



THE CITY OF KEY WEST

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To: The City Commission for The City of Key West
From: Ron Ramsingh, Chief Assistant City Attorney
Date: August 12, 2019
RE: Proposed new ordinance banning the use and distribution of plastic straws and stirrers
Sponsor: Commissioner Jimmy Weekley; Co-Sponsors: Mayor Johnston, Commissioners Hoover, Kaufman, Wardlow, and Lopez.
Meeting date: 1st reading August 20, 2019

EXECUTIVE SUMMARY

Proposed Action: To create a new ordinance that bans the use and distribution of single-use plastic drinking straws and stirrers in the City of Key West.

Background: At the request of Commissioner Weekley, the undersigned drafted this proposed new ordinance that bans the use and distribution of single-use plastic drinking straws and stirrers in the City of Key West. This issue of regulation of various types of plastics, plastic bags, polystyrenes and straws has drawn a lot of attention from governments around the country. In Florida, several cities have either implemented ordinances that ban these materials or are in the stages of banning some of the materials, while navigating a minefield of state preemptive statutes. Specifically, the Florida Legislature passed F.S. 403.7033 in 2008 that prevents local governments from enacting any regulation regarding auxiliary containers, wrappings, or plastic bags until studies are conducted and submitted to the Legislature no later than February 1, 2010. Those studies were submitted, but the Legislature never acted on them with new regulations. The Florida Legislature also passed F.S. 500.90 in 2016, which is a statute that prohibits cities from passing any regulation that bans polystyrene products if the regulation was enacted after 1/1/2016. The City of Coral Gables enacted an ordinance banning certain single-use plastics in 2016. The Florida Retail Federation and Super Progresso Foods sued the City of

Coral Gables over their ordinance in light of the expressed preemption in F.S. 403.7033 and F.S.900.50. The State of Florida joined in the lawsuit against Coral Gables as well. The suit was filed in the 11th Judicial Circuit (Miami-Dade County). The Circuit Court ruled that F.S. 403.7033 was unconstitutionally vague and struck the statute. The Florida Retail Federation, Super Progresso, as well as the State of Florida appealed that decision to the 3rd District Court of Appeal. The 3rd DCA issued their opinion on the matter on 8/14/19. They ruled that the 3 state statutes in question regarding preemption of local ordinances on plastic containers, bags, and polystyrene are constitutional and reversed the opinion of the lower court¹. Therefore, cities cannot regulate plastic containers, polystyrenes, or plastic bags unless or until the state statutes are changed.

Additionally, the Legislature passed F.S. 57.112 in 2019 that allowed for plaintiff's attorney's fees if a successful case is brought against a local government for enacting an ordinance or rule that they were preempted from enacting.

However, in the summer of 2019, Gov. DeSantis vetoed HB 177 that would have prevented local governments from enacting any legislation that bans plastic straws; thereby clearing the way for cities and counties to pass ordinances like the one being considered here.

Enforcement of this proposed ordinance will begin on January 1, 2020 to afford retailers to expend their inventories, as well as to provide for an educational period to the general public. Enforcement will be through the Code Compliance Special Magistrate.

Changes for 2nd reading:

- 1. Section 26-315 has been added, providing for exceptions for pre-packaged beverages with straws sold with the beverage such as Capri-Sun and juice boxes, medical or dental facilities, use by disabled people who rely on straws for beverages, also excluded from the regulation are other governmental entities such as Monroe County, the Monroe County School District, the State of Florida, and the Federal Government.**

¹ The City of Key West, as well as Miami-Dade County both sit in the 3rd DCA.

- 2. Section 26-313(1) has been deleted. Possession of a straw is no longer being proposed. The distribution and selling of straws are prohibitions.**
- 3. Section 26-212 has minor wordsmithing to include stirrers in the definition.**

Options:

1. To defeat this proposed ordinance. There will continue to be no prohibition on the use or distribution of single-use plastic straws or stirrers in the City of Key West.
2. To pass this proposed ordinance with several exceptions for 2nd reading, thereby banning the distribution and sale of single-use plastic straws or stirrers in the City of Key West.

Recommendation: To pass the proposed ordinance.