

#### **40-360.21. Definitions**

In this article, unless the context otherwise requires:

1. "**Abandoned**" means no longer in service and physically disconnected from a portion of the facility, or from any other facility, that is in use or still carries service.
2. "**Apartment community**" means any real property that has one or more structures and contains five or more dwelling units for rent or lease that are subject to title 33, chapter 10. For the purposes of this paragraph "dwelling unit" has the same meaning prescribed in section 33-1310.
3. "**Building official**" means the agency or officer employed by a political subdivision of this state and charged with the administration and enforcement of a building code to regulate the quality, type of material and workmanship of construction of buildings or structures.
4. "**Careful and prudent manner**" means conducting an excavation in such a way that when the excavation is less than or equal to twenty-four inches from an underground facility that is marked with stakes or paint or in some customary manner, the facility is carefully exposed with hand tools, and the uncovered facility is supported and protected.
5. "**Carefully**" means acting with reasonable care under the circumstances.
6. "**Cross culverts or similar roadway drainage facilities**" means transverse drainage structures with both ends or openings visible including box culverts, drainage pipes or other covered structures.
7. "**Detectible underground location device**" means any device that is installed underground and that is capable of being detected from above ground with an electronic locating device.
8. "**Excavation**" means any operation in which earth, rock or other material in the ground is moved, removed or otherwise displaced by means or use of any tools, equipment or explosives and includes, without limitation, grading, trenching, digging, ditching, drilling, augering, boring, tunnelling, scraping, cable or pipe plowing and driving.
9. "**Implied easement**" means any easement or right-of-way on private property required to provide utility services by means of underground facilities in property of the owner requesting such service.
10. "**Inactive**" means:
  - (a) That portion of an underground facility that is not in use but is still connected to the facility, or to any other facility, that is in use or still carries service.

(b) A new underground facility that has not been connected to any portion of an existing facility.

11. "**Installation records of an underground facility**" means maps, drawings, diagrams, surveys, schematics, illustrations, sketches or any other depictions or descriptions of an underground facility that reflect the location at the time of installation of the underground facility and any surface extensions in a reasonably accurate manner.

12. "**Homeowners' association**" has the same meaning prescribed in section 33-2001.

13. "**Landlord**" has the same meaning prescribed in section 33-1310 for an apartment community and has the same meaning prescribed in section 33-1409 for a mobile home park.

14. "**Locator strip**" means a type of detectible underground location device that consists of a plastic or other durable material ribbon containing a material capable of being detected from above ground with an electronic locating device and color coded by type of underground facility.

15. "**Locator wire**" means a type of detectible underground location device that consists of a copper wire or metallic, conductive, noncorrosive trace wire capable of being detected from above ground with an electronic locating device.

16. "**Mobile home park**" has the same meaning prescribed in section 33-1409.

17. "**One-call notification center**" means an organization of owners or operators of underground facilities that provides a telephone number notification service for the purpose of receiving and distributing to its members advance notifications from persons regarding planned excavations.

18. "**Person**" means any individual, firm, joint venture, partnership, corporation, association, homeowners' association, municipality, governmental unit, department or agency and shall include any trustee, receiver, assignee or personal representative thereof.

19. "**Routine road maintenance grading**" means the routine grading or resurfacing of the concrete, asphaltic or composite surface but not the subbase of a roadway by the state or a political subdivision of the state for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch.

20. "**Stakes or paint or in some customary manner**" means marking the location of an underground facility by the colors established by the commission. These colors shall be restricted to the underground facility location.

**21. "Underground facilities operator"** means a public utility, municipal corporation, landlord or other person having the right to bury underground facilities in any public street, alley, right-of-way dedicated to the public use or public utility easement, in any apartment community or mobile home park or pursuant to any express or implied private property easement. Underground facilities operator does not include a homeowner or homeowners' association that owns a sewer facility in a public street, alley, right-of-way dedicated to public use or public utility easement.

**22. "Underground facility"** means any item of personal property that is buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those portions of poles and their attachments below ground except cross culverts or similar roadway drainage facilities and landscape irrigation systems of two inches in diameter or less.

