

City of Coral Gables City Commission Meeting
Agenda Item E-2
March 15, 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
Assistant Public Works Director, Jessica Keller

Public Speaker(s)

Perry Adair
Jose Bermudez
Mark Trowbridge

Agenda Item E-2 [10:14:15 a.m.]

An Emergency Ordinance of the City Commission of Coral Gables granting Ordinance No. 2016-08 relating to the regulation of polystyrene a retroactive effective date of December 8, 2015 (the date of passage on First Reading), while continuing to maintain the same schedule as to enforcement, providing for a repealer provision, severability clause, codification, and providing for an effective date.

City Attorney Leen: Do you want to go to E-2?

City Commission Meeting
March 15, 2016

Agenda Item E-2 – Emergency Ordinance relating to the regulation of polystyrene a retroactive effective date of December 8, 2016, while continuing to maintain the same schedule as to enforcement

Mayor Cason: Do we have time?

City Attorney Leen: Yes.

Mayor Cason: Okay. Alright. We're going to move on to Item E-2. It's an Emergency Ordinance.

City Attorney Leen: Thank you, Mr. Mayor. May I have one second? Okay. Item E-2 is an Emergency Ordinance of the City of Coral Gables granting Ordinance No. 2016-08 relating to the regulation of polystyrene a retroactive effective date of December 8, 2015 (the date of passage on First Reading), while continuing to maintain the same schedule as to enforcement, providing for repealer provision, severability clause, codification, and providing for an effective date. This is an Emergency Ordinance, so it's a public hearing item. It's sponsored by Commissioner Lago, who I'm going to turn it over to in a little bit. I also know that Perry Adair is in the audience, and he would like to speak on this ordinance as well. I'd like to say a few words first, though. Item E-2 came before the Commission in February on Second Reading, and what it did was it did a comprehensive regulation of polystyrene in the City of Coral Gables. Part of those regulations applied to businesses in Coral Gables and the use of polystyrene and the sale of polystyrene, et cetera, with some appropriate exceptions. I say appropriate exceptions because the reason why the ordinance was passed in February was because the City reached out to the Chamber of Commerce and the Business Improvement District and worked with them to prepare a comprehensive ordinance that would be acceptable to them and that they could support, which they did. So, that's why even though it was approved on First Reading in December, it did not get approved until Second Reading until February and that was the reason why. Well, why do I raise all that? Because what recently happened in the State Legislature was the State passed a law that preempts local polystyrene regulations. That's what it says it does. It doesn't provide any other regulations. It just simply says it preempts it to a regulatory agency. In addition, there's a grandfathering provision which says that all local ordinances regulating

polystyrene that were adopted before January 1 of this year are grandfathered. Now, Coral Gables did raise with our legislators the issue that our ordinance, which was adopted in February before this legislation was enacted would be preempted potentially, although I think that it's an impermissible preemption, but would potentially be preempted by the statute and that we would be the only ordinance in the state of Florida that would be preempted. Now one thing you'll see in the -- in newspaper articles related to this matter is that the City of Orlando was also planning on adopting a local regulation of polystyrene and had requested a later date for the grandfathering so they could get their ordinance passed. But as far as I know, as of this time, they have not adopted a polystyrene ordinance as of the date of the legislation. So, right now there's no other ordinance in the state other than the four ordinance -- I believe it's four ordinances, and let me read them: Surfside, Miami Beach, Aventura, Key Biscayne -- it's more than four; it's six -- North Bay Village, and Hollywood, according to the Florida League of Cities. Those are the cities -- those are the municipalities that have polystyrene ordinances that were adopted before January 1. The only city that has one adopted between January 1 and the date of the legislation is Coral Gables. And the reason why that occurred was because Coral Gables reached out to the Chamber of Commerce and the BID. Now please note that the Chamber of Commerce was one of the primary supporters of the preemption ordinance, the statewide Chamber of Commerce and a number of businesses, because they were concerned about the effect on business. So what's interesting and ironic is that the City could have passed this ordinance in December and it could have certainly done it as an Emergency Ordinance if there was a danger of preemption but did not in order to work with the Chamber of Commerce, and in fact, received the local Chamber of Commerce's support. So what do you have before you? And I issued an opinion, which I sent to you last night, because I learned that Mr. Adair would be appearing before you and I wanted to put my view on the record and I've asked that the City Clerk accept that in the record, Mr. Mayor, if that is okay with you.

Mayor Cason: It's fine.

