

SOUTHERN UTE INDIAN TRIBAL CODE

TITLE 22

EXCAVATION CODE

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22-1-101. Purpose. The purpose of the Excavation Code is to prevent injury or monetary damages caused by excavation resulting from damage to pipelines, underground utility lines, cable television lines and similar underground facilities by requiring location and marking of such facilities prior to any excavation. Nothing contained in this Code shall be deemed to waive the requirements of any other law that establishes conditions for conducting an excavation.

22-1-102. Definitions.

- (1) “Damage” includes, but shall not be limited to, the penetration or destruction of any protective coating, housing, or other protective device of an underground facility, the partial or complete severance of an underground facility, or rendering any underground facility inaccessible.
- (2) “Emergency” means an occurrence or situation, beyond the excavator’s control, necessitating immediate action to prevent or mitigate loss of, or significant damage to, life, health, public safety, essential public services, property or underground facilities and where advance notice of an excavation is impracticable under the circumstances.
- (3) “Excavate” or “Excavation” means any operation in which earth, rock or other similar material is moved, removed or displaced by means of any tools, equipment or explosives and includes, but is not limited to, augering, backfilling, blasting, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, tunneling and directional boring.
- (4) “Excavator” means any person or entity that excavates or conducts excavation activities.
- (5) “Operator” or “Owner” means a person that owns, operates, maintains or has the right to bury underground facilities.
- (6) “Person” means the legal representative of an individual or the individual, a sole proprietorship, partnership, association, corporation, joint venture, or any other legally-recognized business entity, the Southern Ute Indian Tribe, or any subdivision or instrumentality of the Tribe.
- (7) “Underground Facility” means any tangible personal property that is underground and is used in connection with the storage, transportation or

delivery of water, sewage, communications, electricity, oil, gas, oil and gas products or byproducts, steam, slurry or other similar materials or products, including, but not limited to, pipes, pipelines, sewers, conduits, cables, valves, lines, wires and attachments to such items.

22-1-103. Duties of Excavators.

- (1) Every person who engages in excavation or prepares engineering plans for excavation shall:
 - (a) Request all possible owners or operators of underground facilities at the proposed excavation site to locate and mark the underground facility as set forth in § 22-1-105 below. The request shall, at least, be given by telephone to the Utility Notification Center of Colorado and by any other means reasonably calculated to give actual notice of the request to the owners or operators.
 - (b) Plan the excavation to avoid or minimize interference with or damage to underground facilities.
 - (c) Include information in the engineering plans identifying all underground facilities in the excavation area.
- (2) The excavator shall request reaffirmation of the line location from the owners or operators of the underground facility not less than every 30 working days after the initial location request or on a more frequent basis as needed to maintain clearly visible markings of underground facilities.
- (3) Prior to initial exposure of the underground facility, the excavator shall maintain an estimated clearance of at least 18 inches between existing underground facilities previously identified and marked by the owners or operators of the underground facilities and the cutting surface of any mechanical excavating equipment. An excavator shall not use any mechanical excavating equipment within 18 inches of the exterior sides of markings for an underground facility before the excavator has determined the exact location of the underground facilities by excavating with hand tools.
- (4) The excavator shall provide such support, including but not limited to, subsurface, lateral and subjacent support, for underground facilities in the excavation area as is necessary to prevent damage.
- (5) The excavator shall backfill all excavations in a manner and with materials necessary to prevent damage to underground facilities.

- (6) The excavator shall immediately notify the owner or operator of any underground facilities that have been, or may have been, damaged or dislocated during the excavation work. Notice may be given by telephone, in person or in writing so long as the means used is reasonably calculated to give immediate notice.
- (7) The excavator shall not move or obliterate markings made to show the location of any underground facility or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with this Code.
- (8) The requirements of this section shall not apply to the following:
 - (a) Emergency excavations.
 - (b) Gardening.
 - (c) Tilling private ground.

22-1-104. Notice of Excavation.

- (1) Prior to beginning any excavation, every excavator shall notify each owner or operator of an underground facility in the proposed excavation area of the commencement, extent and duration of the excavation work.
 - (a) Notice may be given by telephone, in person or by writing delivered to the owner or operator.
 - (b) Notice shall be given not less than 3 business days and not more than 7 business days prior to the commencement of the excavation.
 - (c) Notice shall include the following information:
 - (i) Name and telephone number of the person giving notice.
 - (ii) Name and telephone number of the excavator.
 - (iii) Specific location, starting date, duration and description of the proposed excavation.

22-1-105. Emergency Excavation. Every person who engages in emergency excavation shall take all necessary and reasonable precautions to avoid or minimize interference with or damage to existing underground facilities in or near the excavation and shall, as promptly as is reasonable under the circumstances, notify the owners and operators of the underground facilities and the Utility Notification Center of Colorado of the specific location and description of the emergency excavation. In the event of damage

to or dislocation of any underground facility caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner of the underground facility.

22-1-106. Marking of Underground Facilities.