**23. "Working day"** means every day excluding Saturday of each week, the fourth Friday in November, Sunday of each week and other legal holidays as prescribed in section 1-301.

**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; detectable 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 public utility easement or in any express or implied private property utility easement or in any apartment community or mobile home park 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. For all excavations in an apartment community or mobile home park, the excavator shall inform the landlord as promptly as practical that the excavator intends to submit an inquiry to the landlord that will trigger the landlord's obligations provided by subsection B of this section and the inquiry itself shall be made by certified mail to the landlord, using a form prepared by a one-call notification center. The inquiry to a landlord may be made by a one-call notification center for a reasonable fee to the excavator.

**B.** Except as otherwise provided in this subsection, upon receipt of the excavator's inquiry, the underground facilities operator shall respond as promptly as practical, but in no event later than two working days, by carefully marking such facility with stakes or paint or in some customary manner. A landlord shall respond in the same manner and as promptly as practical, but in no event later than ten working days. 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 a one-call notification center that marking is unnecessary pursuant to a method established by the one-call notification center. An underground facilities operator may assign 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 area 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 provided in subsection F of this section, a person shall not begin excavating in any apartment community or mobile home park before the landlord has completed marking the underground facility or the excavator is notified that marking is unnecessary. After underground facility markings are complete or the excavator has received notice that marking is unnecessary, an excavator shall notify the landlord if any of the following conditions exist:

- 1.** Visible and obvious evidence, such as pavement cuts, that would alert a reasonable excavator to the presence of an unmarked underground facility within the boundary of the intended area of excavation.
- 2.** The excavator has concerns regarding the accuracy and meaning of the marks.
- 3.** The excavator encounters an underground facility that has not been marked.
- 4.** The excavator encounters an underground facility that has been incorrectly marked or marked in the wrong location.

**E.** For every excavation in an apartment community or mobile home park where the excavation method is boring:

1. Every underground facilities operator shall be notified of this methodology.
2. The excavator shall ensure that sufficient clearance is maintained between the bore path and any marked underground facility.
3. The excavator shall visually check the drill head each time it passes through potholes, entrances and exit pits, including during pullback.
4. Each underground facilities operator shall be given a reasonable opportunity to inspect its facility before and during the boring operation.

**F.** If a landlord fails to respond to an excavator's request in a manner required by this article, an excavator does not violate this article and fulfills the standard of care of a reasonably prudent excavator if the excavator complies with all of the following:

1. One working day before conducting the excavation, the excavator notifies the landlord in writing or by fax that the excavator has determined that the acts or omissions of the landlord is a refusal to respond to an excavator's request.
2. The excavator investigates for the presence of visible and obvious evidence that would alert a reasonable excavator to the presence of an unmarked underground facility within the boundaries of the area to be excavated.
3. The excavator carefully locates all unmarked facilities that are known to exist due to the excavator's investigation performed pursuant to paragraph 2 of this subsection using one of the methods listed in subsection G of this section and carefully marks the facilities with stakes or paint or in some customary manner. In addition, when a landlord provides verbal or written information regarding the location of underground facilities that are within the boundaries of the area to be excavated, the excavator carefully locates all such identified facilities using one of the methods listed in subsection G of this section and carefully marks the facilities with stakes or paint or in some customary manner.
4. The excavator takes measures to control all such located facilities in a careful and prudent manner.
5. The excavator shall not excavate if the excavator receives a response from the landlord that notifies or alerts the excavator to the presence of a mistake or an intention by the landlord to respond in a manner that is consistent with this article, even if the response will be untimely. A landlord's delay, failure to respond to a location request, failure to mark or other noncompliance is not excused by the excavator's or landlord's compliance with this subsection.

**G.** 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 or public utility easement, but not including any express or implied private property utility easement, shall carefully locate the facility by referring to installation records of the facility that are in the possession of the underground facility operator 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. This paragraph does not obligate an underground facilities operator to be aware of and utilize every surface or subsurface location technique available.

