

---

Sponsored by: Mayor Hennessy

---

**AN ORDINANCE AMENDING THE O’FALLON CITY CODE AND REVISING REQUIREMENTS FOR SUBSURFACE DIRECTIONAL BORING WITHIN RESIDENTIAL AREAS.**

**WHEREAS**, Chapter 406 of the Municipal Code addresses excavations and work within the right-of- way and near existing utility lines; and

**WHEREAS**, in May 2022 the City Council enacted Ordinance 6909 and established conditions and requirements related to directional boring in order to assure public safety and the health and welfare of the community; and

**WHEREAS**, the City Council now wishes to revise the regulations previously enacted as hereinafter provided; and to codify the regulations to facilitate compliance and enforcement;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF O’FALLON, MISSOURI, AS FOLLOWS:**

**SECTION 1:** Article I of Chapter 406 of the Code of Ordinances of the City of O’Fallon, Missouri, is hereby amended by the addition of one new Section, initially to be designated as Section 406.015, to read as follows:

**Chapter 406. Excavation and Work Affecting Right-of-Way, Utility Lines or Other Public Interests**

**Article I. General**

**Section 406.015 Requirements for Directional Boring in Residential Areas**

A. In addition to (and not in lieu of) all other conditions and requirements in this Municipal Code, required by previous regulations promulgated by the City, or appearing as a condition on any permit, all directional boring in any residential area shall be conducted in accord with the conditions and requirements of this Section.

B. Additional Administrative Requirements and Restrictions:

1. The utility provider, contractor and sub-contractor for any excavation work must be co-listed on the Excavation Permit and all such parties (collectively, the “Permittee”) shall be listed as insureds on the Certificate of Insurance (COI) covering the work.

2. Each Permittee shall hold no more than ten (10) Excavation Permits involving active directional boring in the City at any time. Additional permits shall not be issued by the City until the active directional boring under existing permits has been completed by the Permittee. For example, if Permittee is conducting directional boring under ten (10) permits and completes the active directional boring under one (1) such permit, one (1) additional permit may be issued by the City. The purpose of this provision is to limit

Permittee’s active directional boring to ten (10) permits at any given time. For purposes of this Section, “Active directional boring” shall include all work where directional boring is taking place and does not include projects where the directional boring has been completed and the Permittee is taking final steps such as site restoration.

C. Additional Requirements for In-Field Performance

1. All boring equipment shall be calibrated in accordance with the manufacturer’s specifications. In addition, the calibration shall be checked at a minimum of once per day and at any time during operations that the location for the boring head is unknown or uncertain. Calibration checks shall be conducted to ensure that the equipment is correctly calibrated and functioning properly at all times. The job site supervisor on duty shall keep a log on the project site indicating each calibration and calibration check and shall include a signature verifying that the check was witnessed. This log will be made available to City Inspectors upon request at any time. Failure to produce confirmation and proof of calibrations/checks will result in a Tier 1 Violation, with a protocol as outlined below.

2. All utility crossings shall occur at the pothole. If the boring equipment is determined to be crossing utility equipment at a different location than the intended pothole, a new pothole at the current location shall be dug and the utility equipment shall be exposed at the new crossing location. In addition, the depth of the boring equipment shall be noted upon the ground in white spray paint at all utility crossing locations.

3. Independent third-party safety monitors shall be required to oversee active directional boring done pursuant to excavation permits covered under this Section. The number of safety monitors required shall depend on the number of Excavation Permits where active directional boring is being performed. Independent third-party safety monitor(s) is/are required to work with each crew during active directional boring operations in residential areas as follows:

One (1) to Four (4) Permits:	One (1) Safety Monitor
Five (5) to Seven (7) Permits:	Two (2) Safety Monitors
Eight (8) to Ten (10) Permits:	Three (2) Safety Monitors

4. Repairs for damage to any existing utility facilities or equipment (including but not limited to gas, electric, sewer, water, cable, fiber optic, etc.) shall be the responsibility of the Permittee.

5. Any lawns, plantings, driveways, sidewalks, roadways or other property damaged during the course of excavation work shall be restored to at least the pre-excavation condition by the Permittee

D. Safety monitors are required to perform the following duties:

1. Be present during the pre-construction meeting(s) and to the extent possible, be present on site when any directional boring operations are taking place in residential areas (including pullback), but, at a minimum, be present with each crew being monitored at least once per day.

2. Verify all stakeouts and/or locates.

3. Verify pothole crossings while boring is taking place.

4. Ensure that the Permittee is following best practices and working in compliance with applicable regulations.

5. If the monitor observes any practices that are contrary to regulations, the monitor shall inform City personnel immediately.

E. Failure to have the required number of safety monitors while work is occurring will impact the issuance of additional permits involving directional boring and may result in suspension of existing permits until the required number of safety monitors is achieved.

