

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2017-13

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, AMENDING THE CITY OF CORAL GABLES CODE BY:

- CREATING SECTION 62-245 “PROHIBITION ON USE OF SINGLE-USE CARRY OUT PLASTIC BAGS” IN CHAPTER 62, ARTICLE VII SPECIAL EVENTS; AND
- CREATING ARTICLE IX “SALE, USE OR DISTRIBUTION OF SINGLE-USE CARRY OUT PLASTIC BAGS BY RETAIL ESTABLISHMENTS WITHIN THE CITY” IN CHAPTER 34 NUISANCE, OF THE CITY CODE.

PROVIDING FOR A REPEALER PROVISION, SEVERABILITY CLAUSE, CODIFICATION, ENFORCEABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Coral Gables declares that it is in the best interest of the public health, safety and welfare of its residents and visitors to reduce litter and pollutants on the land and in the waters of the City; and

WHEREAS, distribution of single-use carry out plastic bags by retailers to consumers 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 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 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, retailers establishments such as ALDI, Trader Joes, and Whole Foods have successfully incorporated programs that encourage the use of reusable and/or recyclable alternatives to single use carry-out plastic bags; and

WHEREAS, the City's Sustainability Advisory Board and Economic Development Board have unanimously voted in support of this Ordinance; and

WHEREAS, the City has collaborated with the business community, including the Coral Gables Chamber of Commerce, Coral Gables Business Improvement District, University of Miami, and others in the development of the proposed Ordinance, including discussions on the potential impacts to businesses, educating businesses on the benefits of the Ordinance and on potential alternative products, and incorporating accommodations as necessary and appropriate; and

WHEREAS, this Ordinance provides for a 1 year implementation period allowing for an extensive education campaign and for retail establishments to expend their current stock of single-use carry out plastic bags and transition to reusable, recyclable, or compostable alternatives; and

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

WHEREAS, the City was a party in a lawsuit with the State of Florida, the Florida Retail Federation and Super Progreso in which the Court held that Sections 403.708(9) and 403.7033, F.S., relating to plastic bags and packaging, are unconstitutional.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

SECTION 2. That Chapter 62, Article VII "Special Events," of the Code of the City of Coral Gables, Florida, be hereby amended to add Section 62-245 as follows:

Sec. 62-245. – Prohibition on Use of Single-Use Carry Out Plastic Bags

- (a) *Definitions.* For purposes of this section only, the following definitions should apply:
- (1) *Single-use carry out plastic bag* means a bag provided by a company or individual to a customer, typically at the point of sale, for the purpose of transporting purchases, which is made predominantly of plastic derived from petroleum or a biologically-based source. This definition includes bags, as defined above, provided to an individual to transport items

provided free of charge, including but not limited to, samples and informational materials.

- (2) *City facility* includes, but is not limited to, any building, structure, park, or golf course owned, operated or managed by the City.
 - (3) *Special event permittee* means any entity or individual, and their subcontractor(s), who has been issued a special events permit by the City for a special event on City property, in a City facility or in the City's right-of-way, for the promotion or sale of their product(s) and/or business(es).
 - (4) *Compostable carry out bag* means a bag that (1) conforms to the current ASTM D6400; (2) is certified and labeled as meeting the ASTM D6400 standard specification 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
- (b) *Prohibited Use of Plastic Bags; Penalties; Exceptions*
- (1) Special event permittees shall not provide items in single-use carry out plastic bags during special events as a condition of approval.
 - (2) Upon warning, the special event permittee must cease providing the single-use carry out plastic bags immediately. If the special events permittee does not do so he or she may be forced to discontinue the service, sale or participation in the special event.
 - (3) A violation of this section shall constitute a City code violation and may result in the revocation of the special events permit and fines and may be grounds for the placement of conditions on or for denial of a future special events permit.
 - (4) *Exceptions.* This prohibition shall not apply to Exempt Bags in 34-191(e) or other types of single-use plastic bags used, provided or given out by individuals who are special events permittees for the purpose of hosting a small private event (100 people or less) (e.g. birthday party, family reunion).

SECTION 3. That Chapter 34 "Nuisances," of the Code of the City of Coral Gables, Florida, be hereby amended to add Article IX as follows:

Article IX. – Sale, Use or Distribution of Single-Use Carry Out Plastic Bags by Retail Establishments within the City

Sec. 34-191. – Definitions

For purposes of this section only the following definitions should apply:

- (a) *Customer* means any person purchasing goods from a retail establishment.
- (b) *Single-use carry out plastic bag* means a bag provided by a company or individual to a customer, typically at the point of sale, for the purpose of transporting purchases, which is made predominantly of plastic derived from petroleum or a biologically-based source. This definition includes bags

provided to a customer to transport items provided free of charge, including but not limited to, samples and informational materials.

- (c) *Exempt bags* means (1) a compostable carry out bag (as defined in 62-245(a)(4)) or any bag without handles provided to a customer (2) to protect food or merchandise from being damaged or contaminated by other food or merchandise, when items are placed together in a reusable bag or recyclable bag, including produce bags; (3) to hold prescription medications dispensed from a pharmacy or veterinary office; (4) designed to be placed over articles of clothing on a hanger, including dry cleaning bags; (5) door hanger bags; (6) newspaper bags, (7) garbage bags; (8) pet waste bags; (9) yard waste bags; and (10) bags of any type that a customer previously owned and brings to a retail establishment for his or her own use in carrying away store goods.
- (d) *Reusable bag* means a bag with handles that is specifically designed and manufactured for multiple reuse and made of durable material specifically designed for and provided to consumers with the intention of multiple, long-term use and does not include any film plastic bags.
- (e) *Recyclable paper bag* means a bag that contains a minimum average of forty percent (40%) post-consumer recycled materials and displays the minimum percent of post-consumer content on the outside of the bag.
- (f) *Compostable carry out bag* means a bag that (1) conforms to the current ASTM D6400; (2) is certified and labeled as meeting the ASTM D6400 standard specification 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
- (g) *Retail establishment* means any entity or individual engaged in the retail sale of goods. Retail establishment includes any supermarket, grocery store, convenience store, shop, service station, restaurant, farmers' market vendor, and any other sales outlet where a customer can directly purchase goods, materials, and products.

