

ORDINANCE NO. 20-_____

AN ORDINANCE CREATING A NEW ARTICLE 10 (UNDERGROUND DAMAGE PREVENTION SAFETY PROGRAM) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO UNDERGROUND EXCAVATION REGULATIONS AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. A new Article 10 (Underground Damage Prevention Safety Program) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, is created to read as follows:

ARTICLE 10: UNDERGROUND DAMAGE PREVENTION SAFETY PROGRAM

12.10.101: DEFINITIONS:

12.10.102: PURPOSE:

12.10.103: UNDERGROUND DAMAGE PREVENTION SAFETY PROGRAM:

12.10.104: PREMARKING; NOTICE OF EXCAVATION; DUTIES OF EXCAVATORS; DUTIES OF OWNERS AND OPERATORS:

12.10.105: VIOLATIONS:

12.10.106: COMPLAINTS AND ENFORCEMENT:

12.10.101: DEFINITIONS:

DAMAGE: Includes the penetration or destruction of any protective coating, housing, or other protective device of an underground facility, the denting or partial or complete severance of an underground facility, or the rendering of any underground facility inaccessible.

EMERGENCY SITUATIONS: Includes ruptures and leakage of pipelines, explosions, fires, and similar instances where immediate action is necessary to prevent loss of life or significant damage to property, including, without limitation, underground facilities, and advance notice of proposed excavation is impracticable under the circumstances.

EXCAVATION: Any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes augering, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching,

hydro excavating, postholing, and tunneling. "Excavation" includes all excavations performed in a public place pursuant to a license and permit granted in accord with chapter 3, article 3, part 2 of this Code. "Excavation" does not include:

- A. Routine maintenance on existing planted landscapes; or
- B. An excavation by a rancher or a farmer, as defined in section 42-20-108.5, C.R.S., occurring on a ranch or farm when the excavation involves:
 - 1. Any form of existing agricultural activity that is routine for that ranch or farm;
 - 2. Land clearing if the activity does not involve deep ripping or deep root removal of trees or shrubs; or
 - 3. Routine maintenance of:
 - a. An existing irrigation facility if the facility has been subjected to maintenance in the previous 24 months; or
 - b. Existing fence lines.

NOTIFICATION ASSOCIATION: The statewide notification association of owners and operators of underground facilities created in section 9-1.5-105, C.R.S., also known as "Colorado 811" or as the "Utility Notification Center of Colorado".

OPERATOR or OWNER: Any person, including public utilities, municipal corporations, political subdivisions, or other persons having the right to bury underground facilities in or near a public road, street, alley, right-of-way, or utility easement. "Operator" or "owner" as used in this article does not include any railroad.

PERSON: Any individual acting on his or her own behalf, a sole proprietor, partnership, association, corporation, or joint venture; the state, any political subdivision of the state, or any instrumentality or agency of either; or the legal representative of any of these.

PREMARK: Marking the route of a proposed excavation with white paint, flags, stakes or a combination of such methods to outline the dig site prior to notifying the notification association, and before the locator arrives on the site.

PROGRAM: The Colorado Springs underground damage prevention safety program, set forth in this article. The program will collaborate with the notification association and other state agencies on the enforcement authority as established by statute.

PROGRAM MANAGER: The person appointed by the Chief Executive Officer to administer this program.

ROUTINE MAINTENANCE: A regular activity that happens at least once per year on an existing planted landscape if earth is not disturbed at a depth of more than twelve inches by nonmechanical means, including using hand tools, or four inches by mechanical means and if the activities are not intended to permanently lessen the ground cover or lower the existing ground contours. Mechanical equipment used for routine maintenance tasks includes aerators, hand-held rototillers, soil injection needles, lawn edgers, and overseeders.

SOFT DIGGING: Any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

UNDERGROUND FACILITY: Any item of personal property which is buried or placed below ground for use in connection with the storage or conveyance of water or wastewater, electronic, telephonic, or telegraphic communications or cable television, electric energy, or oil, gas, or other substances. For purposes of this definition, an item of personal property, includes, but is not limited to, pipes, wastewater collection facilities, conduits, cables, valves, lines, wires, manholes, and attachments thereto.

