



City of Coral Gables  
CITY COMMISSION MEETING  
**January 28, 2020**

**ITEM TITLE:**

**Resolution.** A Resolution of the City Commission of the City of Coral Gables, Florida, supporting Florida Senate Bill 182 and Florida House Bill 6043, which if passed would repeal current state preemptions of local law relating to the regulation of expanded polystyrene products, single use plastic bags, wrappings, and containers. (Sponsored by Vice Mayor Lago)

**BRIEF HISTORY:**

On December 8, 2015, the City Commission adopted, on first reading, Ordinance 2016-08, regulating the use of expanded polystyrene. The Commission was prompted to legislate this product due to the significant harmful effects of expanded polystyrene on the environment and in service to the public health, safety, and welfare of City of Coral Gables residents and visitors.

The City engaged the business community and delayed second reading of the ordinance in order to allow time for input from retailers, the Coral Gables Chamber of Commerce, and the Business Improvement District. On February 9, 2016, the City Commission adopted Ordinance 2016-08, on second reading, providing for an immediate effective date but stipulating that enforcement would not begin until August 9, 2016 or 180 days after second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition. 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.

On July 18, 2016, the Florida Retail Federation, Inc. and Super Progresso, Inc. (“Plaintiffs”) filed a Complaint against the City of Coral Gables for declaratory judgment and injunctive relief and seeking a declaration that Ordinance 2016-08 was invalid as preempted by Section 500.90, F.S.

On February 27, 2017, Eleventh Judicial Circuit Judge Jorge E. Cueto granted the City’s Motion for Summary Judgment finding (1) Section 500.90, F.S. (preempting the regulation of expanded polystyrene) violates the Miami-Dade Home Rule Amendment, is an impermissible special law aimed at the City of Coral Gables, violates the doctrine of non-delegation of powers, and is arbitrary and capricious, and (2) Sections 403.708(9) and 403.7033, F.S. (preempting the regulation of single-use plastic bags) unconstitutionally vague.

As a result of the Court’s ruling finding the preemption of single-use plastic bags unconstitutional, on May 9, 2017, the City Commission, again finding that the regulation is necessary for the preservation of our environment and the public health, safety, and welfare of City residents, visitors, and future generations, adopted Ordinance 2017-13 providing an immediate effective date, but stipulating that enforcement would not begin for one year after

second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition. Ordinance 2017-13 prohibits (1) special event permittees from using single-use plastic bags during events, and (2) generally prohibits the use of single-use plastic bags by businesses in the City.

Plaintiffs appealed the Circuit Court's order, and on March 13, 2017, the State of Florida joined Plaintiffs in the appeal. Oral argument was held on December 2017, before a panel of the Third District Court of Appeals.

On August 14, 2019, 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. As a result of the August 14th ruling, on August 27, 2019, the City Commission passed Resolution No. 2019-250, staying enforcement of Chapter 34, Articles IX and X of the City Code but urging businesses to continue to comply with the City's prohibitions by not using products made with expanded polystyrene and not resuming the use of single-use plastic bags.

During the August 27, 2019 City Commission meeting, the City Commission directed the City Attorney to proceed with appealing the ruling by the Third District Court of Appeal to the Florida Supreme Court. In addition to judicial relief, the City seeks to exhaust all legislative avenues to undo what it views as an unconstitutional preemption of the City's home rule powers.

Consistent with the City's 2020 legislative priorities, the City Commission wishes to articulate its support for Senate Bill 182 and House Bill 6043, which would repeal the current state preemption of local law relating to expanded polystyrene and single-use plastic bags and would allow the City to continue enforcement of Chapter 34, Articles IX and X of the City Code.

**ATTACHMENT(S):**

**1. Draft Resolution**