

MEMORANDUM

Agenda Item No. 11(A)(7)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: October 17, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution urging the Florida Legislature to repeal section 556.101(3)(d)4, Florida Statutes, to allow local governments to regulate the removal of paint or other markings used to identify underground facilities, or, alternatively, repeal section 556.101(3)(d)3, Florida Statutes, to provide local governments greater ability to regulate the type of paint or other markings used to identify underground facilities, or to enact similar legislation consistent with the above

Resolution No. R-932-23

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


Geri Bonzon-Keenan
County Attorney

GBK/gh



MEMORANDUM (Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: October 17, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(7)

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)(7)
10-17-23

RESOLUTION NO. _____ R-932-23

RESOLUTION URGING THE FLORIDA LEGISLATURE TO REPEAL SECTION 556.101(3)(D)4, FLORIDA STATUTES, TO ALLOW LOCAL GOVERNMENTS TO REGULATE THE REMOVAL OF PAINT OR OTHER MARKINGS USED TO IDENTIFY UNDERGROUND FACILITIES, OR, ALTERNATIVELY, REPEAL SECTION 556.101(3)(D)3, FLORIDA STATUTES, TO PROVIDE LOCAL GOVERNMENTS GREATER ABILITY TO REGULATE THE TYPE OF PAINT OR OTHER MARKINGS USED TO IDENTIFY UNDERGROUND FACILITIES, OR TO ENACT SIMILAR LEGISLATION CONSISTENT WITH THE ABOVE

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 556.105(5)(a) provides that where member operators determine that proposed excavation or demolition activities could affect their underground facilities, the member operators shall identify the horizontal routes of their underground facilities “by the use of stakes, paint, flags, or other suitable means”; and

WHEREAS, section 556.114(4) provides that under certain circumstances an excavator 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, from time to time the public right-of-way and other facilities in various parts of Miami-Dade County (the “County”) are painted with dotted or dashed lines used to identify underground facilities in relation to excavation and demolition activities in accordance with the Act; and

WHEREAS, such utility markings can disrupt the aesthetic harmony within communities across the County, and have the potential to interfere with traffic or pedestrian control; and

WHEREAS, the Act neither specifies the type of paint to be used by member operators, nor defines “temporary, nonpermanent paint” to be used by excavators; and

WHEREAS, the Act contains no clear mechanism for the County or other local governments to be able to ensure that utility markings are created with paint that is actually and reasonably temporary and nonpermanent; and

WHEREAS, paint and other markings placed on County-maintained property in accordance with the Act remain on public streets, sidewalks, and facilities long after the applicable work is completed; and

WHEREAS, the paint and other markings have a very negative effect on the aesthetics of County neighborhoods and public areas, including recreational areas such as The Underline which is particularly affected because of its location within a public rail corridor; and

WHEREAS, section 556.101(3)(d), Florida Statutes, expressly 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; and (4) requirements for removal of marks; and

WHEREAS, increasing the ability of local governments to regulate utility markings would place more local control over the aesthetics of local streets and sidewalks; and

WHEREAS, this Board wishes to urge the Florida Legislature to repeal section 556.101(3)(d)4, Florida Statutes to allow local governments to require member operators to remove paint or other markings used to identify underground facilities upon completion of the applicable project, or alternatively, repeal section 556.101(3)(d)3, Florida Statutes to provide local governments greater ability to regulate the type of paint or other marking used to identify underground facilities, or to enact similar legislation consistent with the above,

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 repeal section 556.101(3)(d)4, Florida Statutes, or otherwise enact legislation to allow local governments to require member operators to remove paint or other markings used to identify underground facilities upon completion of the applicable project. Alternatively, this Board urges the Florida Legislature to repeal section 556.101(3)(d)3, Florida Statutes, or otherwise enact legislation to provide local governments greater ability to regulate the type of paint or other marking used to identify underground facilities. Such local government regulatory authority could include, but not be limited to: (1) defining “temporary, non-permanent paint” as used in section 556.114(4), Florida Statutes, to ensure the

paint used in utility markings is actually and reasonably temporary and non-permanent; (2) requiring that member operators using paint to mark the horizontal lines of their underground facilities as provided for in section 556.105(5)(a), Florida Statutes, use paint that is actually and reasonably “temporary, non-permanent paint”; and (3) creating a clear enforcement mechanism that would allow local governments the ability to ensure that paint used for utility markings is actually and reasonably temporary.

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 2024 State Legislative Package to include this item.

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

Oliver G. Gilbert, III, Chairman		aye
Anthony Rodríguez, Vice Chairman		absent
Marleine Bastien	aye	Juan Carlos Bermudez aye
Kevin Marino Cabrera	aye	Sen. René García aye
Roberto J. Gonzalez	aye	Keon Hardemon aye
Danielle Cohen Higgins	aye	Eileen Higgins aye
Kionne L. McGhee	aye	Raquel A. Regalado aye
Micky Steinberg	aye	

The Chairperson thereupon declared this resolution duly passed and adopted this 17th day of October, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in blue ink, appearing to read "RAH", is written over a horizontal line.

Rochelle A. Hall
Dale P. Clarke