

MEMORANDUM

Agenda Item No. 11(A)(5)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: January 20, 2021

FROM: Geri Bonzon-Keenan
Successor County Attorney

SUBJECT: Resolution urging the Florida Legislature to amend the Underground Facility Damage Prevention and Safety Act to further define the term "temporary, non-permanent paint" to be used by excavating contractors; or, alternatively, allow local governments to determine and enforce whether the "temporary, non-permanent paint" used by excavating contractors is actually and reasonably temporary and non-permanent and to further define the term

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Geri Bonzon-Keenan
Successor County Attorney

GBK/uw



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(5)
1-20-21

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE TO AMEND THE UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY ACT TO FURTHER DEFINE THE TERM “TEMPORARY, NON-PERMANENT PAINT” TO BE USED BY EXCAVATING CONTRACTORS; OR, ALTERNATIVELY, ALLOW LOCAL GOVERNMENTS TO DETERMINE AND ENFORCE WHETHER THE “TEMPORARY, NON-PERMANENT PAINT” USED BY EXCAVATING CONTRACTORS IS ACTUALLY AND REASONABLY TEMPORARY AND NON-PERMANENT AND TO FURTHER DEFINE THE TERM

WHEREAS, from time to time the public right-of-way and other public spaces in various parts of Miami-Dade County are painted with dotted or dashed lines used to identify underground facilities such as pipelines, sewers, conduits, and cables where contractors intend to engage in excavation and demolition activities (“utility markings”); and

WHEREAS, such utility markings are often visible for prolonged periods of time, in some cases several months, which disrupts aesthetic harmony within communities across the County by defacing public spaces; and

WHEREAS, such utility markings may potentially interfere with traffic or pedestrian controls by defacing traffic markings painted on streets or directional markings painted on pedestrian right-of-ways; and

WHEREAS, the Underground Facility Damage Prevention Act, section 556.101, et seq., Florida Statutes (the “Act”), establishes a notification system that provides member operators, as defined in the Act, an opportunity to identify and locate their underground facilities, and further provides access to excavating contractors and the public to provide notice of their intent to engage in excavation or demolition activities; and

WHEREAS, section 556.101(d), Florida Statutes, reserves to the state the power to regulate any subject matter addressed therein, and precludes municipalities, counties, districts, and other local government entities from adopting or enforcing ordinances or rules that conflict with the Act, or that prescribe any of the following: (1) requirements that operators of underground facilities obtain permits from local governments in order to identify underground facilities; (2) requirements for premarking or marking; (3) specifications for the types of paint or other marking devices that are used to identify underground facilities; (4) requirements for removal of markings; and

WHEREAS, section 556.114(4) provides that under certain circumstances, an excavating contractor is required to premark the proposed area of excavation “using flags or stakes or temporary, non-permanent paint or other industry-accepted low-impact marking practices” before a member operator is required to identify the horizontal route of its underground facility in the proximity of any excavation; and

WHEREAS, the Act does not define the term “temporary, non-permanent paint” to be used by excavating contractors; and

WHEREAS, the Act provides no clear mechanism for local governments to be able to ensure that utility markings are created with paint that is actually and reasonably temporary and non-permanent; and

WHEREAS, clarifying this portion of the Act would increase the ability for local governments to regulate utility markings and control the aesthetics of local streets and sidewalks; and

WHEREAS, this Board wishes to urge the Florida Legislature to amend the Act to further define the term “temporary, non-permanent paint” to be used by excavating contractors, or, alternatively, allow local governments to determine and enforce whether the “temporary, non-permanent paint” used by excavating contractors is actually and reasonably temporary and non-permanent and to further define the term,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to amend the Underground Facility Damage Prevention Act, section 556.101, et seq., Florida Statutes to further define the term “temporary, non-permanent paint” as used in section 556.114(4), Florida Statutes, to ensure that the paint used by excavating contractors for utility markings is actually and reasonably temporary and non-permanent, or, alternatively, allow local governments to determine and enforce whether the “temporary, non-permanent paint” used by excavating contractors is actually and reasonably temporary and non-permanent and to further define the term.

Section 2. Directs the Clerk of the Board to transmit certified copies of this resolution to the Governor, Senate President, House Speaker, and the Chair and Members of the Miami-Dade State Legislative Delegation.

Section 3. Directs the County’s state lobbyists to advocate for the actions described in section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2021 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Eileen Higgins. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman
Oliver G. Gilbert, III, Vice-Chairman
Sen. René García
Sally A. Heyman
Eileen Higgins
Kionne L. McGhee
Raquel A. Regalado
Sen. Javier D. Souto
Keon Hardemon
Danielle Cohen Higgins
Joe A. Martinez
Jean Monestime
Rebeca Sosa

The Chairperson thereupon declared this resolution duly passed and adopted this 20th day of January, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Cristina M. Rabionet