**H.** 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 or public utility easement, in performing the marking required by subsection B of this section, the underground facilities operator may refer to installation records or other records relating to the facility to assist in locating the facility and shall carefully locate the facility utilizing one of the methods listed under subsection G of this section.

**I.** 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 or the excavator is notified that marking is unnecessary pursuant to any mutually agreeable

method. A person that receives notice from the underground facilities operator of these facts shall not begin excavating before the underground facilities operator has completed marking the underground facility or the excavator is notified that marking is unnecessary. Except as provided in subsection J of this section, the underground facilities operator shall bear all of its own expenses associated with assigning representatives.

**J.** The marking required by subsection B of this section is valid for fifteen working days from the date of the marking. 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 working days 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 damages proximately caused by the violation, including economic loss.

**K.** 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 for marking or excavating or written arrangement that may constrain the excavation methods or that may provide for the delivery of installation records to the excavator for the purpose of 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.

**L.** 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 public 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. This paragraph does not

obligate a landlord to represent that an underground facility in any apartment community or mobile home park is abandoned if it was installed before January 1, 2007.

**2.** For an underground facility abandoned after December 31, 1988 or covered by installation records prepared under section 40-360.30, 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. 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 facilities operator of the apparent abandonment and has received verification of abandonment pursuant to paragraph 2 of this subsection.

**4.** Each one-call notification center may establish a method for reimbursing the verifying underground facilities operator for the expenses incurred under paragraph 2 of this subsection. The reimbursement method shall not include any charge or expense to the excavator. A landlord that fails to advise or represent that an underground facility is abandoned pursuant to paragraph 1 of this subsection, whose underground facility is verified as abandoned pursuant to this subsection and who has not filed information with a one-call notification center is liable to the one-call notification center and to all affected underground facilities operators and excavators for the cost of verifying abandonment together with any damages, including economic loss, proximately caused by the violation.

**M.** 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 or the facility is installed within single family residential property and is beneath a pool, permanent pool decking that is less than forty-eight inches from the pool or a permanent building. 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. Except as required by a city, town or county building code or other related code, for purposes of locating an underground facility a building official or political subdivision shall not compel the installation of one or more clean-outs on any underground sewer facility that is owned by another person and serves one customer where any portion of the underground sewer facility is in any public street, alley, right-of-way dedicated to public use, private property or easement.

**N.** 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.

**O.** 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 carefully 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 public utility easement.
- 2.** In performing the marking required by this subsection, the underground facilities operator of the sewer system shall carefully locate the facility by referring to installation records of the facility and by using one of the methods listed in subsection G 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 public utility 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.

P. For every landlord:

1. For the purposes of this article, each landlord is responsible for marking the underground facilities operated by the landlord pursuant to subsection B of this section. For the purposes of this paragraph, "underground facilities operated by the landlord" includes every underground facility that is in an apartment community or a mobile home park and that:

(a) Discharges into an underground facility that is operated by the landlord.

(b) Is supplied by an underground facility that is operated by the landlord.

(c) Is not operated by a public utility or municipal corporation.

2. If a landlord is unable to complete the location and marking within the time period provided by subsection B of this section, the landlord shall satisfy its obligations in the manner provided by subsection I of this section. Nothing in this subsection shall be construed to prevent the excavator and the landlord from entering into a mutually agreeable written schedule or written arrangement for satisfying the requirements of this section in the manner provided by subsection K of this section.

3. In performing the marking required by this subsection for an underground facility installed after December 31, 2006, the landlord shall carefully locate the facility by referring to installation records of the facility that are in the possession of the landlord and by using one of the methods listed in subsection G of this section.

4. In performing the marking required by this subsection for an underground facility installed before January 1, 2007, the landlord may refer to installation records or other records relating to the facility to assist in locating the facility and shall locate the facility using one of the methods listed in subsection G of this section.

5. Subject to the availability of monies, landlords may apply for grants from a grant account established for the purpose of meeting the standards prescribed by this article and for the purpose of creating installation records for facilities that are not required to be created or maintained by this article.

6. Notwithstanding any other provision in this article, a landlord is not liable for any costs or expenses, including damage to third parties, resulting from

damage to an underground sewer facility owned by the landlord and located within a public right-of-way if the damage was not caused by either:

(a) The landlord's or tenant's actions.

