



## Legislation Text

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**File #:** 20-509, **Version:** 2

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Ordinance No. 20-69 amending Section 203 (Application for License; Fees; Term; Bond and Insurance Requirements; Suspension or Revocation) of Article 3 (Streets and Public Ways) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, pertaining to excavation licenses

**Presenter:**

Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

**Summary:**

This ordinance is one of two ordinances being proposed as part of an effort to codify Colorado Springs Utilities' existing Underground Damage Prevention Safety program. This ordinance adds the requirement that prospective excavators submit a certificate of completion of the City's Underground Damage Prevention Safety Class to the City Clerk along with their excavation license application and license fees.

**Background:**

Colorado Springs Utilities ("Utilities") has had a damage prevention safety program in place since at least 2003, utilizing a group of 29 in-house locators and one program manager. Using a locate ticket management system, the locators mark underground infrastructure when a homeowner or contractor makes a request through Colorado's Call Before You Dig Notification System, also known as Call 811. Under the existing program, which was established in accordance with Colorado's previous statutory program, within two business days after the day the request was made, Utilities' locators mark Utilities' pipelines, electrical lines, water lines, wastewater lines and fiber. Other owners and operators of underground utility facilities are required to do the same thing. In the event a Utilities' facility is damaged, Utilities also has two damage investigators who investigate damage and prosecute violations.

In 2018, the Colorado General Assembly passed Senate Bill 18-167, establishing the Colorado Underground Damage Prevention Safety Commission to provide for greater enforcement of Colorado's excavation statutes. In this legislation, the General Assembly granted home rule municipalities the ability to adopt their own ordinances establishing a local damage prevention safety program similar to that established at the state level or to sign a waiver delegating enforcement of violations of excavation requirements to the state Commission.

After discussion by stakeholders within both the City's municipal government and Utilities, Utilities and the City agreed that establishing a formal local enforcement program was the preferred option as it will ensure that violations of excavation requirements occurring within the City of Colorado Springs receive priority for enforcement and that violators receive necessary education to better prevent future damage.

If approved by City Council, these two ordinances will effectively make Utilities' Damage Prevention Program the local enforcement arm for all damage to underground facilities within the City of Colorado Springs on behalf of all owners and operators of underground facilities, including the City, Utilities, telecommunications and cable providers, and others.

The first proposed ordinance amends section 3.3.203 of City Code to include as an additional requirement for excavators seeking an excavation license from the City of Colorado Springs, that excavators successfully complete the City's Underground Damage Prevention Safety Class.

The second proposed ordinance creates a new article within Chapter 12 of City Code. Within the newly created article, the first new section establishes definitions applicable to the ordinance. The second new sections provides a purpose statement. The third new section establishes in City Code the Colorado Springs Underground Damage Prevention Safety Program within Utilities and establishes the responsibilities of the Program Manager. The fourth new section establishes requirements for excavators and owners and operators of underground facilities related to utility locates and excavations. The fifth new section states which actions shall be considered violations of the ordinance. The sixth and final new section provides for enforcement of the ordinance and adopts the statutory penalties for violation of the ordinance.

The proposed ordinance was presented to the Utilities Board on August 19, 2020, at which time Utilities staff informed the Board that it would work to incorporate certain stakeholder feedback into the proposed ordinance. Based on a review of external and internal stakeholder feedback, the following changes were made after the Utilities Board meeting:

1. The ordinance was divided into two ordinances to break out the revisions to Chapter 3 as a separate ordinance.
2. A minor change recommended by City Public Works was made in the definition of the word "Excavation."
3. A change was made in subsection 12.10.102 to clarify that nothing in this ordinance is intended to supersede or replace the requirements of Article 3 of Chapter 3 of City Code.
4. A change was made in subsection 12.10.104A., of the new program language to allow persons planning to conduct an excavation to premark or provide electronic delineation of the area in which an excavation will occur. This is reflective of the current requirements within the Colorado Statute and reflects the fact that premarking may not always be feasible. This change was the result of industry feedback.
5. A change was made in subsection 12.10.104E., of the new program language to eliminate the ability of an owner or operator to charge a fee for providing on-site assistance. Comments from the construction industry pointed out that the on-site assistance contemplated by this section is optional to the excavator, and that imposition of a fee will likely result in the failure of excavators to request on-site assistance. In order to encourage excavators to seek assistance when needed, the ability to impose a fee has been eliminated.
6. A change was made in subsection 12.10.104F., also based on industry feedback to limit the imposition of a fee for gas standby services to situations where an excavator was unprepared or

missed a scheduled standby appointment. The basis for this change again was to encourage excavators to appropriately schedule standby appointments and because this is currently already part of the services offered as part of the damage prevention program.

7. A change was made to subsection 12.10.104J., based on industry feedback to clarify that potholing is only required if required by an underground facility owner.

8. Changes were made to subsection 12.10.104O., based on industry feedback, to reincorporate the ability under the state law of an excavator to proceed with excavations using due care if locates were not provided, except where there were no locates provided for electric, natural gas, water or wastewater underground facilities. The basis for carving out these four types of facilities is related to the public safety and health concerns that arise if these facilities are damaged.

9. Changes were made to subsections 12.10.104P. and Q., to extend the period by which an excavator must commence excavation activities from ten to fifteen days, in light of industry feedback that ten days is not always feasible, and to remove an incomplete sentence.

10. A change was made to Section 12.10.105, to add a new subsection D., which makes it a violation of the ordinance for any owner or operator of underground facility to fail to locate its facilities in accordance with the ordinance. This change was based on industry feedback and in recognition of the fact that damage prevention is a shared responsibility between owners and operators and excavators.

11. Changes were made to Section 12.10.106, include a requirement that the Program Manager notify the City Clerk in addition to the City Engineer, and to clarify the enforcement process for this ordinance. Ultimately, we contemplate that all of the enforcement requirements for Chapter 12 will be consolidated into a newly created article in Chapter 12, however, the inserted language provides a placeholder and temporary process until that consolidation occurs.

**Previous Council Action:**

N/A

**Financial Implications:**

Colorado Springs Utilities expects that codification of a local damage prevention program will reduce repair costs to all owners and operators of underground facilities. Additionally, it may generate fines which would be used to offset the costs of enforcing the program.

**City Council Appointed Board/Commission/Committee Recommendation:**

N/A

**Stakeholder Process:**

Ordinance language and summary was sent to the Housing and Building Association of Colorado Springs and the Colorado Contractors Association. These industry stakeholder organizations have replied with comments and questions for suggested changes and clarifications. Stakeholder input is reflected in the revised ordinances.

**Alternatives:**

1. Approve the ordinances as presented;
2. Modify the ordinances;
3. Not approve the ordinances; or
4. Refer the ordinances back to Utilities staff for further consideration

**Proposed Motion:**

Approve the ordinance amending Section 203 (Application for License; Fees; Term; Bond and Insurance Requirements; Suspension or Revocation) of Article 3 (Streets and Public Ways) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, pertaining to excavation licenses

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