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A BILL
23-117

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 require exploration of information sharing for planning and design purposes, to establish certain zones for acceptable marking, excavation and demolition, 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, to clarify emergency notification requirements, to authorize an advisory committee to advise the Mayor on the implementation of this act, 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 2020”.

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 to read as follows:

For the purposes of this act, the term:

“(1) “Demolition” or “demolish” means any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of any tool, equipment, or explosive.

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25 “(2) “Excavate” or “excavation” means any operation in which earth, rock, or
26 other material in or on the ground is moved, removed, or otherwise displaced by means of any
27 tool, equipment, or explosive, including grading, trenching, digging, ditching, drilling, boring,
28 augering, tunneling, scraping, cable or pipe plowing and driving, wrecking, razing, moving,
29 using equipment, trenchless technology, or removing any structure or mass of material.

30 “(3) “One-call center” means any organization among the purposes of which it
31 has is to notify one or more utility operators of planned excavation activities or demolition in a
32 specified area.

33 “(4) “Owner” in cases of water, sewage, or drainage, means the District of
34 Columbia, including the District of Columbia Water and Sewer Authority.

35 “(5) “Person” means any individual, firm, joint venture, partnership, corporation,
36 association, or any other legal entity, including any governmental body or authority or
37 subdivision of a governmental body or authority, including any trustee, receiver, assignee, or
38 personal representative thereof.

39 “(6) “Underground facility” means any item of personal property, including utility
40 lines, pipes, sewers, conduits, cables, valves, lines, wires, manholes, switches, equipment, traffic
41 signal and street light equipment, attachments, and those portions of poles located below the
42 ground, which are buried, placed below ground, or submerged for use in connection with the
43 storage or conveyance of any material or service listed in paragraph (8) of this section.

44 “(7) “Utility line” means any cable, pipeline, or other conduit installed
45 underground by which a utility operator furnishes materials or services.

46 “(8) “Utility operator” means a person, including the District of Columbia Water
47 and Sewer Authority, that supplies or transports any of the following materials or services by
48 means of a utility line:

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

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

52 “(C) Electric energy;

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

55 “(E) Sewage disposal and drainage;

56 “(F) Water; or

57 “(G) Steam.”.

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

59 (1) Subsection (a) is amended as follows:

60 (A) Strike the “District of Columbia Department of Transportation” and
61 insert the phrase “Mayor,” in its place.

62 (B) Strike the phrase “public utility operator” and insert the phrase “utility
63 operator” in its place.

64 (2) Subsection (b) is amended as follows:

65 (A) Strike the phrase “, including the Water and Sewer Authority,”.

66 (B) Strike the phrase “District of Columbia Department of Public Works”

67 and insert the word “Mayor” in its place.

68

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

70 “(c) The one-call center shall provide call records to the Department of Consumer

71 and Regulatory Affairs for enforcement purposes pursuant to section 8(d) (D.C. Official Code §

72 34-2707(d)).”

73 (c) Section 4 (D.C. Official Code § 34-2703) is amended by striking the phrase “The

74 District of Columbia Department of Transportation shall make available to each public utility

75 operator” and inserting the phrase “The Mayor shall make available to each utility operator” in

76 its place.

77 (d) A new section 4a is added to read as follows:

78 “Sec. 4a. Information sharing for planning and design purposes.

79 “To increase safety, and minimize hazard, repair costs, and work to complete a project

80 requiring excavation, DDOT, the Mayor, and all affected utility companies may enter into a

81 Memorandum of Understanding for the use of sharing appropriate information on underground

82 utility locations at the design stage.”.

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

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

85 “(a) Except as provided in section 10 (D.C. Official Code § 34-2709), no person shall
86 excavate or engage in demolition in a street, highway, or public space, or on private property,
87 without first notifying at least 96 hours, but no more than 10 days (excluding Saturdays,
88 Sundays, and legal holidays) (‘time limit’), before the commencement of the proposed
89 excavation or demolition, each utility operator that may have underground facilities in the area of
90 the proposed excavation or demolition. The notification shall be accomplished by the person
91 notifying the one-call center, in any manner approved by the one-call center, within the time
92 limit and the one-call center shall, in turn, notify the appropriate utility operators.”.

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

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

95 “(c)(1) If it is determined by a utility operator that a proposed excavation or demolition is
96 planned in such proximity to an underground facility that the underground facility may be
97 damaged, dislocated, or disturbed, the utility operator shall identify the approximate horizontal
98 location of the underground facility on the ground to within 2 feet from the outermost part of the
99 underground facility within 72 hours (excluding Saturdays, Sundays, and legal holidays) by
100 marking, staking, locating, or otherwise providing the location of the utility operator’s
101 underground facility. The method of identifying the location shall conform to standards and
102 requirements, including the use of the color-coding system, established in regulations issued by
103 the Mayor.

104 “(2) If it is determined by a District of Columbia agency or instrumentality that a
105 proposed excavation or demolition is planned in such proximity to an underground facility that
106 the facility may be damaged, dislocated, or disturbed, the District of Columbia agency or
107 instrumentality shall identify the approximate horizontal location of the underground facility on
108 the ground to within 2 feet from the outermost part of the underground facility within 72 hours
109 (excluding Saturdays, Sundays, and legal holidays) by marking, staking, locating, or otherwise
110 providing the location of the District of Columbia agency or instrumentality underground
111 facility. The method of identifying the location shall conform to standards or requirements,
112 including the use of the color-coding system, established in regulations issued by the Mayor.

