

Tonia Wilcox

From: Tonia Wilcox
Sent: Monday, March 9, 2020 3:39 PM
To: Andrea Zelman; Camaria Pettis-Mackie; Cate Wells; CityCouncilStaff; Erin Bradley; Gina Grimes; Morris Massey; Shawny Tim; Susan Johnson-Velez; Jan McLean
Cc: Sandy Marshall
Subject: Council Motions March 5, 2020 at 9:00 a.m. Regular Session File # E2019-48
Agenda # 72

File E2019-48

JUN 04 2020



Office of the City Clerk
3rd Floor, City Hall
315 E. Kennedy Boulevard
Tampa, Florida 33602
Phone: 813-274-8397
Fax: 813-274-8306

MOTION ACTION REQUEST

COUNCIL SESSION March 5, 2020 at 9:00 A.M.

PLEASE SUBMIT ALL WRITTEN RESPONSES DIRECTLY TO THE OFFICE OF THE CITY CLERK BY 5:00 P.M. ON THE MONDAY PRIOR TO THE SCHEDULED THURSDAY MEETING - [NOTE: All written responses must include the original and eight (8) copies for distribution by the Office of the City Clerk to Council and to the Council Attorney.]

TO: Legal Motion Group
City Council Staff

File No. E2019-48 – (Verbal report provided by Senior Assistant City Attorney Jan McLean, Legal Department.
Legal Department to appear and present a draft ordinance that is modeled after the City of Orlando's policy; further, that said ordinance stays within the constraints of state statute as related to the use of single use plastics on City of Tampa property. - (Original motion initiated by Dingfelder-Citro on January 30, 2020.)

Motion: (Citro-Gudes) That Staff be requested to appear before Council on June 4, 2020 under Staff Reports and Unfinished Business to provide a report on a proposed implementation plan to restrict single use plastics on City property, that includes community involvement and education, an economic impact review and such other restrictions as reported by any legislative or legal action that have occurred and such other relevant information is necessary. Motion carried with Viera and Miranda being absent at vote.

From: Karencia Ciagala
Sent: Friday, January 31, 2020 10:21 AM
To: Jan McLean; Andrea Zelman; Brad Baird; Cate Wells; CityCouncilStaff; Debra Rotolo; Dennis Rogero; Erin Bradley; Gina Grimes; John Bennett; Lori Hernandez; Marlene Rigal; Michele Miles; Shawny Tim; Lenora Roberson; Paul Dial
Cc: Sandy Marshall
Subject: Council Motions January 30, 2020 at 9:00a.m. Workshop Session File: E2019-48
Agenda #9 Plastic/Styrofoam



File E2019-48

MAR 05 2020

Verbal by Jan McLean
by ACA
See Motion
LV + CM
APV

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MOTION ACTION REQUEST

COUNCIL SESSION January 30, 2020 at 9:00 A.M.

PLEASE SUBMIT ALL WRITTEN RESPONSES DIRECTLY TO THE OFFICE OF THE CITY CLERK BY 5:00 P.M. ON THE MONDAY PRIOR TO THE SCHEDULED THURSDAY MEETING - [NOTE: All written responses must include the original and eight (8) copies for distribution by the Office of the City Clerk to Council and to the Council Attorney.]

TO: Chief of Staff Motion Group

**Senior Assistant City Attorney Jan McLean
Legal Motion Group
Parks & Recreation Motion Group**

City Council Staff

10:30 a.m. File No. E2019-48 - (Workshop) – (Verbal presentations by Senior Assistant City Attorney Jan McLean, Legal Department.)

To discuss the banning of single-use plastics (i.e.: single-use plastic bags; Styrofoam containers, etc.), on City parks or venues, similar to the ordinance recently enacted by the City of Orlando; further, that the Legal Department to attend said workshop and to explain what can be done by the City. - (Original motion initiated by Maniscalco-Miranda on July 18, 2019.) - (Rescheduled from October 24, 2019.)

