

GREEN IMPLEMENTATION ADVANCEMENT BOARD MINUTES
THURSDAY, OCTOBER 17, 2019
SWINTON OPERATION COMPLEX BOARD ROOM
9:00AM – 11:00AM

MEMBERS PRESENT:

Hal Stern
Lisa Shaheen
Sarah Lucas
Susan Lebrun
Sandy Trento
Christina Hammond

MEMBERS ABSENT:

Maren Graben

STAFF PRESENT:

Missie Barletto, Assistant Public Works Director
Molly Daly, Sustainability Intern
Kelly Brandon, Assistant City Attorney
Suzanne Fisher, Assistant City Manager
William Wilsher, Senior Landscape Planner

GUESTS/OTHERS:

Andrew Bourick
Sierra Greenberg
Justin Potts
Eliana Cohen
Elliot Komishock
Anthony Pugliese

Zach Hirsch
Noria David
Rachel Mezza
Lucas Rochwerger
Mylene Crumiere

1. Call to Order

The meeting was called to order by Hal Stern at 9:06am.

2. Roll Call

Roll call was conducted by Hal Stern.

3. Approval of Agenda

Lisa Shaheen made a motion to approve the agenda of September 19, 2019, seconded by Sandy Trento. Said motion passed unanimously.

4. Approval of Minutes

Sandy Trento provided edits to the September 19, 2019 meeting minutes. Lisa Shaheen made a motion to adopt the September 19, 2019 meeting minutes as amended and the August 15,

2019 meeting minutes. Said motion was seconded by Susan Lebrun and the motion was passed unanimously.

5. Public Comments

None

6. Welcome New Member

This agenda item was deferred until the next meeting.

7. Presentation about Florida Sunshine Law

This agenda item was deferred until the next meeting.

8. City Attorney Review of Single-Use Plastic Reduction Strategies

Kelly Brandon, Assistant City Attorney of the City of Delray Beach attended to discuss the Green Implementation Advancement Board's recommendations for strategies to reduce single-use plastics. A memorandum was submitted by Molly Daly to Kelly Brandon to convey these strategies, and in response, Kelly Brandon submitted a memorandum with a legal analysis of these items.

The first item discussed was the regulation of polystyrene. In March 2016, the State of Florida passed a preemption statute that prevents cities from regulating polystyrene. There was a debate about this statute, and the City of Coral Gables passed a regulation of polystyrene containers. The Florida Retail Federation sued the City of Coral Gables, and the district court ruled in favor of the City. This decision was appealed, and oral arguments were heard in December 2017; however, a decision was not reached in August 2019 by the 3rd District Court of Appeal. During the time between oral arguments and a decision, several cities passed ordinances to regulate polystyrene and many of these cities received letters about potential litigation action by Florida Retail Federation. The 3rd District Court of Appeals decision disagreed with the lower court and upheld three preemptions on polystyrene: Florida Statute 500.90, 403.708(9), and 403.7033. Thus, the following items cannot be regulated: the packaging of products manufactured or sold in the state; use, disposition, sale, prohibition, restriction, or tax of containers, wrappings or disposable plastics bags; use or sale of polystyrene containers.

Kelly Brandon listed some items that have not been preempted by the state. This included plastic stirrers and cocktail picks, and single-use plastic cutlery. It is also possible to pass stricter regulations regarding balloon releases and mylar balloons.

Hal Stern asked if it is possible for the City can make stipulations in vendor contracts that prevent the business from using polystyrene or plastic bags. Kelly Brandon clarified that we cannot regulate these items through a city ordinance, but the board could recommend to the City Commission to consider these items when negotiating contracts on a case by case basis.

Hal Stern also asked if it was possible to regulate these items in sidewalk cafes; however, Kelly Brandon stated that this could still be challenged if it is a regulation. In addition, Hal Stern posed the question about if there could be different permitting costs for restaurants with outdoor seating areas for businesses that do not use these items. Susan Lebrun stated that this could be viewed as a discount for more sustainability-minded businesses who voluntarily reduce polystyrene and plastic bags. Kelly Brandon responded that she will research this.

In terms of what the next steps are, Brandon Kelly informed the board that legislature can act, and citizens can let the state know their opinion. Also, Senate Bill 182 has been introduced for the State Legislature Session in 2020 which would amend the F.S. 403.7033 and repeal F.S. 500.90.

It was discussed if packing peanuts are considered part of packaging, and legal concerns about working around a preemption were raised. Sandy Trento asked Kelly Brandon about the regulating cigarette smoking. William Wilsher stated that Keep Palm Beach County Beautiful found that it is possible to do litter abatement, but cities are not able to regulate cigarette smoking. Kelly Brandon confirmed that regulations of cigarette smoking is preempted under F.S. 386.209. The state regulates indoor smoking and wants smoking regulations to be uniform statewide. There is not much case law regarding this, but an Attorney General opinion was released in 2005 which expressed to the City of Margate that the preemption is clear, and the state is handling how to regulate smoking. The preemption was amended to also include schools.

A student from Space of Mind asked Kelly Brandon if there are restrictions on preemptions that can be passed by the State, and Brandon clarified that preemptions can be considered unconstitutional and therefore repealed.