City Attorney Leen: So, I issued a City Attorney opinion. I believe the preemption is an impermissible, invalid preemption -- the one that is done by the state -- for two reasons. First, the Miami-Dade County Home Rule Amendment -- the Dade County Home Rule Amendment to the Florida Constitution expressly forbids special acts and what's called local acts as to Dade County and to municipalities within Dade County. It allows general law, but does not allow special acts or local acts. So, what's interesting about this particular law is that it has the effect of a local act or a local law. What does that mean? Well, it only preempts one city's ordinance. It's Coral Gables. Every other city in the state of Florida is treated differently. In addition, it's a closed class. There's no other city that could adopt an ordinance prior to the legislation being enacted by the Legislature. Now any city that goes ahead and adopts an ordinance would do it with knowledge of what the Legislature has done. Coral Gables adopted its ordinance before the Legislature acted and is now the only city that could do so, so it's a closed class. Well, case law indicates -- I'd like to read a case into the record. I won't read the whole case, but Dade County v. Dade County League of Municipalities. This is a Supreme Court of Florida from 1958. This has been established law for a very long time, 104 So. 2d 512 -- and there's other cases that support the same principle -- is that Dade County is treated differently than all other counties in Florida because there's a Dade County amendment in the Florida Constitution which provides home rule for this county and prevents special acts and local laws which harm cities or the County. Now, there are limited circumstances where a city or county could accept a local law under the ordinance, but -- and pardon me, under the amendment, but that -- it can never be done against the municipality's will or the County's will because what the ordinance -- what the amendment says is that the city or the County can basically pass an ordinance nullifying or, in a sense, preempting the state law. It's interesting because you typically don't have localities preempting or nullifying or repealing a state law, but the Dade County amendment expressly says that that can be done. And in fact, if you look at the Dade County charter, Dade County has reserved its right, the ability to nullify, repeal or effectively preempt a state law when it only affects Dade County and it's a local law or a special law. So, that's exactly what's happening here as to the preemption portion of this statute. So, in my view, it's invalid. Now, are we going to get in legislation -- I mean, pardon me, litigation regarding this matter? Well, we don't intend

to start litigation regarding this matter. It may be brought to us and we will defend our position, but I did think -- there's a doctrine called constitutional avoidance, which is that, you know, typically we're the only city right now that has a problem probably with this statute because we have an ordinance that is -- that the State would potentially preempt if it's found to be a valid preemption. So, we're the only city that's harmed. There's a much more direct way to address this, which is to give our ordinance a retroactive applicability or effective date as of December, which would predate January 1. So, let's talk about retroactivity. The case of R.A.M. of South Florida, Inc. v. WCI Communities, Inc., which is 869 So. 2d 1210, it's a Second District of Florida case -- Second District Court of Appeal of Florida from 2004. This basically goes to what are the requirements for retroactivity. And typically, the first thing a court will look to is does the local government intend for it to be retroactive. Well, by today's action, you would make that express. You would adopt an ordinance saying, yes, indeed that it should be retroactive as of December, so the court will have no issue with that. So the only question then would be, is this something that could be applied retroactively. And what the court looks to is a retroactive application of a civil statute ordinarily transgresses constitutional limitations on legislative power if the statute impairs vested rights, creates new obligations or imposes new penalties. The issue here is that this retroactive application does none of those things because it's already law and there's already an enforcement period that's in the future, which is not being changed. So, the retroactive application of this ordinance will harm no one. No one's going to get a ticket because of it. No one's going to lose a vested right. All of that's already established in the future. So -- and the same enforcement time period will be allowed. Now, finally, as to its emergency -- it being an emergency ordinance, the basis for the emergency is that right now local businesses in Coral Gables, if they just look at this legislation, will believe that they do not have to comply with the polystyrene ordinance, and in fact, that it will be preempted, assuming the Governor doesn't veto it. The concern for the City is we provided this grace period so that local businesses would have time to adapt. And it's very important to those local businesses, in my view, that we let them know as soon as possible, i.e. today, that we do intend to enforce this ordinance so that they are on notice and so they are not harmed. By sitting on our rights and waiting for another Commission meeting or a future Commission meeting to let them know this,

we are affecting -- we could be doing exactly what the harm would be for not making this retroactive, which is we could be affecting their rights because it's going to -- they will believe that they no longer have to comply with our polystyrene ordinance, so that's the basis for the emergency. All that an Emergency Ordinance does is you have to do this by a four-fifths vote. You're waiving basically the -- a Second Reading and the publication that would go in the paper. Now, I'm not so concerned about that in this particular ordinance because we've already gone through two readings with the polystyrene ordinance. It's already been advertised in the paper. People know about it. So this is simply trying to address a very specific situation that came up which will not affect anyone's substantial rights because this is not going into effect for many months in terms of its enforcement period. There's a grace period, then there's warnings, then there would be citations. So, that's the general legal analysis. With that, I would turn it over to Commissioner Lago to discuss, and then I know that Mr. Adair would like to speak to you.

Mayor Cason: I think he would like to hear first from the two speaker cards we have. This is all -- City Clerk, we only had two?

City Clerk Foeman: Yes, Mr. Mayor.

Mayor Cason: After that, we'll close the public hearing. We'll start with Jose Bermudez, and then Perry Adair.

Vice Mayor Quesada: Jose is waiving.

Mayor Cason: Okay, you're waiving. Perry Adair.

Perry Adair: Good morning.

Mayor Cason: Good morning.

Mr. Adair: Commissioners. So, Perry Adair, 121 Alhambra Plaza, 10th Floor, Coral Gables, Florida, for American Chemistry Council, as my client. So, first let me start by saying that Craig mentioned -- I said Craig, like we're on a first name basis around here -- Mr. Leen mentioned that he found that I would be here, and I want to make it clear that I told Mr. Leen I would be here. I wanted to do him the courtesy. Mr. Leen is a very fine city attorney and a great colleague and a very good person, and that courtesy would be shown to him no matter what the issue was.

City Attorney Leen: Thank you, Mr. -- yes. He sent me an email last night, which I did appreciate.