Motion: (Dingfelder-Citro) That the Legal Department be requested to appear before Council on March 5, 2020 under Staff Reports and Unfinished Business to present a draft ordinance that is modeled after the City of

Orlando's policy; further, that said ordinance stays within the constraints of state statute as related to the use of single use plastics on City of Tampa property. Motion carried with Viera being absent.

Memorandum from Senior Assistant City Attorney Jan McLean, Legal Department, providing a report regarding said agenda item.

Motion: (Citro-Carlson) That said memorandum be received and filed. Motion carried with Viera being absent.

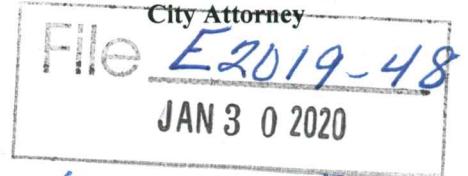


CITY OF TAMPA

Jane Castor, Mayor

Office of the City Attorney

Gina K. Grimes
City Attorney



MEMORANDUM

TO: Chair Luis Viera and Members of City Council
Shirley Foxx-Knowles City Clerk

FROM: Janice M. McLean, Senior Assistant City Attorney

DATE: January 24, 2020

SUBJECT: Request:
File No. E2019-48 July 18, 2019 Tampa Regular City Council Meeting
Motion: (Maniscalco-Miranda) That Council schedules a **workshop for January 30, 2020 at 10:30 a.m.** to discuss the banning of single-use plastics (i.e.: single-use plastic bags; Styrofoam containers, etc.), on City parks or venues, similar to the ordinance recently enacted by the City of Orlando; further, that the Legal Department be requested to attend said workshop and to explain what can be done by the City. Motion carried with Citro being absent.

Status of current-law on Local Government banning single-use plastics

Section 500.90, Florida Statutes preempts the regulation of polystyrene products to the State:

500.90 Regulation of polystyrene products preempted to department.—The regulation of the use or sale of polystyrene products by entities regulated under this chapter is preempted to the department. This preemption does not apply to local ordinances or provisions thereof enacted before January 1, 2016, and does not limit the authority of a local government to restrict the use of polystyrene 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, unless such use is otherwise preempted by law.

History.—s. 7, ch. 2016-61.

Section 57.112 F.S., effective July 1, 2019, provides for attorney fees, costs, and damages to a prevailing party who challenges a local government adoption or enforcement of an ordinance on the grounds it is preempted by state law. The new statute does not apply to ordinances adopted pursuant to part II of Chapter 163, Florida Building Code, or the Florida Fire Prevention Code. Attorney fees

and costs may not be awarded under the new statute if: If the governing body of local government receives written notice that an ordinance that has been publically noticed or adopted is preempted by the State Constitution or state law, and the governing body of a local government withdraws the proposed ordinance within 30 days; or in the case of an adopted ordinance, the governing body of a local government notices an intent to repeal the ordinance within 30 days receipt of notice and repeals the ordinance within 30 days thereafter.

On August 14, 2019, the Florida Third District Court of Appeal (3rd DCA) in Florida Retail Federation, Inc. v City of Coral Gables, ruled that the 2016 Coral Gables ordinance which prohibited food service providers and stores from selling or using, offering for sale or providing food or beverages in expanded polystyrene (i.e. Styrofoam) container was preempted by state law. The 3rd DCA ruled that three (3) Florida statutes preempt and prohibit local governments from regulating disposable plastic bags and other packaging, including polystyrene (e.g. Styrofoam). Coral Gables has filed a writ of certiorari to the Florida Supreme Court to hear its appeal.

Other local governments across Florida repealed or delayed their bans of single-use plastics after Coral Gables lost its case including Gainesville, Miami Beach, Palm Beach, Surfside, and Alachua County. The City of Orlando's "Single-Use Products on City Property" administrative policy effective October 1 2019 banning single-use plastics and polystyrene on City property also is viewed as having inconsistencies with the above-described Florida statutes.