Susan Lebrun said that it might be possible to regulate single-use plastic plates, since it is not a container. Kelly Brandon reiterated that the board can make this recommendation, but it needs to be approved by the City Commission before staff can act. Hal Stern stated that he would like to know more about what is possible for the City to do within the permitting process so these initiatives can be accomplished while still being within the correct legal boundaries. Kelly Brandon spoke to board members about working with staff to work on these projects one on one, which is within the purview of Florida Sunshine. Moving forward, board members decided to choose projects to lead and work with staff on when necessary.

Staff informed board members that a memorandum has been drafted which conveys the board's recommendation to amend Ordinance 10-19 to include plastic stirrers, cocktail sticks and for disposable cutlery to be made of biobased materials and to be distributed upon request only. The memorandum is ready for the Chairperson to sign and then will be submitted to City Commission.

9. Old Business

a. Green Business Certification Program

Staff worked with the City of Boynton Beach and City of Boca Raton to update the checklist for restaurants to be compatible with their Coastal Connection program. If restaurants become certified through the program, they are also qualified to become certified as ocean-friendly restaurants through both Surfrider and Ocean Allies. Staff is confident about this updated version of the program and is ready to send it to businesses as part of the pilot program. Sarah Lucas is working with the Chamber of Commerce to update them on the program's project and will ask if there are businesses they would also like to include in the pilot.

b. Tree Trust Fund and Tree Canopy Program

William Wilsher spoke to board members about the Tree Trust Fund and activities of the previous Tree Board. Board members received a list of projects that were previously proposed to be funded through the Tree Trust Fund and a copy of the City of Delray Beach's annual application to continue to be a Tree City through the Arbor Day Foundation.

Hal Stern conveyed that there needs to be a plan for where to plant trees and expressed the importance of a comprehensive plan for the City. Suzanne Fisher clarified that Parks & Recreation does have a plan for tree planting, but more coordination is needed between departments to form an overall goal for the City. Stern inquired if the City is still looking to do a tree inventory, and staff confirmed that some funding was approved to complete an inventory of trees on public rights-of-way and all City property. Stern also recommended that board members complete the training provided by Arbor Day Foundation through Tree University to understand responsibilities of a Tree Board.

c. Review of RISE: Climate and Art Weekend

Molly Daly informed board members about attendance at the events throughout the two-day event and stated that it seemed to be an overall success. A lot of positive feedback about the events were received, especially regarding Friday Night Art Walk. Sarah Lucas acknowledged staff for their hard work. Sandy Trento stated that the Atlantic High School band was great, and many children wrote letters to the future about climate change.

d. Updates on Coastal Resilience Partnership

Boynton Beach can still work with Florida Department of Environmental Protection to accept the grant, as long as the interlocal agreement is signed by the end of November. The partners are working hard to revise the interlocal agreement to ensure that it meets the needs of each city attorney's concerns and requirements. The City Attorney's Office is staying up to date with the documents revisions so it can be submitted this to the City Commission as soon as possible.

10. New Business

a. Resolution to Repeal Preemption of Plastic Bags and Polystyrene

A resolution was passed by the Town of Palm Beach to encourage the State of Florida to pass Senate Bill 182 that is proposed for the 2020 legislature session. Lisa Shaheen made a motion to recommend the City Commission passes a similar resolution. Said motion was seconded by Sandy Trento and it was passed unanimously.

b. Time of Monthly Meetings

A consensus was given to discuss this at a later date if deemed necessary.

11. Comments by Board Members

Board members would like to see documents submitted ahead of the meeting when possible. Lisa Shaheen would like to see composting back on the agenda. Hal Stern expressed his desire to see more outreach to homeowner associations and asked staff to keep the board updated on a position being added in the Neighborhood & Community Services Department that will be working with these organizations. Susan Lebrun asked to add a discussion item on the next agenda about require solar panels on new development. Christina Hammond commented that she would like to see less paper used during these meetings.

12. Comments by Staff

Missie Barletto informed board members that staff will convey board recommendations more quickly by writing memorandums, attaining a signature by the Chairperson and submitting it to the City Commission right away.

13. Adjournment

A motion to adjourn the meeting was made by Lisa Shaheen and seconded by Sandy Trento. Said motion passed unanimously and Hal Stern declared the meeting adjourned at 11:11am.

ATTACHMENT 1



City of Delray Beach M E M O R A N D U M

www.mydelraybeach.com

TO: Kelly Brandon, Assistant City Attorney

THROUGH: Missie Barletto, Assistant Public Works Director

FROM: Molly Daly, Sustainability Intern

DATE: September 23, 2019

SUBJECT: Actions Requested by Green Implementation Advancement Board to Address Single-Use Plastics

Introduction

Single-use plastics are triggering detrimental impacts to the environment and our local community. As plastics spread throughout the environment, they break down into smaller parts (microplastics) and pollute water bodies by leaching toxins such as lead, cadmium and mercury. Furthermore, a recent study in the journal *Environmental Science and Technology* found it is possible humans may consume 39,000 to 52,000 microplastic particles a year¹.

Local community members and City Commissioners on multiple occasions have expressed the interest in addressing the impact of plastics on the local environment and citizens. For instance, on April 19, 2019 the Chamber of Commerce hosted an event called Plastic Planet, in which the public voiced their support for the City of Delray Beach to take action. During this event, citizens held discussions with staff regarding their desire for the City to regulate plastic take-out food containers, single-use utensils, plastic water bottles and plastic bags.

