



2019 FEB -4 PM 3:35
OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

FEB - 4 2019

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Mendelson:

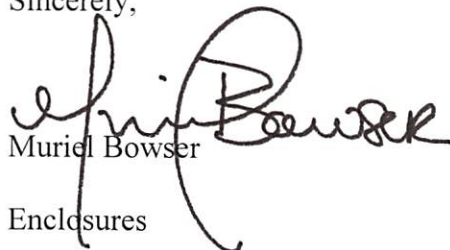
Enclosed for consideration by the Council is the "Underground Facilities Protection Amendment Act of 2019". This bill would amend the District's excavation safety law, the Underground Facilities Protection Act of 1980 ("UFPA"), to better protect underground facilities, such as gas and water lines.

Significantly, the bill would amend existing law to allow the UFPA, which may now be enforced only in the District of Columbia Superior Court, to also be enforced administratively under the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.


The bill would also clarify and update other provisions of the UFPA. For example, the bill would amend the definition of the term "excavation" to make clear that it includes the use of trenchless technology. The bill would also add a new provision to the UFPA that would impose a clear obligation on utilities to respond to an inquiry from the One-Call Center within 48 hours. In addition, the bill would add a new provision that would provide that if a person knows or has reason to know that an underground facility in the area of a planned or ongoing excavation is not marked, the person may not begin or continue the excavation unless the person notifies the One-Call Center and receives notification that all underground facilities have been marked. The provisions in this bill will help ensure that underground facilities in the District are appropriately protected.

I urge the Council to take prompt and favorable action on this legislation.

Sincerely,


Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Underground Facilities Protection Act of 1980 to provide that violations of the act may be enforced as civil infractions; to establish the time period by which utility operators shall make certain notifications; to amend a provision related to hand digging; to strengthen provisions related to the requirements of persons responsible for excavation when the person has reason to know that an underground facility is unmarked; and to authorize the Mayor to issue rules to implement the act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Underground Facilities Protection Amendment Act of 2019”.

Sec. 2. The Underground Facilities Protection Act of 1980, effective March 4, 1981 (D.C. Law 3-129; D.C. Official Code § 34-2701 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 34-2701) is amended as follows:

(1) Paragraph (2) is amended by striking the phrase “moving, or” and inserting the phrase “moving, using trenchless technology, or” in its place.

(2) Paragraph (3) is amended by striking the phrase “public utility operators” and inserting the phrase “utility operators” in its place.

(3) Paragraph (4) is amended to read as follows:

“(4) The term “person” means any individual, firm, joint venture, partnership, corporation, association, or any other legal entity, including any governmental body or authority

31 or subdivision of a governmental body or authority, and shall include any trustee, receiver,
32 assignee, or personal representative thereof.

33 (4) Paragraph (5) is repealed.

34 (5) Paragraph (6) is amended to read as follows:

35 “(6) The term “underground facility” means any item of personal property,
36 including utility lines, pipes, sewers, conduits, cables, valves, lines, wires, manholes, switches,
37 equipment, attachments, and those portions of poles located below the ground, which is buried,
38 placed below ground, or submerged for use in connection with the storage or conveyance of any
39 material or service listed in paragraph (8) of this section.”.

40 (6) Paragraph (7) is amended by striking the phrase “public utility operators” and
41 inserting the phrase “utility operators” in its place.

42 (7) A new paragraph (8) is added to read as follows:

43 “(8) The term “utility operator” means a person who supplies or transports any of
44 the following materials or services by means of a utility line:

45 “(A) Gas of any kind, including flammable, toxic, or corrosive gas;

46 “(B) Liquids of any kind, including coal slurry, petroleum, and petroleum
47 products;

48 “(C) Electric energy;

49 “(D) Communication services (including cable television, telephone,
50 video, data, and internet services);

51 “(E) Sewage disposal and drainage;

52 “(F) Water; or

53 “(G) Steam.”.

54 (b) Section 3 (D.C. Official Code § 34-2702) is amended as follows:

55 (1) Subsection (a) is amended by striking the phrase “District of Columbia
56 Department of Transportation” and inserting the word “Mayor” in its place.

57 (2) Subsection (b) is amended by striking the phrase “District of Columbia
58 Department of Public Works” and inserting the word “Mayor” in its place.

59 (3) Subsection (c) is repealed.

60 (c) Section 4 (D.C. Official Code § 34-2703) is amended by striking the phrase “The
61 District of Columbia Department of Transportation shall make available to each public utility
62 operator” and inserting the phrase “The Mayor shall make available to each utility operator” in
63 its place.