In the current legislative session Senate Bill 182 and House Bill 6043, have been filed and which propose to repeal the preemption of local governments' ability to regulate recyclable and polystyrene materials.

During the 2019, legislative session HB 771 was passed which would have created Section 403.7034 F.S. that would have blocked local governments from adopting or enforcing local ordinances or regulations related to single-use of plastic straws before a certain date. However, Governor Ron DeSantis vetoed the measure. DeSantis wrote in a veto message "the state should simply allow local communities to address this issue through the political process. Citizens who oppose plastic straw ordinances can seek recourse by electing people who share their views." Hard plastic straws are a polystyrene product.

Under current law, local government may restrict the use of certain types of polystyreneⁱ by:

- (1) Individuals on public property;
- (2) Temporary vendors on public property;
- (3) Entities engaged in a contractual relationship with the local government for the provisions of goods and services;
- (4) Unless such other use is otherwise preempted by law.

Preempted by State Law – What Local Government cannot regulate under current status of law

1. Cannot regulate recyclable materialsⁱⁱ including "auxiliary containers" wrappings or disposable plastic bags.ⁱⁱⁱ Auxiliary containers is not a defined term in the statute The FDEP defined these terms in its 2010 "Retail bags report to Legislature" as follows:

Auxiliary container: A secondary container into which a product is placed for transport

by a consumer. It includes reusable bags, paper bags, gift bags, gift boxes, hat boxes, and cloth bags ---everything but a plastic bag.

Wrappings: Includes plastic wrapping for items that are used to protect and transport the items within.

Disposable plastic bags: Includes plastic bags (of any thickness) used by consumers to carry products from establishments. These bags are not necessarily meant to be re-used multiple times, but may have beneficial secondary uses.

The 3rd DCA, however, in the Coral Gables case, determined that Section 403.7033 F.S. clearly preempted the City's Polystyrene Ordinance because the type of polystyrene containers regulated by Coral Gables Ordinance are a type of auxiliary container. The Coral Gables ordinance defines "*Expanded polystyrene containers to mean plates, bowls, cups, containers, lids, trays, coolers, ice chests, food containers, and all similar articles that consist of expanded polystyrene.*"

2. The regulation of the use or sale of polystyrene products by entities regulated under the Food Safety Act is preempted to the Department of Agriculture and Consumer Services. Local governments cannot regulate the use or sale of polystyrene products by grocery stores, food manufacturers, and processing facilities, convenience stores, food markets, food warehouses, storage facilities, freezer lockers, and food service establishments. Preemption does not apply before July 1, 2016.
3. Local Government cannot regulate the packaging of products manufactured or sold in the state. The 3rd DCA held in the Coral Gables case that the plain text of Section 403.708 F.S. encompasses all types of packaging, including polystyrene.

Recommendation: It is recommended that Council take no action to ban single use plastics at this time pending the end of the legislative session or until the preemption conflict issue is resolved through the courts.

ⁱⁱ Recyclable materials that can be feasibly recycled are e.g. metal, paper, glass, plastic, textile, or rubber materials.

ⁱⁱⁱ **Section 403.7033 Florida Statutes, "Departmental analysis of particular recyclable materials"** *Effective: July 1, 2008.* The legislation was adopted to allow the FDEP to analyze, with stakeholder, input the need for new or different regulations of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments and provide recommendations to the Legislature no later than February 1, 2010. This legislation prohibits local government from adopting any rule, regulation or ordinance regarding disposition, sale, prohibition, restriction or tax of such auxiliary containers, wrappings or disposable plastic bags. The FDEP submitted its required report "Retail bags report to Legislature" on February 2010. To date no legislation has been adopted.

