



City of Coral Gables
CITY COMMISSION MEETING
August 27, 2019

ITEM TITLE:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, URGING THE FLORIDA LEGISLATURE TO REPEAL SECTIONS 403.708, 403.7033, AND 500.90, FLORIDA STATUTES AND REJECT ANY OTHER STATUTES THAT INHIBIT A LOCAL GOVERNMENT'S ABILITY TO REGULATE EXPANDED POLYSTYRENE OR SINGLE-USE PLASTIC BAGS, AND REQUESTING THE SUPPORT OF GOVERNOR RON DESANTIS IN THOSE EFFORTS.

(SPONSORED BY VICE MAYOR LAGO)

BRIEF HISTORY:

The significant negative impact that plastic bags and polystyrene have on the environment and the health, safety, and welfare of Coral Gables residents and properties prompted the City to enact Chapter 34 Nuisances, Articles IX and X of the City Code related to the prohibition of polystyrene and single-use carry out plastic bags respectively.

Expanded polystyrene, a petroleum by-product commonly known as Styrofoam, is neither readily recyclable nor biodegradable and can take thousands of years to degrade in the environment. Products made from expanded polystyrene have little value, are not accepted in single stream recycling facilities, and cause serious harm and death to wildlife.

On December 8, 2015, to address significant environmental concerns related to polystyrene, and consistent with the Home Rule powers guaranteed to the City of Coral Gables by the Miami-Dade Home Rule Charter and the Florida Constitution, the City Commission adopted Ordinance 2016-08 on first reading. Ordinance 2016-08 prohibits: (1) city vendors/contractors from, selling or using expanded polystyrene within the City or in completing their duties under contract with the City, (2) special event permittees from using expanded polystyrene articles during events, and (3) generally prohibits the sale or use of expanded polystyrene by businesses in the City.

Hand-in hand with the Coral Gables Chamber of Commerce, the City spent several months engaging and educating local business on the effects of Ordinance 2016-08, thereby delaying second reading of the ordinance until February 9, 2016.

On July 18, 2016, the Florida Retail Federation, Inc. and Super Progresso, Inc. sued the City of Coral Gables for declaratory judgment and injunctive relief, seeking a declaration that Ordinance 2016-08 was invalid as preempted by Section 500.90, F.S. The City prevailed in the suit, and on February 27, 2017, Judge Cueto of the Eleventh Judicial Circuit found that Section

500.90, F.S., Sections 403.708(9) and 403.7033, F.S. were unconstitutional and thus unenforceable against the City.

As a result of the Court's ruling on Sections 403.708(9) and 403.7033 (finding the preemption of single-use plastic bags unconstitutional), the City Commission adopted Ordinance 2017-13 to combat the harmful environmental effects of single use plastic bags.

On March 10, 2017, Plaintiffs appealed the Circuit Court's order and on March 13, 2017, the State of Florida joined Plaintiffs in the appeal. Nearly 2 ½ years later, after successful enforcement of the City's ordinances with the support of both residents and the business community, the Third District Court of Appeal found that the trial court erred in concluding that the three statutes are unconstitutional and reversed the lower court's ruling on August 14, 2019.

Despite the appellate court's ruling, the City remains wholly committed to protecting the environment and Home Rule, and urges the Florida Legislature to eliminate Sections 403.708, 403.7033, and 500.90, Florida Statutes and any other preemption statutes that inhibit a local government's ability to regulate expanded polystyrene and/or plastic bags. The City also requests the support of Governor Ron DeSantis, who has demonstrated respect for both the environment and Home Rule through his recent veto of HB 771, wherein the Legislature attempted to preempt local regulations on single-use plastic straws.

ATTACHMENT(S):

1. Draft Resolution