Mr. Adair: So, let's talk about the merits of where we are. So, we have now just talked about what the emergency is, but there's no evidence of an emergency before you. So, what the City Attorney says is an emergency is not evidence. There's nothing before you that really would count as evidence. I'm not saying you should disregard what your City Attorney says -- and I know you would not -- but there's no evidence of the (INAUDIBLE) he described. Our position is pretty clear, that under 166.041, when you're going to deal with an Emergency Ordinance, you have to have an emergency. There isn't any question about that. And candidly, I'm not too terribly unhappy about this situation because usually it's the other way around. It's somebody I represent trying to get an application or something in to take action from the City before some ordinance comes into effect, precisely what the City is doing here. So, I don't know that I'm too terribly upset by the precedent, although it is our position that it is not an emergency. There's certainly no evidence before you that it's an emergency. Now, as for the Dade County Home Rule Charter, no question about it that Mr. Leen described it accurately. Where he and I disagree on the point is what has occurred here the impact of a local law or a special act or a local law -- general law of local application. Now, that is -- what you have to assume there is that this legislation was aimed at us. In other words, the City's position is we back into that role because we're the only one that happens to have this problem. There's no sense in us debating here. Some court will sort it out at some point, but that is not typically the way that you get to a

general law of local application or a special act, that we back -- that we just happen to be the only one in this dilemma. When you talk about the retroactivity, first off, you're having the effective date of December 8, the effective date of an ordinance that did not exist. So, you're having an ordinance effective -- the ordinance that you adopted in February is not the ordinance that was before you on December 8. It has changes to it. So, you're essentially saying that we are going to adopt something that didn't exist as of that date on the basis of this emergency. Again, we don't think that's what's contemplated by Chapter 166, but it is what it is. Now, the -- as to the retroactivity and whether it has any substantive effect, other words, that Mr. Leen and I disagree on this point. If you don't do this -- right, so the premise is because of the grace period built into the ordinance, it's not going to have any impact on anyone if you make the date back -- retroactive December 8. I completely and utterly disagree with that. That might be the case if we were not in the context we're operating in. Now, there's a state statute that will -- that -- and we're not going to get to the issue of whether it's an improper state statute or whether it was properly adopted or it's arbitrary. Some judge will decide that as well. But that -- but for the retroactivity that we're trying to get to today, there wouldn't be any ordinance. It could not be more substantive -- could not be more substantive, this change because we're trying to pigeonhole into a place on the basis of an emergency where it will be effective because we're concerned about if we don't do it, it would not be effective. That's not procedural. Right, the whole ordinance would fail. It doesn't get any more substantive than that. That's a whole different genre of procedural issues we could talk about if we were not in that -- if we were not in this context. Now, in terms of the City putting it off for -- and by the way, I would like to make sure that the video of the First Reading is made a part of this record because at the First Reading, the City was not even -- I'd say -- not concerned -- the City discussed the option of the ordinance not going forward at all, right, because they wanted to gather some information from the Chamber and the BID wound up doing the reporting. Whoever else they reached out to, I don't know. But the -- so the -- and what we have now is this emergency, but back when we were here on First Reading, there was no emergency. It almost was deferred, I think at the suggestion of Commissioner Lago, for the laudable purpose of, we want to get the businesses and see where they are on this to get them on board. So, those are our positions of why this

emergency is not an emergency, that you can't go forward this way, and that it could not be more substantive than it is, could not be more substantive than it is in effect because if the state statute is valid -- an issue that we're not going to decide here -- but for this attempt at retroactivity today, which we don't think -- our feeling is it's probably going to pass today, but if it didn't, then it wouldn't have any validity at all, the ordinance, if the state statute holds up, and that's where we'd be. So, it's completely substantive. And that -- yes, Commissioner Lago.

Commissioner Lago: Mr. Mayor, if I may. I have a few comments that I want to make. I'll reserve that for after our discussion, but besides procedural legal matters, I'm not an attorney. I leave that up to the Vice Mayor and to our esteemed City Attorney to my right. What is your client's interest and want in ensuring that this ordinance does not move forward? What is the purpose? - because we're discussing procedural matters here. You can have that discussion with our City Attorney. I want to know where you stand. What is your client's reason for being here and for opposing an ordinance which serves a very, very simple objective, which is to be environmentally friendly and take responsibility for an environmental issue which has been going on for years, which should not be happening because there's multiple options for us to be responsible. So, what I want to know is, what is your client's reasoning behind, number one, engaging you, and number two, being here before this Commission.

Mr. Adair: Well, a lawyer needs a fee. Let's not be that way, Commissioner Lago, but...

Commissioner Lago: I didn't hear. I'm sorry, I missed it.

Mr. Adair: No, it was an attempt at humor. Let me just address your question.

Commissioner Lago: Don't worry, I fail sometimes at humor, but tell me the joke.

Mr. Adair: Commissioner Quesada got it right away.

Commissioner Lago: I didn't hear you. I apologize.

Mr. Adair: The -- even Mr. Leen is smiling. So, the -- I want to address the way you premised the question because this is how we get into trouble, whether it's in politics or in any other arena. We frame the question in a way that to answer would mean you're not responsible and you're not for protecting the environment. I know you didn't mean that. I understand that. I'm just saying the question was premised that way.

Commissioner Lago: Well, let me go back and...

Mr. Adair: No need. I got it.

