

ORDINANCE NO. 2019-4295

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ENVIRONMENT," BY CREATING ARTICLE VIII, TO BE ENTITLED "SALE OR USE RESTRICTIONS FOR SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS," TO ESTABLISH REGULATIONS FOR THE SALE AND USE OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS, AND TO PROVIDE FOR ENFORCEMENT, PENALTIES, AND WAIVERS FOR FINANCIAL HARDSHIP; AND 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, disposable food service articles, including single-use plastic beverage straws and single-use plastic stirrers, constitute a portion of the litter in the City of Miami Beach's streets, parks, public places, and waterways; and

WHEREAS, the City's goal is to reduce litter by reducing the use of and replacing single-use plastic beverage straws and single-use plastic stirrers with environmentally preferred alternative materials; and

WHEREAS, on July 25, 2018, the City Commission adopted Ordinance No. 2018-4208, which prohibited City contractors, sidewalk café permittees, and special event permittees from selling, using, providing beverages with, or offering the use of single-use plastic beverage straws or single-use plastic stirrers in City facilities or on City property; and

WHEREAS, as an environmental leader among local governments in the State of Florida, the City of Miami Beach, by virtue of this Ordinance, will prohibit the sale and use of single-use plastic beverage straws and single-use plastic stirrers by food service providers and retail stores; and

WHEREAS, this Ordinance will preserve and enhance the environment of the City of Miami Beach.

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

SECTION 1. That Article VIII of Chapter 46 of the Code of the City Miami Beach is hereby created as follows:

CHAPTER 46
ENVIRONMENT

* * *

**ARTICLE VIII. Sale and Use Restrictions for Single-Use Plastic Beverage Straws and
Single-Use Plastic Stirrers.**

Sec. 46-212. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chain food service provider means five or more food service providers located within the city that (a) conduct business under the same business name or (b) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.

Chain store means five or more stores located within the city that (a) conduct business under the same business name or (b) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.

Code compliance officer means a code inspector as defined in section 30-3 of the City Code and, for purposes of this article, shall include, without limitation, a police officer.

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 of a 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.

Single-use plastic beverage straw means a tube, intended for only one-time use, that is made predominantly of plastic derived from either petroleum or a biologically based polymer, including polymers derived from corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. Single-use plastic beverage straw includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

Single-use plastic stirrer means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, including polymers derived from corn or other plant sources. Single-use plastic stirrer includes compostable and biodegradable petroleum or biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

Store means a retail or wholesale establishment other than a food service provider.

Section 46-213. Prohibitions regarding the sale or use of single-use plastic beverage straws and single-use plastic stirrers by food service providers and stores; exemptions.

- (a) Food service providers and stores shall not sell, use, offer for sale or use, or provide beverages with single-use plastic beverage straws and single-use plastic stirrers.
- (b) Exceptions.

 - (1) The requirements of this article shall not restrict a food service provider or a store from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.
 - (2) The requirements of this article shall not apply to the school district, and county, state, and federal governmental entities.
 - (3) Single-use plastic beverage straws and single-use plastic stirrers used for prepackaged beverages that have been filled and sealed prior to receipt by the food service provider or store.

Section 46-214. Enforcement; penalties.

- (a) Beginning October 1, 2019, the City shall engage in public education efforts to inform food service providers and stores of the provisions of this article and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers.
- (b) Beginning January 1, 2020, the City shall provide for a six (6) month warning period through and including June 30, 2020 during which the code compliance department shall issue written warnings for violations of this article.
- (c) Beginning July 1, 2020, the code compliance department shall fully enforce the provisions in this article.
- (d) If a code compliance officer finds a violation of this article, the code compliance officer shall issue a notice of violation. The notice 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, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (e) A violator who has been served with a notice of violation 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 or subsequent violation within a 12-month period....\$500.00;
or

- (2) request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
- (f) Failure to pay the civil fine, or to timely request an administrative hearing before a special master, 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 assessed accordingly.
- (g) A certified copy of an order imposing a 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. After three months following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien for the amount of the lien plus accrued interest.
- (h) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation. The special master shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

Section 46-215. Financial hardship waiver.

Any food service provider or store that reported an annual gross income 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 manager, in a manner and form established by the city manager, a financial hardship waiver of the requirements of this article. The city manager may grant a waiver if the food service provider or store proves the following:

- (a) there is no comparable alternative product not composed of plastic that would cost the same as or less than single-use plastic beverage straws and single-use plastic stirrers, and
- (b) the purchase or use of an alternative product not composed of plastic would create an undue financial hardship.

Such financial hardship waiver shall be valid for twelve months and may be renewable upon application to the city manager. If an administrative hearing is requested pursuant to section 46-214(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 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 Code of the City of Miami Beach, Florida. 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.

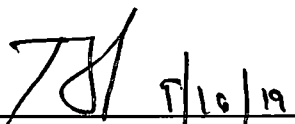
This Ordinance shall take effect on the 21 day of September, 2019.

PASSED AND ADOPTED this 11 day of September, 2019.