Sec. 34-192. – Single-Use Carry Out Plastic Bags Prohibited; Exceptions

- (a) No retail establishment shall provide to any customer a single-use carry out plastic bag, unless noted in exceptions below.
- (b) *Exceptions:* Although the discontinuation of the use of single-use carry out plastic bags is strongly encouraged by the City of Coral Gables Commission, this article shall not apply to Exempt Bags in 34-191(c).
- (c) Retail establishments can propose innovative and creative environmentally sustainable alternative programs that eliminate the use of single use plastic bags. After being submitted, the program is reviewed by City staff for approval. Each program is reviewed on a case by case basis.

Sec. 34-193. – Use of reusable bags

Retail establishments are strongly encouraged to educate their staff to promote reusable bags and to post signs encouraging customers to use reusable bags. Should retail establishments provide carryout bags, they shall be reusable (as defined in 34-191(d)), compostable carryout bags and/or recyclable paper bags free of charge or for a fee as determined by the merchant. Retail establishments may keep any fees charged for providing such bags to offset the cost of providing the bag.

Sec. 34-194. – Enforcement; penalties

- (a) If a code enforcement officer finds a violation of section 34-192 or 34-193, prior to issuing a ticket the code enforcement officer shall issue a warning to allow for time to correct violation before citing. After the warning, the code enforcement officer may issue a ticket. The ticket shall inform the retail establishment of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, and that the violation may be appealed pursuant to the procedures in Chapter 101, Article VI, Division 3 of the City Code of Ordinances. A violation of this ordinance is deemed to be irreparable as it may only be complied with in the future and not retroactively.
- (b) A retail establishment that has been issued a ticket must elect to either:
 - (1) pay the following civil fine (per day, irrespective of the number of violations in a given day):
 - (a) First violation within a 12-month period.....\$50.00;
 - (b) Second violation within a 12-month period..... \$100.00;
 - (c) Third violation within a 12-month period..... \$500.00;
 - (d) Any subsequent violation within a 12-month period..... .\$1,000.00.
 - (2) request an administrative hearing before a special master as set forth in Chapter 101, Article VI, Division 3 of the City Code of Ordinances
- (c) Failure to pay the civil fine, or to timely request an administrative hearing before a hearing officer, shall constitute a waiver of the violator’s right to an administrative hearing before the special master, and shall be treated as an admission to the violation, for which fines and penalties shall be assessed accordingly.
- (d) A certified copy of an order imposing the 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.

- (e) The hearing officer shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a hearing officer may appeal that decision to a court of competent jurisdiction.

SECTION 4. EDUCATIONAL CAMPAIGN.

The City, desires to collaborate with the Coral Gables Chamber of Commerce (the Chamber) Business Improvement District of Coral Gables (BID), and others in a joint marketing and education effort aimed at businesses & customers. The education campaign, which will begin upon the adoption of this Ordinance, is aimed at informing special events permittees, retail establishments, and customers of its requirements. The campaign may include: community meetings, workshops, green products expos, the use of social media, citywide newsletters, programming on Coral Gables T.V., printed informational materials, email blasts to members of the Chamber and/or BID, website, resident letters and/or emails and mail inserts. New businesses will be informed about ordinance through the business tax license application process. After the conclusion of the educational campaign, the City will continue to make the Ordinance known to special event permittees and retail establishments within the City. The City will explore the possibility of joint bulk purchasing of reusable bags, compostable bags and/or recycled paper bags with its partners to assist businesses in the transition to alternative products. In addition, the City will explore and pursue grants and assistance to facilitate the transition for small businesses.

SECTION 5. SEVERABILITY.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 6. REPEALER.

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

SECTION 7. CODIFICATION.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances immediately upon the signing of the Ordinance; and that 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 such other appropriate word or phrase in order to accomplish such intentions.

SECTION 8. EFFECTIVE DATE.

This ordinance shall become effective upon adoption and enforcement shall begin immediately with the issuance of warnings; citations will not be issued for 1 year after said date to allow for education and the transition to alternative products. In the case of special events, enforcement shall commence immediately with all new applications. On February 27, 2017, the Court entered an Order in *Florida Retail Federation, Inc. and Super Progreso, Inc. v. City of Coral Gables*, 2016-018370-CA-01

finding Sections 403.708(9) and 403.7033, F.S. relating to plastic bags and packaging unconstitutional thereby clarifying the City's ability to pass this Ordinance.

PASSED AND ADOPTED THIS NINTH DAY OF MAY, A.D., 2017.

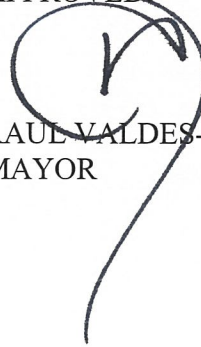
(Moved: Lago / Seconded: Keon)

(Yeas: Quesada, Keon, Lago, Mena, Valdes-Fauli)

(Unanimous: 5-0 Vote)

(Agenda Item: E-1)

APPROVED:

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a vertical line and a small flourish at the bottom.

RAUL VALDES-FAULI
MAYOR

ATTEST:

A handwritten signature in blue ink, written in a cursive style, reading 'Walter J. Foeman'.

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small flourish at the end.

CRAIG E. LEEN
CITY ATTORNEY