

ORDINANCE NO. _____

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 VIII, TO BE ENTITLED "SALE OR USE RESTRICTIONS FOR SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS," TO ESTABLISH REGULATIONS FOR THE SALE AND USE OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS, 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, disposable food service articles, including single-use plastic beverage straws and single-use plastic stirrers, constitute a portion of the litter in the City of Miami Beach's streets, parks, public places, and waterways; and

WHEREAS, the City's goal is to reduce litter by reducing the use of and replacing single-use plastic beverage straws and single-use plastic stirrers with environmentally preferred alternative materials; and

WHEREAS, on July 25, 2018, the City Commission adopted Ordinance No. 2018-4208, which prohibited City contractors, sidewalk café permittees, and special event permittees from selling, using, providing beverages with, or offering the use of single-use plastic beverage straws or single-use plastic stirrers in City facilities or on City property; 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 single-use plastic beverage straws and single-use plastic stirrers by 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 VIII of Chapter 46 of the Code of the City Miami Beach is hereby created as follows:

CHAPTER 46
ENVIRONMENT

* * *

**ARTICLE VIII. Sale and Use Restrictions for Single-Use Plastic Beverage Straws and
Single-Use Plastic Stirrers.**

Sec. 46-212. 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.

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.

Single-use plastic beverage straw means a tube, intended for only one-time use, that is made predominantly of plastic derived from either petroleum or a biologically based polymer, including polymers derived from corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. Single-use plastic beverage straw includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

Single-use plastic stirrer means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, including polymers derived from corn or other plant sources. Single-use plastic stirrer includes compostable and biodegradable petroleum or biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

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

Section 46-213. Prohibitions regarding the sale or use of single-use plastic beverage straws and single-use plastic stirrers by food service providers and stores; exemptions.

- (a) Food service providers and stores shall not sell, use, offer for sale or use, or provide beverages with single-use plastic beverage straws and single-use plastic stirrers.
- (b) Exceptions.
 - (1) The requirements of this article shall not restrict a food service provider or a store from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.
 - (2) The requirements of this article shall not apply to the school district, and county, state, and federal governmental entities.

Section 46-214. Enforcement; penalties.

- (a) Beginning August 1, 2019, 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 single-use plastic beverage straws and single-use plastic stirrers.
- (b) Beginning November 1, 2019, the City shall provide for a six (6) month warning period through and including April 1, 2020 during which the code compliance department shall issue written warnings for violations of this article.
- (c) Beginning May 2, 2020, the code compliance department shall fully enforce the provisions in this article.
- (d) If a code compliance officer finds a violation of this article, 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.
- (e) 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.

- (f) 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.
- (g) 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.
- (h) 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 46-215. 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 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 plastic that would cost the same as or less than single-use plastic beverage straws and single-use plastic stirrers, and
- (b) the purchase or use of an alternative product not composed of plastic 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 46-214(e)(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 _____ day of _____, 2019.

PASSED AND ADOPTED this _____ day of _____, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Ricky Arriola)

Underline denotes additions
~~Strike through~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Raul Cervit
City Attorney
FA

6-19-19
Date