(b) The landlord's or tenant's refusal to grant access to the operator of the sewer system that connects to the landlord's underground sewer facility.

7. This article does not obligate a landlord to locate and mark a facility owned by a tenant if the tenant owns the mobile home, the tenant refuses to grant permission to the landlord to access the mobile home and the facility cannot be located without accessing the mobile home.

8. Any rule, regulation, lease or agreement that purports to obligate a tenant to perform the landlord's obligations required by this article is against the public policy of this state and is void.

9. This subsection does not obligate a landlord to maintain, clean or unstop underground facilities owned by another person.

Q. All inquiries and notices to a landlord shall be made to the address on file at a one-call notification center. Notwithstanding any other law, if the landlord has not filed information at the one-call notification center, the excavator does not violate this article and fulfills the standard of care of a reasonably prudent excavator if the excavator makes the inquiry or notice to the property owner of record according to the records of the county assessor in the county in which the property is located.

**40-360.23. Making excavation in careful, prudent manner; liability for negligence; notice; obliteration of marks**

A. Except as otherwise provided in section 40-360.28, subsection E, obtaining information as required by this article does not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such persons from liability for any damage or injury resulting from their negligence.

B. Except as otherwise provided in section 40-360.22, subsection D, after markings have been made pursuant to section 40-360.22, an excavator shall notify either the underground facilities operator or an organization designated by the underground facilities operator if the excavator encounters an underground facility that has not been located and marked or has been marked in the wrong location.

C. An excavator or an underground facilities operator shall not move or obliterate markings made pursuant to this article or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with this article.

**40-360.24. Notice of damage to underground facility**

A. In the event of any damage to or dislocation of any underground facility or detectible underground location device in connection with any excavation the person responsible for the excavation operations shall immediately notify the underground facilities operator and shall not attempt any repair to the damaged facility or device except the temporary emergency repairs allowed by this section.

B. Temporary emergency repairs shall not be made by an excavator to a public utility's or municipal corporation's natural gas, electric, propane, hazardous liquid, communication, cable television, sewer system, wastewater or water facilities without the consent of the underground facilities operator.

C. The excavation shall be left open until the arrival of representatives of the underground facilities operator. Upon receipt of notice, the underground facilities operator shall dispatch its representatives promptly, but in no event later than two working days, to examine the underground facility, and, if necessary, effect repairs. Unless it would interfere with compliance with commission rules or requirements regarding maintenance or restoration of service and repair of facilities, the underground facilities operator shall immediately respond to a notification for emergencies involving injury or damage.

**40-360.25. Injunction; mandamus**

A. If any person is engaging in excavation in violation of this article and the violation has resulted in or is likely to result in damage to an underground facility or if any person is proposing to use procedures for excavation in violation of this article that are likely to result in damage to an underground facility, any affected underground facilities operator may commence an action in the superior court in the county in which the excavation is occurring or is to occur, or in which the person complained of has its principal place of business or resides, for the purpose of having such act or omission stopped and prevented, either by mandamus or injunction.

**B.** If any landlord in violation of this article fails to file information with a one-call notification center, knowingly fails to update the information, fails to locate or mark an underground facility in a manner required by this article or fails to prepare and maintain installation records required by this article, any affected underground facilities operator, any harmed excavator or a one-call notification center may commence an action in the superior court in the county in which the facility is situated or in which the person complained of has its principal place of business or resides, for the purpose of having such acts or omissions stopped and prevented, either by mandamus or injunction. A landlord is deemed to have knowledge of the filing requirements ten working days after a copy of section 40-360.32, subsection A is sent by certified mail to the property owner of record according to the records of the county assessor in the county in which the property is located.

**C.** Such persons as the court may deem necessary or proper may be joined as parties.

**D.** The final judgment in any such action or proceeding shall either dismiss the action or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the complaint. If the court finds that the person complained of has repeatedly engaged in negligent or unsafe excavation or has knowingly violated this article without just cause, the court shall issue such order and take such equitable action as shall be reasonable and appropriate to prevent continuance by such person of such act or omission.