113 “(3) After receiving notice from the one-call center as described in subsection (a)
114 of this section, a utility operator shall, within 72 hours, notify the one-call center whether it has
115 marked its underground facilities as required by this section, determined that it has no
116 underground facilities that are required to be marked, or provide another valid response to the
117 status of the ticket. No person may begin excavation or demolition until receiving notification
118 from the one-call center that the notices from the utility operators have been provided.”.

119 (4) Subsection (d) is amended to read as follows:

120 “(d)(1) When the actual excavation or demolition operation enters the immediate vicinity
121 of an underground facility, the person responsible for excavation or demolition shall provide
122 adequate protection to the underground facility, including the provision of support as needed,
123 and shall expose the underground facility by hand digging.

124 “(2) For the purposes of this subsection, the term “immediate vicinity of the
125 underground facility” means the space within 18 inches from the outermost part of the
126 underground facility to the proposed excavation marked in the field.”.

127 (5) Subsection (e) is repealed.

128 (6) Subsection (f) is repealed.

129 (7) Subsection (g) is amended as follows:

130 (A) Strike the phrase “excavating” and insert the phrase “excavating or
131 demolishing” in its place.

132 (B) Strike the phrase “public utility operator” and insert the phrase “utility
133 operator” in its place.

134 (9) A new subsection (h) is added to read as follows:

135 “(h) For the purposes of this section, a District of Columbia agency or
136 instrumentality shall mark buried infrastructure for traffic operations, including streetlights and
137 traffic signals.”.

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

139 (1) New subsections (e) and (f) are added to read as follows:

140 “(e) If a person engaged in or preparing to engage in excavation or demolition observes
141 evidence of the presence of an unmarked underground facility in the area of a planned or
142 ongoing excavation or demolition or observes a discrepancy between the marked or unmarked

143 underground facilities, the person may not begin or continue the excavation or demolition unless
144 the person:

145 “(1) Has repeated the notification to the one-call center required by section 5; and

146 “(2) Receives notification from the one-call center that the notices from the utility
147 operators required by section 5(c)(3) have been provided.”.

148 (g) Section 7(b) (D.C. Official Code § 34-2706(b)) is amended by striking the phrase
149 “public utility operator, the Metropolitan Police Department, and the District of Columbia Fire
150 Department, and shall” and inserting the phrase “notify the utility operator, 911, and any other
151 agency identified by the Mayor and” in its place.

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

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

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

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

162 (3) A new section (d) is added to read as follows:

163 “(d) Civil fines and penalties may be imposed by the Mayor pursuant to the Department
164 of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985
165 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”) as alternative
166 sanctions for any violations of the provisions of this act or rules issued pursuant to this act. The
167 adjudication of any such infraction, fine, or penalty shall be pursuant to the Civil Infractions
168 Act.”.

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

172 (j) Section 10 (D.C. Official Code § 34-2709) is amended as follows:

173 (1) Strike the phrase “public utility operators” and insert the phrase “utility
174 operators” in its place.

175 (2) Strike the phrase “possible. An imminent” and insert the phrase “possible. The
176 appropriate utility operator shall respond by marking the approximate horizontal location of the
177 underground facility within 2 hours of notification of the emergency excavation or demolition,
178 where practicable. An imminent” in its place.

179 (k) New sections 10a and 10b are added to read as follows:

180 “Sec. 10a. Public education; advisory committee.

181

182 “(a) The Mayor may provide education programs, collect and report data, require
183 reporting by entities who are subject to this act, and take other action to develop an effective
184 damage prevention program as described in 49 U.S.C. § 60134 and regulations issued to
185 implement 49 U.S.C. § 60134.

186 “(b)(1) The Mayor, may establish an advisory committee to advise on the implementation
187 of this act, and shall nominate and appoint persons to serve on the advisory committee pursuant
188 to section 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C.
189 Official Code 1-523.01(f)).

190 “(2)(A) The Mayor may appoint persons to fulfill the provisions of this act;
191 provided, that the membership of the advisory committee includes representation from each
192 utility operator, the Public Service Commission, the one-call center, excavation industry, and
193 utility locator services.

194 “(B) The advisory committee shall be solely advisory in nature and shall
195 not have authority to act for, or on behalf, of the Mayor.

196 “(3) A member appointed pursuant to this section shall serve a term of 2 years. A
197 member may be reappointed but shall not serve more than 2 consecutive terms.

198 “Sec. 10b. Rulemaking.

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

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202 Sec. 3. Section 6 of the Office of Administrative Hearings Establishment Act of 2001,
203 effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by
204 adding a new subsection (b-26) to read as follows:

205 “(b-26) This act shall apply to all adjudicated cases involving a violation of the
206 Underground Facilities Protection Act of 1980, effective March 4, 1981 (D.C. Law 3-129; D.C.
207 Official Code § 34-2701 *et seq.*)”.

208 Sec. 4. Fiscal impact statement.

209 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
210 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
211 October 16, 2006 (12 Stat. 2038; D.C. Official Code § 1-301.47a).

212 Sec. 5. Effective date.

213 This act shall take effect following approval by the Mayor (or in the event of veto by the
214 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
215 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
216 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
217 Columbia Register.