

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 AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 46-92 THEREOF, ENTITLED "LITTER; DEFINITIONS; PROHIBITIONS ON LITTER; PENALTIES FOR LITTER AND COMMERCIAL HANDBILL VIOLATIONS; COMMERCIAL HANDBILL REGULATIONS, FINES, AND REBUTTABLE PRESUMPTIONS; SEIZURE AND REMOVAL OF LITTER BY THE CITY; ENFORCEMENT; APPEALS; LIENS" TO PROHIBIT ANY PERSON FROM CARRYING ANY SINGLE-USE PLASTIC BEVERAGE STRAW OR SINGLE-USE PLASTIC STIRRER ONTO ANY BEACH OR PARK WITHIN THE CITY, OR ONTO ANY CITY MARINA, PIER, DOCK, OR BOAT RAMP; AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY CREATING SECTION 82-8 THEREOF, TO BE ENTITLED "PROHIBITIONS REGARDING SALE OR USE OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS BY CITY CONTRACTORS AND SPECIAL EVENT PERMITTEES," TO PROHIBIT THE SALE, USE, PROVISION, AND OFFERING OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS BY CITY CONTRACTORS AND SPECIAL EVENT PERMITTEES IN CITY FACILITIES AND ON CITY PROPERTY; 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 THEREOF, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," TO PROVIDE PROHIBITIONS REGARDING SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS ON THE RIGHT-OF-WAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") 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 land and in the waters of the City; 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 reusable materials; 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 use of single-use plastic beverage straws and single-use plastic stirrers by its contractors and special event permittees in City facilities and on City property; will prohibit the use of single-use plastic beverage straws and single-use plastic stirrers by sidewalk cafes on the public right-of-way; and, will strengthen its litter laws by prohibiting single-use plastic beverage straws and single-use plastic stirrers in City parks, beaches, marinas, piers, docks, and boat ramps; 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. Division 1 of Article III of Chapter 46 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 46
ENVIRONMENT**

* * *

ARTICLE III. Litter

* * *

DIVISION 1. Generally

Sec. 46-92. Litter; definitions; prohibitions on litter; penalties for litter and commercial handbill violations; commercial handbill regulations, fines, and rebuttable presumptions; seizure and removal of litter by the city; enforcement; appeals; liens.

(a) *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:

* * *

(2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

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(5) *Litter* means any paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused cigarettes, cigars, pipe or chewing tobacco, polystyrene or plastic products, or other waste, including, but not limited to, tree, plant, and grass cuttings, leaves, or other yard maintenance debris, that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or in a gutter, drain, or sewer, or on any other public property, right-of-way or place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.

- (7) *Person, benefactor, or owner* include, within their respective meanings, either an individual or an entity.
- (8) *Right-of-way* means and includes, but is not limited to, any state, county, or city-owned public street, sidewalk, street corner, curb, bicycle path, or pedestrian walkway.
- (9) *Polystyrene* means a thermoplastic polymer comprised of at least 80 percent styrene or para-methylstyrene by weight.
- (10) *Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).
- (11) *Single-use plastic beverage straw* means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as 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.
- (12) *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, such as 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.
- (b) *Litter prohibited.* It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, sidewalk cafe areas, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, including, but not limited to, sidewalk cafe furniture and fixtures, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.
- (c) *Prohibitions on beaches, marinas, piers, docks, boat ramps, and in parks.* It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container. In addition, it shall be unlawful for any person to carry any expanded polystyrene product, single-use plastic beverage straw, or single-use plastic stirrer onto any beach or park within the city, or onto any city marina, pier, dock, or boat ramp, or for any business to provide single-use plastic beverage straws or single-use

plastic stirrers with the service or delivery of any beverage to patrons on any beach within the city.

(1) Notwithstanding the above, beginning on August 6, 2018, the city shall engage in public education efforts to inform the public of those provisions in this subsection (c) that pertain to carrying any single-use plastic beverage straws and or single-use plastic stirrers onto any beach or park within the city, or onto any city marina, pier, dock, or boat ramp, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers. Beginning on November 1, 2018, and continuing through January 31, 2019, the city shall provide for a warning period, during which the code compliance department shall issue written warnings for violations of those provisions of subsection (c) that pertain to carrying any single-use plastic beverage straws and or single-use plastic stirrers onto any beach or park within the city, or onto any city marina, pier, dock, or boat ramp. Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (c) that pertain to carrying any single-use plastic beverage straws and or single-use plastic stirrers onto any beach or park within the city, or onto any city marina, pier, dock, or boat ramp.

(d) *Prohibitions on causing litter in sewers and on public and private property.* It shall be unlawful for any person to use leaf blowers, or any other means, to sweep, cast or throw, or cause to be cast or thrown, or discarded into any of the gutters, drains, sewers, or public rights-of-way within the city, or upon any adjacent public or private real or personal property, any garbage, litter, paper, handbill, trash, tree, plant, or grass cuttings, leaves, yard maintenance debris, or other objects or substances.

* * *

(f) *Penalties for violations.* The following civil fines shall be imposed for violations of this section, except as provided in subsection (h) below:

(1) For violations of subsection (c):

- a. First offense within a 12-month period: \$100.00 civil fine.
- b. Second offense within a 12-month period: \$200.00 civil fine.
- c. Third or subsequent offense within a 12-month period: \$500.00 civil fine.

