

City of Coral Gables City Commission Meeting
Agenda Item F-1
April 26, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item F-1 [Start: 10:55:15 a.m.]

Discussion regarding state law relating to plastic bag regulations, including discussion of options for Commission action, provided by City Attorney. (Sponsored by Commissioner Lago).

Mayor Cason: We'll move onto plastic bags, F-1.

City Attorney Leen: Thank you Mr. Mayor. This is a discussion regarding state law relating to plastic bag regulations, including discussion of options for Commission action, provided by the City Attorney. Sponsored by Commissioner Lago. I'm going to briefly give you my report, and then I'm going to turn it over to Commissioner Lago and to the Commission. The question I was asked was, what discretion does the City have to pass a regulation or a ban of plastic bags in Coral Gables?- what is the limit of your discretion? In light of the fact that Section 403.7033 of the Florida Statutes purports to preempt the City from taking action. So just to put into the record what the statute says is, to ensure consistent and effective implementation the department, and by that they mean the Department of Environmental Protection, shall submit a report, and this report

is about plastic bag regulations, with conclusions and recommendations to the Legislature no later than February 1, 2010, until such time the Legislature adopts the recommendations of the department, no local government, local government agency or state government agency may enact any rule or regulation or ordinance regarding use, disposition, sale, prohibition, restriction or tax of such auxiliary containers, wrappings, or disposable plastic bags, that's part of 403.7033. Now unlike the polystyrene preemption, which had the effect of a local law in Coral Gables because we had an existing regulation, which was preempted and the only existing regulation that was preempted in the State of Florida. This preemption applies to all local governments and doesn't treat Coral Gables any differently than anyone else. So in light of the fact that there is this preemption, we looked to see what had happened. So in your agendas, under Item F-1, there is a report from the Department of Environmental Protection regarding plastic bags and it's a report that was submitted by February 1, 2010. Now what that report did was it took a look at plastic bags generally and the positives and negatives, mostly negatives of plastic bags, but also some of the options like recycling and some positive things that can come out of that, and eventually concluded that there were twelve options for regulations. Those included an education campaign, recycling campaigns, a reusable bag credit, requiring bio-degradable bags, having fees for a company that was using plastic bags like Publix, or like any supermarket, or a ban, a ban of plastic bags; and the report did not make any recommendation, even though the statute called for it. What the report did was it provided options and it listed the twelve options and put them into a chart. So I was concerned that there was no actual recommendation because the statute called for it, so then we looked to see, well what did the Legislature do in response. And I do want to say, the report is comprehensive and it is generally negative about the effects of plastic bags and even though it doesn't give a recommendation as to a specific outcome, it does give a general recommendation that plastic bags should be regulated and that there are issues with them and that these are the twelve options you might consider from voluntary to mandatory. But I don't think under the statute from a legal perspective they've given a recommendation as to what the Legislature should do. So then you reach the second part, well what did the Legislature do? Did they take any action based on this report? There were two bills that came out and I'd like to thank Naomi Levi for her help with this. She really responded quickly and she is going to continue looking at this if the Commission sends this to the Sustainability Advisory Board, which I'm going to recommend to you. So we took a look at the two statutes, here's what they said. Senate Bill 830, which was introduced in 2014 by Senator Bullard, and what it did was it applied to larger stores, like supermarkets, larger stores and larger drug stores, and it looked at how much business they had and how large they were, in terms of their physical size and business, as I recall, but we'll get you more when we do a more business-oriented report on this, right now this is more legal. What they focused on was reusable and recyclable bags and they put a prohibition in place of no plastic bags for larger stores that were using these bags, and they required the stores to provide reusable alternative and recyclable bags. So it was sort of a combination of a mandatory aspect and also voluntary aspect and it allowed people to bring their