Commissioner Lago: But let me go back in reference to your attempt at humor. Sometimes I get put in a position where I get offered projects either in a design or in the construction phase and I say no to those projects because I have an ethical dilemma in regards to doing those projects. So, we have to make decisions -- and my attempt was not to box you into a corner, but my attempt was to frame it in the fashion where I feel we're basically doing two things here. Number one, I think we're wasting this Commission's time, and I'm going to be completely frank with you. And number two, everyone in this room today will tell you that this a no-brainer. This is a slam dunk. And I'm going to get into my opinion in regards to the Governor and what I think he should do later, and ask for this Commission's support, as I've always done before. But I think we've gotten to the point where I just want to know what is the point of being here today and having a discussion based on an item where you can use paper, you can use plastic, you can use standard ceramic, you can use whatever you'd like to use to serve yourself and there's no need to continue using an archaic method which does nothing but, number one, pollute the environment, and number two, result in the death of a multitude of creatures who live in the sea and live in our neighborhoods. So, I'd like to know -- just a simple answer. I don't want to go on too long. I just want to know exactly why are we here today.

Mr. Adair: So, I want to address two things you said and then get to the merits of your question. So you raised the issue of ethics. The premise of that question is there's something unethical about this engagement, my engagement. That's number one.

Commissioner Lago: No, I'm not saying...

Mr. Adair: Let me just finish.

Commissioner Lago: No, no, hold on.

Mr. Adair: Yes, of course.

Commissioner Lago: Hold on. I want to know what is the point...

Mr. Adair: I'm getting to it, but...

Commissioner Lago: I never said you were unethical, so don't put words in my mouth. Let's be clear about that.

Mr. Adair: Alright.

Commissioner Lago: Okay.

Mr. Adair: So, you made a comparison to a project you might turn down if you had an ethical dilemma.

Commissioner Lago: Yeah.

Mr. Adair: So -- and I think your comment -- or I may have heard it wrong, but I thought you said wasting the Commission's time.

Commissioner Lago: Yeah.

Mr. Adair: Alright, now let me give you the perspective of counsel for this or any other personal appearance.

Commissioner Lago: But that's my opinion. I'm not speaking about the Commission.

Mr. Adair: Yeah, understood.

Commissioner Lago: That's my opinion.

Mr. Adair: Right, but when you speak from the dais, you speak as the Commission, Mr. Lago, right?

Commissioner Lago: I said that's my opinion.

Mr. Adair: Mr. Lago doesn't sit there; Commissioner Lago sits there.

Commissioner Lago: Yes, sir.

Mr. Adair: So, let's be clear about this. When an attorney comes here advocating on behalf of the client because he has identified an issue which he thinks doesn't comport with the law, in particular, this emergency procedure you're following. He not only has a duty, he has an obligation to bring to your attention, I don't think this comports with the law. Now, if that means every time that the Commission doesn't agree, that's a waste of the Commission's time,

it's an interesting perspective. I don't -- I hope that's not the -- so I want to make it clear about that. Now we move on to the merits of the question.

Commissioner Lago: Mr. Adair, listen, what you're doing right now is you're trying to spin this. I said you're not wasting -- what I want to make very, very clear -- I mean, you keep going around and you haven't answered my question. My question is, let's get away from the legality of the issue. I want to understand what is the purpose behind what the company that hired you is doing today. Are they trying to ensure -- I'm going to answer for you, maybe so you can answer it very clearly. Are they trying to ensure that their products are still viable and they can be used throughout the state? - even though you have probably a dozen municipalities that are right now trying to do the same thing the City of Coral Gables is trying to do because it makes sense? We have to evolve. It's very simple. You have to evolve as a people. You can't get caught up in the same ways that we've doing things for 50 years, and that's across the board. That's on all aspects. There's a certain part of evolution that happens here, and this is very clear. So, what my question to you is, what is the purpose of the company that hired you? Why are they here? What is the point of it? Are they trying to fight this ban? Are they trying to ensure that a product which is not in the best interest of this community continues to be able to be sold? I just want to understand. So, I don't want to get caught in the legalities. If you want to have a legal discussion, you can have it with our City Attorney. But I want to understand what's going on.

Mr. Adair: So, the -- my client disagrees with the policy of the Commission that an outright ban is the solution to the problem. My client believes that recycling is the solution to the problem. My client feels that it is very likely you're going to find yourself with a substitute material that creates its own set of problems. That's the distinction between how my client sees the problem should be solved...

Commissioner Lago: Which substitute material would that be, sir?

Mr. Adair: I'm not prepared to discuss the merits of it. I don't -- and really, we don't know. Right, we don't know today what people will substitute for this stuff you're banning. It may work out exactly as you say. And if it doesn't work out exactly as you say, you may very well come back and say, you know what, we were wrong. We made -- recycling may be the solution. But you asked me my client's position. I'm telling you my client's position. They disagree that an outright ban is the solution. As you noted, the state legislation doesn't give a solution, it just preempts, so we don't know what their -- ultimately will determine the solution is. So, the answer to your question on the merits is it disagrees an outright ban is the solution and feels that recycling is the solution for this problem.

Commissioner Lago: I appreciate your candor.

Mayor Cason: Mr. Bermudez, you still don't want to speak, or...

Commissioner Lago: No, I mean -- by the way, just to be clear -- and I have to ask our staff, maybe Jessica Keller or Matt come up -- but can we discuss whether -- because Mr. Adair made a comment about recyclability of polystyrene. Can we have a -- can we -- can you give me just a little bit of information, Matt? Maybe you want to come up here to discuss whether...

Commissioner Keon: It's not recyclable.

Commissioner Lago: Through the City Manager, if I may, what is the current -- I'm not holding you to these numbers, but I just want to get an idea in regards to polystyrene. Is it really being recycled right now and what does it make up in regards to the waste stream?

Assistant Public Works Director Keller: Right now I don't have the figures of what percentage it makes up in the waste stream, but right now we do not have the opportunity to recycle expanded polystyrene here in the City of Coral Gables.