Cc: Gina K. Grimes, City Attorney
John Bennett, Chief of Staff
Martin Shelby, City Council Attorney
Brad Baird, Administrator Public Works & Utility Services
Paul Dial, Director of Parks & Recreation
Mark Wilfalk, Director of Solid Waste

(9)

Karencia Ciagala

From: Karencia Ciagala
Sent: Wednesday, October 30, 2019 2:43 PM
To: Brad Baird; CityCouncilStaff; Debra Rotolo; Dennis Rogero; Ernest Mueller; John Bennett; Lori Hernandez; Marlene Rigal; Michele Miles; Salvatore Territo; Lenora Roberson; Paul Dial; Andrea Zelman; Gina Grimes; Heather Herlein
Cc: Sandy Marshall
Subject: Council Motions October 24, 2019 at 9:00 a.m. Workshop Session File # E2019-48
Agenda #17



File E2019-48
JAN 30 2020
U/P See Motion 81F

Office of the City Clerk
3rd Floor, City Hall
315 E. Kennedy Boulevard
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MOTION ACTION REQUEST

COUNCIL SESSION October 24, 2019 at 9:00 A.M.

PLEASE SUBMIT ALL WRITTEN RESPONSES DIRECTLY TO THE OFFICE OF THE CITY CLERK BY 5:00 P.M. ON THE MONDAY PRIOR TO THE SCHEDULED THURSDAY MEETING - [NOTE: All written responses must include the original and eight (8) copies for distribution by the Office of the City Clerk to Council and to the Council Attorney.]

TO: Chief of Staff Motion Group

Parks & Recreation Motion Group
Legal Motion Group

City Council Staff

9:00 a.m. File No. E2019-48 - (Workshop)

To discuss the banning of single-use plastics (i.e.: single-use plastic bags; Styrofoam containers, etc.), on City parks or venues, similar to the ordinance recently enacted by the City of Orlando; further, that the Legal Department to attend said workshop and to explain what can be done by the City. - (Original motion initiated by Maniscalco-Miranda on July 18, 2019.)

Motion: (Maniscalco-Gudes) That said agenda item be rescheduled per the verbal request from Councilmember Maniscalco to **January 30, 2020 at 10:30 a.m. under the workshop session**. Motion carried with Citro and Miranda being absent at vote.

Motion: (Maniscalco-Gudes) That the email from Annette Antinori-Hall, Legislative aid to Councilmember Dingfelder requesting said agenda item be rescheduled be received and filed. Motion carried with Citro and Miranda being absent at vote.

From: Annette AntinoriHall
Sent: Wednesday, October 23, 2019 5:02 PM
To: Sandy Marshall; Suling Lucas; Jim Crew
Cc: Brannon JordanLazo
Subject: FW: Request to reschedule Item 17 on 10.24.19's workshop

File E2019-48

OCT 24 2019

RIF

From: Christian Leon <axialpoint@gmail.com>
Sent: Wednesday, October 23, 2019 4:40 PM
To: Luis Viera <Luis.Viera@tampagov.net>; Guido Maniscalco <Guido.Maniscalco@tampagov.net>; Bill Carlson <Bill.Carlson@tampagov.net>; John Dingfelder <John.Dingfelder@tampagov.net>; Joseph Citro <Joseph.Citro@tampagov.net>; Orlando Gudes <Orlando.Gudes@tampagov.net>; Charlie Miranda <Charlie.Miranda@tampagov.net>
Cc: Annette AntinoriHall <Annette.AntinoriHall@tampagov.net>
Subject: Request to reschedule Item 17 on 10.24.19's workshop

Dear Tampa City Council, Chairman Viera, and Council members:

I wish to respectfully request that you remove Item 17, a discussion of single use plastics, and reschedule this item for the next appropriate council discussion agenda.

Due to the number of complex issues scheduled for tomorrow, and this item's place as the last item on the agenda, we are making this request.

Thank you,
Christian

Christian Leon
Co-Chair, Suncoast Rise Above Plastics Coalition
suncoast-rap.org
suncoastrap@gmail.com

Sandy Marshall

From: Brannon JordanLazo
Sent: Wednesday, October 23, 2019 11:40 AM
To: councilppt
Subject: FW: For tomorrow's workshop :: Vid Link

Please see the approved video requested to be played during public comment on Workshop item #17. I have informed Mr. Leon this video would count toward his 3 mins.

