

ORDINANCE NO. 2018-4205

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," BY MODIFYING THE CIRCUMSTANCES UNDER WHICH SUBSECTION (Z), RELATING TO SINGLE-USE CARRY OUT PLASTIC BAGS, WOULD TAKE EFFECT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City"), a world-renowned tourist destination, declares that it is in the interest of the public health, safety, and welfare of its residents and visitors to reduce litter and pollutants on the lands and in the waters of the City, and along its shores and famous beaches; and

WHEREAS, the City is comprised of a number of islands with approximately 70 miles of shoreline along numerous canals and waterways, the Atlantic Ocean, and the Biscayne Bay Aquatic Preserve, all of which support a wide variety of flora and fauna; and

WHEREAS, the waters surrounding the City support threatened and endangered species such as the West Indian manatee and Johnson's seagrass; and

WHEREAS, the City's beaches are a designated nesting habitat for the protected loggerhead, green, and leatherback sea turtles, and support shorebird species, including royal terns and seagulls; and

WHEREAS, single-use carry out plastic bags are neither readily recyclable nor biodegradable, and take hundreds to thousands of years to degrade in the environment; and

WHEREAS, the distribution of single-use carry out plastic bags by businesses to consumers and patrons for use in carrying purchased goods has a detrimental effect on the environment of the City, County, and State; and

WHEREAS, discarded single-use carry out plastic bags contribute to overburdened landfills, threaten wildlife and marine life, and degrade and litter drainage and sewage systems, as well as the beaches and waters off the Florida coast, which include areas within the City; and

WHEREAS, single-use carry out plastic bags are photo-biodegradable and break down into smaller pieces which can make their way into the food chain via such animals as jellyfish and endangered sea turtles; and

WHEREAS, plastic bags constitute a portion of the litter in the City's streets, parks, public places, stormwater management system, and waterways; and

WHEREAS, as an environmental leader among local governments in the State of Florida, the goal of the City is to replace single-use carry out plastic bags with reusable, recyclable, or compostable alternatives whenever possible; and

WHEREAS, the City Commission finds that this Ordinance is necessary for the preservation of the City's environment and the public health, safety and welfare of City residents and visitors and future generations; and

WHEREAS, in Florida Retail Federation, Inc. and Super Progreso Inc. v. The City of Coral Gables, in the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida (Case No. 2016-018370-CA-01), the Court held that Sections 403.708(9) and 403.7033 of the Florida Statutes, relating to packaging and plastic bags, are unconstitutional. The Plaintiffs appealed the trial court ruling, and the case is currently pending before the Third District Court of Appeal; and

WHEREAS, on July 26, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4117, amending Chapter 82 of the City Code, entitled "Public Property," to create a definition for "single-use carry out plastic bag," and to create Section 82-385(z), which provides that, at sidewalk cafes, single-use carry out plastic bags shall not be allowed on the right-of-way and shall not be provided to sidewalk cafe patrons. The provisions in Section 82-385(z), and the definition of "single-use carry out plastic bag," would only take effect upon the issuance of a final mandate by the Third District Court of Appeal or the Florida Supreme Court which upholds the unconstitutionality of Section 403.7033, Florida Statutes; and

WHEREAS, this Ordinance modifies the circumstances under which City Code Section 82-385(z), relating to single-use carry out plastic bags, would take effect.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Division 5, entitled "Sidewalk Cafes," of Article IV, entitled "Uses in Public Rights-of-Way," of Chapter 82, entitled "Public Property," of the Miami Beach City Code, is hereby amended as set forth below. The definition in Section 82-366 is provided for reference purposes.

**CHAPTER 82
PUBLIC PROPERTY**

* * *

Article IV. Uses in Public Rights-of-Way

* * *

Division 5. Sidewalk Cafes

* * *

Subdivision I. Generally

* * *

Sec. 82-366. Definitions.

* * *

Single-use carry out plastic bag means a bag provided by a sidewalk cafe permittee to a sidewalk cafe patron, for the purpose of transporting purchases or goods, including, but not

limited to, food and beverages, which is made predominantly of plastic derived from petroleum or a biologically-based source. A single-use carry out plastic bag does not include a compostable carry out bag that:

- (1) Conforms to current ASTM D6400 standards;
- (2) Is certified and labeled as meeting ASTM D6400 standard specifications by a recognized verification entity; and
- (3) Must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

* * *

Subdivision II. Permit

* * *

Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.

