



To: Billy Urquia, City Clerk

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Polystyrene/Plastic Bags

Date: March 16, 2020

On February 9, 2016, the City Commission adopted Ordinance No. 2016-08 (hereafter referred to as the "Polystyrene Ordinance") which:

- Added Section 2-801 (renumbered to 2-730) to the City Code to prohibit City vendors/contractors from selling or using expanded polystyrene within the City or in completing their duties under their contract with the City;
- Added Section 62-230 (renumbered to 62-262) to the City Code to prohibit special event permittees from selling, using, or providing food or drink in expanded polystyrene articles in City facilities; and
- Added Sections 34-187 through 34-190 (renumbered to 34-263 through 34-266) to the City Code to prohibit businesses located within the City from selling, using, offering for sale or use, or providing food or beverages in expanded polystyrene containers.

On May 9, 2017, the City Commission adopted Ordinance No. 2017-13 (hereinafter referred to as the "Plastic Bag Ordinance") which:

- Added Section 62-245 (renumbered to 62-263) to the City Code to prohibit special event permittees from providing items in single-use carry out plastic bags during special events as a condition of approval; and
- Added Sections 34-191 through 34-194 (renumbered to 34-285 through 34-288) to the City Code to prohibit retail establishments located within the City from providing to any customer a single-use carry out plastic bag.

After the adoption of the Polystyrene Ordinance, the Florida Retail Federation and Super Progreso, Inc. ("Plaintiffs") filed a suit against the City alleging that the Polystyrene Ordinance was preempted by Sec. 500.90 Florida Statutes. During the pendency of the suit, the City argued that Section 500.90 was unconstitutional as applied to the City. Sections 403.7033 and

403.708(9), F.S. were also implicated and the trial court found all three statutes to be unconstitutional. In accordance with that ruling, the City continued with the implementation and enforcement of the Polystyrene Ordinance and adopted the Plastic Bag Ordinance. Meanwhile, Plaintiffs appealed and in July 2019, the Third District Court of Appeal reversed the trial court's ruling and expressly declared all three statutes constitutional, thereby rendering portions of the Polystyrene and Plastic Bag Ordinances unenforceable.

In response to the ruling and mandate of the Third District Court of Appeal, in August 2019, the City Commission adopted Resolution No. 2019-250 which:

- Stayed the enforcement of the ordinance prohibiting businesses located within the City from selling, using, offering for sale or use, or providing food or beverages in expanded polystyrene containers;
- Stayed the enforcement of the ordinance prohibiting retail establishments located within the City from providing to any customer a single-use carry out plastic bag;
- Directed the continued enforcement of the prohibition on City vendors/contractors selling or using expanded polystyrene within the City or in completing their duties under their contract with the City;
- Directed the continued enforcement of the prohibition on special event permittees from selling, using, or providing food or drink in expanded polystyrene articles in City facilities; and
- Directed the continued enforcement of the prohibition on special event permittees from providing items in single-use carry out plastic bags during special events as a condition of approval.

The City appealed the decision of the Third District Court of Appeal and filed a Petition for Discretionary Review with the Florida Supreme Court. On February 12, 2020, the Florida Supreme Court declined to accept jurisdiction of the appeal and ordered the petition for review denied. The Florida Supreme Court was the final tribunal to which the case could be appealed. Accordingly, the three statutes at issue stand as constitutional and Chapter 34, Articles IX and X of the City Code, may not be enforced until such time as there is a change to the pertinent Florida Statutes. The City Clerk is hereby directed to make the following notation in Chapter 34 of the City Code: "Articles IX and X of Chapter 34 will not be enforced until the City Attorney opines that they are legal." In addition, Section 34-267 "Nullification of state laws," of the City Code shall be stricken.

This opinion is issued pursuant to Section 2-252(e)(1), (8), and (9) of the City Code.

Paulk, Enga

From: Ramos, Miriam
Sent: Monday, March 16, 2020 2:58 PM
To: Paulk, Enga
Cc: Suarez, Cristina; Throckmorton, Stephanie; Ceballos, Gustavo; Levi Garcia, Naomi
Subject: Opinion re. polystyrene/plastic bags
Attachments: opinion - polystyrene and plastic bag ordinances.docx

Enga, please conform the attached for publishing. It should be addressed to Billy.

Thanks,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

Board Certified by the Florida Bar in City, County, and Local Government Law

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CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING ORDINANCE REGULATING THE USE OF EXPANDED POLYSTYRENE AND
ORDINANCE REGULATING THE USE OF SINGLE-USE CARRY OUT PLASTIC BAGS

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- Directed the continued enforcement of the prohibition on special event permittees from selling, using, or providing food or drink in expanded polystyrene articles in City facilities; and
- Directed the continued enforcement of the prohibition on special event permittees from providing items in single-use carry out plastic bags during special events as a condition of approval.

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