own bags as well, which of course they can do today, so that did not pass. My understanding from Naomi is that that failed in Committee, but we'll get more information about that. We got all this information yesterday, and again, I want to thank her for that doing this so quickly. As to House Bill 661, which was introduced in 2015, this applied to municipalities under 100,000 residents; and what it did was, it allowed them to do a pilot program, which is really what my understanding is Commissioner Lago as the sponsor, but what the Commission wanted to know whether you could do. Could you do some sort of pilot program?- could you enact some sort of ban? The statute would have allowed after a date in 2018....that had adopted a pilot program to continue them by another ordinance. So this would have applied to Coral Gables, it would have allowed the City Commission to adopt a ban or regulation. It would have required us to study it and provide information to the state and then would have given the option to renew. This also failed. So at this point there has been no action by the Legislature taken and what the statute says is, until such time that the Legislature adopts the recommendation of the department there is a pre-emption. So my legal opinion is although we could try to challenge the pre-emption, I think it's unlikely to succeed at this point, and even the state hasn't really followed the statute by giving direct recommendations and the Legislature taking action on those specific recommendations, I still believe that a court would be likely to apply this. So what can we do? The types of things that we could do are, of course, we could urge action by the Legislature, you could always do that. You could also look at voluntary programs to increase usage of plastic bags. So now that you have the legal report, this get more into the issue of policy and business and how we want to proceed as a City, so I would turn it over to the Commission.

Commissioner Lago: Mayor, if I may, I'll be very brief because we could probably talk about this for a long time. You mentioned about potentially making a request from our Legislatures in Tallahassee or the Governor to take some sort of action. I think that's come and gone. Asking or depending on the Legislators to be able to be able to pass something that's been floating out there since 2010, in my opinion is never going to happen. The reason why I put this on the agenda is just to discuss it. I think the idea that Craig had about pushing it to the Sustainable Advisory Board, I think it's the best option that we have right now. Again, this is an issue like we discussed on many other levels that defines Coral Gables, we have very high standards across the board, and I think that this is an issue about just pure laziness, in my opinion. I think that if you are going to go to a supermarket knowing the fact that we have over 40 miles of waterways and knowing that the state has produced an actual document, which Craig just mentioned, that states that plastic bags are harmful for our environment and we talk about the environment as being paramount to the City of Coral Gables and being tied in with quality of life and we are planting trees and we are protecting our waterways, to me this is a no-brainer. All it takes is going to, by the way, this is only being pushed by one entity here in Coral Gables, I don't know where, because if you go to Fresh Market they'll give you, I think a discount on your bill if you bring your own bags, correct me if I'm wrong Madam City Manager.

City Manager Swanson-Rivenbark: Whole Foods absolutely does it.

Commissioner Lago: Whole Foods, excuse me. So this is really a Publix issue and the reason why I want to push it to the Sustainability Advisory Board is because I want this Commission to really think that if they want to pick this fight, because this is a big fight, the entity that was pushing against polystyrene was the lobby, the Publix Lobby. I was told that by several legislators in Tallahassee and they are going to come out swinging in regards to this. They are not interested in stopping plastic bag usage, even though the state has produced a document which was included in your packet, which clearly states that there is no use for plastic bags except for what we all despise, which is the collection of dog feces and then dumping it into your neighbors swale, which I don't know how many phone calls I've gotten this week about that. It's up for your consideration. I'd love your guidance on this issue, see what you think.

Mayor Cason: I think that's a good idea and I think the second part should be as we did before with the Chamber and the BID to have them take a look at it, as they did with polystyrene and come back with a recommendation. There are a lot of options here, and none of them are perfect.

Commissioner Slesnick: Mr. Mayor, I have to confess, Commissioner Lago that I go to Publix and I have the recyclable bags in the trunk of my car and I don't always pull them out and I come out with five plastic bags, but I do take them back, I do take them back.

Commissioner Lago: You are one of the few by the way. You are probably like one percent of individuals that take plastic bags and then recycle them. So I commend you on that by the way.

Commissioner Slesnick: We have three Publix stores here in the Gables, maybe have something where, if we have any funds in the City that are in the sustainable fund category, to buy some of those bags, I mean they are not that expensive and have them at Publix and make some kind of program at our three Publix and work in conjunction with just our local stores that the people would use those, they would be given those bags to use up to like two or three per load of groceries, so that we make people aware in Publix. So if our local managers were up for that at least get people started.

Commissioner Lago: That's a good idea. Our City Manager mentioned to me on my review for today's Commission meeting, pre-agenda review, that when you buy wine at Publix they give you a free carryon bag.

Vice Mayor Quesada: I think they charge you for the cloth bags, I think they charge you a dollar.