- (1) Every owner or operator shall, upon the request of any person intending to commence excavation who gives notice in accordance with the requirements of this Code, locate and mark on the surface of the ground, pursuant to the color code stated in this Code, the actual horizontal location of underground facilities in the area of the excavation within 18 inches horizontally from the exterior sides of such facilities and the depth of the underground facilities, in a manner that enables the excavator to locate the underground facilities in advance of and during the excavation work.
- (2) The underground facilities shall be marked with stakes, flags, whiskers, paint or in some other way customary in the line-staking industry, conspicuous in nature and designed to last at least 30 working days if not disturbed.
- (3) In marking the location of underground facilities, an owner or operator shall use the following color code:
 - (a) Electric power - safety red.
 - (b) Gas, oil, steam - safety yellow.
 - (c) Communications - safety orange.
 - (d) Potable water - safety blue.
 - (e) Reclaimed water or slurry - safety purple.
 - (f) Sewer - safety green.
- (4) If the owner or operator of an underground facility finds that he has no underground facilities in or near the proposed excavation, the owner or operator shall use reasonable care to advise the excavator of the absence of any underground facilities in the proposed excavation area by communicating directly with the excavator or by clearly marking that no underground facilities exist within the proposed excavation area.
- (5) If the owner or operator fails to correctly mark the underground facility after having been given notice as required by this Code and the failure to correctly mark the underground facility results in additional costs to the excavator, then the owner or operator shall reimburse the excavator for the additional costs.

- (6) An owner or operator of an underground facility shall not move or obliterate markings made to show the location of any underground facility or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with this Code, and any violation of this provision shall subject the owner or operator to the penalties as set forth in § 22-1-107(3), below.

22-1-107. Liability for Damage to Underground Facilities.

- (1) If any excavator fails to comply with the requirements of this Code to give notice of a proposed excavation or to determine the location of an underground facility, then the excavator shall be liable for a fine of \$200 per violation in addition to any other penalties provided by this section.
- (2) If any excavator fails to comply with the requirements of this Code to determine its location damages an underground facility, then the excavator shall be liable for the following damages and civil penalties:
 - (a) Reimbursement to the owner or operator of the underground facility for the actual cost of the damage to the underground facility, including the cost of restoration of services, together with the reasonable costs and expenses of suit, including attorney fees.
 - (b) Indemnification of the affected owner or operator against any and all claims or actions for personal injury, death, property damage or service interruption resulting from the damage to the underground facility.
 - (c) Payment of a civil penalty to the Southern Ute Indian Tribe in the amount of \$5,000 for a first offense and up to \$25,000 for each subsequent offense within a 12-month period after the date of the first offense.
 - (d) Payment of a civil penalty to the Southern Ute Indian Tribe in the amount of \$75,000 where the excavator has committed violations of the Code on more than 3 separate occasions within a 12-month period after the date of the first offense.
- (3) If any underground facility is damaged by an excavator who has complied with the requirements of this Code to determine its location and damage to the underground facility is caused by the failure of the owner or operator of the underground facility to correctly locate and mark that underground facility as required by this Code, then the excavator shall have no liability for damage to that facility and the owner or operator shall be liable for the following monetary damages:

- (a) Reimbursement to the excavator for the actual cost of the damage caused by delay in the excavation project while the underground facility is restored, repaired or replaced, together with the reasonable costs and expenses of suit, including attorney fees.
 - (b) Indemnification of the affected excavator against any and all claims or actions for personal injury, death, property damage or service interruption resulting from the damage to the underground facility.
- (4) If any underground facility is damaged by an excavator who has complied with the requirements of this Code to determine its location and the damaged underground facility was correctly located and marked by the owner or operator of the underground facility as provided in this Code, then the excavator causing the damage shall be liable to the owner or operator of the underground facility for only the actual costs of damage to the underground facility, including the cost of restoration of service.
- (5) An excavator, who fails to comply with the requirements of Section 22-1-103(3) of this Code to determine the exact location of an underground facility through excavation with hand tools and who causes damage to an underground facility as a result of this failure, shall be liable for a fine of \$500 per violation in addition to any other penalties provided by this section.

22-1-108. Severability. If any court of competent jurisdiction holds any provision of this Code invalid, the remaining provisions of the Code shall have full force and effect.

22-1-109. Prior Inconsistent Laws Repealed. All prior laws, resolutions, regulations, rules, and provisions of the Tribe previously adopted are repealed to the extent that they are inconsistent with the provisions of this code.

TITLE 22

EXCAVATION CODE

History and Amendments¹

The Southern Ute Indian Tribal Excavation Code adopted by Tribal Resolution No. 2004-48 on February 23, 2004 and approved by the Bureau of Indian Affairs on March 4, 2004.

Resolution No. 2021-151 repealed and replaced Title 22 – Excavation Code – with a reformatted Excavation Code for online publication that contained only minor technical corrections, no substantive revisions, that the Bureau of Indian Affairs concurred it did not need to formally approve (April 25, 2023).

Resolution No. 2023-079 authorized on-line publication of the 2021-151 reformatted Excavation Code and provided an effective date of May 25, 2023.

¹ This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.