

AN ORDINANCE TO PREVENT INJURY TO PERSONS AND PROPERTY AND INTERRUPTIONS OF UTILITY SERVICES RESULTING FROM DAMAGE TO GAS PIPES AND OTHER UNDERGROUND UTILITY FACILITIES CAUSED BY BLASTING OR EXCAVATING OPERATIONS, AND TO PROVIDE FOR A FINE OF UP TO \$1000 FOR VIOLATION OF THIS ORDINANCE.

BE IT ORDAINED by the Board of Commissioners of Newton County, Georgia, and it is hereby ordained by authority of the same as follows:

BLASTING OR EXCAVATING NEAR UNDERGROUND GAS PIPES AND UTILITY FACILITIES.

Section 1. Purpose.

The purpose of this ordinance is to prevent injury to persons and property and interruptions of utility and cable television service resulting from damage to gas pipes and other underground utility facilities caused by blasting or excavation operations by providing a method whereby the location of underground gas pipes and other utility facilities will be made known to persons planning to engage in blasting or excavation operations so that such persons may observe proper precautions with respect to such underground gas pipes and other utility facilities.

Section 2. Definitions.

As used in this ordinance, the term:

(a) "Blasting" means any operation by which the level of grade of land is changed or by which earth, rock, buildings, structures, or other masses or materials are rendered, torn, demolished, moved, or removed by the detonation of dynamite or any other explosive agent.

(b) "Business days" means Monday through Friday, excluding the following holidays: New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Friday following Thanksgiving Day, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday.

(c) "Business hours" means the time from 7:00 A.M. to 4:30 P.M. local time on business days.

(d) "Corporation" means any corporation, municipal corporation, county, joint-stock company, partnership, association, business trust, cooperative, organized group of persons, whether incorporated or not, or receiver(s) or trustee(s) of any of the foregoing.

(e) "Distribution of gas" means the distribution or furnishing of gas to the ultimate consumer through the use of underground pipes or other facilities and includes, but is not limited to, the distribution of gas pursuant to a certificate of public convenience and necessity issued by the

Public Service Commission.

(f) "Excavating" means any operation by which the level or grade of land is changed and includes, without limitation, grading, trenching, digging, ditching, auguring, scraping and pile driving. Such term, however, does not include public road maintenance activities within the rights of way of a public road on the state highway system, the county road system, or the city street system.

(g) "Gas" means any flammable gaseous matter and includes, but is not limited to, natural gas, manufactured gas, liquefied petroleum gas, and any material composed predominantly of any of the following hydrocarbons or mixtures of the same: methane, propane, propylene, butane, or butylene. The term "gas" shall also include liquid petroleum products.

(h) "Mechanized excavating equipment" means all equipment which is powered by any motor, engine, or hydraulic or pneumatic device and which is used for excavating, including, without limitation, bulldozers, backhoes, power shovels, scrapers, draglines, clamshells, augurs, drills and pile drivers.

(i) "Person" means an individual or corporation. Such term, however, does not include and no provision of this ordinance shall apply to any excavating done by a railroad when excavating is made entirely on the land which the railroad owns or on which the railroad operates or, in the event of an emergency, on adjacent land. Such term, however, also does not include and shall not apply to the Department of Transportation or its officers or employees when excavating, blasting, or operating mechanized excavating equipment anywhere within public road rights of way.

(j) "Railroad" means all corporations, companies, or individuals owning or operating any railroad line or railroad company in this state.

(k) "Service area" means a contiguous area or territory which encompasses the underground distribution system or network of gas pipes or other underground utility facilities by means of which a utility provides utility service.

(l) "Transmission of gas" means the transmission or transportation of gas through the use of underground pipes or other facilities and includes, but is not limited to, the transportation or transmission of gas in interstate commerce pursuant to a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission and the transmission or transportation of gas in interstate commerce pursuant to a certificate of public convenience and necessity issued by the Public Service Commission.

(m) "Utilities Protection Center" or "Center" means the corporation or other organization formed by utilities to provide a joint telephone number notification service for the purpose of receiving advance notification from persons planning to blast or excavate and distributing such notifications to its affected utility members.

(n) "Utility" means any person operating or maintaining gas pipes or other underground utility facilities.