* * *

- (z) Single-use carry out plastic bags shall not be allowed on the right-of-way and shall not be provided to sidewalk cafe patrons. ~~The provisions in this subsection (z), and the definition of single-use carry out plastic bag in section 82-366, shall only take effect upon the issuance of a final mandate from following an opinion from the Third District Court of Appeal or, if appealed to the Florida Supreme Court, the issuance of a final mandate from the Florida Supreme Court, regarding the opinion final judgment rendered in Florida Retail Federation Inc. and Super Progreso, Inc. v. The City of Coral Gables, in the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida (Case No. 2016-018370-CA-01), which final mandate Third District Court of Appeal opinion upholds the unconstitutionality of F.S. § Section 403.7033, Florida Statutes. Notwithstanding the above, the provisions in this subsection (z), and the definition of single-use carry out plastic bag in section 82-366, shall automatically sunset if an appeal is filed with the Florida Supreme Court, and the Florida Supreme Court upholds Section 403.7033, Florida Statutes, as constitutional, or as otherwise valid.~~

- (1) Notwithstanding the above, beginning on August 6, 2018, the city shall engage in public education efforts to inform the public of the provisions in this subsection (z), and to provide assistance with identifying alternatives to single-use carry out plastic bags. Beginning on November 1, 2018, and continuing through January 31, 2019, the city shall provide for a warning period, during which the code compliance department shall issue written warnings for violations of the provisions of subsection (z). Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (z) that pertain to single-use carry out plastic bags.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.


It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. 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 other appropriate word.

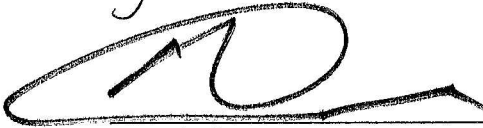
SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the 4 day of August, 2018.

PASSED and **ADOPTED** this 25 day of July, 2018.

ATTEST:

 8/6/18
Rafael E. Granado
City Clerk


Dan Gelber
Mayor

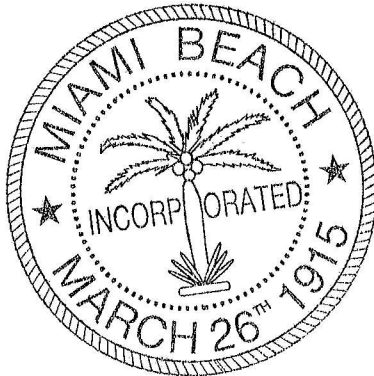
Underline denotes additions

~~Strikethrough~~ denotes deletions

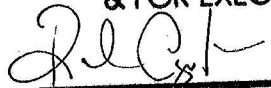
Double underline denotes additions made after First Reading

~~Double-strikethrough~~ denotes deletions made after First Reading

(Sponsored by Mayor Dan Gelber, and co-sponsored by Commissioners John Elizabeth Alemán, Ricky Arriola, Michael Góngora, Kristen Rosen Gonzalez, Mark Samuelian, and Micky Steinberg)



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

7/11/18
Date

NK

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: July 25, 2018

1:30 p.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," BY MODIFYING THE CIRCUMSTANCES UNDER WHICH SUBSECTION (Z), RELATING TO SINGLE-USE CARRY OUT PLASTIC BAGS, WOULD TAKE EFFECT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Legislative Tracking

Office of the City Attorney

Sponsor

Mayor Dan Gelber and Co-Sponsored by the City Commission

ATTACHMENTS:

Description

- ▣ City Manager's Memorandum
- ▣ City Attorney's Memorandum
- ▣ Exhibit A to City Attorney's Memorandum
- ▣ Ordinance

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

cc: Rafael E. Granado, City Clerk

FROM: Jimmy L. Morales, City Manager

DATE: July 25, 2018

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION I, ENTITLED "GENERALLY," BY AMENDING SECTION 82-366 THEREOF, ENTITLED "DEFINITIONS," TO DEFINE THE TERM "SINGLE-USE CARRY OUT PLASTIC BAG"; BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385 THEREOF, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES" TO PROVIDE PROVISIONS RELATING TO SINGLE-USE CARRY OUT PLASTIC BAGS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

BACKGROUND

On April 26, 2017, the Mayor and City Commission adopted Resolution No. 2017-29822, supporting Florida House Bill 93 and Senate Bill 162, which authorized the establishment of a two-and-a-half year pilot program by certain coastal municipalities to regulate or ban disposable plastic bags; and, alternatively, in the event these Bills were not adopted, urging the repeal of Section 403.7033, Florida Statutes, so that local governments are no longer preempted from enacting legislation relating to the regulation of disposable plastic bags.