Commissioner Keon: Not for the wine bags.

Commissioner Lago: Not for the wine bags, the wine bags are free.

Commissioner Slesnick: And I have a collection of wine bags.

Commissioner Lago: I just think this is about changing people's habits.

Commissioner Slesnick: But if we started with some campaign just for our three stores with Publix, they are the main three grocery stores here that are in the City limits that are not doing this, Whole Foods already does it, maybe we could at least have some kind of informational campaign going to get people started repeating...

Commissioner Lago: It's a great idea and that's why I'm saying what you said is a great idea and I want the Sustainability Advisory Board to know that we want to take action on this item as a Commission within the next few months, hopefully engage Publix with your idea and ask the Sustainability Advisory Board to come up with other opportunities to really make this a possibility.

Mayor Cason: And you also have to take a look at the whole City and see some statistics how much of the plastic bags comes from supermarkets, how much just from mom and pop stores...

Commissioner Keon: Dry cleaning.

Mayor Cason: All kinds of...

Vice Mayor Quesada: Yes, but the supermarket has got to be the number one culprit.

Commissioner Slesnick: That's the main one. Just coming in this morning there were plastic bags floating around the parking lot out there.

Commissioner Lago: And by the way, I didn't want to bring that up, because that's everywhere, the plastic bags are everywhere. When you drive through the City people use it and they tie them up and they throw them in the trash piles that flies away.

Vice Mayor Quesada: So here's an idea that I don't think Publix would be in favor of, the supermarket would be in favor of, because I think it goes to their convenience, but what Costco does and what BJ's does I think is actually very effective because you end up using the boxes

that they use that they receive from their suppliers, so that's the way they recycle and then obviously you take it home and you put it in our bins, and you create more for that bulk pick up.

Commissioner Lago: More for the recycling.

Vice Mayor Quesada: The recycling.

Commissioner Lago: The problem is you don't break them down; we talked about this already Vice Mayor. Just break them down, cut them and break them down.

Vice Mayor Quesada: Free switch blades for our residents so that you can cut down the boxes (laughter), that's a joke. I think it would be tough but that's an idea as well, because they are getting it, we can't prevent, they can't prevent from receiving those types of boxes, but reusing it, repurposing it.

Commissioner Keon: I think they sell them, because they told me in the store because I know we've asked at different times over the years you can ask for a box and they told me that as soon as they...

Commissioner Slesnick: They tear them apart.

Commissioner Keon: They tear them apart as soon as they use them because they stack them and they sell them.

Mayor Cason: These are all points that I think back to your --- let Sustainability take a look at it. There are a lot of recommendations, a lot of them have pros and cons, we've got what other cities do. They can take a look at it and come back with a recommendation.

Commissioner Lago: I'm going to go with the Mayor on this. I just think that we can't expect our Legislature to really do any heavy lifting because they don't want to do this. When the State comes out with a detailed report as what we have in 2010 and its clear, it say it, this is not good for the environment, this is not good for quality of life. We are sophisticated enough to move in a different direction, we hold ourselves to a much higher standard across the board. This is to me, what I consider to be a no-brainer.

Vice Mayor Quesada: What if we look at it a little bit differently. What if we, let's say a little bit different perspective, what if we incentivize it somehow, whether it's coupons, something, let's think about it, people bringing their plastic bags back.

Mayor Cason: That's one of the options that...

Vice Mayor Quesada: Because right now you can do it. You just bring it back and drop it or you reuse that plastic bag. But to be honest with you, we have my wife and I when we get those plastic bags, she has like a little bin under the sink and she put them in there and we use it for odds and ends. If I was going to get a coupon to Publix for "X" amount of dollars for bringing them back...

Mayor Cason: For the wine you go on those wine days.

Vice Mayor Quesada: But if we look at it a little bit differently, because what ends up happening is, when Publix first started rolling out using the cloth bags, we bought ten of them. You know what happens?- they stay in your car, you use them a few times and then they make it to the garage or they make it into a cabinet and all of a sudden...

Commissioner Lago: You keep saying we, I don't think that the Vice Mayor actually does groceries.