**40-360.26. Damage of underground facility; liability to owner; homeowner and tenant exemption**

**A.** If any underground facility is damaged by any person in violation of this article as a result of failing to obtain information as to its location, failing to take measures for protection of the facilities or failing to excavate in a careful and prudent manner, the person is liable to the owner of the underground facility for the total cost of the repair of the facility.

**B.** A homeowner or homeowners' association engaging in excavating in an express or implied private property utility easement across property owned by the homeowner or homeowners' association is not liable to the owner or operator of the underground facility damaged by the homeowner or homeowners' association pursuant to this section if the damaged underground facility is not buried or placed below ground in

accordance with the applicable standards, if the underground facility is not located within the easement or if the homeowner or homeowners' association engaged in the excavation has complied with section 40-360.22. This subsection does not apply to any person employed by a homeowner or a homeowners' association including a contractor licensed pursuant to title 32, chapter 10 or a person engaging in contracting without a license as prohibited by section 32-1151.

**C.** Notwithstanding any other provision in this article, a homeowner is not liable for any costs or expenses, including damage to third parties, resulting from damage to an underground facility owned by the homeowner but located within a public right-of-way if the damage was not caused by the homeowner's actions or by the homeowner's refusal 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. A tenant is not liable for any costs or expenses, including damage to third parties, resulting from damage to an underground facility owned by the tenant but located within a mobile home park if the damage was not caused by the tenant's actions or by the tenant's refusal to grant permission to the landlord to access the mobile home for the purpose of ascertaining the location of the underground facility.

**40-360.27. Liability for attorney fees; administrative costs and expenses**

The prevailing party in an action brought to impose liability under any section of this article or to have any act or omission stopped and prevented, either by mandamus or injunction, pursuant to section 40-360.25 is entitled to recover reasonable attorney fees. In addition, if the prevailing party is a one-call notification center, that party is entitled to recover reasonable administrative costs and expenses.

**40-360.28. Civil penalty; liability**

**A.** Except as provided in section 40-360.22, subsection M, a person who violates any provision of this article is subject to a civil penalty in an amount not to exceed five thousand dollars to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the state general fund.

**B.** If a violation of this article results in damage to an underground facility, the violator is liable to all affected underground facilities operators and excavators for all resulting damages proximately caused by the violations, including economic loss.

C. If a person violates this article by failing to provide timely notice as required by this article, by failing to respond in the time and manner provided by this article or by failing to locate and mark an underground facility in the manner provided by this article, the person is liable to all affected underground facilities operators and excavators for all damages proximately caused by the violation, including economic loss.

D. Notwithstanding any other law, a violation of section 40-360.22, subsection D or subsection I, paragraph 3 is a superseding event that breaks the chain of causation for any damages that could result from an underground facilities operator's failure to accurately locate or mark an underground facility.

E. If a landlord or an excavator complies with the duties set forth in sections 40-360.22, 40-360.30 and 40-360.32 for all facilities operated by a landlord as provided in section 40-360.22, subsection P, paragraph 1, the person is not liable for any death or injury to persons or property or for any economic loss to any person to the extent the conduct is regulated by this article. This section does not excuse any landlord or excavator from liability for any death or injury to persons or property or for any economic loss to any person to the extent the injury or loss does not arise from the conduct regulated by this article.

F. This section is not applicable to an excavation made:

1. During an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.
2. In agricultural operations or for the purpose of finding or extracting natural resources.
3. With hand tools on property owned or occupied by the person performing the excavation while gardening or tilling such property.

**40-360.29. Charters and ordinances of governments not affected; preemption**

A. Except as provided in subsection B, the provisions of this article shall be cumulative and supplemental to other provisions of law or charter and shall not be construed to prohibit cities and towns from enacting ordinances regulating excavations.

**B.** The legislature finds that notification, location, marking, installation records, enforcement and remedies relating to underground facilities pursuant to sections 40-360.22, 40-360.24, 40-360.25, 40-360.26, 40-360.28 and 40-360.30, are a matter of statewide concern and are hereby preempted by this state.