Commissioner Lago: Okay. Is that across --? Would you have an idea in regards to the County and the state level and nationally? Is that really a recycled product? My understanding, it's not very recyclable.

Assistant Public Works Director Keller: There is no market to recycle.

Commissioner Lago: Okay.

Mayor Cason: Let me ask Mr. Bermudez. You originally had a speaker card and you decided -- you now would like to address this?

Jose Bermudez: Yeah, absolutely, because we were talking about the emergency item that was upon you, but now we're actually talking about the product. So, I wanted to say there's several communities throughout the United States that are -- that have proposed recycling programs and are currently recycling the product. When Commissioner Lago said that this is a product that's been used for 50 years and it has...

City Attorney Leen: We need your name and...

City Manager Swanson-Rivenbark: Could you identify yourself, please?

Mr. Bermudez: I'm sorry. Jose Bermudez, on behalf of the American Chemistry Council.

City Attorney Leen: Thank you.

Mr. Bermudez: So, for 50 years, this product has evolved, and there are programs that recycle the product. There are also communities like yours that have passed bans and they have reversed their position on banning. There's several communities in California which have opted to put recycling programs. You know, what you're doing now is do an all-out ban for food service

companies, for retailers and all that. But that doesn't mean that cities next to you are not going to be selling those products and those products are going to end up in your cities, in your parks, and in other places. So, what...

Commissioner Lago: Could I ask you a quick question in regards to that? And I'm sorry to interrupt you. But you mentioned that polystyrene is recycled. So, what percentage -- give me an idea -- if you have 100 percent products produce polystyrene, what percentage of polystyrene products go into a landfill or go into the ocean would you say, just to give me an idea? Because I know that there's nowhere near the level of plastic recycled and paper recycled and metal and glass that are recycled. So, what would you say? Would you say 1 percent, 2 percent of polystyrene is recycled?

Mr. Bermudez: You know, and that is the problem. I think -- and with all due respect, I think...

Commissioner Lago: And you know why that happens? Because there's no market for polystyrene recycling.

Mr. Bermudez: But if you really want to face a problem, you have to be proactive and give the option to the consumer, to your residents to be able to recycle this product because it's going to continue to be a problem.

Commissioner Lago: Can I answer that question?

Mr. Bermudez: Yeah, absolutely.

Commissioner Lago: We have given the option. We have, and I'll tell you exactly how we've done it. We took a moment. We took a step back. I said let's hold off on Second Reading. Let's speak to the Chamber, who is our partner. Let's speak to the BID. Let's have them speak to all the restaurants and see what their opinions are. They're the ones that mostly use

polystyrene. Let's see what their opinion of the matter is. They came back -- and I'm not going to speak for Mr. Trowbridge, but they came back with overwhelming support of the fact, like I mentioned before, that it's time to evolve. It's time to take responsibility. It's time to move in a different direction. Again, other cities in this county have already taken these measures and it's working. It's working across the board. Anybody that goes on the waterway here, our esteemed realtor, Commissioner Slesnick can tell you. Commissioner -- Vice Mayor Quesada -- I don't live on the waterway. They can tell you that our waterways are full of polystyrene. It's just -- this is not about I want to cause harm to a certain individual or agency. I have the utmost respect for you. But at the end of the day, we have to make certain decisions which will benefit this community as a whole. And I think that we have to start taking responsibility, just like we've talked about on this dais so many times and the Mayor has been talking about it for years and Commissioner Keon just had her second of two -- second of three symposiums based on sea level rise. We have to be environmentally conscious. And this is a measure, which in my opinion, will only benefit, not harm the people as a whole.

Mr. Bermudez: Absolutely, Commissioner. And we're prepared to talk with the City in promoting recycling programs and really the safe use of these products and to expand, you know, cleanup efforts and also...

Commissioner Lago: Will you do me a favor? Will you acknowledge one thing? Will you acknowledge right now that there's no market for polystyrene recycling right now because of the fact of the mass and the weight of polystyrene. There's really no recycling for it. Will you acknowledge that, that it gets either incinerated, it goes into waste plants, or it ends up in the ocean?

Mr. Bermudez: No, absolutely not. There's several recycling plants throughout the state and throughout the United States that are currently recycling this product.

Commissioner Lago: Would you -- would our sustainability team like to stand up here and say something or --? Listen, you have the floor so...

Assistant Public Works Director Keller: Hi. I'm Jessica Keller. I'm the Assistant Public Works Director and I oversee transportation and sustainability. I do -- if you could provide us locations and the names of the businesses that are recycling polystyrene, that would be very helpful. We're interested in, you know, working with you. But the other thing I would like to bring up is that it's not simply about recycling the material. There's also the concern that -- expanded polystyrene breaks down to smaller pieces and those smaller pieces create a large amount of litter and are ingested by wildlife, and that's one of our concerns that we -- can you address?

