

Intro. Res. No. 1742-2019

Laid on Table 7/16/2019

Introduced by Legislators Calarco, Donnelly, Anker, Sunderman, Kennedy, Spencer, Gonzalez, Berland, Muratore, Fleming, McCaffrey Cilmi, Gregory and Lindsay

**RESOLUTION NO. 1198-2019, ADOPTING LOCAL LAW
NO. 10-2020, A LOCAL LAW TO REQUIRE REST BREAKS
FOR WORKERS PROVIDING UTILITY LOCATION SERVICES**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on July 16, 2020, a proposed local law entitled, "**A LOCAL LAW TO REQUIRE REST BREAKS FOR WORKERS PROVIDING UTILITY LOCATION SERVICES**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 10-2020, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO REQUIRE REST BREAKS FOR WORKERS
PROVIDING UTILITY LOCATION SERVICES**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that County government strives to protect the health, safety, and welfare of individuals who live and work in Suffolk County.

This Legislature also finds and determines that construction and public works projects frequently require that utility mains be located underground and marked for the safety of on-site workers and the public.

This Legislature further finds and determines that many workers providing utility location services work long shifts, including overtime, to finish their projects.

This Legislature finds that because many workers providing utility location services frequently work overtime, their subsequent shifts may sometimes be as little as 2 hours later, leaving little to no time for rest.

This Legislature determines that sleep deprivation can cause workers to become disoriented and ill, which affects the safety and welfare of the workers and could contribute to dangerous errors in marking utilities which may affect other construction workers and the public.

This Legislature further finds that workers performing utility location services are performing a necessary function that affects the health, safety, and welfare of County residents and should be provided with breaks long enough for food and rest.

This Legislature also determines that a minimum rest period of eight hours prior to the start of a regular shift is adequate for workers performing utility location services.

This Legislature further determines that to ensure that the County is protecting the safety of utility location workers and the public, businesses providing this service should ensure that workers receive eight hours of rest prior to the start of a regular shift.

Therefore, the purpose of this local law is to require that all workers providing utility location services be provided with eight hours of rest prior to the start of a regular shift.

Section 2. Definitions.

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

BREAK – a time period where an employee or contractor is not scheduled to take part in or complete any type of work.

REGULAR SHIFT – the period of consecutive hours starting when a utility safety employer requires a utility safety employee to report to a work location and ending when the utility safety employee is free to leave a work location. Breaks totaling two hours or less are not an interruption of consecutive hours, provided that such breaks do not include time when the utility safety employee’s work location is closed. The term “regular shift” does not include the hours worked by a utility safety employee who is called into work after a regular shift.

UNDERGROUND UTILITY FACILITY – pipelines, conduits, ducts, cables, wires, manholes, vaults, or other such facilities or their attachments, that have been installed underground to provide service on materials, including electricity, gas, water, stream liquid, petroleum products, telephone communications, cable television, sewage removal, or traffic control.

UTILITY LOCATION – the process of locating and marking public utility mains that are underground.

UTILITY SAFETY EMPLOYEE – any person who is employed within the County and who performs work on a full-time or part-time basis, and whose job duties include locating and marking underground utility facilities. The term “utility safety employee” does not include any person who is employed by (i) The United States Government; (ii) the State of New York, including any office, department, independent agency, authority, institution, association, society, or other body of the State, including the Legislature and Judiciary.

UTILITY SAFETY EMPLOYER – any person or entity that employs a utility safety employee. The term, “utility safety employer” does not include (i) the United States Government; (ii) the State of New York, including any office, department, independent agency, authority, institution, association, society, or other body of the State, including the Legislature and Judiciary.

Section 3. Rest Requirements.

A. Any utility safety employer shall provide utility safety employees who engage in utility location with at least eight hours of consecutive rest prior to a regular shift.

B. A utility safety employee required to work in excess of his or her regular shift shall not be penalized by a utility safety employer when the mandated 8 hour break interferes with attending his or her next regular shift.

Section 4. Exemption.

This law shall not apply to any utility safety employee covered by a collective bargaining agreement if (i) such provisions are expressly waived in the collective bargaining agreement and (ii) the agreement addresses employee scheduling.

Section 5. Enforcement.

A. This law shall be enforced by the Suffolk County Department of Labor, Licensing, and Consumer Affairs (“the Department”).

B. Any person, including any utility safety employer or employee, alleging a violation of this law may file a complaint with the Department within one year of the date of the alleged violation. Upon receiving a complaint, the Department shall investigate it. The Department may open an investigation on its own initiative.

Section 6. Rules and Regulations.

The Commissioner of the Suffolk County Department of Labor, Licensing, and Consumer Affairs is hereby authorized, empowered, and directed to promulgate such rules and regulations as he or she deems necessary to implement this law.

Section 7. Penalties; Hearing.

A. Any utility safety employer found in violation of any portion of this law shall be subject to a civil penalty. The penalty shall be \$500 for an initial violation, \$750 for a second violation within a two (2) year period, and \$1,000 for each successive violation within a two (2) year period. Each instance involving an individual utility safety employee shall constitute a separate and distinct offense.

B. A civil penalty shall only be assessed by the Commissioner of the Department following a duly noticed hearing and opportunity to be heard.

Section 8. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

DATED: December 17, 2019

EFFECTIVE PURSUANT TO SECTION 2-15(D) OF THE SUFFOLK COUNTY CHARTER,
RETURNED BY THE COUNTY EXECUTIVE UNSIGNED JANUARY 17, 2020

After a public hearing duly held on January 2, 2020
Filed with the Secretary of State on January 29, 2020