

**ORDINANCE NO. 21-2023**

**BOROUGH OF ROSELAND  
COUNTY OF ESSEX, STATE OF NEW JERSEY**

**ESTABLISHING A NEW CHAPTER 19, SECTION 22 “PUBLIC UTILITIES  
CONSTRUCTION AND POLE INSTALLATION AND REPLACEMENT”**

**WHEREAS**, the Mayor and Council of the Borough of Roseland wish to establish a section of the Revised General Ordinances of the Borough of Roseland to be known as “Public Utilities Construction and Pole Installation and Replacement”;

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of the Borough of Roseland as follows:

**SECTION I:** There is hereby established a new Chapter 19 Section 22 (Public Utilities Construction and Pole Installation and Replacement) of the Code of the Borough of Roseland to read as follows:

**§ 19-22.1 Definitions.**

For the purposes of this section:

“Underground facility” means one or more underground pipes, cables, wires, lines or other structures used for the supplying and distribution of electricity for light, heat or power, or for the furnishing of telephone or other telecommunications service.

"Pole" means, in addition to its commonly accepted meaning, any wires or cable connected thereto, and any replacements which are similar in construction and use.

“Hot patch” means the installation of a mixture of asphalt to restore property within the right of way to its previous condition subsequent to the construction or excavation of a site required for the placement, replacement or removal of a pole of a utility pole or an underground facility pursuant to this section.

**§ 19-22.2 Placement, replacement or removal of public utility pole or underground facility; required notice, traffic control, restoration and pole removal.**

A. Before a public utility places, replaces or removes a pole or an underground facility located in the Borough of Roseland, the public utility shall notify the Zoning Officer and Borough Engineer in writing, which may be by e-mail, personal service or certified mail, at least, but not less than, 24 hours before undertaking any excavation related to the placement, replacement or removal of the pole or underground facility.

B. Any public utility placing, replacing or removing a pole or an underground facility located in the Borough shall provide for adequate traffic control during the course of

said work, including any barricades, cones and/or officers necessary in order to safely divert the flow of traffic.

C. After completing the placement, replacement or removal of a pole or an underground facility pursuant to this ordinance, the public utility shall remove from such right of way any pole or underground facility no longer in use as well as any other debris created from such placement, replacement or removal and restore the property including, but not limited to, the installation of a hot patch as needed to restore the property within the right of way to its previous condition as much as possible. In the case of removal or replacement of a pole or an underground facility utilized by two or more public utilities, the public utility last removing its pipes, cables, wires, lines or other structures shall be liable for the removal and restoration required under this section.

### **§ 19-22.3 Exceptions.**

Under emergency conditions which significantly impact the placement of a pole or underground facility resulting from natural forces or human activities beyond the control of the public utility, or which pose an imminent or existing threat of loss of electrical, power, telephone, or other telecommunication service, or which pose an imminent or existing threat to the safety and security of persons or property, or both, or which require immediate action by a public utility to prevent bodily harm or substantial property damage from occurring, the provisions of subsection §19-22.2 (A) of this ordinance shall not apply when a public utility undertakes any construction or excavation related to the placement, replacement or removal of a pole or an underground facility in response to such an emergency, provided that the public utility undertaking such construction or excavation notifies the Zoning Officer and Borough Engineer at the earliest reasonable opportunity and that all reasonable efforts are taken by the public utility to comply with § 19-22.2(B) and 19-22.2(C). After the emergency is concluded, the provisions of § 19-22.2(C) and penalties contained in § 19-22.4 shall be applicable for failure to restore the property or any pole or underground facility no longer in use as well as any other debris created from such placement, replacement or removal and restore the property.

This Ordinance is not intended to replace or conflict with *N.J.S.A. 48:3, Art. 3e Infrastructure Projects, et. seq.*, and where those statutory provisions are applicable those provisions must also be followed.

### **§ 19-22.4 Violations and penalties; notice of violation.**

A. In the event a public utility does not satisfy the debris removal and restoration requirements of § 19-22.2(C) above within ninety (90) days of the date of such placement, replacement or removal of a utility pole or underground utility facility, the municipality shall be authorized to impose a fine up to an amount not to exceed \$100 each day until the requirements of § 19-22.2(C) are met, except that if the public utility is unable to complete the installation of a hot patch due to the unavailability of asphalt material during the period of time from November through April, the public utility shall not be required to complete the hot patch installation until sixty (60) days immediately following the end of the November through April period.

B. Public utilities shall remove from such right of way any pole no longer in use, or sought to be replaced by the placement of a new pole, ninety (90) days after the abandonment of the use of the pole or ninety (90) days after placement of the new pole. Any poles currently not in use, or intended to be replaced based upon the placement of a new pole that has already been installed, must be removed within ninety (90) days of the effective date of this ordinance. The municipality shall be authorized to impose a fine up to an amount not to exceed \$100 each day until the pole is removed and requirements of § 19-22.2(C) are met, except that if the public utility is unable to complete the installation of a hot patch due to the unavailability of asphalt material during the period of time from November through April, the public utility shall not be required to complete the hot patch installation until sixty (60) days immediately following the end of the November through April period.

C. At least five business days prior to the end of the ninety-day or sixty-day periods established pursuant to § 19-22.4(A) as applicable, the Zoning Officer shall notify the public utility that the penalties authorized by such section shall begin to be assessed against the utility after the end of the applicable period unless the utility complies with the requirements of § 19-22.2(C) hereof.

#### **§ 19-22.5 Collection of penalties as summary enforcement action.**

Any penalties imposed in accordance with § 19-22.4 hereof shall be collected or enforced in a summary manner, without jury, in any court of competent jurisdiction, including, but not limited to, the Municipal Court of the Borough of Roseland in accordance with the procedures provided by the Penalty Enforcement Law (*N.J.S.A. 2A:58-1 et seq.*).

### **SECTION II: REPEAL OF INCONSISTENT PROVISIONS**

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

### **SECTION III: SEVERABILITY**

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

### **SECTION IV: EFFECTIVE DATE**

This Ordinance shall take effect immediately upon passage and publication as provided by law.

**SECTION V: CODIFICATION**

This ordinance shall be a part of the Code of the Borough of Roseland as though codified and fully set forth therein. The Borough Clerk shall have this ordinance codified and incorporated in the official copies of the Code. The Borough Clerk and the Borough Attorney are authorized and directed to change any Chapter, Article and/or Section number of the Code of the Borough of Roseland in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

**SECTION VI: NOTICE TO PUBLIC UTILITIES**

The Borough Clerk shall cause any public utility that provides service in the Borough of Roseland to be notified of the provisions of this ordinance.

DATE OF INTRODUCTION: August 15, 2023

Motion to Introduce by: Councilwoman Perrotti  
 Motion Seconded by: Councilwoman Tolli  
 Introduction Approved: 4-0 Voice Vote (Fishman, Freda absent)

DATE OF ADOPTION: September 19, 2023

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	RECUSE	ABSENT
Councilman Bardi	X		X				
Councilwoman Fishman		X	X				
Councilman Freda							X
Councilwoman Perrotti							X
Councilwoman Tolli			X				
Council President Trillo			X				
Mayor Spango (In case of tie)							
VOTE:			4	0			

I hereby certify that the above Ordinance was duly adopted by the Mayor and Council of the Borough of Roseland at a meeting of Borough Council held on the 19<sup>th</sup> day of September, 2023.

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 James R. Spango, Mayor

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 Jock H. Watkins, Borough Clerk

Date of Publication: September 28, 2023, The Progress