Additionally, the Green Implementation Advancement Board (GIAB) enthusiastically supports the City moving forward on ways to address single-use plastics. During the most recent GIAB meeting held on August 15, 2019, a motion was made to recommend the City moves forward on regulating single-use plastic products that have been previously preempted by the State.

After assessing recommendations provided by GIAB members and citizens, the following actions are requested by GIAB and the Office of Sustainability:

- I. Amending Ordinance 10-19 (Plastic Straw Ban) to include additional single-use plastic products
- II. Place restrictions on single-use plastics that are common litter sources
- III. Publicize the Green Business Certification Program and encourage local businesses to participate
- IV. Implement prohibitions for plastic bags, polystyrene, balloons and cigarettes on City property

¹ Human Consumption of Microplastics Kieran D. Cox, Garth A. Covernton, Hailey L. Davies, John F. Dower, Francis Juanes, and Sarah E. Dudas *Environmental Science & Technology* **2019** 53 (12), 7068-7074 DOI: 10.1021/acs.est.9b01517

Background

The State of Florida has an existing state statutes that preempt local ordinances of plastic bags and polystyrene:

- F.S. 403.7033 – Directed FDEP to analyze and provide a report on the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments.
 - Prohibited regulation until conclusions in FDEP's report are adopted by the Legislature.
 - Report submitted to Legislature on February 1, 2010, but has not been adopted.
- F.S. 403.708(9) – The packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974,...

In addition, the State of Florida preempted restrictions of polystyrene products in 2016:

- F.S. 500.90 – Regulation of the use or sale of polystyrene products by entities regulated under this chapter (food services) is preempted to the department (State Department of Agriculture and Consumer Services)

Prior to 2016, cities enacted broad ordinances regarding polystyrene containers. After the State of Florida's preemption of polystyrene was enacted in 2016, local jurisdictions moved forward with ordinances to restrict the sale or use of these products on city-owned land.

Numerous coastal cities throughout Florida have focused on drinking straws, which were not preempted in the state's regulations. In January 2019, Delray Beach placed its own limitations on plastic straws by passing Ordinance 10-19. City staff was previously cautious in proposing a comprehensive plastic reduction ordinance due to persistent challenges to home rule; such as House Bill 771 and ongoing litigation between the Florida Retail Federation and City of Coral Gables in regards to their regulation of plastic bags and polystyrene.

During the 2019 legislative session, House Bill 771 –which required that a “study” for each plastic straw ordinance and a five-year enforcement moratorium – passed in both houses. Fortunately, on May 10, 2019, Governor DeSantis vetoed the bill. He stated that the local ordinances did not “frustrate any state policy” and “the state should simply allow local communities to address this issue through the political process.”²

The City's Green Implementation Advancement Board (GIAB) has sought to advance sweeping plastic reduction ordinances for more than a year. In the March 2019 meeting, the Board passed a resolution asking the City Commission to adopt ordinances regarding polystyrene products and plastic bags that mimicked the broad language of the City of Gainesville. A memorandum was drafted to request passing an ordinance of this nature and was submitted and approved by Neal de Jesus, Interim City Manager through Caryn Garner-Young, Assistant City Manager (Exhibit A). However, days after submitting this

² Gross, Samantha. *Plastic Straws Are out: Ron DeSantis Vetoes Prohibition of Local Straw Bans*. Tampa Bay Times, 5 Aug. 2019, <https://www.tampabay.com/florida-politics/buzz/2019/05/10/plastic-straw-are-out-ron-desantis-vetoes-prohibition-of-local-bans/>.

memorandum, the Town of Palm Beach³ and the City of Surfside⁴ received a letter from the Florida Retail Federation stating that they will take legal action against these jurisdictions if they do not repeal their ordinances regarding plastic bags and polystyrene.

FLORIDA STATUTE REGARDING MARINE DEBRIS CONTROL AND PREVENTION

F.S. 403.41315 states the Legislature finds that a comprehensive illegal dumping, litter, and marine debris control and prevention program is necessary to protect the beauty and the environment of Florida and will have a positive effect on the state's economy. Furthermore, in section (2)(b) it is conveyed that such a program must include an educational campaign to government concerning the role they must assume in preventing and controlling litter.

City Comprehensive Plan

Initiatives to reduce single-use plastics citywide is supported by the following section and subsequent policies of *Always Delray*:

CONSERVATION, SUSTAINABILITY AND RESILIENCY

GOAL CSR 6: SUSTAINABLE WASTE MANAGEMENT, URBAN AGRICULTURE AND FOOD PROGRAMS

Objective CSR 6.1 Materials Management: Develop a cooperative materials management system with partnering organizations to maximize the recovery and reuse of waste and other materials to capture their economic value, conserve embedded energy, and minimize net life-cycle emissions of greenhouse gases and other pollutants.

- Policy CSR 6.1.4 Implement communitywide incentives and policies for residents and businesses to help achieve community waste reductions goals. Conduct an annual education program to encourage increased participation in the recycling program by low performing neighborhoods. Policy PFE 5.1.4 & 5.1.8
- Policy CSR 6.1.6 To reduce waste, promote use of more sustainable products in certain industries, such as biodegradable straws, bags, packaging and containers. Policy PFE 5.1.10
- Policy CSR 6.1.16 Work with Green Market vendors to reduce waste, minimize polystyrene and plastic bag use and promote composting and recycling.