UTILITY LOCATE: Actions taken by or on behalf of an operator or owner using reasonable care to advise an excavator of the location, number and size of any underground facilities in the proposed excavation area including laterals in the public right of way, by accurately marking the location of the underground facilities with clearly identifiable markings.

VIOLATION: A determination by the Program Manager that a violation of this article has occurred.

VIOLATION, MAJOR: A major violation includes, but is not limited to, an act that the Program Manager finds to be in blatant disregard of this article where the potential for injury to the public or property is highly probable.

VIOLATION, MINOR: A minor violation includes, but is not limited to, an act that the Program Manager finds to be in violation of this article where the potential for injury to the public or property is not a factor. The act of filing a frivolous complaint shall also constitute a minor violation. For purposes of this article, a frivolous complaint is one that is entirely without merit and is made with the intention of causing inconvenience, harassment or expense.

VIOLATION, MODERATE. A moderate violation includes, but is not limited to, an act that the Program Manager finds to be in violation of this article where the potential for injury to the public or property is foreseeable.

12.10.102: PURPOSE:

The purpose of this part is to establish the Colorado Springs Underground Damage Prevention Safety Program, pursuant to section 9-1.5-101, et seq., C.R.S. The City is exercising its home rule authority to establish a Program similar to that of the underground damage prevention safety commission. City Council exercises its police powers to govern excavations near and around underground utility infrastructure for the purposes of protecting persons and underground utility infrastructure from nonemergency excavation work. Nothing in this part is intended to supersede or replace the requirements of Article 3 of Chapter 3 of this Code.

12.10.103: UNDERGROUND DAMAGE PREVENTION SAFETY PROGRAM:

There is hereby established the Colorado Springs Underground Damage Prevention Safety Program within Utilities. The Chief Executive Officer will appoint a Program Manager. The Program Manager will:

- A. Collaborate with the underground damage prevention safety commission existing within the Colorado department of labor and employment, the notification association and other state agencies to develop best practices and training to prevent damage to underground utilities.
- B. Review complaints alleging violations of this article and order appropriate remedial action or penalties.
- C. Establish best practices for excavators.
- D. Serve as the utility enforcement officer for violations of this article.

12.10.104: PREMARKING; NOTICE OF EXCAVATION; DUTIES OF EXCAVATORS; DUTIES OF OWNERS AND OPERATORS:

- A. Premarking. A person planning to conduct an excavation shall premark the area to be excavated or provide electronic delineation of the area to be excavated on a map, plan sheet, or aerial photograph before calling the notification association. If the area is not premarked, an owner or operator may, at their discretion, choose not to locate and field mark any underground facilities, until the area to be excavated has been premarked.
- B. Notification Association. No person shall make or begin excavation without first submitting a locate request to the notification association. At the

time of submitting a locate request, excavators shall provide electronic delineation of the excavation area through the notification association, if available.

C. Perform Locate. Any owner or operator receiving notice pursuant to C.R.S. section 9-1.5-103 (4)(a)(I) shall, at no cost to the excavator and within two (2) business days unless otherwise agreed to by the excavator, not including the day the owner or operator receives notice from the notification association, use reasonable care to advise the excavator of the location, number and size of any underground facilities in the proposed excavation area including laterals in the public right of way, by marking the location for the facilities with clearly identifiable markings within eighteen inches (18") horizontally from the exterior sides of the facilities. The marking must include the depth, if known, and shall be made pursuant to the uniform color code as approved by the American Public Works Association. The markings must meet the marking standards as established by the commission pursuant to section 9-1.5-104.2 (1)(a)(I), C.R.S. The documentation required by this section shall be provided to the excavator through the notification association and must meet or exceed any quality standards established by the commission pursuant to section 9-1.5-104.2 (1)(a)(I), C.R.S. In addition to the markings, the owner or operator shall provide for each of its underground facilities:

1. Documentation listing the owner's or operator's name and the size and type of each marked underground facility; and
2. Documentation of the location of the underground facilities in the form of a digital sketch, a hand-drawn sketch, or a photograph that includes a readily identifiable landmark, where practicable.