From: Christian Leon <axialpoint@gmail.com>
Sent: Wednesday, October 23, 2019 9:57 AM
To: Brannon JordanLazo <Brannon.JordanLazo@tampagov.net>
Subject: For tomorrow's workshop :: Vid Link

Hi Brannon, it was nice to meet you finally!

The file is too big to e-mail (although the video is less than 3min), but it can be downloaded here.
<https://drive.google.com/file/d/1m-QMkxZCOnEs2PTVS6S80BA3V99m9uBf/view?usp=sharing>

Let me know if that's possible for the folks at CTV.

Thanks again and feel free to call me if you'd like,
Christian

Christian Leon

Co-Chair, Suncoast Rise Above Plastics Coalition
727.312.9033

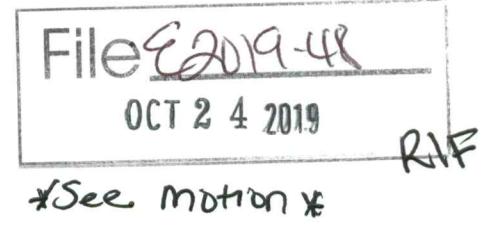
suncoast-rap.org

suncoastrap@gmail.com

(17)

Karencia Ciagala

From: Karencia Ciagala
Sent: Wednesday, July 24, 2019 9:45 AM
To: CityCouncilStaff; Ernest Mueller; Heather Herlein; Salvatore Territo; Lenora Roberson; Paul Dial; Bob McDonaugh; Brad Baird; Debra Rotolo; Dennis Rogero; Jake Slater; Lori Hernandez; Marlene Rigal; Michele Miles; Sonya Little
Cc: Sandy Marshall
Subject: Council Motions July 18, 2019 at 9:00 a.m. Regular Session File #E2019-48
Agenda Item #61



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MOTION ACTION REQUEST

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TO: Legal Motion Group
Parks and Recreation Motion Group

Chief of Staff Motion Group

City Council Staff

File No. E2019-48

Motion: (Maniscalco-Miranda) That Council schedules a workshop on October 24, 2019 at 9:00 a.m. to discuss the banning of single-use plastics (i.e.: single-use plastic bags; Styrofoam containers, etc.), on City parks or venues, similar to the ordinance recently enacted by the City of Orlando; further, that the Legal Department be requested to attend said workshop and to explain what can be done by the City. Motion carried with Citro being absent.

Karencia Ciagala

From: Karencia Ciagala
Sent: Wednesday, July 24, 2019 9:46 AM
To: Rodge Matthews
Cc: Sandy Marshall
Subject: FW: Council Motions July 18, 2019 at 9:00 a.m. Regular Session File #E2019-48
Agenda Item #61



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MOTION ACTION REQUEST

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TO: Legal Motion Group
Parks and Recreation Motion Group

Chief of Staff Motion Group

City Council Staff

File No. E2019-48

Motion: (Maniscalco-Miranda) That Council schedules a workshop on October 24, 2019 at 9:00 a.m. to discuss the banning of single-use plastics (i.e.: single-use plastic bags; Styrofoam containers, etc.), on City parks or venues, similar to the ordinance recently enacted by the City of Orlando; further, that the Legal Department be requested to attend said workshop and to explain what can be done by the City. Motion carried with Citro being absent.

From: Lenora Roberson <Lenora.Roberson@tampagov.net>
Sent: Wednesday, July 24, 2019 9:45 AM
To: Karencia Ciagala <Karencia.Ciagala@tampagov.net>
Subject: Automatic reply: Council Motions July 18, 2019 at 9:00 a.m. Regular Session File #E2019-48 Agenda Item #61

I am currently out of the office, returning on Monday, July 29, 2019. If you need immediate assistance, please feel free to contact Rodge Matthews at 274-8015 or by email Rodge.Matthews@tampagov.net.

Thank you.