

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, FLORIDA, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING SECTION 46-92 THEREOF, ENTITLED "LITTER; DEFINITIONS; PROHIBITIONS ON LITTER AND COMMERCIAL HANDBILL VIOLATIONS; COMMERCIAL HANDBILL REGULATIONS, FINES, AND REBUTTABLE PRESUMPTIONS; SEIZURE AND REMOVAL OF LITTER BY THE CITY; ENFORCEMENT; APPEALS; LIENS," TO ESTABLISH AN EXCEPTION PERMITTING ALUMINUM BOTTLES AND CONTAINERS TO BE BROUGHT ONTO THE CITY'S BEACHES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has had a sponsorship agreement with Coca-Cola North America ("Coca-Cola"), a division of the Coca-Cola Company, since March 14, 2012; and

WHEREAS, since the sponsorship agreement with Coca-Cola expired on December 31, 2021, the City decided to explore its various opportunities for a non-alcoholic pouring rights partnership; and

WHEREAS, after a selection process to identify an exclusive/official non-alcoholic beverage partner, PepsiCo was recommended to the City by Spectra Partnerships; and

WHEREAS, on March 9, 2022, the City Commission passed and adopted Resolution No. 2022-32091, which authorized the City Manager to negotiate and execute an agreement with PepsiCo, for an exclusive non-alcoholic beverage pouring rights partnership for vending and dispensing products in certain City properties; and

WHEREAS, presently, pursuant to section 46-92 of the City Code, there is a prohibition on carrying metal and glass bottles, and other metal and glass containers, onto the City's beaches; and

WHEREAS, plastic bottles and containers are not presently prohibited in the City or on its beaches, however, the Mayor and City Commission have implemented many initiatives to reduce plastic in the City of Miami Beach; and

WHEREAS, in enacting such initiatives, the City has spearheaded single-use plastic reduction through various regulations including the following:

1. A City-wide polystyrene ban, which prohibits the sale and use of expanded polystyrene (Styrofoam) within the City;
2. A prohibition on the use and distribution of single-use carry out plastic bags on the public rights-of-way and to sidewalk café patrons;
3. A citywide ban on single-use plastic straws and stirrers;

4. A requirement that all beachfront concessionaries and third-party concessions switch to 100% reusable food and beverage wares; and

WHEREAS, in 2018, the voluntary #PlasticFreeMB program for businesses, which aims to remove single use plastics (such as plastic bags, plastic straws, plastic cutlery, plastic take out containers, and plastic lids), was created, and the program currently has over 155 participating businesses in the City; and

WHEREAS, some of the negative impacts and statistics pertaining to plastic include the fact that 8 million metric tons of plastic end up in the ocean annually and 100 million marine animals are killed every year due to plastic debris; approximately one-half of all plastic produced is single-use plastic (which means it's typically used once and thrown away); and the reduction of single-use plastic helps decrease the demand on natural resources to produce plastic (which, in turn, reduces greenhouse gas emissions, protects wildlife from ingesting plastic, reduces litter in waterways and beaches, and allows the City's stormwater system to function more efficiently without the problem of debris); and

WHEREAS, the Environmental Protection Agency states that aluminum cans have about 68 percent recycled content compared to just 3 percent for plastic bottles in the United States and, as a result, aluminum is widely seen as the better choice for the environment; and

WHEREAS, aluminum cans are recycled at a higher rate than any other beverage container – and at more than twice the rate of plastic bottles; and

WHEREAS, aluminum cans support the concept of closed-loop recycling, which is preferred because the recycled product maintains its original quality and the process can be repeated infinitely; and

WHEREAS, more than 92% of recycled aluminum can materials are used to make more aluminum cans, whereas the recycling of plastic is more complex, leads to degradation, and has lower reuse rates than aluminum; and

WHEREAS, the recycling of aluminum cans emits less greenhouse gas and can save 95% of the energy that would be needed to make a new can and, therefore, no new material needs to be mined or transported; and

WHEREAS, unlike plastic bottles, aluminum cans do not contain Bisphenol A (commonly known as BPA), which chemical has come under scrutiny due to various health risks including cancer; and

WHEREAS, the Mayor and City Commission desire to adopt the following amendment to the City Code of Laws and Ordinances in order to establish an exception permitting bottles and containers primarily composed of aluminum to be carried onto the City's beaches.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Section 46-92 of the City Code shall be amended as follows, and as hereinafter set forth below:

CHAPTER 46

ENVIROMENT

* * *

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:
- (1) *Benefactor* means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.
 - (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.
 - (3) *Handbill* means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.
 - (4) *Commercial handbill* means any handbill that conveys any information about any good or service provided by a business.
 - (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.

