

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING THE FLORIDA LEGISLATURE TO REPEAL THE STATE LAW PREEMPTION OF LOCAL GOVERNMENTS REGULATING THE PAINT OR OTHER MARKINGS USED TO IDENTIFY UNDERGROUND FACILITIES OR, ALTERNATIVELY, PROVIDE LOCAL GOVERNMENTS GREATER ABILITY TO REGULATE THE PAINT OR OTHER MARKINGS USED TO IDENTIFY UNDERGROUND FACILITIES; DIRECTING THE CITY'S STATE LOBBYISTS TO ADVOCATE FOR THE ACTIONS DESCRIBED IN THIS RESOLUTION; AND AUTHORIZING AND DIRECTING THE CITY ADMINISTRATION TO AMEND THE CITY'S 2020 STATE LEGISLATIVE AGENDA TO INCLUDE THIS ITEM.**

**WHEREAS**, from time to time the public right-of-way and other facilities in various parts of the City of Miami Beach (the "City") are painted with dotted or dashed lines used to identify underground facilities in relation to excavation and demolition activities ("utility markings"); and

**WHEREAS**, such utility markings can disrupt the aesthetic harmony within communities across the City, and have the potential to interfere with traffic or pedestrian control; 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) require operators of underground facilities to obtain permits from local governments in order to identify underground facilities; (2) require pre-marking or marking; (3) specify the types of paint or other marking devices that are used to identify underground facilities; (4) require removal of marks; and

**WHEREAS**, Section 556.105(5)(a), Florida Statutes, 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), Florida Statutes, provides that under certain circumstances an excavator is required to pre-mark 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 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 local government entities to be able to ensure that utility markings are created with paint that is actually and reasonably temporary and nonpermanent; 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**, as such, the Mayor and City Commission urge the Florida Legislature to repeal the state law preemption of local governments regulating the paint or other markings used to identify underground facilities or, alternatively, provide local governments greater ability to regulate the paint or other marking used to identify underground facilities ("utility markings"), by including, but not 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 should member operators choose to use paint to mark the horizontal lines of their underground facilities as provided for in section 556.105(a), Florida Statutes, that they must 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.

**WHEREAS**, the Mayor and City Commission further direct the City's state lobbyists to advocate for the actions described in this Resolution, and authorize and direct the Administration to amend the City's 2020 State Legislative Agenda to include this item; and

**WHEREAS**, finally, the Mayor and City Commission direct the City Clerk to transmit a certified copy of this Resolution to the Governor, Senate President, House Speaker, and the Chair and members of the Miami Beach State Legislative Delegation.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby urge the Florida Legislature to repeal the state law preemption of local governments regulating the paint or other markings used to identify underground facilities or, alternatively, provide local governments greater ability to regulate the paint or other markings used to identify underground facilities; direct the City's state lobbyists to advocate for the actions described in this Resolution; and authorize and direct the City Administration to amend the City's 2020 State Legislative Agenda to include this item.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

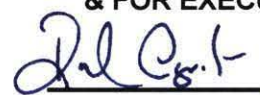
**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

(Sponsored by Commissioner Ricky Arriola)

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney

12-2-19  
\_\_\_\_\_  
Date