D. Sewer Laterals. The owner or operator of a sewer system shall provide its best available information when marking the location of sewer laterals in the public right-of-way with clearly identifiable markings. This includes tap measurements and historic records. If the sewer lateral can be electronically located, the sewer system owner or operator shall mark and document the location of the sewer laterals in accordance with C.R.S. section 9-1.5-103 (4)(a). If a sewer system owner or operator of a sewer lateral cannot electronically locate the sewer lateral, the excavator shall find the sewer lateral. The marking of customer-owned laterals in the public right-of-way is for informational purposes only, and an owner or operator is not liable to any party for damages or injuries resulting from damage done to customer-owned laterals.

E. On-Site Assistance. If a person is excavating across a preexisting underground facility, the owner of such facility shall, pursuant to a predetermined agreement at the request of the excavator or owner, provide on-site assistance.

F. Gas Standby Process and Compliance with Utilities Gas Line Extension and Service Standards. If a person is excavating across a preexisting natural gas underground facility, the excavator must schedule an appointment for a standby with the owner three days before excavation occurs. An owner or operator of a natural gas underground facility may charge a reasonable fee for standby services associated with excavation near natural gas underground facilities if an excavator misses or is unprepared for a scheduled appointment and a follow-up appointment is necessary. In addition to the above requirements, all excavators excavating in an area where natural gas underground facilities have been identified, must comply with the excavation requirements of Colorado Springs Utilities' Gas Line Extension and Service Standards or the standards of any other operator or owner of natural gas underground facilities.

G. Absence of Facilities. Any owner or operator receiving notice concerning an excavator's intent to excavate shall use reasonable care to advise the excavator of the absence of any underground facilities in the proposed excavation area by providing positive response documentation to the excavator through the notification association that no underground facilities exist in the proposed excavation area. An owner or operator will, within the time limits specified in subsection C., of this section, provide to the excavator evidence, if any, of the underground facilities abandoned after January 1, 2001, known to the owner or operator to be in the proposed excavation area.

H. Duration of Markings, Duty to Notify. The markings of underground facilities will be considered valid as long as the markings are clearly visible, but not for more than thirty calendar days following the due date of the locate request. If an excavation has not been completed within the applicable period, the excavator shall notify the notification association at least two business days, not including the day of actual notice, before the end of the applicable period.

I. Nondestructive Means on Edges. When a person excavates within eighteen inches (18") horizontally from the exterior edges of any marked underground facility, the person shall use nondestructive means of excavation, such as soft digging, prescribed by the Program Manager, to identify underground facilities and shall otherwise exercise reasonable care to protect any underground facility in or near the excavation area.

J. Trenchless Excavation. When utilizing trenchless excavation methods, the excavator shall expose underground facilities and visually observe the safe crossing of marked underground facilities at the owner or operator's request.

K. Documentation on Site. The excavator shall maintain adequate and accurate documentation. This includes photographs, video, or sketches and documentation obtained through the notification association, at the excavation site on the location and identification of any underground facility.

The excavator shall maintain adequate markings of any underground facility throughout the excavation period.

L. Discovery of Facilities during Routine Maintenance. If a person performing routine maintenance discovers an underground facility in an area where the routine maintenance is being performed, the person shall notify the notification association and the affected owner or operator as quickly as is practicable and request an immediate verification of the location of any underground facility. Upon receiving notification, the affected owner or operator shall respond as quickly as practicable. The person shall cease routine maintenance activities in the immediate area, as determined by exercising due caution and care, until the location of any underground facilities has been verified. Persons performing routine maintenance shall take reasonable care when disturbing the soil.

M. Emergency Situations. In emergency situations, excavators shall submit a request to the notification association for emergency utility locates. Pre-marking shall not be a prerequisite to submitting a request for emergency utility locates. Excavators shall be on-site when utility locators arrive to perform utility locates in an emergency situation.

