

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Mayor Dan Gelber
Members of the City Commission

Date: June 6, 2018

From: Raul J. Aguila
City Attorney



Subject: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," BY MODIFYING THE CIRCUMSTANCES UNDER WHICH SUBSECTION (Z), RELATING TO SINGLE-USE CARRY OUT PLASTIC BAGS, WOULD TAKE EFFECT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Pursuant to the request of Mayor Dan Gelber, the above-referenced Ordinance has been placed on the June 6, 2018 City Commission meeting agenda for consideration on First Reading.

On July 26, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4117, amending Chapter 82 of the City Code, entitled "Public Property," to create a definition for "single-use carry out plastic bag," and to create Section 82-385(z), which provides that, at sidewalk cafes, single-use carry out plastic bags shall not be allowed on the right-of-way and shall not be provided to sidewalk cafe patrons.

Pursuant to Ordinance No. 2017-4117, the provisions in Section 82-385(z), and the definition of "single-use carry out plastic bag," shall only take effect upon the issuance of a final mandate from the Third District Court of Appeal or, if appealed to the Florida Supreme Court, the issuance of a final mandate from the Florida Supreme Court, regarding the opinion rendered in *Florida Retail Federation Inc. and Super Progreso, Inc. v. The City of Coral Gables* (Florida Eleventh Judicial Circuit Case No. 2016-018370-CA-01), which final mandate upholds the unconstitutionality of Section 403.7033, Florida Statutes. (See Commission Memorandum for Ordinance No. 2017-4117, attached hereto and incorporated herein as Exhibit "A".)

The proposed Ordinance modifies the circumstances under which the provisions in Section 82-385(z), and the definition of "single-use carry out plastic bag," would take effect. More specifically, the proposed Ordinance would allow the restrictions on single-use carry out plastic bags to take effect immediately upon the issuance of a mandate following an opinion from the Third District Court of Appeal, regarding the final judgment rendered in *Florida Retail Federation Inc. and Super Progreso, Inc. v. The City of Coral Gables*, which Third District Court of Appeal

opinion upholds the unconstitutionality of Section 403.7033, Florida Statutes. Notwithstanding the above, the provisions in Section 82-385(z), and the definition of “single-use carry out plastic bag,” would automatically sunset if an appeal is filed with the Florida Supreme Court, and the Florida Supreme Court upholds Section 403.7033, Florida Statutes, as constitutional, or as otherwise valid.