

RESOLUTION NO. 18-07-01

**RESOLUTION OF
THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
IN OPPOSITION TO ASSEMBLY BILL 1914 (FLORA) UNLESS AMENDED**

WHEREAS, pursuant to the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”), codified under Government Code section 4216 et seq. (the “statute”), the California Underground Facilities Safe Excavation Board (the “Board”) is mandated to coordinate education and outreach activities that encourage safe excavation practices, develop certain standards for safe excavation practices, investigate possible violations of the statute, and enforce the statute on specified persons;

WHEREAS, Government Code section 4216.4, subdivision (a), requires excavators to determine the exact location of subsurface installations in conflict with the excavation by using hand tools before using any power-driven excavation or boring equipment within the tolerance zone of the subsurface installation, except the use of a vacuum excavation device with agreement by the operator and to remove any existing pavement where there is no known subsurface installation in the pavement;

WHEREAS, Assembly Bill 1914, introduced by Assembly Member Flora, (the “bill”) would require the Board to adopt regulations to allow excavators to use certain power-operated or boring equipment prior to determining the exact location of subsurface installations beginning July 1, 2020;

WHEREAS, the bill further requires the Board to adopt guidelines on the use of hand-held pneumatic or hand-held motorized power-operated equipment when agreed upon by the excavator and operator, and such guidelines would be in effect until July 1, 2020;

WHEREAS, Government Code section 11346 provides that the Administrative Procedure Act is applicable to the exercise of any quasi-legislative power conferred by any statute and shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly; and

WHEREAS, in order to establish safe excavation practices, the Board must be given discretion to limit the type of hand-held pneumatic or hand-held motorized power-operated equipment and establish other conditions on the use of such equipment within the tolerance zone of a subsurface installation;

THEREFORE, BE IT RESOLVED that the California Underground Facilities Safe Excavation Board opposes Assembly Bill 1914 (Flora) unless amended to clarify the Board’s rulemaking authority by (1) expressly exempting rules the Board may adopt from the Administrative Procedure Act, and (2) providing the Board with discretion to limit the type of hand-held pneumatic or hand-held motorized power-operated equipment and establish other conditions on the use of such equipment within the tolerance zone of a subsurface installation. Further, the Executive Officer, in consultation with Board Members Bianchini and Johnson, is delegated the authority to modify and convey the Board’s position on the bill to the Legislature upon any subsequent bill amendments.

Date of Adoption: July 24, 2018

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 18-07-01 adopted by the California Underground Facilities Safe Excavation Board on July 24, 2018:
RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD IN OPPOSITION TO ASSEMBLY BILL 1914 (FLORA) UNLESS AMENDED.

/s/ Tony Marino

Tony Marino
Executive Officer

/s/ Jessica Arden

Jessica Arden
Chair

Date: July 24, 2018