ATTEST:



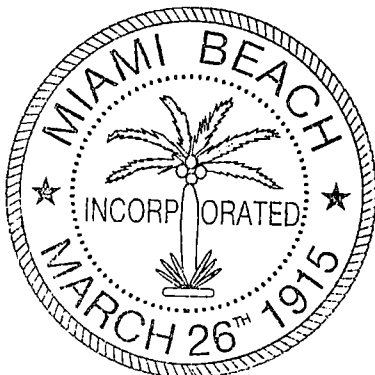
Dan Gelber, Mayor



Rafael E. Granado, City Clerk

(Sponsored by Commissioner Ricky Arriola and Mayor Dan Gelber)

Underline denotes additions
Doubleunderline denotes additions after the First Reading
Strike through denotes deletions



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 8/26/19
City Attorney Date

FA

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: September 11, 2019

10:25 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ENVIRONMENT," BY CREATING ARTICLE VIII, TO BE ENTITLED "SALE OR USE RESTRICTIONS FOR SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS," TO ESTABLISH REGULATIONS FOR THE SALE AND USE OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS, AND TO PROVIDE FOR ENFORCEMENT, PENALTIES, AND WAIVERS FOR FINANCIAL HARDSHIP; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

Adopt the ordinance for second reading establishing regulations for sale and use of single-use plastics.

ANALYSIS

At the Commission meeting on July 25, 2018, the City Commission and Mayor adopted an ordinance extending the city's previous single-use plastic straw/stirrers ban from beaches to all city properties, including marinas, parks, piers, docks, boat ramps and sidewalk cafes (as well as contractors and special events permittees). At the Commission meeting on July 17, 2019, the City Commission and Mayor adopted for first reading an ordinance to extend city-wide the city's single-use plastic straw/stirrers ban. The Commission requested to add exemptions to the ordinance, including individuals with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer; and single-use plastic beverage straws and single-use plastic stirrers used for prepackaged beverages that have been filled and sealed prior to receipt by the food service provider or store.

The small size and disposable nature of single-use plastic beverage straws and single-use plastic stirrers cause them to become an environmental blight for coastal communities worldwide. The City of Miami Beach, similar to other cities, is a major and internationally recognized tourist destination that continues to encounter a proliferation of discarded plastic straws and plastic stirrers on the City's beaches, waterways, and streets, as a result of businesses providing plastic straws and plastic stirrers with beverages, and improper disposal

of those beverages and straws by consumers.

The average plastic straw is used only for a few minutes before being discarded. Plastic straws are one of the most commonly found littered items during beach cleanups and pose a challenge to daily cleaning efforts carried out by Miami-Dade County Parks and Recreation Beach Operations and Miami Beach Sanitation Department staff. It is estimated that 500 million single-use plastic beverage straws are used by Americans daily. Many of these end up in the ocean, where it takes approximately 200 years to begin degrading. According to a United Nations (UN) article, over eight million metric tons of plastic are found in our oceans every year, impacting our marine wildlife, fisheries, and tourism, and costing at least \$8 billion in damage to marine ecosystems. Plastic straws are among the top ten marine debris items.

The remains and broken-down particles of these types of plastic are ingested by wildlife such as shore birds, sea turtles, and fish. The UN takes the position that it is critical to the public's health, safety, and welfare to reduce litter and pollutants. Accordingly, the UN has launched a full campaign to encourage countries around the world to reduce their dependency on single-use plastics.

The City of Miami Beach is committed to reducing single-use plastics and the attached draft ordinance (Attachment A) is proposed to further extend the city's existing single-use plastic straw/stirrers city-wide. The purpose of this ordinance is to further reduce the amount of plastic pollution outside of the waste stream and in Miami Beach's storm drains and waterways through litter and the circulation of windblown debris, as well as to improve the City's water quality. The proposed ordinance amends Chapter 46 of the City Code, to prohibit single-use plastic beverage straws and single-use plastic stirrers citywide. The ordinance exempts individuals with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer; school district, and county, state, and federal governmental entities; and single-use plastic beverage straws and single-use plastic stirrers used for prepackaged beverages that have been filled and sealed prior to receipt by the food service provider or store.

Similar to the City's polystyrene restriction, the ordinance proposes a phased implementation.

- During the first three months, a public education campaign will be conducted to inform businesses and residents of the provisions of the ordinance, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers (i.e. from October 1, 2019, through December 31, 2019).
- Following the City's public education efforts, the City will provide for a six-month written warning period (i.e. from January 1, 2020, through June 30, 2020), during which time written warnings will be issued by the Code Compliance Department for violations of the ordinance.
- Beginning on July 1, 2020, the Code Compliance Department will enforce the full enforcement and penalty provisions in the ordinance.

The city's #PlasticFreeMB program will assist with the public outreach implementation phase.

CONCLUSION

The Administration recommends the Mayor and City Commission to adopt the Ordinance for

second reading.

Legislative Tracking

Environment and Sustainability

Sponsor

Vice-Mayor Ricky Arriola and Co-sponsored by Mayor Gelber and Commissioner Gongora

ATTACHMENTS:

Description

- ▣ Ordinance