

40-360.22. Excavations; determining location of underground facilities; providing information; excavator marking; on-site representative; validity period of markings; liability for misuse of locate requests; detectible underground locating devices; civil penalty

A. A person shall not make or begin any excavation in any public street, alley, right-of-way dedicated to the public use or utility easement, in any express or implied private property utility easement, without first determining whether underground facilities will be encountered, and if so where they are located from each and every underground facilities operator and taking measures for control of the facilities in a careful and prudent manner.

B. Every underground facilities operator shall file with the corporation commission the job title, address and telephone number of the person or persons from whom the necessary information may be obtained. Such person or persons shall be readily available during established business hours. The information on file shall also include the name, address and telephone number of each one-call notification center to which the underground facilities operator belongs. Upon receipt of inquiry or notice from the excavator, the underground facilities operator shall respond as promptly as practical, but in no event later than two working days, by marking such facility with stakes, paint or in some customary manner. No person shall begin excavating before the location and marking are complete or the excavator is notified that marking is unnecessary. If the excavator consents, an underground facilities operator may notify the one-call notification center that marking is unnecessary pursuant to a method established by the one-call notification center. An underground facilities operator may delegate any marking or notification obligations required by this subsection to an agent or servant of the underground facilities operator. An underground facilities operator may notify the excavator that marking is unnecessary pursuant to any mutually agreeable method.

C. On a timely request by the underground facilities operator, the excavator shall mark the boundaries of the location requested to be excavated in accordance with a color code designated by the commission or by applicable custom or standard in the industry. A request under this subsection for excavator marking does not alter any other requirement of this section.

D. Except as otherwise provided in this section, in performing the marking required by subsection B of this section, the underground facilities operator of an underground facility installed after December 31, 1988 in a public street, alley or right-of-way dedicated to public use, but not including any express or implied private property utility easement, shall locate the facility by referring to installation records of the facility and utilizing one of the following methods:

1. Vertical line or facility markers.
2. Locator strip or locator wire.
3. Signs or permanent markers.
4. Electronic or magnetic location or tracing techniques.
5. Electronic or magnetic sensors or markers.
6. Metal sensors or sensing techniques.
7. Sonar techniques.
8. Underground electrical or radio transmitters.
9. Manual location techniques, including pot-holing.
10. Surface extensions of underground facilities.

11. Any other surface or subsurface location technique that is at least as accurate as the other marking methods in this subsection and that is not prohibited by the commission or by federal or state law.

E. Except as otherwise provided in this section, for an underground facility other than one installed after December 31, 1988, in a public street, alley or right-of-way dedicated to public use, in performing the marking required by subsection B of this section, the underground facilities operator may refer to installation or other records relating to the facility to assist in locating the facility and shall locate the facility utilizing one of the methods listed under subsection D of this section.

F. If an underground facilities operator is unable to complete the location and marking within the time period provided by subsection B of this section, the facilities operator shall satisfy the requirements of this section by providing prompt notice of these facts to the excavator and assigning one or more representatives to be present on the excavation site at all pertinent times as requested by the excavator to provide facility location services until the facilities have been located and marked. The underground facilities operator shall bear all of its own costs associated with assigning representatives. If representatives are assigned under this subsection, the excavator is not responsible or liable for damage to or repair of the underground facilities operator's underground facility while acting under the direction of an assigned representative of the underground facilities operator, unless the damage or need for repair was caused by the excavator's negligence.

G. The marking required by subsection B of this section is valid for fifteen days from the date of the marking, excluding Saturdays, Sundays and other legal holidays. If the excavation will continue past the validity period of the marks as provided by this subsection, the excavator shall notify the underground facilities operator or an organization designated by the underground facilities operator at least two days, excluding Saturdays, Sundays and other legal holidays, before the end of the validity period. All requests for facility markings and requests to extend the validity period of the markings shall be for the purpose of excavating within the validity period of the markings. An excavator that requests facility markings shall limit the request to an area that can reasonably be excavated within the validity period of the markings. A person who violates this subsection is liable to the one-call notification center and to all affected underground facilities operators for any resulting damages, costs and expenses.

H. Nothing in this section shall be construed to prevent an excavator and an underground facilities operator from holding a preconstruction conference regarding marking and location of underground facilities and entering into a mutually agreeable written schedule or written arrangement for satisfying the requirements of this section, except that this subsection does not eliminate the excavator's obligation to notify the underground facilities operator to locate and mark excavation sites under subsection B of this section based on the actual construction schedule.

I. For abandoned and apparently abandoned underground facilities:

1. The underground facilities operator shall notify the excavator whether the facility is active or abandoned. An inactive facility shall be considered active for purposes of this subsection. This section does not obligate any person to represent that an underground sewer facility in any public street, alley, right-of-way dedicated to public use or utility easement is abandoned if it was installed on or before December 31, 2005 and it is not owned by an underground facilities operator of a sewer system.

2. For an underground facility abandoned after December 31, 1988 or covered by installation records prepared under section 40-360.30, subsection A, the underground facilities operator may not advise or represent to the excavator that a facility or portion of a facility is abandoned unless the underground facilities operator has verified, by reference to installation records or by testing, that the facility or portion is actually abandoned and not merely inactive. For all other abandoned or apparently abandoned underground facilities, each one-call notification center shall establish a method of providing personnel from an underground facilities operator qualified to safely inspect and verify that the facility is abandoned or active and a method for reimbursing the verifying underground facilities operator for the costs incurred. The reimbursement method may not include any charge or expense to the excavator. For the purposes of this article, an underground facilities operator shall not represent that an underground facility is abandoned unless the facility has been verified as abandoned pursuant to this subsection.

3. For the purposes of this article, if an excavator encounters an apparently abandoned underground facility, the excavator shall not treat the underground facility as abandoned until the excavator has received notification that the underground facility is abandoned pursuant to paragraph 1 of this subsection or has notified the underground facility operator of the apparent abandonment and has received verification of abandonment pursuant to paragraph 2 of this subsection.

J. All new and active underground facilities installed in any real property after December 31, 2005 shall be installed with a detectible underground location device unless the facility is capable of being detected from above ground with an electronic locating device. A person who violates this subsection is subject to a civil penalty in an amount not to exceed five thousand dollars. The building official shall administer and enforce this subsection for all underground facilities except those that are installed for a public utility or municipal corporation. Any penalties received by the building official shall be deposited in the municipality's or political subdivision's general fund, as applicable.

K. Nothing in this section shall be construed as prohibiting the use of warning tape, warning markers or any other warning device by the underground facilities operator.

L. For every underground facilities operator of a sewer system:

1. For the purposes of this article, an underground facilities operator of a sewer system is responsible for locating and marking the underground sewer facilities owned by another person pursuant to subsection B of this section if those underground facilities are installed after December 31, 2005 and are in any public street, alley, right-of-way dedicated to public use or utility easement.

2. In performing the marking required by this subsection, the underground facilities operator of the sewer system shall locate the facility by referring to installation records of the facility and by using one of the methods listed in subsection D of this section.

3. This subsection does not obligate an underground facilities operator of a sewer system to locate and mark the underground sewer facilities owned by another person if the customer receiving sewer service from the underground sewer facility refuses to grant permission to the underground facilities operator of a sewer system to access the real property for the purpose of ascertaining the location of the underground sewer facility in any public street, alley, right-of-way dedicated to public use or easement.

4. This subsection does not obligate an underground facilities operator of a sewer system to maintain, clean or unstop underground sewer facilities owned by another person.