64 (d) Section 5 (D.C. Official Code § 34-2704) is amended as follows:

65 (1) Subsection (a) is amended to read as follows:

66 “(a) Except as provided in section 10, no person shall excavate or engage in demolition
67 in a street, highway, or public space, or on private property, without first notifying at least 48
68 hours, but not more than 10 days (excluding Saturdays, Sundays, and legal holidays), before the
69 commencement of the proposed excavation or demolition, each utility operator which may have
70 underground facilities in the area of the proposed excavation or demolition. Such notification
71 shall be accomplished by the person notifying the one-call center, in any manner approved by the
72 one-call center, within the time limit prescribed in the prior sentence, and the one-call center
73 shall, in turn, notify the appropriate utility operators.”.

74 (2) Subsection (b) is amended by striking the phrase “telephonic or teletype”.

75 (3) Subsection (c) is amended to read as follows:

76 “(c) If it is determined by a utility operator that a proposed excavation or demolition is
77 planned in such proximity to an underground facility that the facility may be damaged,
78 dislocated, or disturbed, the utility operator shall within 48 hours (excluding Saturdays, Sundays,
79 and legal holidays) respond by marking, staking, locating, or otherwise providing the location of
80 the utility operator’s underground facilities. Such response shall conform to any standards or
81 requirements (including the use of a particular color coding system) established in regulations
82 issued by the Mayor.”.

83 (4) A new subsection (c-1) is added to read as follows:

84 “(c-1) After receiving notice from the one-call center as described in subsection (a) of
85 this section, a utility operator shall, within 48 hours, notify the one-call center whether it has
86 marked its underground facilities as required by this section or determined that it has no
87 underground facilities that are required to be marked. No person may begin excavation or
88 demolition until receiving notification from the one-call center that the notices from the utility
89 operators have been provided.”.

90 (5) Subsection (d) is amended to read as follows:

91 “(d) When the actual excavation or demolition operation enters the immediate vicinity of
92 an underground facility, the person responsible for excavation or demolition shall provide
93 adequate protection to the underground facility (including the provision of support as needed)
94 and shall expose the underground facility by hand digging. For the purposes of this subsection,
95 the immediate vicinity of the underground facility shall be defined as a space within 18 inches
96 from the nearest point on the underground facility.”.

97 (6) Subsection (e) is repealed.

98 (7) Subsection (f) is repealed.

99 (8) Subsection (g) is amended by:

100 (A) Striking the phrase “excavating” and inserting the phrase “excavating
101 or demolishing” in its place; and

102 (B) Striking the phrase “public utility operator” and inserting the phrase “utility operator”
103 in its place.

104 (e) Section 6 (D.C. Official Code § 34-2705) is amended as follows:

105 (1) Subsection (d) is repealed.

106 (2) A new subsection (e) is added to read as follows:

107 “(e) If a person knows or has reason to know that an underground facility in the area of a
108 planned or ongoing excavation or demolition is not marked as required by section 5, the person
109 may not begin or continue the excavation or demolition unless the person:

110 “(1) Has repeated the notification required by section 5; and

111 “(2) Receives notification from the one-call center that the notices from the utility
112 operators required by section 5(c-1) have been provided.”.

113 (f) Section 7(b) (D.C. Official Code § 34-2706(b)) is amended to read as follows:

114 “(b) Each person responsible for any excavation or demolition operation that results in
115 damage to an underground facility, permitting the escape of any flammable, toxic, or corrosive
116 gas or liquid shall, immediately upon discovery of such damage, notify the utility operator, 911,
117 and any other agency identified by the Mayor and shall take any other action which may be
118 reasonably necessary to protect persons and property.”.

119 (g) Section 8 (D.C. Official Code § 34-2707) is amended as follows:

120 (1) Subsection (a) is amended by striking the word “If” and inserting the phrase
121 “Except as provided in subsection (b) of this section, if” in its place.

122 (2) Subsection (c) is amended to read as follows:

123 “(c) Any person who violates any provision of this act shall be subject to a civil
124 penalty of \$2,500 for the first violation, \$5,000 for the second violation, and \$10,000 for the
125 third or subsequent violation. Action to recover the civil penalties provided for in this section
126 shall be brought by the Attorney General for the District of Columbia in the Superior Court of
127 the District of Columbia. All penalties recovered from such action, including reasonable
128 attorney’s fees, shall be paid into the General Fund of the District of Columbia.”.

129 (2) A new subsection (d) is added to read as follows:

130 “(d) Civil fines and penalties may be imposed by the Mayor pursuant to the Department
131 of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985
132 (D.C. Law 6-42; D.C. Official Code § 2-1801.01) (“Civil Infractions Act”) as alternative
133 sanctions for any violations of the provisions of this act or rules issued under the authority of this
134 act. The adjudication of any such infraction, fine, or penalty shall be pursuant to the Civil
135 Infractions Act.”.

136 (h) Section 9 (D.C. Official Code § 34-2708) is amended by striking the phrase
137 “Corporation Counsel” and inserting the phrase “Attorney General for the District of Columbia”
138 in its place.

139 (i) Section 10 (D.C. Official Code § 34-2709) is amended by striking the phrase “public
140 utility operators” and inserting the phrase “utility operators” in its place.

