

**City of Coral Gables
CITY COMMISSION MEETING
April 26, 2016**

ITEM TITLE:

Ordinance on Second Reading. (Sponsored by Commissioner Lago) An Ordinance of the City Commission of Coral Gables, Florida, pursuant to the authority granted by the Dade County Home Rule Amendment (Article VIII, Section 6 of the Florida Constitution of 1968), conflicting with, modifying, and nullifying the preemption of polystyrene regulations in Chapter 2016-61, Laws of Florida (to be encoded as Section 500.90 of the Florida Statutes), to the extent that such preemption is a local, special, or general law applicable only to the City of Coral Gables in Miami-Dade County, and determining that the City's polystyrene regulations are not preempted and remain enforceable, and providing for severability, repealer, codification and an effective date.

BRIEF HISTORY:

On February 9, 2016, the Coral Gables City Commission passed Ordinance No. 2016.08, prohibiting the use of polystyrene products in the City of Coral Gables by the City, City vendors, special event permittees and certain businesses within the City. The Coral Gables City Commission, on December 8, 2015, had the authority to enact legislation to protect and promote the public health, safety and welfare of its residents and visitors by reducing litter and pollutants on the land and in the waters of the City. However, the Commission postponed the enactment of the legislation in order to obtain comments from the City's Business Improvement District and Coral Gables Chamber of Commerce. On March 15, 2016, the City Commission adopted an emergency ordinance that retroactively established December 8, 2015, as the effective date of its polystyrene regulations.

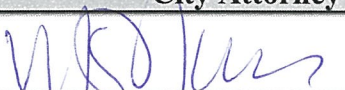

In the most recent legislative session, the Legislature adopted Chapter 2016-61, Laws of Florida (to be encoded as Section 500.90 of the Florida Statutes), which purports to preempt certain regulations of polystyrene products to the Department of Agriculture and Consumer Services, while grandfathering local ordinances adopted before January 1, 2016. The statute was approved by the Governor on March 16, 2016 and would take effect on July 1, 2016. The Legislature enacted Chapter 2016-61, and the Governor approved Chapter 2016-61, after the City had already changed the effective date of its polystyrene regulations to December 8, 2015.

The City has been informed that its retroactive establishment of December 8, 2015 as the effective date may be challenged in court. The City is prepared to defend the validity of this ordinance. Even if a court were to determine that February 9, 2016 was still the effective date, however, the City's polystyrene regulations, would not be preempted based on the Dade County Home Rule Amendment (Article VIII, Section 6 of the Florida Constitution of 1968). The Dade County Home Rule Amendment establishes Home Rule for Miami-Dade County and municipalities in Miami-Dade County, and establishes that the Legislature may not adopt local, special, or general laws of local application to Miami-Dade County and its municipalities. The Dade County Home Rule Amendment authorizes conflict with, modification of, and nullification of such local, special, or general laws of local application.

Ordinance No. 2016-08 was one of several municipal ordinances regulating polystyrene in the State of Florida that was in existence at the time Chapter 2016-61 was enacted and approved, including ordinances from Bal Harbour, Bay Harbor Islands, Hollywood, Key Biscayne, Miami Beach, North Bay Village, and Surfside. Ordinance No. 2016-08 was the only municipal ordinance in the State of Florida, however, that the Legislature purported to preempt through Chapter 2016-61, as it was the only municipal ordinance adopted after January 1, 2016 but before Chapter 2016-61 was enacted and approved. The City of Coral Gables is in a closed class for purposes of evaluating whether the polystyrene preemption and grandfathering providing in Chapter 2016-61 is a local, special, or general law of local application in this matter, as it would be the only municipality with an active and valid ordinance that was purportedly preempted. The Dade County Home Rule Amendment therefore authorizes the City of Coral Gables to conflict with, modify, or nullify the polystyrene preemption and grandfathering provision as a local, special, or general law of local application.

By enacting the Ordinance, the City Commission supports and ratifies the retroactive establishment of December 8, 2015 as the effective date of Ordinance No. 2016-08 and its polystyrene regulations. The City, further, exercises its Home Rule powers under Article VIII, Section 6 of the Florida Constitution of 1968 to conflict with, modify, and nullify the polystyrene preemption and grandfathering provisions of Chapter 2016-61, Laws of Florida because the preemption is local, special, or general law of local application as to the City of Coral Gables in Miami-Dade County as it relates to Ordinance No. 2016-08 and the City's polystyrene regulations. Lastly, City staff is directed to enforce the regulations consistent with the schedule established in Ordinance No. 2016-08.

REVIEWED BY:

City Attorney	City Manager
	

ATTACHMENT(S):

1. Draft Ordinance