(2) For violations of subsection (b) that take place anywhere other than a beach or park within the city, or a city marina, pier, dock, or boat ramp, or for violations of subsections (d) or (e):

- a. First offense within a 12-month period: \$1,000.00 civil fine.
- b. Second offense within a 12-month period: \$2,000.00 civil fine.
- c. Third or subsequent offense within a 12-month period: \$3,000.00 civil fine.

(3) For violations of subsection (b) that take place on a beach or park within the city, or on a city marina, pier, dock, or boat ramp:

- a. First offense within a 12-month period: \$1,500.00 civil fine;
 - b. Second offense within a 12-month period: \$2,500.00 civil fine; and
 - c. Third or subsequent offense within a 12-month period: \$3,500.00 civil fine.
- (4) In lieu of a civil fine, the special master may accept voluntary community service removing litter in the city equivalent to one hour of community service for each \$50.00 of an imposed civil fine. If the community service is not completed within six months of an adjudication of guilt, the fine shall be reinstated.
- * * *
- (l) *Enforcement by code compliance officers; notice of violation.* If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this article, such 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 may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.
- (m) *Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.*
- (1) A violator who has been served with a civil notice of violation shall elect either to:
 - a. Pay the civil fine in the manner indicated on the notice; or
 - b. Request an administrative hearing before a special master to appeal the notice of violation, which hearing must be requested within ten days of service of the notice of violation.
 - (2) 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 the City Code.
 - (3) The 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 administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties may be assessed accordingly.
 - (4) Any party aggrieved by a decision of the special master may appeal that decision to a court of competent jurisdiction.
 - (5) 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 days of the service of the notice of violation.
 - (6) Other than the option to accept voluntary community service in lieu of a civil fine pursuant to subsection (f)(4), the special master shall not have discretion to alter the penalties prescribed in subsections (f)(1), (f)(2) or (f)(3).

- (n) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*
 - (1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
 - (2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other 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. Three months after the recording of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien, for the amount of the lien, plus accrued interest.
- (o) *Planning board authority.* Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.
- (p) *Injunctive relief.* As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.

SECTION 2. Article I of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 82
PUBLIC PROPERTY**

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ARTICLE I. In General

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Sec. 82-8. Prohibitions regarding sale or use of single-use plastic beverage straws and single-use plastic stirrers by city contractors and special event permittees.

- (a) Legislative intent. Plastic straws are neither readily recyclable nor biodegradable, and take hundreds of years to degrade. 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 reusable materials.
- (b) Definitions. For purposes of this section only, the following definitions shall apply:
 - (1) City contractor means a contractor, vendor, commercial lessee, concessionaire of the city, or operator of a city facility or property.
 - (2) City facility includes, but is not limited to, any building, structure, park, beach, golf course, marina, pier, dock or boat ramp leased to the city, or owned, operated, leased, or managed by the city.
 - (3) City property includes, but is not limited to, any land, water, or air rights leased to the city, or owned, operated, leased, or managed by the city.

- (4) Single-use plastic beverage straw means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as 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.
- (5) 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, such as 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.
- (6) Special event permittee means any person or entity issued a special event permit by the city for a special event on city property or in a city facility.
- (c) Prohibitions. City contractors and special event permittees shall not sell, use, provide beverages with, or offer the use of single-use plastic beverage straws or single-use plastic stirrers in city facilities or on city property. A violation of this section shall be deemed a default under the terms of the city contract, lease, or concession agreement and is grounds for revocation of a special event permit.
- (d) Exceptions. Any city contract, lease, or concession agreement entered into prior to February 1, 2019, or any special event permit issued prior to February 1, 2019, shall not be subject to the requirements of this section, unless the city contractor or special event permittee voluntarily agrees thereto.

Secs. 82-89—82-35. – Reserved.

SECTION 3. Subdivision II of Division 5 of Article IV of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 82
PUBLIC PROPERTY
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ARTICLE IV. Uses in Public Rights-of-Way
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DIVISION 5. Sidewalk Cafes
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Subdivision II. Permit
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Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.

- (p) No food preparation, food storage, expanded polystyrene food service articles, single-use plastic beverage straws, single-use plastic stirrers, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the right-of-way. In addition, expanded polystyrene food service articles, single-use plastic beverage straws, and single-use plastic stirrers shall not be provided to sidewalk cafe patrons.

- (1) Notwithstanding the above, beginning on August 6, 2018, the city shall engage in public education efforts to inform the public of those provisions in this subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers. Beginning on November 1, 2018, and continuing through January 31, 2019, the city shall provide for a warning period, during which the code compliance department shall issue written warnings for violations of those provisions of subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers. Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers.

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SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 6. 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 7. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2018.

PASSED AND ADOPTED this _____ day of _____, 2018.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

(Sponsored by Mayor Dan Gelber and Co-Sponsored by Commissioner Michael Góngora)

Underline denotes additions

~~Strike through~~ denotes deletions

Double underline denotes additions made after First Reading

~~Double strike through~~ denotes deletions made after First Reading

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Deget
City Attorney
7/16/18
Date
NK