(o) "Utility facility" means underground mains, pipes, conduits, cables, ducts, wires, fiber optic or photonic lines, or other structures operated or maintained by utilities in connection with the storage, conveyance, distribution, or transmission of gas, electric energy, telephone or telegraphic, or cable television or video communications.

Section 3. Requirement.

(Reserved)

Section 4. One-call notification centers.

(a) All utilities operating or maintaining underground utility facilities within the unincorporated area of the county shall participate as members in and cooperate with the Utilities Protection Center. No duplicate center shall be established. The activities of the Center shall be funded by the participating utilities.

(b) The Utilities Protection Center shall maintain a list showing the counties within which its participating utilities maintain gas pipes and other underground utility facilities. The Center shall also maintain a list of the name, address and telephone number of the office, department, or other source from or through which information respecting the location of gas pipes and other underground utility facilities of its participating utilities may be obtained during business hours on business days.

Section 5. Duties.

(Reserved)

Section 6. Prerequisites to blasting or excavating.

(a) No person shall commence, perform or engage in blasting or in excavating with mechanized excavating equipment on any tract or parcel of land in the unincorporated area of Newton County unless and until the person planning the blasting or excavating, at least 72 hours prior to commencement of the work, excluding hours during days other than business days, has given actual notice to the Utilities Protection Center, which notice shall:

(1) Describe the tract or parcel of land upon which the blasting or excavation is to take place with sufficient particularity to enable the utility to ascertain the precise tract or parcel of land involved;

(2) State the name, address, and telephone number of the person who will engage in the blasting or excavating and state whether such person desires to be notified in the event there are no utility facilities present on the tract or parcel specified;

(3) Describe the type of blasting or excavating to be engaged in by the person; and,

(4) Designate the date upon which the blasting or excavating will commence.

(b) Whenever any blasting or excavating with mechanized excavating equipment is undertaken on a project on the public road system under contract with the Department of Transportation, the notice required under subsection (a) shall be deemed to have been given for all utility facilities other than gas which are shown on the project plans and for which a notice of contract award and notice of preconstruction conference have been mailed to the utility by the Department of Transportation. Nothing contained in this subsection shall be construed to relieve any person under contract with the Department of Transportation of the duties set forth in Section 8 as to all underground utility facilities.

(c) In the event the blasting or excavation work which is the subject of the notice given pursuant to subsection (a) will not be completed within 17 days following the date of such notice, then no later than 14 days following such date of notice an additional notice must be given in accordance with subsection (a).

(d) If, subsequent to giving the notice required by subsection (a), a person planning excavating determines that such work will require blasting, then such person shall promptly so notify the Utilities Protection Center.

Section 7. Duty of utility notified of proposed blasting or excavating.

(a) Within 72 hours, excluding hours during days other than business days, following receipt by the Utilities Protection Center of actual notice filed in accordance with Section 6, each utility shall stake or otherwise mark the surface of the tract or parcel of land to indicate the location of gas pipes or other underground utility facilities. Such markings shall be in accordance with the following color code:

(1) Safety Red shall be used to mark electric power distribution and transmission facilities;

(2) High Visibility Safety Yellow shall be used to mark gas and oil distribution and transmission facilities;

(3) Safety Alert Orange shall be used to mark telephone, telegraph, cable television, video, and other telecommunications facilities;

- (4) Safety Precaution Blue shall be used to mark water systems facilities; and,
- (5) Safety Green shall be used to mark sewer systems facilities.

(b) If the person planning the blasting or excavating has stated pursuant to paragraph 6(a)(2) that he desires to be notified in the event there are no utility facilities present on the tract or parcel specified, then each utility shall attempt to so notify such person by telephoning such person at the number furnished pursuant to paragraph 6(a)(2).

Section 8. Treatment of gas pipes and other underground utility facilities by blasters and excavators.

Persons engaged in blasting or excavating with mechanized excavating equipment shall not strike, damage, injure, loosen, or remove lateral support from or around any gas pipe or other underground utility facility which has been staked or marked in accordance with this chapter; provided, however, that nothing in this chapter shall be construed or applied to limit or reduce the duty of a person engaged in blasting or excavating in the vicinity of gas pipes or other underground utility facilities, irrespective of whether the same have been staked or marked as provided in this chapter.