On July 26, 2017 the City Commission adopted an Ordinance requiring sidewalk cafés to discontinue the use of plastic bags upon a favorable outcome in the *Florida Retail Federation v. City of Coral Gables* litigation¹. At the City Commission meeting on June 6, 2018, the Mayor and City Commission adopted a motion to amend the proposed Ordinance, to immediately implement restrictions on the use of single-use carry out plastic bags at sidewalks cafes. The Motion was made by Mayor Gelber, and seconded by Commissioner Góngora. The motion was

¹ See City Attorney's Memorandum, also attached to this agenda item.

adopted by a vote of 7-0 and the Second Reading Public Hearing is scheduled for the July 25, 2018 Commission meeting.

ANALYSIS

According to the Environmental Protection Agency (EPA), over one trillion plastic bags are used each year. In U.S., Americans use over 380 billion plastic bags and wraps every year, each typically discarded after a single use. Plastic bags are comprised of high-density polyethylene, the production of which requires both petroleum and natural gas. It takes an estimated twelve million barrels of oil to produce the amount of plastic bags estimated to be used annually in the United States. That's equivalent to over 1,000 bags per person per year, with less than 10% of these bags being recycled or reused. In addition, as litter, a plastic bag can take hundreds of years to break down at the landfill.

The Florida Department of Environmental Protection (FDEP) asserts that plastic bags are detrimental to our community because they do not fully degrade in our oceans or land environment and introduce unsafe chemicals into our environment. FDEP's Retail Bags Report, FDEP recognizes that plastic bags create the potential for injury to or death of marine animals through entanglement and ingestion. Moreover, plastic bags can block sunlight from reaching into the depths of the water, leading to stress on aquatic vegetation, plant death and a reduction in the oxygen level of the water. Unnaturally low oxygen levels kill fish and other animals. According to the National Geographic, filter feeders, known as known as larvaceans, ingest the plastic particulates that are produced by the degradation of plastic in the water, and then the plastic gets into their fecal pellets or into the "mucus houses" in which the larvaceans live, made of excreted mucus. Their fecal pellets and their houses sink into the deep ocean, carrying the plastic with it. A wide range of marine animals consume larvaceans, their fecal pellets or their mucus houses, accounting for microplastics in the marine food webs and potentially on our plates.

Further, the expansive usage of single-use plastic bags and their typical disposal rates creates unsightly litter and is an impediment to the City's waste reduction and recycling goals. Plastic bags are easily picked up by the wind and end up as litter throughout our City's beaches, parks, greenspaces, and waterways. In addition, plastic bags that enter our stormwater system clog our pollution control devices causing increased maintenance costs and localized flooding. The widespread use of single-use plastic bags also presents recycling challenges and frequently contaminates material sent to recycling facilities. Plastic bags cause equipment and operational problems at recycling facilities, landfills and waste transfer stations. The machinery on trucks and separators is frequently impaired because plastic bags wrap around wheels, gears and other parts of the equipment, forcing work to stop while someone extracts the plastic and restarts the process. This happens daily at recycling facilities and employees risk injury by reaching into sharp or pinching areas to free the plastic from the machinery.

The discontinuation of plastic bag usage by the City's sidewalk cafe permittees will support the City's waste reduction and recycling goals, promote environmental health, protect wildlife, and conserve resources. Reducing the availability of plastic bags also encourages the use of more sustainable products. As an alternative, reusable bags reduce overall litter by allowing customers to reuse a single bag on multiple occasions. Moreover, brown paper bags can be recycled, which also reduces overall litter.

Similar to the city's polystyrene restrictions, the Ordinance proposes a phased implementation.

- During the first three months, a public education campaign would be conducted in order

to inform sidewalk cafe permittees, city contractors, and special event permittees of the provisions of the Ordinance, and to provide assistance with identifying alternatives to plastic bags (i.e. from August 6, 2018, through October 31, 2018).

