Valencia County; and,

WHEREAS, NMSA 1978 § 67-2-2 (1915) requires that the public highways in the unincorporated part of the County "are to be maintained and kept in repair by the respective counties in which they are located"; and,

WHEREAS, the County finds and determines that, pursuant to Section 67-2-2 (1915), it has the authority to regulate its highways, streets and roads and rights-of-way to protect the public; and,

WHEREAS, the County finds and determines that utility poles are damaged from time to time; and,

WHEREAS, the County finds and determines that public safety can be compromised when utility lines and equipment remain affixed to utility poles that are weathered or otherwise damaged; and,

WHEREAS, the County finds and determines 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; and,

WHEREAS, the County finds and determines that the interest of the public is best served by cooperation and communication between public utilities and the County Commission; and,

WHEREAS, the Board of County Commissioners adopts this Ordinance as an exercise of its statutory general welfare powers pursuant to NMSA 1978, Section 4-37-1 (1975).

NOW, THEREFORE, IT IS ORDAINED AS FOLLOWS:

ARTICLE I. REMOVAL OF INACTIVE, BROKEN OR REPLACED UTILITY POLES

This Ordinance may be cited as the "Removal of Inactive, Broken, or Replaced Utility Ordinance."

ARTICLE II. AUTHORITY

The Removal of Inactive, Broken, or Replaced Utility Poles Ordinance is enacted pursuant to the statutory authority conferred upon counties to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the County and its inhabitants (NMSA 1978 Section 4-37-1 (1975)).

ARTICLE III. PURPOSE

3.1 The purpose of the Removal of Inactive, Broken or Replaced Utility Poles Ordinance is to protect the public safety by having weathered or otherwise damaged utility poles removed, to improve the aesthetics of the County, and to keep clear pedestrian paths throughout the County, 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.

ARTICLE IV. DEFINITIONS

As used in this 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 Valencia County.

DEPARTMENT

The Code Enforcement Department, and its authorized representatives, including the planning and zoning manager, code enforcement officers, the emergency services personnel, and the animal control manager.

UTILITY POLE

A column or post used to support service lines 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.

ARTICLE V. PERMIT/FRANCHISE REQUIREMENTS

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

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

5.3 The Department shall include in all permits/franchise agreements for the installation of utility poles on County highways, 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, guy 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 of this Ordinance.

ARTICLE VI. DEPARTMENT NOTIFICATION; TIMEFRAME FOR REMOVAL OF DANGEROUS/DAMAGED POLE

6.1 When the Department determines that a utility pole on a County highway, 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 for in Article IX. 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, guy 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 in Article IX of this Ordinance. As an alternative, the affected utility may present documentary evidence to the County 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 public safety, he shall have the discretion to withdraw the removal notice.

6.2 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.

ARTICLE VII. ENFORCEMENT.

The Valencia County Sheriff's Department (hereafter, "Sheriff's Department") or any duly authorized and commissioned law enforcement officer shall enforce the provisions of this Ordinance.

ARTICLE VIII. IMMUNITY.

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

ARTICLE IX. PENALTY; INJUNCTIVE RELIEF

9.1 Any person who places or erects any pole for any purpose in or upon any County highway, street, road or right-of-way of the County, or alters or change the location of any existing pole in any County highway, street, road or right-of-way of the County, 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.

9.2 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.

9.3 An 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, guy wires and anchors, whether located on the public right-of-way or private property, shall, upon conviction, be subject to a fine not exceeding \$300 or by imprisonment not exceeding 90 days or both.

9.4 The Board of County Commissioners of the County of Valencia is also entitled to injunctive relief to enforce the provisions of this Ordinance.

ARTICLE X. SAVINGS CLAUSE.

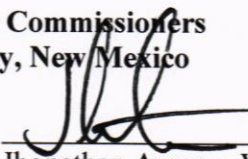
If any article, section paragraph, clause, word or phrase of this Ordinance is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

APPROVED, ADOPTED, AND ORDAINED on this 20th day of October, 2021.

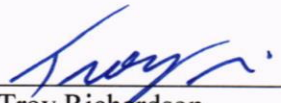
**Board of County Commissioners
Valencia County, New Mexico**



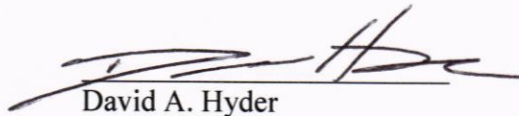
Gerard Salz, Chair
District I




Jhonathan Aragon, Vice-Chair
District V



Troy Richardson
Commissioner, District II




David A. Hyder
Commissioner, District III



Joseph Bizzell
Commissioner, District IV

Attest:



Mike Milam
Valencia County Clerk