

MEMORANDUM

FROM: CITY ATTORNEY, Timothy P. Driscoll
TO: CITY COUNCIL/CITY MANAGER, Debbie Manns
DATE: June 4, 2019
RE: Banning of Plastic Straws and Bags, and Polystyrene

I have been asked to address the banning of certain substances in the City.

State law provides for preemption of regulation of polystyrene, with specific limited exceptions, and prohibition on regulation of plastic bags. The governor recently vetoed a bill that would have pre-empted regulation of plastic straws to the State, so the issue of banning plastic straws has thus far been preserved to the local governments.

500.90 Regulation of polystyrene products preempted to department.—The regulation of the use or sale of polystyrene products by entities regulated under this chapter is preempted to the department. This preemption does not apply to local ordinances or provisions thereof enacted before January 1, 2016, and does not limit the authority of a local government to restrict the use of polystyrene by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the local government for the provision of goods or services, unless such use is otherwise preempted by law.

403.7033 Departmental analysis of particular recyclable materials.—The Legislature finds that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy. As such, the Department of Environmental Protection shall undertake an analysis of the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. The analysis shall include input from state and local government agencies, stakeholders, private businesses, and citizens, and shall evaluate the efficacy and necessity of both statewide and local regulation of these materials. To ensure consistent and effective implementation, the department shall submit a report with conclusions and recommendations to the Legislature no later than February 1, 2010. Until such time that the Legislature adopts the recommendations of the department, no local government, local governmental agency, or state government agency may enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

403.7034 Local regulation of single-use plastic straws; moratorium.— (1) Before July 1, 2024, a county, a municipality, or another entity of local government may not adopt or enforce an ordinance or other local regulation relating to single-use plastic straws. The moratorium on local regulation and enforcement under this section expires July 1, 2024.

Please let me know if you have any questions about this matter.