Objective CSR 6.3 Disposal of Waste on Beaches: Enhance and protect the character of Delray Beach's public beach through promotion of coastal cleanup activities and supporting the proper disposal of solid waste and recyclable materials.

Actions Requested to Address Single-Use Plastics

1. Amending Ordinance 10-19 (Plastic Straw Ban) to include additional single-use plastic products

After discussion and consideration of other refreshment accessories used for decorative purposes, it is recommended to amend Ordinance 10-19 to prohibit single-use plastic stirrers, cocktail sticks and

³ Kelly, William. *Facing Legal Hurdle, Palm Beach Will Repeal Ban on Plastic Bags, Polystyrene Containers*. The Palm Beach Post, 16 Aug. 2019, <https://www.palmbeachpost.com/news/20190817/facing-legal-hurdle-palm-beach-will-repeal-ban-on-plastic-bags-polystyrene-containers>.

⁴ Lipscomb, Jessica. *After Threat From Florida's Retail Lobby, Surfside to Overturn Its Plastic Bag Ban*. Miami New Times, 20 Aug. 2019, <https://www.miaminewtimes.com/news/surfside-florida-repeals-plastic-bag-ban-after-florida-retail-federation-threatens-lawsuit-11244931>.

toothpicks. Many municipalities that have placed restrictions on these items since they are similar in nature to plastic straws and more environmentally friendly alternatives are readily available.

In addition to these beverage accessories, staff recommends prohibiting the distribution of single-use plastic utensils in favor of biodegradable or compostable products. Furthermore, it would also be beneficial to require food establishments to provide cutlery upon request only. By providing cutlery upon request, businesses can save money and help promote positive behavior change to reduce waste. As an example, rather than providing these items to every customer, some businesses have set up a station for customers to grab cutlery and condiments as needed.

Delray Beach is a tourist destination that has many waterfront restaurants with patios. It is often that improper disposal of these small disposable items leads to them becoming an environmental blight on our community and bodies of water. While these items are only used for a few minutes before being discarded, they do not fully degrade and quickly become a prevalent source of pollution on our beaches. By amending Ordinance 10-19 to include these items, we will be putting our best foot forward.

II. Place restrictions on single-use plastics that are common litter sources

MYLAR BALLOONS AND CONFETTI

The City's green Implementation Advancement Board has also discussed and voted in favor of restriction on the use of Mylar balloons. Restrictions on throwing of mylar confetti could be included in Section 53.051 B(3) and Section 98.04-06 of the Code of Ordinances that address litter prevention. These changes could also be introduced concurrently with plastic bag and expanded polystyrene initiative, or in separate directives.

BALLOON RELEASES

The State of Florida currently restricts balloon releases to no more than 10 balloons, due to the danger they pose to the environment and wildlife. The GIAB recommends that the City of Delray Beach further these efforts by prohibiting all balloon releases, barring the exemptions stated in F.S. 379.233. Furthermore, staff recommends pursuing the option of requiring all balloons sold to be tied to a weight in order to prevent accidental balloon releases.

CIGARETTE LITTER

Cigarette butts are composed of plastic particles and have overtaken plastic straws as the worst contaminate of the world's oceans⁵. There are about 5.6 trillion filtered cigarettes produced annually and it is estimated that two-thirds of them are thrown away irresponsibly. Despite an effort from State Sen. Joe Gruters, R-Sarasota, to prohibit the use of tobacco on public beaches, the Florida Legislature never took up the bill during the 2019 legislative session.

The City of Delray Beach should move forward in addressing this public health hazard, and can do so by prohibiting cigarette smoking on City property east of the A1A. The City owns a portion of the beaches that extends from the sidewalk to the end of the coastal dunes. If cigarette smoking is

⁵ Young, Mark. *Photo of Mama Bird Feeding Chick a Cigarette Butt Reignites Idea for Beach Smoking Ban*. Bradenton Herald, <https://www.bradenton.com/news/local/article231968577.html>.

banned, the City can post signs at the beginning of the trail to the beach. However, the City does not own the beach below the dunes.

EXPANDED POLYSTYRENE PACKAGING PEANUTS AND FOAM BEADS

It is suggested that Delray Beach also consider restrictions on selling or using/shipping expanded polystyrene packaging peanuts and foam beads. The restriction on selling EPS packaging peanuts would impact commercial establishments; such as, pack-and-ship retail establishments, office supply stores, storage facilities that sell moving supplies, and some distributors that ship products. However, there are sustainable dunnage materials at affordable prices, including air pillows made of recyclable polyethylene #4 plastics, recycled paper products, peanut noodles derived from organic products such as corn starch or sorghum, and novel products made of wood, pea straw, and coconut husk to replace them. For comparison:

- 7 cubic feet of EPS package peanuts cost between \$22 and \$35 dollars
- 7 cubic feet of biodegradable packaging peanuts cost between \$27 and \$35 dollars
- A 55 cubic/foot roll of air pillow product costs \$98 and makes 3,198 pillows.