Commissioner Lago: And another issue with our Assistant Public Works Director didn't mention, though we've had several discussions about it and I've had discussions with Matt about it is the thousands of years that it takes for this to break down. We're not talking about paper, which may take a few hundred years or a hundred years or 50 years to break down. We're talking about thousands of years. This is a product that is chemically produced, that in the byproduct of its production causes pollution. So, again, and I'm going to put it on the record just so you know, I'm a Republican. This is a nonpartisan city. I'm Republican, but I have to, you know, it's my duty as the father of two young children, to make sure that we leave this place better than when we were here. So, it's not just you. It's -- again, we're going to start talking about plastic bags. We're talking about sea level rise. These two gentle -- this gentleman and this nice, fine lady next to my right are leading that charge. You know, we have Commissioner Slesnick, which is helping us out in regards to our waterways. We're doing a lot of different things and we have to make sure that the City of Coral Gables not only talks the talk, but also walks the walk when it comes to the environmental cause. So, again, you have -- you're here. We respect you. I just want to make sure that we're not talking about semantics and legalities here from your attorney, that we're talking about -- this is about pennies and cents -- this is about cents and dollars and this is about a business and whether we will be affecting that industry. And

again, sometimes we have to make very, very tough decisions. And if the City Manager wants to weigh in, I don't know if you...

City Manager Swanson-Rivenbark: Sure.

Commissioner Lago: Do you want...

City Manager Swanson-Rivenbark: And Commissioner Lago, I just wanted to remind the dais and the community that this city has been committed to an aggressive sustainability program since before I returned to the City. There is a \$300,000 master plan -- sustainability master plan that is underway that talks about how the City, the community, how we can be better stewards. You funded that last year. It's a very involved process. We've had presentations to you all speaking about what those recommendations will be. There is a Sustainability Advisory Board that you created; in fact, you reinvigorated it. They have joined in on this desire to eliminate polystyrene. Those minutes have come forward to you on multiple occasions. You passed the resolutions, but before you passed the First Reading of the ordinance, you have discussed this on the dais numerous occasions over the past year. So if anyone thinks that this city isn't committed to a polystyrene free environment, they have failed to follow the minutes that have come forward to you, the discussions that have happened on this dais, and the monies that you have spent to make sure that this city, your community, is a more sustainable environment for generations.

Commissioner Lago: And if I could just have one item before my colleagues -- maybe they want to say a few words. I speak to a lot of people in this community, a lot. I mean, I know that Commissioner Slesnick is, you know, working seven days a week on her real estate profession and she probably speaks to more people than all of us on this dais, maybe the Mayor when he has -- he's got to go to so many events. But I haven't had one individual come to me and say that this is a bad idea. I've had probably dozens of people come to me and say, you know what, it's a matter of time that the City step up and assume some sort of responsibility, you know. We're proud of you about the tree succession plan. You're doing a great job in regards to

sustainability, great job recycling, you know. We're pushing cardboard. You know, hey, I had it posed to me at the Lisbon Park event this weekend. We were talking about different sustainability endeavors and the City going -- moving forward on. And one of the residents came up to me and said, hey, what about plastic bags. I said, listen, we're working on that, but we're doing our due diligence. So, when we mentioned polystyrene in front of the residents at the Lisbon event -- there was about 80 people there -- everybody clapped about how important this was and this was a step forward in the right direction. I mean, have you had any other mixed feelings from residents? Has anybody told you banning polystyrene is not a good idea, that we're inflexible, that maybe we're not heeding -- you know, we're not being proactive?

Vice Mayor Quesada: Actually when we just had the restaurant presentation now, it's actually -- so I've been speaking leading up to this event and I had actually -- I told them about the polystyrene and they all, I think, with the exception of one, use -- it's like a brown box for takeout, so it's...

Commissioner Lago: Which is recycled paper.

Vice Mayor Quesada: Paper, some product.

Mayor Cason: And remember we -- when we passed this 5-0, there was an exemption for food that's coming in, for example, the containers that have eggs that come in from outside. So, this is not -- there is flexibility in this.

Commissioner Lago: There is.

Mayor Cason: But by and large, we don't want to see more polystyrene in the trash, floating around, and I think that -- I've never received any opposition to it. So, I think, as a policy, we voted 5-0 for it. I think we're willing to take our risk with -- on the legal side and if we have any...

City Attorney Leen: Can I add two additional things? I would also like to note one of the reasons that I gave in the memo to you was that, you know, this particular statute, if we were to challenge it, I believe it could be challenged. And that challenge would not just be to the City of Coral Gables, it would be a statewide challenge by Coral Gables as to the statute because it's arbitrary and capricious. And it is -- you look at it on its face and it's arbitrary and capricious. It doesn't give any regulations at all. It only -- it picks an arbitrary date knowing that it's going to - - and let me be clear. The Legislature knew, we informed them, so knowing that Coral Gables would be the only ordinance in the state that's preempted, that's arbitrary. Why only Coral Gables? Particularly, when Coral Gables is one of the only cities in the state where they can't single out the city and pass a special or local law, but yet the State Legislature did exactly that through this statute. In addition, I would simply point -- you know, and I didn't reference this in my memo to you, but I would also reference 6.02 of the Miami-Dade County Charter, which gives the City of Coral Gables primary jurisdiction over local matters in Coral Gables and allows us to have a higher standard of zoning, regulation and service, and this is regulation.

Commissioner Lago: Craig.

City Attorney Leen: So, and that's in the Dade County Charter, which expressly grants us this authority. So, what I would say is if the Governor signs this statute, I will be coming before you with an ordinance asking you to nullify it in the City of Coral Gables based on all those provisions. And if we're challenged, I will defend the ordinance based on this retroactive Emergency Ordinance, based on that nullification ordinance, and based on a general argument that statewide it's facially invalid as arbitrary and capricious and we will seek the support of cities throughout the state of Florida in order to achieve that goal.

Commissioner Lago: Mayor, if I may, I'd like to have Mark Trowbridge from the Chamber, if he has a moment, to come up and just give his words in reference to the Chamber's opinion in regards to this matter. I want to make sure that's memorialized and for the record.