- (6) *One day* means a 24-hour period from noon to noon.
 - (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, 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.
 - (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, 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.
- (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, unless such bottle or container is primarily composed of aluminum. 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) *Exception.* The provisions in subsection (c) that pertain to single-use plastic beverage straws and single-use plastic stirrers shall not apply to a person or patron 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) *Effective dates.* Notwithstanding the above:
 - a. 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 a 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, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers;
 - b. 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 in subsection (c) that pertain to carrying a 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; and
 - c. Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (c) that pertain to carrying a 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.
- (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.
- (e) *Garbage container requirements for restaurants.* All restaurants with take-out service shall have up to four garbage containers, as need requires, based on the determination of the city manager or his designee. The containers shall be located in front of and within 50 feet in each direction of the premises at locations approved by the city manager or his designee. These containers shall be kept in clean and sanitary condition at all times and shall be emptied daily or more frequently if necessary to prevent overflowing. The garbage containers required by this section are in addition to those required by chapter 90 of this Code.
- (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 magistrate 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.

(g) *Prohibitions on commercial handbill distribution.*

- (1) *Historic areas.* It shall be unlawful for any person to distribute commercial handbills on the right-of-way in any of the following areas in the City of Miami Beach:
 - a. The area bounded on the north by, but not including, 17th Street, bounded on the east by, but not including, Washington Avenue, bounded on the south by Lincoln Lane, and bounded on the west by Alton Road;
 - b. Ocean Drive from 5th to 15th Streets;
 - c. Collins Avenue from 5th to 15th Streets;
 - d. Washington Avenue from 5th to Lincoln Road;
 - e. All cross streets and bystreets bounded on the north by 15th Street, bounded on the east by Ocean Drive, bounded on the south by 5th Street, and bounded on the west by Washington Avenue;
 - f. Española Way from Pennsylvania Avenue to Collins Avenue; and
 - g. Lummus Park.

The prohibitions of this subsection (g) shall apply to the distribution of commercial handbills on any right-of-way, including, but not limited to, any doorway, stairway, window or other opening of a building abutting on or adjacent to such right-of-way. All rights-of-way identified as prohibited areas shall include the entire width of the right-of-way, including all sidewalks.

- (2) *Sidewalk cafes.* Commercial handbills shall not be distributed on the right-of-way:
 - a. Within 20 feet in any direction from the outside perimeter of any approved sidewalk cafe (as indicated in the approved site plan attached to the city-issued permit); and
 - b. On any right-of-way within the approved sidewalk cafe.
- (3) *Beaches.* Commercial handbills shall not be distributed on any city beach east of the dunes.
- (h) *Penalties for commercial handbill violations.* If a violation resulted from the throwing, discarding, placing, or depositing, or causing to be thrown, discarded, placed, or deposited, of commercial handbills as litter in violation of subsection (b), or resulted from a violation of subsection (g), then the following civil fines shall be imposed. The special magistrate shall not have discretion to alter these prescribed penalties except as to the per handbill fine of \$50.00 provided in subsection (f)(1).
 - (1) If the offense is the first offense, \$100.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
 - (2) If the offense is the second offense within the preceding 12 months, \$500.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
 - (3) If the offense is the third or subsequent offense within the preceding 12 months, \$1,500.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
 - (4) Notwithstanding subsections (h)(1)—(3), no person or benefactor shall receive more than one offense within any one-day period, however, the \$50.00 per handbill fine shall apply to all littered handbills found during that one-day period for a violation of subsection (b).
- (i) *Commercial handbill presumption.* At any prosecution for violation of this section when the litter involved is a commercial handbill, if ten or more commercial handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that the commercial handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the commercial handbills, the special magistrate shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the commercial handbills as litter.
- (j) *Securing of commercial handbill litter by the city.* If a person is found littering with commercial handbills, the code compliance officer is authorized to seize, for use as evidence in the prosecution of the violator before the special magistrate, all commercial handbills in the possession of the violator.
- (k) *Removal of litter by the city.* The city may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.
- (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 magistrate 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 magistrate, shall constitute a waiver of the violator's right to administrative hearing before the special magistrate, 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 magistrate may appeal that decision to a court of competent jurisdiction.
 - (5) The special magistrate 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 magistrate 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. REPEALER.

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

SECTION 3. 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 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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered 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 _____.

PASSED and **ADOPTED** this ____ day of _____, 2022.


ATTEST:

Rafael E. Granado
City Clerk

Dan Gelber
Mayor

(Sponsored by Commissioner Alex J. Fernandez)

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney *MAF* 4-25-22
Date