**40-360.30. Installation records of underground facilities**

**A.** Except as otherwise provided in this subsection, for all new underground facilities, excluding service drops and service lines, installed after December 31, 1988 in a public street, alley or right-of-way dedicated to the public use or public utility easement, but not including any express or implied private property utility easement, the underground facilities operator shall prepare and maintain installation records of the underground facility and shall refer to such records in marking pursuant to section 40-360.22, subsection B.

**B.** For all new sewer facilities installed after December 31, 2005 in any public street, alley, right-of-way dedicated to the public use or public utility easement, the underground facilities operator of a sewer system shall prepare and maintain installation records of the underground facility and shall refer to such records in marking pursuant to section 40-360.22, subsection B. To assist the underground facilities operator of a sewer system in preparing and maintaining such records, a certified survey plan of the sewer's location in the public street, alley, right-of-way dedicated to public use or public utility easement shall be provided to the underground facilities operator of a sewer system by the customer receiving sewer service as a condition to receiving such sewer service.

**C.** For all new underground facilities that are installed after December 31, 2006 in an apartment community or mobile home park and that are not owned or operated by a public utility or municipal corporation, the landlord at the time the facilities are installed or abandoned shall prepare and maintain installation records of the underground facilities. Successor landlords shall maintain the installation records that come into their possession. The landlord shall keep records in its possession and shall refer to records in marking pursuant to section 40-360.22, subsection B.

**D.** Installation records required by this section shall reflect, if applicable, any field notes or other indications by the installer of the facilities that the installation involved deviations or changes from installation standards, instructions or designs and the correction of any inaccuracies found as a result of locating or marking the

underground facilities. Installation records of an underground facility shall indicate if all or a portion of the facility has been abandoned. Installation records required by this section are for the internal use of the underground facilities operator and its successor in locating its underground facilities and are not intended to be relied on by others.

**E.** Information contained in installation records relating to the nature and location of underground facilities, but not the installation records themselves, shall be made available on a confidential basis within ten working days from a written request to persons who are engaged in the design of construction projects involving excavation in a public street, alley, right-of-way dedicated to the public use, or public utility easement, in any express or implied private property utility easement, or in an apartment community or mobile home park. The underground facilities operator shall make the same information available to authorized persons who are complying with a requirement imposed by contract providing for construction projects involving excavation in a public street, alley or right-of-way dedicated to the public use or public utility easement, in any express or implied private property utility easement, in any apartment community or mobile home park or by operation of law. The only lawful use of the information that is obtainable pursuant to this subsection is to minimize delays of construction projects. The underground facilities operator may indicate any portions of the information that are proprietary and require the authorized person to protect proprietary matters. The underground facilities operator may satisfy the requirements of this subsection by allowing an authorized person to inspect or copy the installation records required by this section, without charge, or may provide the information in another manner for a reasonable fee. The underground facilities operator is not liable to any person for damages arising from any person's inspection of or reliance on the installation records that are made available for the purpose of complying with this subsection.

**40-360.31. Routine road maintenance; prior notification**

**A.** Prior to performing routine road maintenance grading as defined in section 40-360.21, the state or the political subdivision performing the routine road maintenance grading shall notify every public utility, municipal corporation or other person having the right to bury underground facilities in advance. For the purpose of this section advance notification means written notice delivered to the utility not more than sixty calendar days nor less than two working days prior to the performance of routine maintenance grading. The notification shall include all roads

and their location which are planned for routine road maintenance grading within the time period identified. Notification is complete when received by the persons identified in the records of the commission pursuant to section 40-360.22. No marking pursuant to section 40-360.22 is required in response to a notification of routine road maintenance and the notification specified in this section constitutes full compliance with any notice requirements for routine road maintenance grading.

**B.** If written notice, as required by subsection A of this section, is not practicable, the state or a political subdivision shall comply with the notice provisions required for excavation under section 40-360.22 before performing routine road maintenance grading.