Concurrently, the City should add language specifically mentioning EPS package materials to Section 53.051 B(3) and Section 98.04-06 of the Code of Ordinances and strengthen enforcement of Section 51.18 C (2) of our Code of Ordinances. As discarded EPS products are refuse, they should be separated from recycling materials and disposed of appropriately in a sealed container placed in the garbage. Introducing specific additional language in these codes, or alternatively aggressively enforcing the trash regulations, would diminish litter, as cardboard boxes filled with expanded polystyrene packing peanuts are often placed curbside and its contents spill or are blown out prior to sanitation pick-up. It would also support the goals of reducing the contamination levels of recycled product and allowing our waste hauler to increase cardboard recovery.

III. Publicize the Green Business Certification Program and encourage local businesses to participate

Over the past few months, staff has been working to create a Green Business Certification Program in which businesses can be recognized for the actions that take to be more environmentally friendly. By completing a checklist specific for their industry, the business can pick and choose which will accrue points for each sustainability measure they implement. There are three levels of certification a business can qualify based on the sum of points. A rating system provides an opportunity for the business to recertify and aim for a higher rating while using the checklist as a tool to identify additional sustainability measures that have not been previously implemented.

In order to become certified, each business must meet the core requirements. These mandatory measures focus on ways to reduce single-use plastics. Thus, it is a way to encourage businesses to switch from single-use plastics to more environmentally friendly products. Since this is a voluntary program, it can prohibit participating businesses from distributing plastic bags and polystyrene products. Thus, since this items are preempted by the State, we can begin to make a positive change by motivating businesses to become certified.

IV. Implement prohibitions for plastic bags, polystyrene and balloons on City property

It is important to the GIAB to move forward on restricting common sources of plastic litter, (i.e. plastic bags, polystyrene products and balloons) wherever possible and within the boundaries of Florida law. While the City is unable to place restrictions on plastic bags and polystyrene products citywide due to

the State's preemption, it is recommended to move forward on prohibiting the use of these items on City property. The following jurisdictions have passed such an ordinance:

City	Ordinance	Prohibition of?	On whom?
Bal Harbour	Ord. No. 2019-622	Single-Use Plastic Straws, Single-Use Plastic Bags, and Single-Use Plastic Flatware and Dinnerware	Any person under the bridge or on the jetty
Deerfield Beach	Ord. No. 2017/010 § 2	Sale, use, or distribution of expanded polystyrene food service articles	City contractors or special event permittees in city facilities or on city property
Miami Beach	Ord. No. 2017-4068	Sale, use, or distribution of expanded polystyrene food service articles	People at parks, beaches, city-owned facilities, sidewalk cafes, special event permits, city marinas, encapsulated docks, buoys, platforms, piers, and boat ramps
Miami Beach	Ord. No. 2018-4205	Use or distribution of single-use carry out plastic bags	On the right of way and to sidewalk café patrons
St. Petersburg	Ord. No. 356-H § 1	Distribution of expanded polystyrene food service articles	City contractors, pushcart/sidewalk café/food truck permittees, park/outdoor public assembly/minor easement permittees on city-owned property or right-of-way

ATTACHMENT 2

MEMORANDUM

DATE: October 7, 2019

TO: Molly Daly, Sustainability Intern & Missie Barletto, Assistant Public Works Director

FROM: Kelly Brandon, Assistant City Attorney

SUBJECT: Green Implementation Advancement Board Requests to Regulate Single-Use Plastics

Polystyrene Regulation

In March 2016, Florida passed the following statute relating to polystyrene regulation:

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.

Prior to August 14, 2019, only one court in Florida had ruled on whether the preemptive statute is Constitutional. The Miami Dade Circuit Court, acting in its appellate capacity, ruled that the Preemption was unconstitutional. Among other Miami specific considerations, the Court also reasoned that it was unconstitutional for reasons that would apply to any cities including that the Legislature delegated Legislative power to the Department of Agriculture without defined standards in violation of Article II and that a facial constitutional challenge fails because there are ways that the Ordinance could be applied without conflicting with 500.90 including that the City would be able to apply its ordinance to restrict polystyrene use on public property, by temporary vendors on public property, and by entities that contract with the City for the provisions of goods or services.

The appellant, Florida Retail Federation also argued that 403.7033 and 403.708(9) preempt the Ordinance. 403.7033 attempts to prohibit local governments from implementing ordinances related to polystyrene until the state Legislature adopts recommendations of DEP, which was provided in 2010 and never adopted by the Legislature and 403.708(9), which regulates the package labeling of polystyrene. The Circuit Court also found that they are unconstitutional as they also lack the necessary standards and guidelines for implementation. Additionally, the Court noted that 403.7033 gives the state Legislature authority to do nothing indefinitely and contemporaneously prevent the cities from doing anything either.

On February 27, 2017, the Florida Retail Federation and the State of Florida has appealed to the 3rd DCA. Oral Argument was heard in December of 2017 but the Court did not make a ruling until August of 2019. In the interim, several cities passed Ordinances regulating polystyrene. There were two approaches—some moved forward with broad-sweeping bans based on the ruling of Miami's Circuit Court (Gainesville, Palm Beach), others sought to regulate within the confines of 500.90 permitted regulation (St. Petersburg, Deerfield Beach, Miami Beach). However, each city appears to have operated under the assumption that 403.7033 and 403.708(9) since neither statute had been enforced against the many cities in Florida that had

passed polystyrene ordinances prior to 500.90. During this time period, the City of Delray Beach had also begun to develop an Ordinance that would operate within the confines of 500.90.

However, on August 14, 2019, the Third District Court of Appeal issued its opinion related to the appeal of the Miami Dade Circuit Court's ruling. The Court reversed the decision and commented on the validity of the preemption in all three statutes.