Section 9. Degree of accuracy required in pipe or underground utility facility location; effect of inaccurate information on liability of blaster or excavator; liability of gas company for losses incurred for lack of accurate information, etc.

(a) For the purposes of this Ordinance, information concerning the location of gas pipes and other underground utility facilities which is given by a utility to any person must be accurate to within 24 inches measured horizontally from the outer edge of either side of such facilities. If any gas pipe or other underground utility facilities become damaged due to the furnishing of inaccurate information as to their location by the utility, the liabilities imposed by this Ordinance shall not apply.

(b) Upon documented evidence that the person seeking information as to the location of gas pipes or other underground utility facilities has incurred losses or expenses due to inaccurate information, lack of information, or unreasonable delays in supplying information by the utility, the utility shall be liable to that person for his losses.

Section 10. Effect of Ordinance upon rights, powers, etc., of utilities.

This Ordinance does not affect and is not intended to affect any right, title, power, or interest which any utility may have with relation to any facility or any easement, right of way, license, permit, or other interest in or with respect to the land on which the facility is located.

Section 11. Effect of Ordinance upon rights, powers, etc., of state, counties, or municipalities concerning facilities located on public road or street rights of way.

This Ordinance does not affect and is not intended to affect any rights, powers, interest or liability of the state or the Department of Transportation with respect to the state highway system, the county road system or the municipal street system, or of a county with respect to the county road system or a municipality with respect to a city street system, with relation to any gas pipe or other underground utility facility which is or may be installed within the limits of any public road or street right of way, whether the installation is by written or verbal permit, easement, or any form of agreement whatsoever.

Section 12. Applicability of Ordinance in the event of emergencies.

If any emergency arises which presents an immediate and substantial danger to life, health, or property or which requires the establishment or restoration of gas, electric, communication, rail or other essential public services, it shall be lawful for the person who undertakes to prevent such damage to life, health, or property or who is responsible for the establishment or restoration of such gas, electric, communication, rail, or other essential public services to engage in blasting or excavating with mechanized excavating equipment for such purpose without complying with Section 6, provided that, before commencing the same or as soon thereafter as is reasonably practical, the person shall give notice thereof to any utility which the person, in the exercise of reasonable judgment, believes may have gas pipes or other underground utility facilities within such proximity as to be affected by the blasting or excavating with mechanized excavating equipment.

Section 13. Penalties for violation of Ordinance.

(a) Any person who violates the requirements of Section 6 shall be guilty of a crime punishable by payment of a fine of \$1,000. The fine provided for in this subsection shall not be imposed on a person engaged in farming activities on land he owns or leases.

(b) Any person who violates the requirements of Section 6 and whose subsequent excavating or blasting damages gas pipes or other underground utility facilities shall be strictly liable for:

(1) Any cost incurred by the utility in repairing or replacing its damaged facilities; and,

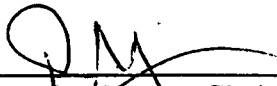
(2) Any injury or damage to persons or property resulting from damaging the underground gas pipe or other utility facilities.

Any such person shall also indemnify the affected utility against all claims, if any, for personal injury, property damage, or service interruptions resulting from damaging the underground gas pipes or other utility facilities.

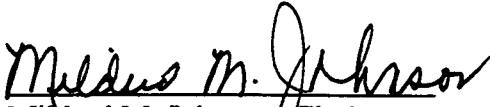
(c) Subsections (a) and (b) shall not apply to any person who shall commence, perform or engage in blasting or in excavating with mechanized equipment on any tract or parcel of land in the unincorporated area of Newton County if the utility to which the notice was given respecting such blasting or excavating with mechanized equipment as prescribed in subsection 6(a) has failed to comply with Section 7 or has failed to become a member of the Utilities Protection Center as required by Section 4.

Adopted and approved by the Board of Commissioners on the 4 day of November, 1997.

NEWTON COUNTY BOARD OF COMMISSIONERS

By: 

Davis Morgan, Chairman

Attest: 

Mildred M. Johnson, Clerk

{Affix County Seal}