N. Cessation of Excavation; Lost, Invalid or Inaccurate Markings. If the documentation or markings maintained pursuant to C.R.S. section 9-1.5-103 (4)(a)(1) become lost, invalid or inaccurate, the excavator shall notify the notification association or the affected owner or operator through the notification association and request an immediate reverification of the location of any underground facility. Upon receipt of the notification, the affected owner or operator shall respond as quickly as is practicable. The excavator shall cease all excavation activities in the vicinity of electric, natural gas, water or wastewater underground facilities at the affected location until the location of any underground facilities has been reverified.

O. Cessation of Excavation for Failure to Locate. If documentation and markings requested and needed by an excavator pursuant to C.R.S. section 9-1.5-103 (4)(a)(1) are not provided by the owner or operator within two (2) business days, not including the day of actual notice, or such later time as agreed upon by the excavator and the owner or operator, or, if the documentation or markings provided fail to identify the location of the underground facilities, the excavator shall immediately give notice through the notification association or to the owner or operator. Upon receipt of the notification, the affected owner or operator shall respond as quickly as practicable. The excavator shall cease excavation activities until the location of electric, natural gas, water or wastewater underground facilities has been identified by the owner or operator, at which point the excavator may continue excavation activity if the excavator exercises due caution and care to prevent damaging any underground facility.

P. Timing to Request a Locate. No person shall request marking pursuant to C.R.S. section 9-1.5-103 (4)(a)(1) unless excavating is scheduled to commence within fifteen (15) days.

Q. Failure to Timely Commence Excavation; Utility Locate Verification Fees. After an owner or operator has provided the requested utility locates, the excavator must commence work within fifteen (15) days of the "locate by" date on the locate ticket created by the notification association. All requests for verification of utility locates and requests for utility locates by the same excavator or for persons working for the same excavation company for the same geographic area for the same project occurring within a ninety (90) day period may be subject to a locate verification fee established by the owner or operator based on the time and materials required to verify the utility locates or \$250, whichever is greater, except for those requests which are necessitated by circumstances not reasonably within the control of the excavator.

12.10.105: VIOLATIONS:

A. It shall be a violation of this article to willfully or maliciously remove a marking used by an owner or operator to mark the location of any underground facility, except in the ordinary course of excavation.

B. It shall be a violation of this article for any person to excavate without first obtaining locates for underground facilities.

C. It shall be a violation of this article for any person to excavate in a manner inconsistent with the requirements of this article.

D. It shall be a violation of this article for any owner or operator of underground facilities to fail to locate its underground facilities in accordance with this article.

12.10.106: COMPLAINTS AND ENFORCEMENT:

A. The Program Manager will investigate all complaints and alleged damage. The Program Manager may receive complaints from any person who observes or identifies a violation or evidence of a violation of this article or from the Colorado underground damage prevention safety commission. The Program Manager may also identify violations as a result of a damage investigation involving damaged underground facilities. The Program Manager will characterize the violations as minor, moderate or major. If violations are found, the Program Manager will issue a notice of violation that is personally served whenever feasible and states with particularity the nature of the violation, the facts giving rise to the violation, any fines, penalties, or damages to be imposed, and that the recipient of the notice has the right to appeal the notice of violation by written application within ten (10) days of the date of

service of the notice of violation. Upon receipt of a written application requesting an appeal hearing, the Program Manager shall schedule a hearing with a hearing officer to occur within thirty (30) days of the date of receipt of the written application requesting the appeal. Any party adversely affected by the decision of a Hearing Officer may appeal that decision to the District Court in and for El Paso County, Colorado, pursuant to rule 106(a)(4) of the Colorado Rules of Civil Procedure.

B. The Program Manager may recommend to the City Engineer that the party's excavator's permit issued pursuant to City Code section 3.3.202 be suspended or revoked and notify the City Clerk.

C. In addition to penalties, the Program Manager may require any person found to be in violation of this article to take an excavation safety training class.

D. Penalties and damages for violation of this article shall be as set forth in sections 9-1.5-104.4 and 9-1.5-104.5, C.R.S.

Section 2. This ordinance shall be in full force and effect on and after January 1, 2021.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2020.

Finally passed: _____

Council President

ATTEST:

Sarah B. Johnson, City Clerk