First, the Court evaluated the lower court's determination that 500.90 was unconstitutional. The Court disagreed with the lower court's determination that the Home Rule Amendment applied. It reasoned that the statute applied to all municipalities across the state after January 1, 2016. The statute did not single out a Miami municipality. Coral Gables was simply the first to pass the Ordinance following the preemption. Additionally, the Court determined that 500.90 did not lack delegation because it is a preemption provision. The state's rulemaking authority actually comes from 500.09.

Next, the Court evaluated the trial court's ruling that Statute 403.708(9) and 403.7033 are unconstitutional. The statutes state the following, respectively:

403.708(9): The packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974, other than as expressly provided in this act.

403.7033: 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.

Again, the Court reasoned that neither statute delegates rulemaking authority. Instead, the statutes are preemption provisions prohibiting local governments from regulating. Since the statutes do not delegate authority, they cannot be found unconstitutional pursuant to the nondelegation doctrine.

Further, the Court disagreed with the lower court that there were any arbitrary classification schemes related to 500.90. There is no mention of beach towns in the statute so it could not be considered an arbitrary classification if it is not even a classification. Additionally, the exemption date is not a classification scheme as noted by the lower court.

Based on the analysis above, the Court found that none of the three state statutes were unconstitutional. Then, the Court applied the statutes to the Ordinance presented by the City of Coral Gables. The Court explained that the lower court used the passage of 500.90, the most recent statute, to interpret the legislative intent related to the prior statutes. The Court found the lower court's analysis to be unpersuasive and misguided as the plain language of each statute clearly state that expressly preempt local regulation. Since the plain language is clear, the lower court's resort to statutory interpretation was improper.

So where are we now?

The Court has concluded that none of the three statutes are unconstitutional. Taking all three statutes into consideration, the following cannot be regulated:

- The packaging of products manufactured or sold in the state
- Use, disposition, sale, prohibition, restriction, or tax of:
 - Containers, wrappings, or disposable plastic bags
- Use or sale of polystyrene products unless:

- By individuals on public property
- Temporary vendors on public property
- Or entities engaged in contracts with the local government for provision of goods
- Or any of the above (i.e. packaging, containers, wrappings, or plastic bags)

Therefore, based on the above, we do not recommend that the City regulate the following items as discussed and requested by the Green Board as the regulation of such is preempted by the above statutes:

1. Packaging Peanuts and Foam Beads (preempted by 403.708(9)).
2. Plastic Bags (preempted by 403.7033)
3. Polystyrene Containers (preempted by 403.7033 combined with 500.90)

NOTE: Senator Stewart has proposed bill 2020 SB 182, which would Amend 403.7033 to delete the preemption language and would repeal 500.90. If approved, the Act would take effect on July 1, 2020. (To allow effective regulation, the bill really needs to include an amendment to 403.708(9))

Cigarette Regulation

Additionally, regulation of smoking is also preempted by the state. Florida Statute 386.209 states the following:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject; however, school districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of municipal or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

While there are no specific cases on point, the Attorney General has authored several opinions related to regulation of smoking by non-state entities. Most relevant, in 2005, the City Attorney of the City of Margate, asked the Attorney General whether Florida Statute 386.209 prohibited a municipality from regulating smoking in a public park. The Attorney General advised that the plain language of the statute makes it clear that the Legislature has directed that the state, not local governments, regulates smoking wherever it may occur. Therefore, a city's attempt to regulate smoking by ordinance in any way other than that prescribed by the Legislature would be preempted and of no effect. Since the opinion was authored, the Statute has not been amended in any way to allow further municipal regulation. On the other hand, when an AG opinion was issued that stated that the School District could not further regulate smoking, the Legislature amended the Statute the following year to allow the School District further regulatory authority. Therefore, the preemption as to municipality regulation appears to be even more clear.

Notwithstanding, cigarettes and cigars are specifically included as litter in Sec. 101.17.

Items that could be regulated but would be up to the Commission whether they wish to regulate:

1. Toothpicks, plastic stirrers, cocktail sticks
2. Single-use plastic utensils and include "upon request" language
3. Mylar balloons and confetti
4. Balloon releases—to restrict further than Florida Statute, which restricts 10 balloons or over

AND/OR Publicize the Green Business Certification Program and encourage local businesses to participate

ATTACHMENT 3



City of Delray Beach

M E M O R A N D U M

www.mydelraybeach.com

TO: City Commission
FROM: Green Implementation Advancement Board
THROUGH: Molly Daly, Sustainability Intern
DATE: October 10, 2019
SUBJECT: Recommendation to Amend Ordinance 10-19

The Green Implementation Advancement Board (GIAB) enthusiastically supports the City moving forward on ways to address single-use plastics. After discussion and consideration of other refreshment accessories used for decorative purposes, GIAB recommends amending the plastic straw ban (Ordinance 10-19) to also prohibit single-use plastic stirrers, cocktail sticks and toothpicks. In addition to these beverage accessories, GIAB recommends prohibiting the distribution of single-use plastic utensils in favor of biodegradable or compostable products and distribution of cutlery to be upon request only.

