

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2016-XXX

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, AMENDING THE CITY OF CORAL GABLES CODE BY:

- **CREATING SECTION 2-801, “PROHIBITION ON USE OF EXPANDED POLYSTYRENE” IN ARTICLE VIII PROCUREMENT CODE; AND**
- **AMENDING SECTION 62-230 “PROHIBITION ON USE OF EXPANDED POLYSTYRENE” IN ARTICLE VII SPECIAL EVENTS; AND**
- **AMENDING ARTICLE VIII “SALE, USE OR DISTRIBUTION OF EXPANDED POLYSTYRENE BY BUSINESSES WITHIN THE CITY” IN CHAPTER 34 NUISANCE, OF THE CITY CODE;**

PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Coral Gables declares that it is in the best interest of the public health, safety and welfare of its residents and visitors to reduce litter and pollutants on the land and in the waters of the City; and

WHEREAS, expanded polystyrene, a petroleum by-product commonly known as Styrofoam, is neither readily recyclable nor biodegradable and takes hundreds to thousands of years to degrade in the environment; and

WHEREAS, products made from expanded polystyrene have little value and are not accepted into single stream recycling facilities; and

WHEREAS, expanded polystyrene is a common pollutant, which fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife, thus harming or killing them; and

WHEREAS, polystyrene food service materials such as cups, plates, coolers, ice chests and food containers, constitute a portion of the litter in the City’s streets, parks, public places and waterways; and

WHEREAS, due to the physical properties of expanded polystyrene, the EPA states “that such materials can also have serious impacts on human health, wildlife, the aquatic environment, and the economy”; and

WHEREAS, as an environmental leader among local governments in the State of Florida, the goal of the City is to replace expanded polystyrene items with reusable, recyclable or compostable alternatives whenever possible; and

WHEREAS, the City Commission finds that this Ordinance is necessary for the preservation of our environment and the public health, safety and welfare of City residents and visitors.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

SECTION 2. That the City will not purchase or use any item made from expanded polystyrene.

SECTION 3. That Article VIII “Procurement Code,” of the Code of the City of Coral Gables, Florida, be hereby amended as follows:

Division 3. - Source Selection and Contract Formation

Subdivision III. - Qualifications and Duties of Contractual Parties

Sec. 2-801. - Prohibition on Use of Expanded Polystyrene by City Vendors/Contractor

- (a) *Definitions.* For purposes of this section only the following definitions should apply:
- (1) *City contractor* means a contractor, vendor, lessee, concessionaire of the City, or operator of a City facility or property.
 - (2) *Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including but not limited to fusion of polymer spheres (expandable bead foam), injection molding, foam molding and extrusion-blown molding (extruded foam polystyrene).
 - (3) *Expanded polystyrene containers* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, food containers and all similar articles that consist of expanded polystyrene.
- (b) *Prohibited Use of Expanded Polystyrene; Penalties*
- (1) City vendors/contractors shall not sell or use expanded polystyrene within the City or in completing their duties to the City under contract.
 - (2) A violation of this section shall be deemed a default under the terms of the City contract, lease or concession agreement. This subsection shall not apply

to expanded polystyrene containers used for prepackaged goods that have been filled and sealed prior to receipt by the City vendor/contractor.

- (3) Any City contract, lease, or concession agreement entered into prior to the effective date of this section shall not be subject to the requirements of this section, unless the City vendor/contractor voluntarily agrees thereto. This section shall not apply to contract extensions where the vendor/contractor has the option. If the City has the option of extension, however, the City Manager may consider whether the vendor/contractor complies or is willing to comply with Sec. 2-801(b)(1) in determining whether to extend the contract.

SECTION 4. That Article VII “Special Events,” of the Code of the City of Coral Gables, Florida, be hereby amended as follows:

Sec. 62-230. – Prohibition on Use of Expanded Polystyrene

- (a) *Definitions.* For purposes of this section only the following definitions should apply:
 - (1) *Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including but not limited to fusion of polymer spheres (expandable bead foam), infection molding, foam molding and extrusion-blown molding (extruded foam polystyrene).
 - (2) *Expanded polystyrene containers* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, food containers and all similar articles that consist of expanded polystyrene.
 - (3) *City facility* includes, but is not limited to, any building, structure, park, or golf course owned, operated or managed by the City.
 - (4) *Special event permittee* means any person or entity, and their subcontractor(s), issued a special events permit by the City for a special event on City property, in a City facilities or in the City’s right-of-way.
- (b) *Prohibited Use of Expanded Polystyrene; Penalties*
 - (1) Special event permittees, and their subcontractor(s), shall not sell, use, provide food or drink in, or offer the use of, expanded polystyrene articles in City facilities.
 - (2) Upon warning, the special event permittee must stop use of the polystyrene item and replace it with a non-polystyrene alternative as soon as practicable. If the special events permittee does not do so within a reasonable amount of time, he/she may be forced to discontinue the service, sale or participation in the event.
 - (3) A violation of this section shall constitute a City code violation and may result in the revocation of the special events permit and fines and may be grounds for the placement of conditions on or for denial of a future special events permit.