F. Tiered violation protocol. A tiered violation protocol is hereby established. Depending on the nature of an incident or violation, the following protocols and procedure shall apply:

1. Tier 1 Violations are violations of regulations and applicable law not otherwise included in Tier 2, and include striking, or otherwise damaging gas or electrical utility facility including a shovel strike.

(a) Upon the occurrence of a Tier 1 Violation, a report on the incident including but not limited to information on the cause, person(s) responsible, etc., shall be submitted to the City from both the monitor and Permittee.

(b) Within ten (10) days from the time of the report submittal City staff will review the report and make any suggestions regarding further conditions or requirements for any work moving forward. Permittee shall comply with any additional conditions or requirements designed to prevent such violation from occurring again.

(c) City staff may impose further permit conditions and requirements if such conditions and requirements are designed to prevent a similar violation from occurring.

2. Tier 2 Violations are violations involving striking or otherwise damaging a gas or electrical utility lines or facilities (excluding shovel strikes)

(a) Upon the occurrence of a Tier 2 Violation, a report on the incident including but not limited to information on the cause, person(s) responsible, etc., shall be submitted to the City from both the monitor and Permittee.

(b) Representatives of the Utility Provider, the Contractor, Subcontractor and Safety Monitor shall be required to meet with City Staff and Administration to discuss and review the incident report and develop possible resolutions or operational changes to prevent the same violation from reoccurring.

(c) Until the formal report has been submitted, the meeting has been conducted and any resolution or operational changes have been implemented, the Permittee's work described in the Excavation Permit shall be stopped. Upon completion of these items to the City's satisfaction, work related to the Permit may recommence.

(d) City staff may impose further permit conditions and requirements if such conditions and requirements are designed to prevent a similar violation from occurring.

(e) A fee of \$1000 shall be paid to the City by the Permittee so that the City may recoup expenses incurred in staff investigation, inspections and other tasks related to the incident. Work shall not resume until such fee is paid.

3. Multiple At-Fault Violations

- (a) If the city determines that any Permittee (as defined in subsection (B)(1), above) has been responsible for three (3) or more Tier 1 violations within any 90-day period, the Permittee shall:
  - i. Submit a report detailing each of the three (3) violations and any operational/procedural changes which will be implemented to avoid such violations in the future.
  - ii. Meet with City Staff to discuss the violations and any proposed operational changes.
  - iii. A fee of \$1000 shall be paid by the Permittee to the City to recoup expenses for staff investigation, inspection and other tasks relating to Multiple Tier 1 At-Fault Violations.
  - iv. The number of strikes shall be reset to zero, upon compliance with all requirements specified in this subsection.
- (b) If the city determines that any Permittee (as defined in subsection (B)(1), above) has been responsible for three (3) or more Tier 2 violations within any 90-day period, the Permittee shall:
  - i. Suspend all operations for all existing excavation permits issued to the Permittee. No new building or excavation permits shall be issued to the permittee until all requirements specified in this subsection have been met.
  - ii. Submit a report detailing each of the three (3) violations and any operational/procedural changes which will be implemented to avoid such violations in the future.
  - iii. Meet with City Staff to discuss the violations and any proposed operational changes.
  - iv. The City shall, within twenty-one (21) days of submittal approve, or modify and then approve, a new operational plan.
  - v. Permittee shall schedule a limited directional boring demonstration (which shall not exceed 500 linear feet) using the procedures outlined in the new operational plan for one (1) working day without a violation. The day of limited directional boring demonstration shall be scheduled with a City Construction Inspector so that they may observe the boring operations while conducted.
  - vi. A fee of \$2500 shall be paid by the Permittee to the City to recoup expenses for staff investigation, inspection and other tasks relating to Multiple Tier 2 At-Fault Violations.
  - vii. The number of strikes shall remain in effect, until the 90-day rolling period has elapsed.

G. Any person found guilty of violating any provision of this Section shall be punished as provided in Section 100.010 of this Code of Ordinances.

**SECTION 2:** It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. If any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

**SECTION 3:** The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City=s Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

**SECTION 4:** This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

First Reading: April 25, 2024

Second Reading: May 9, 2024

**PASSED BY THE CITY COUNCIL FOR THE CITY OF O'FALLON, MISSOURI, THIS 9<sup>TH</sup> DAY OF MAY 2024.**



*Bill Hennessy*  
\_\_\_\_\_  
Presiding Officer

Attest:

*Katie Crabtree*  
\_\_\_\_\_  
Katie Crabtree, Assistant City Clerk

**APPROVED BY THE MAYOR FOR THE CITY OF O'FALLON, MISSOURI, THIS 9<sup>TH</sup> DAY OF MAY 2024.**



*Bill Hennessy*  
\_\_\_\_\_  
Bill Hennessy, Mayor

Attest:

*Katie Crabtree*  
\_\_\_\_\_  
Katie Crabtree, Assistant City Clerk

Approved as to Form:  
*Kevin M. O'Keefe*  
\_\_\_\_\_  
Kevin M. O'Keefe, City Attorney