Items	Materials Prohibited	Accepted Materials
Straws	Plastic	Non-plastic materials
Stirrers	Plastic	Non-plastic materials
Toothpick	Plastic	Non-plastic materials
Cutlery	Plastic	Non-plastic materials; Upon request only

Many coastal municipalities that have placed restrictions on stirrers and toothpicks since they are similar in nature to plastic straws and eco-friendly alternatives are readily available. Furthermore, by providing cutlery upon request, businesses can save money and help promote positive behavior change to reduce waste. As an example, rather than providing these items to every customer, some businesses have set up a station for customers to grab cutlery and condiments as needed.

Ordinance 10-19 has been a great first step in reducing single-use plastics from the city's waste stream. Delray Beach is a tourist destination that has many waterfront restaurants with patios, and it is often that improper disposal of lightweight disposable items, such as stirrers and plastic cutlery, lead to litter that blights our community and bodies of water. While these items are only used for a few minutes before being discarded, they do not fully degrade and quickly become a prevalent source of pollution on our beaches. By amending Ordinance 10-19 to include prohibition on these disposable items, we will be making larger strides towards "greening" Delray Beach and promoting a more sustainable community.


Hal Stern
Chair, Green Implementation Advancement Board

10/17/2019
Date

ATTACHMENT 4

City of Delray Beach Tree Committee
Monday, October 14, 2020@11:00 a.m.
City Hall, Development Services, Conference Room 'A'

AGENDA

Projected Funding: Current & Future Status (Tree Trust Fund)

Meeting Format: Chair, Minutes, Recommendations to Green Implementation Advisory Board (GIAB)

Initial Projects:

- A. Tree Replacements from Hurricane Irma. (Budget cost \$50,300.00)
- B. City Hall Black Olive tree replacements with Live Oak trees-7 trees. Provide Arborist Report & Replacement (Budget cost \$25,000)
- C. Tamarind Road Median landscape renovations including tree replacements and additions. (Budget cost \$8,000.00)
- D. West Atlantic Avenue & Linton Blvd. tree replacements. (Budget cost \$7,400.00)
- E. Misc. costs-tree/stump removal, irrigation replacement and a watering contract. (Budget cost \$10,000)
- F. Replacement Trees for 'Clean & Safe' Area-3 Palms-Coconut, royal & Montgomery Palms-replacements. (Budget cost \$5,000.00)
- G. Add Street Trees-Live Oak tree & Foxtail Palm-Pineapple Grove Way (N.E. 2nd Avenue, between N.E. 1st & 2nd St., eastside. (Budget cost \$4,000.00)
- H. Replacement Trees (Live Oak, Dahoon Holly, Fruit: Avocado, Mango) for removal of tree by LWDD in Sherwood Park & Andover, on homeowner's property-80 trees. (Budget cost \$20,000)

Note: Relocation of Banyan tree-142 N.E. 7th Ave. to Mike Machek Boy Scout Park was taken to City Commission and disapproved. (Budget cost \$45,000+)

Projects were voted on and approved at July 16, 2018 and January 14, 2019 meetings.

Reinforcement of vote for presentation to the Tree Board (GIAB).

Future Projects:

- 1. Anchor Park replacement of Coconut Palms.
- 2. Atlantic Dunes Park replacement of Australian Pine trees.

Non-Agenda Items:

TREE CITY USA® APPLICATION

Select one: ☐ First Time Applicant OR ☒ Recertification



TREE CITY USA

TREE CITY USA status is awarded for work completed by the community during the calendar year. Please contact your State Urban Forestry Coordinator for your state's deadline, mailing address and any additional information required by your state. The common deadline is December 31 but can vary by state. Completed applications with attachments can be mailed to your State Urban Forestry Coordinator. To apply online and for additional information, please visit portal.arboday.org.

Community Information

Community Name (as it should appear on recognition materials) City of Delray Beach
Community Website mydelraybeach.com

Mayor or Equivalent

First Name Cary Last Name Glickstein
Professional Title Mayor
Address 100 N.W. 1st Ave.
City Delray Beach State Florida Zip Code 33444
Email Address glickstein@mydelraybeach.com
Phone Number (ex 402-473-9553) (561) 243-7010 ext. 1110 Fax Number (561) 243-7199

City Forestry Contact:

Person who is responsible for completing and answering questions about this application.

First Name William (Bill) Last Name Wilsher
Professional Title Senior Landscape Planner
Address 100 N.W. 1st Ave.
City Delray Beach State Florida Zip Code 33444
Email Address _____
Phone Number (ex 402-473-9553) (561) 243-6217 Fax Number (561) 243-7221

Standard 1: Tree Board or Department

Frequency of Tree Board Meetings:

Weekly ☐ Bi-weekly ☐ Monthly ☒ Quarterly ☐ Semiannually ☐ Annually ☐

Chairperson: If your city or town has a Tree Board, list your chairperson or head board member. If your city or town doesn't have a Tree Board, list your city department or manager.

First Name William (Bill) Last Name Wilsher
Professional Title Senior Landscape Planner
Address 100 N.W. 1st Ave.
City Delray Beach State Florida Zip Code 33444
Email Address wilsherw@mydelraybeach.com
Phone Number (ex 402-473-9553) (561) 243-6217 Fax Number (561) 243-7221

Other Tree Board Members or Staff

First Name <u>David</u>	Last Name <u>Glover (Landscape Inspector)</u>
First Name <u>Joseph</u>	Last Name <u>Frantz (Public Works)</u>
First Name <u>Tim</u>	Last Name <u>Simmons (Public Works)</u>
First Name <u>Senovain</u>	Last Name <u>Stephens (Parks & Rec.)</u>

Community Greening { Mark
Matt

If additional Tree Board members are needed, please attach.