**C.** Routine road maintenance grading as defined in section 40-360.21, does not include:

1. Recovery of material from the bottom of the borrow ditch at a depth beyond the depth established when the borrow ditch was originally constructed or subsequently reconstructed to accommodate a newly installed underground facility.
2. Grading which progressively reduces the elevation of the roadway surface.
3. Grading of the sub-base of the roadway.
4. Any other activity that intrudes on the sub-base of the roadway.

**D.** If the state or a political subdivision performs any of the activities listed in subsection C of this section, the state or political subdivision shall be required to comply with the notice provisions required for excavation under section 40-360.22.

**40-360.32. One-call notification center membership; termination; designated representatives**

**A.** Every landlord, without charge to the landlord, shall file with a one-call notification center the property name, property address, contact name or job title, contact fax number, contact postal mailing address, contact electronic mail address if available, contact telephone number and hours of contact. The landlord shall update any information required by this subsection within seven working days after a change in the information occurs. The contact person or persons shall be readily available during the hours of contact on file. The hours of contact required by this subsection shall be consistent with the landlord's regular business hours, but shall

total at least thirty hours per week. Subject to the availability of monies, a one-call notification center may apply for grants from a grant account established for the purpose of maintaining and imparting the information supplied to the center from landlords as prescribed by this subsection.

**B.** Every underground facilities operator who is obligated to locate and mark underground facilities pursuant to section 40-360.22, subsection B, except a landlord exempted by this section, shall be a member of a one-call notification center, either statewide or serving each county in which such entity or person has underground facilities. This subsection does not apply to a landlord if the only underground facilities that the landlord are obligated to locate and mark are within an apartment community or mobile home park.

**C.** Each one-call notification center shall establish a limited basis participation membership option, which may be made available to all members, but which must be made available for any member serving less than one thousand customers, or any member irrigation or electrical district. An underground facilities operator who elects limited basis participation membership shall provide to the one-call notification center the location of its underground facilities solely by identifying the incorporated cities and towns, or for unincorporated county areas, by identifying the townships, in which it has facilities. The service level provided to limited basis participation members by the one-call notification center is limited to providing excavators with the names and telephone numbers the excavators should contact to obtain facilities location. Each one-call notification center shall establish fair and reasonable fees for limited basis participation members, based on customer count, areas occupied or miles of underground facilities.

**D.** When any person neglects or refuses to pay fees when due and is in arrears for two months, the one-call notification center may terminate the membership of that person without notice and may have a claim for fees and a separate claim for damages for breach of an ancillary agreement. The one-call notification center may refuse to reinstate any person's membership until that person's fee is paid in full.

**E.** Every underground facilities operator, except a landlord exempted by this subsection, 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. This subsection does not apply to a landlord if the only underground facilities that the landlord are obligated to locate and mark are within an apartment community or mobile home park.

**F.** All underground facilities operators, except landlords, in a county having a population of more than seven hundred one thousand persons shall have designated representatives available and on call for excavators who by public works contract specifications or municipal ordinances are required to work in congested locations involving public streets, alleys or rights-of-way dedicated to the public use during the night or on weekends. Night and weekend telephone numbers to reach the designated representatives shall be furnished to the excavator in writing within forty-eight hours after they are requested for a specific location.

**G.** The form prepared by a one-call notification center as provided in section 40-360.22, subsection A may provide a disclaimer of liability, may instruct the landlord to obtain and review this article and may instruct the landlord to obtain the advice of an attorney to answer any questions about any part of the form or this article. The form may include general guidelines that describe the obligations and rights of landlords as established by this article. This information may include the following rights and obligations:

1. To file and maintain current information with a one-call notification center.
2. To locate and mark certain underground facilities in response to an excavator's request.
3. The manner of marking.
4. The timing of marking.
5. The notification to an excavator if the landlord believes that the landlord will not be timely in making the markings.
6. To provide and receive information from an excavator, including contact information and the estimated construction schedule.
7. To require the excavator to mark the perimeter of the excavation.
8. To hold a preconstruction conference with an excavator.
9. To enter an agreement with an excavator to modify the excavation schedule, marking schedule or means of excavation.
10. To request an excavator to mark the excavation area.