- Following the City's public education efforts, the City would provide for a three-month written warning period (i.e. from November 1, 2018, through January 31, 2019), during which time written warnings shall be issued by the Code Compliance Department for violations of the Ordinance.
- Beginning on February 1, 2019, the Code Compliance Department would enforce the full enforcement and penalty provisions in the Ordinance.

City staff is currently working on the development of a "plastic-free" campaign that will assist with the public outreach implementation phase.

FISCAL IMPACT STATEMENT

According to the City's Code Compliance Department, the City will use existing resources to enforce this Ordinance. Accordingly, the Ordinance is anticipated to have no more than a nominal impact on the City's resources.

CONCLUSION

The attached amended Ordinance is presented to the Mayor and City Commission for Second Reading/Public Hearing. The Administration recommends approving the above-referenced Ordinance.

SMT/ESW/FCT

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Mayor Dan Gelber
Members of the City Commission

Date: July 25, 2018

From: Raul J. Aguila
City Attorney

Subject: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," BY MODIFYING THE CIRCUMSTANCES UNDER WHICH SUBSECTION (Z), RELATING TO SINGLE-USE CARRY OUT PLASTIC BAGS, WOULD TAKE EFFECT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

I. Introduction

Pursuant to the request of Mayor Dan Gelber, the above-referenced Ordinance has been placed on the July 25, 2018 City Commission meeting agenda for consideration on Second Reading/Public Hearing. The Ordinance passed on First Reading at the June 6, 2018 City Commission meeting.

II. Ordinance No. 2017-4117

On July 26, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4117, amending Chapter 82 of the City Code, entitled "Public Property," to create a definition for "single-use carry out plastic bag," and to create Section 82-385(z), which provides that, at sidewalk cafes, single-use carry out plastic bags shall not be allowed on the right-of-way and shall not be provided to sidewalk cafe patrons.

Pursuant to Ordinance No. 2017-4117, the provisions in Section 82-385(z) and the definition of "single-use carry out plastic bag" shall only take effect upon the issuance of a final mandate from the Third District Court of Appeal or, if appealed to the Florida Supreme Court, the issuance of a final mandate from the Florida Supreme Court, regarding the opinion rendered in *Florida Retail Federation Inc. and Super Progreso, Inc. v. The City of Coral Gables* (Florida Eleventh Judicial Circuit Case No. 2016-018370-CA-01) (the "Coral Gables Litigation"), which final mandate upholds the unconstitutionality of Section 403.7033, Florida Statutes. (See Commission Memorandum for Ordinance No. 2017-4117, attached hereto and incorporated herein as Exhibit "A".)

III. Proposed Ordinance

The proposed Ordinance modifies the circumstances under which the provisions in City Code Section 82-385(z), and the definition of "single-use carry out plastic bag," would take effect. Pursuant to the City Commission's direction on June 6, 2018, the Ordinance has been revised for Second Reading to provide that, beginning on August 6, 2018, the City shall engage in public education efforts to inform the public of the provisions in Section 82-385(z), and to provide assistance with identifying alternatives to single-use carry out plastic bags. Beginning on November 1, 2018, and continuing through January 31, 2019, the City shall provide for a warning period, during which the Code Compliance Department will issue written warnings for violations of Section 82-385(z). Beginning on February 1, 2019, the Code Compliance Department shall enforce the provisions of Section 82-385(z).

Notwithstanding the above, if, in the context of the Coral Gables Litigation, the Third District Court of Appeal or the Florida Supreme Court upholds Section 403.7033, Florida Statutes, as constitutional, or as otherwise valid, an Ordinance repealing City Code Section 82-385(z), and the definition of "single-use carry out plastic bag," will be presented to the City Commission for its adoption.


MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Mayor Philip Levine
Members of the City Commission
Jimmy Morales, City Manager

cc: Rafael Granado, City Clerk

From: Raul J. Aguila, City Attorney 

Date: July 26, 2017

Subject: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION I, ENTITLED "GENERALLY," BY AMENDING SECTION 82-366 THEREOF, ENTITLED "DEFINITIONS," TO DEFINE THE TERM "SINGLE-USE CARRY OUT PLASTIC BAG"; BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385 THEREOF, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES" TO PROVIDE PROVISIONS RELATING TO SINGLE-USE CARRY OUT PLASTIC BAGS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

I. Introduction

Pursuant to the request of Commissioner Michael Grieco, the above-referenced Ordinance has been placed on the July 26, 2017 City Commission meeting agenda for consideration on Second Reading/Public Hearing. The Ordinance passed on First Reading at the June 7, 2017 City Commission meeting. The Ordinance amends Chapter 82 of the City Code to define "single-use carry out plastic bags" and to provide that, at sidewalk cafes, single-use carry out plastic bags shall not be allowed on the right-of-way and shall not be provided to sidewalk cafe patrons. The provisions in the Ordinance would only become effective as explained in Section IV of this Memorandum.