[Laughter]

Commissioner Lago: Keep saying we, we go and we bought, I don't know. I'm not sold on that (Laughter). The Mayor is like, let's move, let's move.

Mayor Cason: I got a note from the City Manager that we've got five employees waiting outside for a photo-op with our electric cars. Now we are on sustainability, let's do that and we'll come back.

Commissioner Lago: So we'll basically request the Sustainability Advisory Board to review this and maybe come back at the next Commission meeting.

Vice Mayor Quesada: And for staff to take a look at a potential incentivizing of bringing the plastic bags back and create that mentality, maybe we do it for a month. We give you coupons if you bring the bags back and maybe that will start training people to bring them back.

Commissioner Keon: The next meeting is in a week, so maybe the 24th?

Mayor Cason: We will have a recess, go down take pictures...

Commissioner Lago: One last point. Do you recommend Madam City Manager, that we have staff speak with Publix, engage Publix or just have a discussion?

Vice Mayor Quesada: Hold on a second or maybe we can work with Publix and say, hey look, we'll back off giving you grief about getting rid of plastic bags altogether if you guys incentivize for your customers to bring back the plastic bags, so therefore they pick up the slack, maybe they give a coupon credit to bring back the plastic bags, maybe we can do something of that nature.

Commissioner Lago: It's interesting because when you go to Whole Foods you see a lot more people with the reusable bags, the cloth bags than you see at Publix because there is an incentive, there is an incentive right there in front of you, they are giving you money back. Again, it's not a huge amount of money.

Vice Mayor Quesada: Do they do that?

Commissioner Lago: Yes.

Mayor Cason: To be continued. Let's go downstairs.

Vice Mayor Quesada: ...Publix if not we'll harass them non-stop.

Commissioner Keon: I think that's the culture of who shops at Whole Foods.

Vice Mayor Quesada: Change the culture.

[End: 11:12:38 a.m.]

[Note: The Commission took a recess in order to do a photo-op with staff and the electric cars. The Commission resumed the meeting at 11:22:40 a.m.].

Commissioner Lago: Mayor, if I may, can I proffer a resolution in regards to F-1, saying that it will go the Sustainability Advisory Board for review, and that we will review it maybe in a month or a month and-a-half, not the next Commission meeting, but the following or...

Vice Mayor Quesada: Are you talking about Publix?

Commissioner Lago: Yes.

Vice Mayor Quesada: I think the best bet is working with Publix to incentivize them returning it, because then they are not going to be...

Commissioner Lago: Adversarial.

Vice Mayor Quesada: Correct.

Mayor Cason: But that can be their recommendation, because there are other stores that have plastic bags and we want to make sure it's a comprehensive policy.

Commissioner Lago: That's why I said to the Manager, let's have her have staff reach out to Publix and have a sit down with them.

Commissioner Keon: Well the thing is whatever comes from Publix is going to come from their corporate office, it's not going to come from their local stores, but you know maybe we could draft a letter from the City to Publix, Jacobs is he the gentleman who owns Publix, anyway.

Mayor Cason: Why don't you make your resolution and then...

Commissioner Lago: Basically, I'd like to proffer a resolution in regards to F-1, requesting that the Sustainability Advisory Board thoroughly review our discussion today in regards to plastic bag regulations in the City of Coral Gables and setting a higher standard, and requesting that the City Manager have point person from staff reach out to, like Commission Keon stated, Publix corporate offices and come back with some sort of recommendation from the Sustainability Advisory Board and a brief answer if Publix provides it in regards to what they feel comfortable with, within the next two months.

Commissioner Keon: I think we can encourage them to continue their "Greenwise" efforts to plastic bags and polystyrene, they have made some effort to use their "Greenwise" products and so maybe help them become truly more "Greenwise" than they currently are.

Commissioner Lago: That's the great thing about the City of Coral Gables, there are great options here. We don't always have to go to Publix.

Commissioner Slesnick: But I like the idea since Publix is "Greenwise" saluting them for going that route to begin with and then say furthermore...

Commissioner Keon: You can even be more "Greenwise."

Commissioner Lago: That's it.

Mayor Cason: We have a second for that motion?

Commissioner Slesnick: Second.

Mayor Cason: Commissioner Slesnick seconds. City Clerk.

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 11:25:14 a.m.]