Mark Trowbridge: Well, we've been here I think the last two times on this issue; I think one in December and one in February. And the time that was taken between those two meetings was to allow us to go back to our (INAUDIBLE) Committee and also go back to the restaurants a second time for both and get feedback from them. And I think I shared with you we basically were informed that most of the restaurants had already either completed this process or were tracking through that. And so, you know, our biggest issue was in the collaborative effort, give us as much time as the Commission was willing to do to kind of two-fold, one create a pretty strenuous education process, and then also give us a time where the enforcement was more of a warning, so in the end we'll have an entire year. At the same time, we obviously were tracking what was happening at the state level and I was sending that on to Miriam and others because we were up in Tallahassee as a Chamber on a myriad of issues, and we were aware through the Retail Federation that this was happening, obviously not knowing that there might be a date retroactive, if you will. That didn't have an impact on what we were doing. We wanted to make sure we were talking and getting their feedback. But at the two different restaurant meetings, like I said, the tone was basically a nonissue. We're already doing it, especially those that had takeout. They had already explored this and it was really from their customers' point of view is that they wanted to see them make those changes. So, you know, in working with the City Attorney and working with Matt and Jessica and the team, we just wanted to make sure -- give us as much time as we could to educate and implement. We didn't want any stringent or harsh penalties right out of the gate. And most importantly, you know, use us as an educational tool, so that's kind of where we were. It's the same thing I shared with you.

Commissioner Lago: Would you say the City was flexible in your request?

Mr. Trowbridge: You know, there was nothing that we asked for that they didn't go back and ask for, especially wanting to take this all the way to the end of 2016. So, I think that was our biggest ask. I think we looked at some of the fines. We looked at how you could create an exemption. We talked about the process of putting notices when you open a new business, that

it'll be part of your -- when you open a new business in Coral Gables here are some things to think about. And I think the prepackage was important too because, obviously, we know things come in prepackaged. We have some members like that whether it's a Vicky Bakery or places like that, where things are already done like that. I didn't really, you know, think about the eggs, but you know, especially those smaller businesses where they buy those items and they're sourced that way, that those are exempt. And nonprofits have an opportunity to ask for exemptions, so small companies. We technically would fall under that as the Chamber, but we've made a conscious decision that when we have -- for us, it's mostly events. So events like our 5K in May, Burgerlicious, we're going to work with those restaurants to make sure all those disposable items fit the bill. So, you know, with regard to where we stand, that's kind of how we vetted through that and worked at a very grassroots level.

Mayor Cason: Thank you.

Commissioner Lago: Thank you.

Mayor Cason: Anything else? Any other comments?

Commissioner Lago: Commissioner Keon.

Commissioner Keon: You know, it is dismaying that we have a -- that there is a product that we know is not good for the environment. We know that there's no market for the recycling of it. We know it does us harm. We know it's not good for us, and yet, we pass laws that protect it and allow it, you know, to be present in our society knowing that it's bad, you know, on the basis that, you know, it interferes with private business. You know, I think, you know, conscience is not a party issue. It is -- that is just our role in protecting the environment and protecting our communities.

Commissioner Lago: And if I just may add one last point. This is going before the Governor in reference to the budget, and I want to make sure that I ask the Commission that they grant me the ability to go to Tallahassee, if I have to go to speak before the Governor in regards to this important issue. I think we need to send a very, very clear message to the Governor and to the Senate and to the House that right now he has an opportunity to make sure that special interests does not prevail in regards to this issue. I think it's very easy. For example -- I'll give you two examples where the voters in this state were neglected on behalf of special interests taking -- their voices being louder. That was Florida Amendment number 1, which had 75 percent approval by the entire state of Florida and was never ratified by the Governor. And the second issue was the FP&L transmission lines, which we all know how that turned out in regards to City of Coral Gables at the last moment. This is a third example where this Governor has an opportunity to make a decision which will benefit the residents, not only of the City of Coral Gables, but there are -- correct me if I'm wrong, staff -- I think there's about 10 to 12 cities that are partaking in this issue also in moving the ball forward to really push environmental causes to the forefront. This is not a democrat, republican or independent issue. This is an issue about quality of life. This is an issue about responsibility. And the Governor needs to understand -- and I'm more than willing to sit down with him, if he entertains me with a few moments -- that we need to set this in motion and allow the environment to take center stage. So, if -- it would be an honor, if you'd grant me the opportunity, if we -- if I do have to and that I'm left with no other recourse, to go to Tallahassee. I don't have an issue taking an afternoon and going forward if you grant me that privilege.

Mayor Cason: Sure.

Commissioner Keon: Absolutely.

Mayor Cason: Thank you, Mr. Bermudez.

Mr. Bermudez: Thank you, Mayor.

City Attorney Leen: So, with the ordinance, I would like to incorporate into the Whereas clauses the legal opinion I issued to you, as well as the statement regarding 6.02 into the Whereas clauses, to show the basis for the emergency and our view that this is an appropriate action.

Commissioner Lago: Oh, and by the way, just so you know, now, just in case anybody asks you, the way that this is written is so ambiguous because there's -- correct me if I'm wrong -- an amendment now stating they're banning our ban of poly --

City Manager Swanson-Rivenbark: I'm sorry, sir. You're talking about the state amendment.

Commissioner Lago: Yeah, yeah.

City Manager Swanson-Rivenbark: You're not talking about the City legislation.