II. Section 403.7033, Florida Statutes

In 2008, the Florida Legislature created Section 403.7033, Florida Statutes, which directed the Florida Department of Environmental Protection ("DEP") to "undertake an analysis of the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments." ("Plastic Bag Statute" or "Statute"). The Plastic Bag Statute required DEP to submit a report with conclusions and

recommendations to the Legislature no later than February 1, 2010. Lastly, the Statute states that, "[u]ntil such time that the Legislature adopts the recommendations of the department, no local government, local governmental agency, or state government agency may enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags."

Consistent with the Statute's mandate, DEP issued such a report ("Retail Bags Report" or "Report") on February 1, 2010. However, the recommendations set forth in the Report were never adopted by the Legislature. Accordingly, the preemptive clause in Section 403.7033 remains in effect.

III. *Florida Retail Federation, Inc. and Super Progreso Inc. v. City of Coral Gables* (Fla. 11th Jud. Cir. Case No. 2016-18370-CA-01)

On July 18, 2016, Plaintiffs Florida Retail Federation, Inc. and Super Progreso Inc. filed a complaint in the Miami-Dade County Circuit Court against the City of Coral Gables, challenging the Coral Gables Polystyrene Ordinance, and seeking a declaratory judgment and injunctive relief.¹ The Plaintiffs argued that the Polystyrene Ordinance not only violated State statutory provisions regarding polystyrene regulations, but also violated several other Florida Statutes, including Section 403.7033, the Plastic Bag Statute, which addresses disposable plastic bags. On September 28, 2016, the Court granted the State of Florida's motion to intervene in the litigation.

After reviewing the parties' cross-motions for summary judgment, the Circuit Court entered an order granting the City of Coral Gables's motion for summary judgment, which order upheld the Coral Gables Polystyrene Ordinance. The Court reasoned, among other things, that the Plastic Bag Statute set forth in Section 403.7033, Florida Statutes, "lack[s] the necessary standards and guidelines for implementation, rendering [it] unconstitutionally vague" The Plaintiffs and the State of Florida, as an intervenor, have appealed the Circuit Court ruling to the Third District Court of Appeal (Case No. 3D17-562), where that appeal is currently pending.

IV. Contingent effective date

Given that the Circuit Court's order regarding the unconstitutionality of the Plastic Bag Statute is currently subject to appeal, the attached proposed Ordinance has been carefully drafted so that it would only take effect upon the issuance of a final mandate by the Third District Court of Appeal or the Florida Supreme Court which upholds the unconstitutionality of the Plastic Bag Statute set forth in Section 403.7033, Florida Statutes.

The City may condition the effectiveness of legislation on the outcome of the Coral Gables litigation. "Legislation, the effectiveness of which is conditioned upon the happening of a contingency, has generally been upheld." *Helmsley v. Borough of Ft. Lee*, 394 A.2d 65, 82 (N.J. 1978) (upholding an ordinance contingent on the final outcome of litigation, including appeals) (citing *City of Miami Beach v. Lansburgh*, 218 So. 2d 519 (Fla. 3d DCA 1969), *reh'g denied*, 226 So. 2d 821 (Fla. 1969) (municipal ordinance to take effect upon passage of bill pending in state legislature)); see also *Gaulden v. Kirk*, 47 So. 2d 567, 575 (Fla. 1950) ("In the absence of constitutional or statutory provisions to the contrary, statutes may become effective on the happening of certain conditions or contingencies specified in the act, or implied therefrom.").

¹ On February 9, 2016, the City of Coral Gables adopted Ordinance No. 2016-08, prohibiting the sale and use of expanded polystyrene by City vendors and contractors, special event permittees, food service providers, and stores (the "Polystyrene Ordinance").

If, following all appeals in the Coral Gables litigation, the Circuit Court is reversed and Section 403.7033, Florida Statutes, is found to be constitutional, rather than unconstitutional, then the Office of the City Attorney will prepare a second Ordinance repealing the attached Ordinance.