

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 THE TITLE OF ARTICLE VI ENTITLED "EXPANDED POLYSTYRENE SALE AND USE RESTRICTIONS," TO ADD THE WORDS "FOR FOOD SERVICE ARTICLES," AND CREATING ARTICLE VII, TO BE ENTITLED "EXPANDED POLYSTYRENE RESTRICTIONS FOR FLOATING DOCKS, FLOATING PLATFORMS, AND BUOYS," TO PROVIDE REGULATIONS THEREFOR, AND TO PROVIDE FOR ENFORCEMENT AND PENALTIES; 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**, the City is comprised of a number of islands with approximately 70 miles of shoreline along numerous canals and waterways, the Atlantic Ocean, and the Biscayne Bay Aquatic Preserve, all of which support a wide variety of flora and fauna; and

**WHEREAS**, the waters surrounding the City support threatened and endangered species, such as the West Indian manatee and Johnson's seagrass; and

**WHEREAS**, the City's beaches are a designated nesting habitat for the protected loggerhead, green, and leatherback sea turtles, and support shorebird species, including royal terns and seagulls; and

**WHEREAS**, the City's waters also act as nurseries and habitats for migratory birds, including brown pelicans and ospreys, and for commercially and recreationally important fish, such as snapper, sailfish, and mahi-mahi; and

**WHEREAS**, expanded polystyrene, a petroleum by-product commonly known as styrofoam, is neither readily recyclable nor biodegradable and takes hundreds to thousands of years to degrade in the environment; and

**WHEREAS**, expanded polystyrene is a common pollutant, which fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife, thus harming or killing them; and

**WHEREAS**, due to the physical properties of expanded polystyrene, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment, and the economy"; and

**WHEREAS**, unencapsulated expanded polystyrene floating docks, floating platforms, and buoys degrade overtime or due to contact and contribute to litter in the waterways, and on the City's beaches and shores; and

**WHEREAS**, the City's goal is to replace unencapsulated expanded polystyrene floating docks, floating platforms, and buoys with environmentally friendly alternatives; 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 unencapsulated expanded polystyrene floating docks, floating platforms, and buoys; 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 VI of Chapter 46 of the Code of the City Miami Beach is hereby amended and Article VII is hereby created as follows:

**CHAPTER 46**

**ENVIRONMENT**

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**ARTICLE VI. Expanded Polystyrene Sale and Use Restrictions for Food Service Articles**

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**ARTICLE VII. Expanded Polystyrene Restrictions for Floating Docks, Floating Platforms, and Buoys**

**Sec. 46-209. 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:

*Buoy* means any floating device used as a waterway marker or a navigation aid.

*Code compliance officer* means a code inspector as defined in section 30-3 of the City Code and shall include, without limitation, police officers.

*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).

Floating dock means a structure supported by expanded polystyrene foam flotation and held in place by pilings and or mooring devices and which includes, but is not limited to, boarding floats, gangways, ramps, walkways, marinas, or any combination thereof.

Floating platform means a structure supported by expanded polystyrene foam flotation which includes, but is not limited to, such structures used to clean, repair, or service a boat or a fixed or floating dock, and which structures may be attached to a boat or a fixed or floating dock by ropes or mooring devices.

Polystyrene means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or para-methyl styrene by weight.

Unencapsulated expanded polystyrene means expanded polystyrene that is not completely encapsulated or encased within polyurethane ethylene-vinyl acetate (EVA), polyethylene, other comparable materials approved by and acceptable to the City's public works department and environmental and sustainability department, or that is not encapsulated or encased with a protective covering that is warranted by the manufacturer for eight (8) years or more against cracking, peeling, sloughing, and deterioration from ultra violet rays and physical contacts.

**Sec. 46-210. Prohibitions regarding the use of unencapsulated expanded polystyrene for floating docks, floating platforms, and buoys; exemptions.**

Unencapsulated expanded polystyrene floating docks, floating platforms, and buoys are prohibited to be used or placed in any of the waters and waterways within the jurisdiction of the City. This article shall not apply to county, state, or federal government entities.

**Section 46-211. Enforcement; penalties.**

- (a) Beginning March 1, 2017, the City shall engage in public education efforts to inform the public of the provisions of this article and to provide assistance with identifying alternatives to unencapsulated expanded polystyrene floating docks, floating platforms, and buoys.
- (b) Beginning September 1, 2017, the City shall provide for a six (6) month warning period through and including March 1, 2018 during which the code compliance department shall issue written warnings for violations of this article.
- (c) Beginning March 2, 2018, the code compliance department shall enforce the provisions in this article.
- (d) If a code compliance officer finds a violation of this article, except as otherwise provided during the warning period in subsection (b), 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 for an unencapsulated expanded polystyrene floating dock or platform:

(a) First violation within a 12-month period..... \$250.00;

(b) Second violation within a 12-month period..... ~~\$500.00~~\$1000.00;

(c) Third or subsequent violation within a 12-month period.... ~~\$4000.00~~\$2000.00;  
or

(2) pay the following civil fine for an unencapsulated expanded polystyrene buoy:

(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..... \$250.00;  
or

(3) 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 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 \_\_\_\_\_, 2017.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST:**

\_\_\_\_\_  
Philip Levine, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

(Sponsored by Commissioner John Elizabeth Alemàn)

Underline denotes additions  
~~Strike through~~ denotes deletions

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

*[Signature]*  
City Attorney

1/4/17  
Date

CIA APPROVAL

DATE

& FOR EXECUTION  
FORM & LANGUAGE  
APPROVED AS TO