

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING SUNSHINE STATE ONE-CALL OF FLORIDA, INC. TO PROVIDE MUNICIPALITIES WITH BETTER GUIDANCE REGARDING THE REMOVAL OF TEMPORARY MARKINGS USED BY MEMBER OPERATORS AND EXCAVATORS TO LOCATE UNDERGROUND UTILITY FACILITIES, AND/OR URGING THE FLORIDA LEGISLATURE TO ENACT LEGISLATION PROVIDING MUNICIPALITIES WITH THE ABILITY TO REGULATE THE REMOVAL OF TEMPORARY MARKINGS USED BY MEMBER OPERATORS AND EXCAVATORS TO LOCATE UNDERGROUND UTILITY FACILITIES PRIOR TO EXCAVATION, CONSISTENT WITH THE REQUIREMENTS OF THE UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY ACT, FLORIDA STATUTES 556.101-556.117.

WHEREAS, Chapter 556, Florida Statutes, the Underground Facility Damage Prevention and Safety Act (the "Act"), establishes a statewide one-call, toll-free notification system for persons to give notice of their intent to excavate to owners of underground facilities ("Member Operators") in the area to be excavated; and

WHEREAS, this one-call system allows the Member Operator an opportunity to identify their facilities before excavation occurs in order to avoid damage, injury or service interruption caused by an excavator who may cause damage to the underground facility by digging or excavating into them; and

WHEREAS, by way of example, the City of Miami Beach is a Member Operator within the definition of the Act in the City's capacity as a utility provider for water, sewer and stormwater utilities; and

WHEREAS, the Act creates a not-for-profit corporation made up of operators of underground facilities in Florida, Sunshine State One-Call of Florida, Inc., which is charged with administering the Act; and

WHEREAS, the cost of such administration is funded exclusively by contributions from the Member Operators; and

WHEREAS, Fla. Stat. 556.105 sets forth the procedures that must be followed by those persons who wish to engage in excavation or demolition that may affect underground facilities, and the Act requires "[n]ot less than 2 nor more than 5 business days before beginning any excavation or demolition," an excavator must call the statewide toll-free number during business hours and provide specific information regarding the proposed excavation; and

WHEREAS, each notification through the system is recorded to document compliance with the act, and the person who provides notification is given the names of the

member operators who will be advised of the notification; and

WHEREAS, all Member Operators within the area of proposed excavation or demolition are to be promptly notified through the system, and those member operators whose facilities are in proximity to a proposed excavation or demolition must identify and mark their facilities within 48 hours (excluding days other than business days) after they have been notified; and

WHEREAS, an excavator must avoid excavation in the area until each member operator's underground facility has been marked, or the excavator is advised that no facilities are located in the proposed excavation area, or for 48 hours (excluding days other than business days) after the system has been notified, and no demolition may take place in an area until all member operator's underground facilities have been marked and located, or removed; and

WHEREAS, the Act requires Member Operators to identify the horizontal route of its underground facilities by marking to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means within 2 full business days after the time the notification is received, and excavators shall pre-mark an excavation using flags or stakes or temporary, nonpermanent paint or other industry-accepted low-impact marking practices; and

WHEREAS, all horizontal route identification markers must be in a color identified in the Uniform Color Code for Utilities, and Sunshine State One-Call of Florida, Inc. is charged with establishing an educational program for the purpose of informing excavators and member operators about low-impact marking practices. Fla. Stat. 556.114(4)-(5); and

WHEREAS, the Act provides for a criminal and civil penalties for violating the Act, and provides for a second degree misdemeanor criminal penalty for any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings provided by a Member Operator used to mark the horizontal route of an underground facility. Fla. Stat. 556.107(3)(a); and

WHEREAS, the Act further provides that stakes or other nonpermanent physical markings are considered "valid" for 30 calendar days after information is provided to the system. Fla. Stat. 556.107(3)(a); and

WHEREAS, although the Act provides that it does not "preempt a governmental member operator from reasonable regulation of its right-of-way", Fla. Stat. 556.111(3), the Act does not provide municipalities with clear direction regarding the ability to regulate the removal of temporary markings in a reasonable manner consistent with the Act; and

WHEREAS, with the prolific construction pending within the City of Miami Beach, especially within the City's sidewalks and rights-of-ways, the physical markings used by the Member Operators and excavators pursuant to the Act have created a enduring unappealing nuisance for the City's residents and visitors, hindering the aesthetic appeal of

the City's neighborhoods, especially to the extent that the physical markings, which are only valid for 30 calendar days, often remain visible well beyond the 30 calendar day validity period; and

WHEREAS, the Mayor and City Commission are seeking Sunshine State One-Call of Florida, Inc. to provide municipalities with guidance regarding the removal of temporary markings used by Member Operators and excavators to locate underground utility facilities; and

WHEREAS, additionally, the Mayor and City Commission urge the Florida Legislature to enact legislation clarifying a municipality's ability to remove the temporary markings required by the Act following the 30 calendar day validity period, in order to better achieve the public interests served by the Act, while accommodating local governmental interests in maintaining neighborhood aesthetics.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby urge Sunshine State One-Call of Florida, Inc. to provide municipalities with better guidance regarding the removal of temporary markings used by Member Operators and excavators to locate underground utility facilities, and/or urge the Florida Legislature to provide municipalities with the ability to regulate the removal of temporary markings used by Member Operators and Excavators to locate underground utility facilities prior to excavation, consistent with the requirements of the Underground Facility Damage Prevention and Safety Act, Florida Statutes 556.101-556.117.

PASSED AND ADOPTED this _____ day of _____, 2021.


ATTEST:

Dan Gelber
Mayor


Rafael E. Granado
City Clerk

(Sponsored by Mayor Dan Gelber)

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



City Attorney

 3-11-21
Date