SECTION 5. That Chapter 34 “Nuisances,” of the Code of the City of Coral Gables, Florida, be hereby amended as follows:

Article VIII. – Sale, Use or Distribution of Expanded Polystyrene by Businesses within the City

Sec. 34-187. – Definitions

For purposes of this section only the following definitions should apply:

- (a) *Chain food service provider* means three (3) or more food service providers located within the City that (1) conduct business under the same business name or (2) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.
- (b) *Chain store* means three (3) or more stores located within the City that (1) conduct business under the same business name or (2) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.
- (c) *Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including but not limited to fusion of polymer spheres (expandable bead foam), infection molding, foam molding and extrusion-blown molding (extruded foam polystyrene).
- (d) *Expanded polystyrene containers* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, food containers and all similar articles that consist of expanded polystyrene.
- (e) *Food service provider* means a person or entity that provides food directly to the consumer, regardless of whether such food is provided free of charge or sold, or whether consumption occurs on or off premises, or whether the food is provided from a pushcart, stand or vehicle. Food service providers shall include, but are not limited to, chain food service providers, restaurants, fast food restaurants, cafes, sidewalk cafes, delicatessens, coffee shops, grocery stores, markets, supermarkets, drug stores, pharmacies, bakeries, caterers, gas stations, vending trucks or carts and cafeterias.

Sec. 34-188. – Prohibitions Regarding the Sale, Use or Distribution of Expanded Polystyrene Articles by Food Service Providers and Stores; Exceptions

- (a) Food service providers and stores shall not sell, use, offer for sale or use, or provide food or beverage in expanded polystyrene containers.
- (b) *Exceptions:* Although the discontinuation of the use of polystyrene products is strongly encouraged by the City of Coral Gables Commission, as evidenced in Resolution 2015-269, this article shall not apply to:

1. Expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the food service provider or store;
2. Expanded polystyrene food service articles used to store raw meat, pork, fish, seafood or poultry sold from a butcher case or similar refrigerated retail display or storage case, and
3. Not-for-profit corporations, the school district, and county, state and federal governmental entities.

Sec. 34-189. – Enforcement; penalties

- (a) From August 9, 2016 or 180 days after the second reading of the Ordinance, whichever comes later, until December 31, 2016, if a code enforcement officer finds a violation of 34-188, he/she will issue the violator a warning.
- (b) Beginning January 1, 2017, if a code enforcement officer finds a violation of section 34-188, the code enforcement officer shall issue a ticket. The ticket shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, and that the violation may be appealed pursuant to the procedures in Art. VI, Division 3 of the City Code of Ordinances.
- (c) A violator who has been issued a ticket must elect to either:
 - (1) pay the following civil fine:
 - (a) First violation within a 12-month period.....\$50.00
 - (b) Second violation within a 12-month period.....\$100.00
 - (c) Third violation within a 12-month period.....\$500.00;
 - or
 - (d) Any subsequent violation within a 12-month period.....\$1,000.00
 - (2) request an administrative hearing before a special master as set forth in Art. VI, Division 3 of the City Code of Ordinances.
- (d) Failure to pay the civil fine, or to timely request an administrative hearing before a hearing officer, shall constitute a waiver of the violator’s right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assess accordingly.
- (e) A certified copy of an order imposing fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator’s real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes.
- (f) The hearing officer shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a hearing officer may appeal that decision to a court of competent jurisdiction.

Sec. 34-190. – Financial hardship waiver

Any food service provider or store that reported an annual gross income/revenue under \$500,000 per location on its income tax filing for the most recent tax year, and that is not a chain food service provider or chain store, may request from the City Commission, a financial hardship waiver of the requirements of this article. The financial hardship waiver request may apply to one or more expanded polystyrene food service articles sold, used or offered for sale or use by any such food service provider or store. The City Commission may grant a waiver if the food service provider or store proves the following:

- (a) there is no comparable alternative product not composed of expanded polystyrene that would cost the same as or less than the expanded polystyrene food service article, and
- (b) the purchase or use of an alternative product not composed of expanded polystyrene would create an undue financial hardship.

Such financial hardship waiver shall be valid for twelve (12) months and may be renewable upon application to the City Commission. If an administrative hearing is requested pursuant to section 34-189(e)(2), a pending financial hardship waiver request shall be grounds for a continuance of the administrative hearing, but only if the notice of violation was issued after the submittal of the financial hardship waiver request.

SECTION 6. The City, together with Coral Gables Chamber of Commerce (the Chamber) and the Business Improvement District of Coral Gables (BID) shall undertake an education campaign, beginning upon the adoption of this Ordinance, in order to inform residents and businesses of its requirements. The campaign will include: community meetings, workshops, the use of social media, programming on Gables T.V., printed informational materials, email blasts to members of the Chamber and/or BID, websites, resident letters and/or emails and mail inserts. After the conclusion of the educational campaign, the City will continue to make the ordinance known to vendors, special event permittees and businesses within the City.

SECTION 7. SEVERABILITY.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 8. REPEALER.

All ordinances or parts of ordinances in conflict herewith, are hereby repealed.

SECTION 9. CODIFICATION.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances

immediately upon the signing of the Ordinance; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 10. EFFECTIVE DATE.

This ordinance shall become effective upon adoption except that enforcement shall not begin until August 9, 2016 or 180-days after second reading, whichever comes later.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D., 2016.

APPROVED:

JIM CASON
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY