



## Legislation Text

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**File #:** 19-0168, **Version:** 1

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**Agenda Item Name:**

Repeal of Ordinance Prohibiting the Use of Expanded Polystyrene Containers and Single-Use Carry Out Plastic Bags

**Presenter:**

Sylvia Torres

**Description:**

This is a public hearing to consider an ordinance which repeals Ordinance #19-14, which prohibited the use of expanded polystyrene containers and single use carry out plastic bags.

**Recommended Action:**

Approve the ordinance repealing Ordinance #19-14, which prohibits the use of expanded polystyrene containers and single use carry out plastic bags.

**Prior Board Motions:**

August 13, 2019 - Board adopted Notice of Intent to Repeal

July 9, 2019 - Board adopted Ordinance #19-14.

April 2 - Board directed staff to prepare an ordinance which prohibited the use of expanded polystyrene containers and single use carry out plastic bags.

**Fiscal Consideration:**

None

**Background:**

On January 17, 2019, the City of Gainesville approved their ban on the sale and use of expanded polystyrene containers and single use carry out plastic bags with limited exemptions. The City is bringing forth a proposed amendment to their ordinance later this year to clarify "reusable carryout bags."

On April 2, 2019, a general presentation about plastic bag and expanded polystyrene bans was brought before the Board along with a draft ordinance mirroring the one approved by the City of Gainesville's Commission. At this meeting direction was given to staff to prepare an ordinance mirroring the City's ordinance as closely as possible and bring it to a future meeting for a public hearing.

On July 9, 2019, Ordinance 19-14, which prohibited the use of expanded polystyrene containers and single use carry out plastic bags, was adopted by the Board.

Both the County and the City of Gainesville have been threatened with lawsuits by the plastic bag industry. Florida law appears to prohibit or restrict the ability of local governments to regulate the use of auxiliary containers or plastic bags, although those restrictions have been called into question by local governments, particularly the City of Coral Gables. Below is a legislative history of such regulation:

In 1974, the Florida Legislature adopted F.S. 403.708(9) which states that the packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance.

In 2008, the Florida Legislature adopted F.S. 403.7033 restricting the ability of local governments and state agencies from enacting any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of auxiliary containers, wrappings, or disposable plastic bags until after the Legislature adopts a report on those items prepared by the Department of Environmental Protection. To date this report has not been adopted.

In 2016, the Florida Legislature adopted F.S. 500.90, which limited the regulation of the use or sale of polystyrene products to the Department of Agriculture and Consumer Services unless an ordinance doing such was adopted prior to Jan. 1, 2016. Local governments are allowed to regulate the use of these items by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the local government for the provision of goods or services.

In 2017, the 11th Circuit Court for Miami-Dade County upheld the City of Coral Gables' ordinance on the basis that the State's preemptions are unconstitutional. This suit is currently on appeal to the 3rd District Court of Appeals of the State of Florida.

The Governor recently signed and approved HB 829, which requires courts to award attorneys' fees and costs to the prevailing party in a challenge against a local government if the basis for the challenge is that the local government action is expressly preempted by State law or the State Constitution. While the trial court in the Coral Gables case found the applicable state preemptions to be unconstitutional, the express preemption language regarding regulations on polystyrene and plastic bags is still contained in state statutes. If upheld, those express preemptions may result in attorneys' fees and costs being awarded.

Given the uncertainty of the lawsuit against the City of Coral Gables and the possible consequence of having to pay attorney's fees and costs, it would be prudent to repeal Ordinance 19-14 until after a decision regarding that lawsuit has been finalized in the Courts.