Commissioner Lago: No, the state amendment. There's a state amendment -- and correct me if I'm wrong -- thank you, Madam City Manager. There's an amendment that's supposed to be ratified by the Governor, that's on the Governor's desk, which is a ban on our ban, so it's very confusing. So, what we have to request is that people call the Governor, write their State Legislature, write their senators and say please have the Governor veto that amendment, which would help the City of Coral Gables and all the other cities, including Orlando who were also entertaining the possibility of banning polystyrene.

Mayor Cason: Anything else?

Commissioner Lago: Am I wrong or right?

City Attorney Leen: I asked Fausto Gomez, who's our lobbyist, what would the Governor have to veto. And I asked him could it be a line item veto of the -- of basically the polystyrene preemption. He said no. He said it would have to be a veto of the agricultural bill...

Commissioner Lago: Okay.

City Attorney Leen: The agricultural package. Now, we're going to look at that with him. All I -- that was late at night and he had to respond very quickly. So, we would obviously only seek the Governor's veto as to the most limited thing possible to achieve our goal, but...

Commissioner Lago: Mayor, if I may. I just wanted to mention that -- because Craig just brought it to my attention. I also wanted to commend Fausto Gomez for his work. I mean, we were writing emails I think until like 1 o'clock in the morning last night in reference to this issue, and he's been staying on top of it, so I want to say thank you for all his efforts, especially his entire team.

City Manager Swanson-Rivenbark: And Mr. Mayor, while we've talked about, the First Reading of the ordinance in December and a Second Reading in February after very productive discussions with the business community, I would remind you that also on October 27, 2015, Resolution 2015-269, you, by a 5-0 vote, instructed staff to develop this. You encouraged residents to stop using polystyrene. You identified the damages that was -- were associated with polystyrene and it passed overwhelmingly with a 5-0 vote. And so I would hope that in these discussions that resolution October 27, 2015 is also submitted in the record.

Mayor Cason: Alright. This will require a four-fifths vote.

City Attorney Leen: Yes. And we would be incorporating the Whereas -- the basis for the emergency and the...

Mayor Cason: Right.

City Attorney Leen: Legal opinion I gave into the Whereas clauses.

Commissioner Lago: Can you do me a favor? Can you also please, Madam City Manager, our City Clerk, whatever the outcome of this today is -- and I think we're going to have the four-fifths vote, God willing, I'd like to make sure that we send this out to every single municipality, both in Broward, Dade and Monroe requesting that they urgently pass similar resolutions or ordinances showing support for our ordinance at the state level, and urging the Governor to veto this amendment.

City Attorney Leen: May I make one...

Commissioner Lago: Certainly.

City Attorney Leen: Proposed amendment to that?

Commissioner Lago: Yes, sir.

City Attorney Leen: We're unique because there's no other city that could pass a polystyrene ordinance. What they should be doing...

Mayor Cason: Supporting.

Commissioner Lago: Is supporting.

City Attorney Leen: Respectfully, is supporting what we're doing.

Commissioner Lago: That's what I meant.

City Attorney Leen: And urging the Governor to -- and the Legislature to allow them to adopt their own polystyrene ordinances, by either vetoing this statute, or amending it at the next session.

Mayor Cason: Alright.

Commissioner Lago: I'd like to make a motion.

Mayor Cason: Do I have a motion?

Commissioner Lago: I'd like to make a motion.

Mayor Cason: Commissioner Lago makes the motion.

Vice Mayor Quesada: Second.

Commissioner Slesnick: Second.

City Attorney Leen: So this is a motion as to the...

Mayor Cason: Commissioner Slesnick.

City Attorney Leen: Emergency -- can we do the Emergency Ordinance first?

Mayor Cason: Yes, that's what we're doing.

City Attorney Leen: So would this be a motion as to the Emergency Ordinance?

Commissioner Lago: Yes, sir.

Mayor Cason: Yes. So, Commissioner Lago made the motion. Commissioner Slesnick seconds. City Clerk.

Commissioner Keon: Yes.

Commissioner Lago: Yes.

Vice Mayor Quesada: Yes.

Commissioner Slesnick: Yes.

Mayor Cason: Yes.

(Vote: 5-0)

Second Roll Call

Commissioner Lago: Yes.

Vice Mayor Quesada: Yes.

Commissioner Slesnick: Yes.

Commissioner Keon: Yes.

Mayor Cason: Yes.

(Vote: 5-0)

City Attorney Leen: And then Mayor Cason, may we -- it would be in order to have a second motion as to the resolution and to sending it to all the different cities and to granting Commissioner Lago the ability...

Commissioner Lago: I'll make the motion.

City Attorney Leen: To go to Tallahassee.

Mayor Cason: Commissioner Lago makes that motion.

Commissioner Slesnick: Second.

Mayor Cason: Seconded by Commissioner Slesnick. City Clerk.

Vice Mayor Quesada: Yes.

Commissioner Slesnick: Yes.

Commissioner Keon: Yes.

Commissioner Lago: Yes.

Mayor Cason: Yes.

(Vote: 5-0)

Commissioner Lago: In closing, thank you to all my colleagues, everyone that's here today. Staff, you've done an incredible job, our sustainability team, our Sustainability Task Force, the Chamber, the BID, everyone that really helped out in regards to this issue, our State Representatives, our State Senators, everyone that had a part, Fausto Gomez. Your efforts are incredibly appreciated, and let's move this ball forward. Thank you.

[End: 11:02:26 a.m.]