



City of Coral Gables  
CITY COMMISSION MEETING  
February 25, 2020

**ITEM TITLE:**

**Resolution.** A Resolution of the City Commission of Coral Gables, Florida urging the Florida Legislature to amend Section 500.90, Florida Statutes to grandfather-in the City's polystyrene regulations, enacted as Ordinance 2016-08.

**BRIEF HISTORY:**

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.

Together 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.

As a result of the August 14thth 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 not to resume the use of products made with expanded polystyrene or 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. The Florida Supreme Court declined to accept jurisdiction of City of Coral Gables, FL v. Florida Retail Federation, Inc. Et Al. on February 12, 2020.

The City of Coral Gables was uniquely affected by the preemption in section 500.90, F.S. as it was the only City that had not fully adopted an ordinance regulating the use of expanded polystyrene when the preemption became effective but was also unaware of the impending preemption as it had not yet occurred. Thus, Coral Gables was not grandfathered in, as so many other municipalities were.

Despite the Appellate Court's ruling, the City remains wholly committed to protecting the environment and Home Rule, and urges the Florida Legislature to amend Section 500.90, Florida Statutes to grandfather-in the City's polystyrene regulations. The City Commission also directs that this item be made part of the City's Legislative Agenda, and that this resolution be sent immediately to the Governor of the State of Florida, the Miami-Dade delegation, and all those senators and representatives who represent the City of Coral Gables.

ATTACHMENT(S):

1. Draft Resolution