141 (j) A new section 10a is added to read as follows:

142 “Sec. 10a. Public education; rulemaking.

143 “(a) The Mayor may provide education programs, collect and report data, require
144 reporting by entities who are subject to this act, and take other action to develop an effective

145 damage prevention program as described in 49 U.S.C. § 60134 and regulations issued to
146 implement 49 U.S.C. § 60134.

147 “(b) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure
148 Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue
149 rules to implement this act.”

150 Sec. 3. Section 6 of the Office of Administrative Hearings Establishment Act of 2001,
151 effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by
152 adding a new subsection (b-25) to read as follows:

153 “(b-25) This act shall apply to all adjudicated cases involving a violation of the
154 Underground Facilities Protection Act of 1980, effective March 4, 1981 (D.C. Law 3-129; D.C.
155 Official Code § 34-2701 *et seq.*).”

156 Sec. 4. Fiscal impact statement.

157 The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal
158 impact statement required by section 602(c)(3) of the Home Rule Act, approved December 24,
159 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

160 Sec. 5. Effective date.

161 This act shall take effect following approval by the Mayor (or in the event of veto by the
162 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
163 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
164 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
165 Columbia Register.

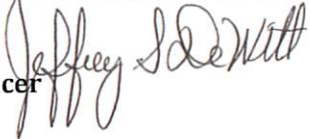
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: January 15, 2019

SUBJECT: Fiscal Impact Statement – Underground Facilities Protection
Amendment Act of 2019

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on January 7,
2019

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

When any person wants to do an excavation or demolition (project) in public or private space that could interact with utility operator facilities, she or he must call into the District's one-call center to report the proposed project and request that the utility operators inspect the project location and mark any utility facilities within their purview or notify the person in charge of the project that no facilities exist.

The bill requires a utility operator to report back to the one-call center after it marks its facilities¹ or if it determines that none of its facilities would be affected by the project. A project cannot proceed until the person responsible for the project receives confirmation from the one-call center that markings have been made or that no facilities exist. The project also cannot proceed if the person responsible for the project knows or has reason to know that utility facilities exist but have not been marked, unless the one-call notification process is repeated and the utility operator notifications have again been provided.

¹ The bill allows the Mayor to establish marking standards to which utility operators must conform.

The Honorable Phil Mendelson

FIS: "Underground Facilities Protection Amendment Act of 2019," Draft Bill as shared with the Office of Revenue Analysis on January 7, 2019

The bill requires that a project provide adequate protection, including supports as needed, to utility operator facilities when they enter the immediate vicinity of the facility.²

The bill eliminates an exception for small excavation projects that were contained within the limits of the original excavation and did not exceed twelve inches in depth.

Current law³ allows a utility operator to seek three times the damages resulting from an excavation or demolition. Current law⁴ also allows the District's Attorney General to pursue graduated civil penalty depending on whether it was a first or subsequent offense. The bill increases the civil penalty for subsequent violations from \$3,500 to \$5,000 for a second offense and \$5,000 to \$10,000 for a third or subsequent offense.⁵ As an alternative to these civil penalties, the bill authorizes the Mayor to issue civil fines and penalties under the Civil Infraction Act.⁶

The bill authorizes the Mayor to implement educational programs, collect data, and require reporting by entities subject to the Act in order to develop an effective damage prevention program.⁷

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The District Department of Transportation (DDOT) and the Department of Consumer and Regulatory Affairs (DCRA) will implement the bill's provisions with the former responsible for public space and the latter responsible for private space. DDOT and DCRA can enforce the one-call rules for both people directing projects and utility companies and can establish any education programs with their existing budget resources.

² The immediate facility is within 18 inches of the facility.

³ The Underground Facilities Protection Act of 1980, effective March 4, 1981 (D.C. Law 3-129; D.C. Official Code § 34-2707(b)).

⁴ See *id.* at D.C. Official Code § 34-2707(c).

⁵ The bill maintains the civil penalty for a first violation at \$2,500.

⁶ Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01).

⁷ As described in the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, approved December 29, 2006 (Pub.L. 109-468; 49 U.S.C. § 60134).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

MEMORANDUM

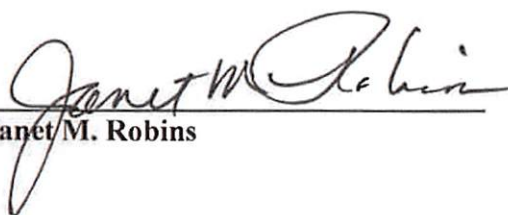
TO: Alana Intrieri
Executive Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: January 8, 2019

SUBJECT: Legal Sufficiency Review of Draft Bill – the “Underground Facilities
Protection Amendment Act of 2018”
(AL-15-658-K)

This is to Certify that this Office has reviewed the above-referenced draft proposed legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.



Janet M. Robins