

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 VI, TO BE ENTITLED "EXPANDED POLYSTYRENE SALE AND USE RESTRICTIONS," TO PROVIDE REGULATIONS FOR THE SALE AND USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES, 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, the City is comprised of a number of islands with approximately 70 miles of shoreline along numerous canals and waterways, the Atlantic Ocean, and 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, the City's waters also act as nurseries and habitats for migratory birds, including brown pelicans and ospreys, and for commercially and recreationally important fish, such as snapper, sailfish, and mahi-mahi; and

WHEREAS, expanded polystyrene, a petroleum by-product commonly known as styrofoam, is neither readily recyclable nor biodegradable and takes hundreds to thousands of years to degrade in the environment; and

WHEREAS, expanded polystyrene is a common pollutant, which fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife, thus harming or killing them; and

WHEREAS, due to the physical properties of expanded polystyrene, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment, and the economy"; and

WHEREAS, disposable expanded polystyrene food service articles such as cups, plates, coolers, ice chests, and food containers contribute to litter in the City's streets, parks, public places, and waterways, and on the City's beaches; and

WHEREAS, the City's goal is to replace expanded polystyrene food service articles with reusable, recyclable, or compostable alternatives within the City; and

WHEREAS, the City encourages the use of unbleached, non-coated, recycled-content paper food service articles and other fiber-based food service articles as the most environmentally preferable alternatives to single-use, disposable food service articles when the use of reusable food ware is not feasible; 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 expanded polystyrene food service articles by certain 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 VI of Chapter 46 of the Code of the City Miami Beach is hereby created as follows:

CHAPTER 46
ENVIRONMENT

* * *

ARTICLE VI. Expanded Polystyrene Sale and Use Restrictions

Sec. 46-205. 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.

Expanded polystyrene means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Expanded polystyrene food service articles means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

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.

Polystyrene means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or para-methylstyrene by weight.

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

Section 46-206. Prohibitions regarding the sale or use of expanded polystyrene food service articles by food service providers and stores; exemptions.

Food service providers and stores shall not sell, use, offer for sale or use, or provide food in expanded polystyrene food service articles. This article shall not apply to

- (a) expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the food service provider or store;
- (b) expanded polystyrene food service articles used to store raw meat, pork, fish, seafood, or poultry sold from a butcher case or similar refrigerated retail display or storage case; and
- (c) ~~not for profit corporations,~~ the school district, and county, state, and federal governmental entities.

Section 46-207. Enforcement; penalties.

- (a) Beginning September 15, 2015,
 - (1) 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 expanded polystyrene food service articles.
 - (2) the City shall provide for a sixty (60) day warning period through and including November 13, 2015, during which the code compliance department shall issue written warnings for violations of the prohibitions in section 46-206 as to the following expanded polystyrene food service articles: coolers and ice chests.
- (b) Beginning November 14, 2015, the code compliance department shall enforce the provisions in this article as to the following expanded polystyrene food service articles: ice chests and coolers.

- (c) Beginning March 15, 2016, and except as otherwise provided in subsections (a)(2) and (b), the City shall provide for a six (6) month warning period through and including September 15, 2016 during which the code compliance department shall issue written warnings for violations of this article.
- (d) Beginning September 15 16, 2016, the code compliance department shall enforce the provisions in this article in addition to the provisions already enforced pursuant to subsection (b).
- (e) If a code compliance officer finds a violation of this article, except as otherwise provided during the warning periods in subsections (a)(2) and (c), 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.
- (f) 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.
- (g) 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.
- (h) 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.

- (i) 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 46-208. 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 financial hardship waiver request may apply to one or more expanded polystyrene food service articles sold, used, or offered for sale or use by any such food service provider or store. The City Manager 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 expanded polystyrene that would cost the same as or less than the expanded polystyrene food service article, and
- (b) the purchase or use of an alternative product not composed of expanded polystyrene 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 46-207(f)(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 12 day of September, 2015.

PASSED AND ADOPTED this 2 day of September, 2015.

ATTEST:

TS 9/8/15
Rafael E. Granado, City Clerk

[Signature]
Philip Levine, Mayor

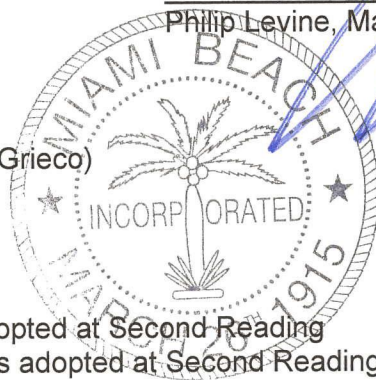
(Sponsored by Commissioner Michael Grieco)

Underline denotes additions

~~Strike through~~ denotes deletions

Double underline denotes additions adopted at Second Reading

~~Double strike through~~ denotes deletions adopted at Second Reading



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Ral Cgr. I-
City Attorney

9/3/15
Date