



Legislation Text

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*City Attorney's Office*

Reference: Opt in to Statewide Safety Commission

**To: Mayor Gregory Mills and Members of City Council**

**Through: Michael Martinez, City Manager**

**Prepared By: Alicia Calderón, City Attorney**

**Date Prepared: July 18, 2022**

**PURPOSE**

To approve a resolution to opt in to the State Underground Damage Prevention Safety Commission for setting standards, reviewing complaints, and enforcement of the underground damage prevention program.

**STRATEGIC FOCUS AREA**

Facilities, Amenities, and Open Space  
Supportive, Sustainable Infrastructure  
Strong Regional Relationships and Partnerships

**BACKGROUND**

In 2018, the state legislature passed Senate Bill 18-167 to increase enforcement of requirements related to the location of underground facilities through the creation of a Statewide Safety Commission. The bill made other changes as well, such as requiring all entities that have underground facilities to be a Tier 1 member of the 811 Colorado notification organization and requiring all underground facilities to be locatable. Anyone conducting excavation is required to contact Colorado 811 to be informed of underground facilities within the excavation area, which owners and operators are required to mark. Another change also requires that when municipalities hire an outside engineer for construction projects, the engineer must meet ASCE 38 standards (American Society for Civil Engineers). This does mean increased costs, which the legislature knew to be the case. The fiscal note attached to the bill says "it will also create new expenditure impacts for local government entities..." Finally, the bill created the Underground Damage Prevention Safety Commission to advise on best practices and review complaints alleging violations of the state's excavation laws. The commission consists of 15 Governor-appointed members. Home rule local governments are not subject to the commission's enforcement authority and may create their own similar enforceable damage prevention safety program or delegate their authority to the Commission.

The City has not adopted its own underground damage prevention program and to do so would require staff time to develop safety standards and funds to develop and enforce a safety program and a commission to hear complaints and enforce the standards. If the City declines to exercise its home rule authority in this instance and subject itself to the State's Underground Damage Prevention Safety Commission, the City is not at risk of being fined or penalized. The Commission can hear complaints from excavators or owners of facilities or utilities with underground infrastructure that has been damaged from excavation that did not comply with the State Commission's standards. The Resolution preserves the City's home rule exemption for itself and is not, itself, subject to the Commission's jurisdiction. Colo. Rev. Stat. § 9-1.5-104.2(1)(c) specifically states that nothing in Article 1.5 authorizes the Safety Commission to impose a penalty on or enforce a recommendation or remedial action regarding an alleged violation of Article 1.5. The state statutes

also state that nothing prevents the City's ability to require permits for excavation or other work in the City. The City will be informed if there is an allegation of a violation against the City, and the City may request a recommendation for corrective action from the Commission in such an instance.

**STAFF RECOMMENDATION**

Staff recommend approval of a resolution to opt in to the authority of the State Underground Damage Prevention Safety Commission and program while reserving and not waiving the City's own home rule exemption to not subject itself to the Commission's jurisdiction when complaints are alleged against the City.

**ATTACHMENTS**

1. Resolution
2. Power Point Presentation