Cassini
Shipley

OVER

Page 1 of 2

Standard 2: A Community Tree Ordinance

Date Current Tree Ordinance was established August 2, 2017

NEW Applicants (required) ☐ Current ordinance is attached

RECERTIFICATIONS:

☐ Our ordinance as last submitted is unchanged and still in effect
☒ Our ordinance has been changed. The new version is attached

Standard 3: A Community Forestry Program with an Annual Budget of at Least \$2 per capita

Community Population

62972

To review program standards and application resources, visit arborday.org/treecity

Tree Planting and Initial Care

\$ 115,000

Tree Maintenance

\$ 25,000

Tree Removals

hurricane damage

\$ 250,000

Management

\$ 8,000

Utility Line Clearance

\$ —

Volunteer Time

\$ —

Other (please explain)

pruning, straightening)
hurricane damage

\$ 100,000

Total Community Forestry Expenditures

\$ 498,000

Please attach Annual Work plan (if required by your state) and supporting budget documents

Hurricane Irma

Trees Planted

50 *thrinax parvifolia*

Trees Pruned

300+

Trees Removed

125+/-

Standard 4: Arbor Day Observance and Proclamation

Date of observance April 28, 2017 (on Proclamation) April 22, 2017 (Earth Day)

Please attach program of activities, photos, and/or news coverage. Attach Arbor Day Proclamation

April 29, 2017 (Arbor Day Community Grove)

Mayor or Equivalent Signature

Title

Date

Application Certification To Be Completed By The State Forester:

Community:

The above named community has made formal application to this office. I am pleased to advise you that we reviewed the application and have concluded that, based on the information contained therein, said community is eligible to be certified as a Tree City USA community, having in my opinion met the four standards required for recognition.

State Forester Signature

Title

Date

Mail completed application with requested attachments to your state forester no later than December 31 (unless your state has instituted a different deadline.)



Arbor Day Foundation





CITY OF DELRAY BEACH
PLANNING, ZONING AND BUILDING DEPARTMENT



1993 • 2001 • 2017 100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444 • PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

TO: **Mark R. Lauzier, City Manager**

THRU: Timothy Stillings, Planning, Zoning and Building Director

FROM: William Wilsher, Senior Landscape Planner

DATE: August 6, 2018

SUBJECT: City of Delray Beach Tree Board-Funding Recommendation for Tree Trust Fund

The City of Delray Beach has been a Tree City for the past 18 years. One of the provisions for being a Tree City is to formulate and maintain a "Tree Board". The general concept of creating a "Tree Board" is to establish a support group for monitoring and promoting the City's tree canopy, both on public and private lands. As a minimum, the Arbor Day Foundation recommends that a "Tree Board" meet on a quarterly basis to review and discuss their goals. In addition, since 2005, the City of Delray Beach has instituted the creation of a Tree Trust Fund. The Tree Trust Fund was created for the collection of in-lieu funds, paid to the City by Developers, for those properties that cannot mitigate their tree losses onsite. The Tree Trust Fund was then to have been utilized to replace tree canopy on public roads and parks. As the custodian of the Tree City program, I felt compelled to initiate the creation of the City of Delray Beach Tree Board as an advisory group to determine and make recommendations for the funding of projects from the Tree Trust Fund. In order to select individuals that would provide a good representation from City staff and from the private sector, I requested the following individuals, beside myself, comprise the City of Delray Beach Tree Board:

- Tim Simmons, Parks Supt.
- Senovain Stephens, Public Works Landscape Supt.
- Ana Puszkin, Sustainability Officer
- Michael Karali, Public Works Streets Supt.
- David Glover, Landscape/Site inspector
- Samuel Metott, Parks & Rec. Asst. Director
- Mark Cassini, Co-Founder Community Greening
- Carolyn Pendelton-Parker, Registered Landscape Architect/Board Member for Community Greening

Since the repeal and replacement of the Tree Preservation, Protection, Enforcement and Maintenance Ordinance in May 2017, along with the increase of in-lieu costs for tree mitigation, there have been a significant recent deposit (\$48,000) and there are some anticipated future payments (two over \$100,000) to go into the Tree Trust Fund. (See current Tree Trust Fund

SERVICE • PERFORMANCE • INTEGRITY • RESPONSIBLE • INNOVATIVE • TEAMWORK

ATTACHMENT 5

RESOLUTION NO. 122-2019

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, STRONGLY ENCOURAGING THE STATE LEGISLATURE TO APPROVE SENATE BILL 182, AND ANY COMPANION HOUSE BILLS RELATING TO THE PREEMPTION OF RECYCLABLE AND POLYSTYRENE MATERIALS BY AMENDING SECTION 403.7033 AND SECTION 500.90, , FLORIDA STATUTES, REPEALING THE PREEMPTION OF LOCAL LAWS REGARDING THE USE OR SALE OF SINGLE-USE PLASTIC BAGS AND POLYSTYRENE MATERIALS.

WHEREAS, the Town Council of the Town of Palm Beach is diligent in its efforts to preserve the beautiful environment that supports the tourism industry which is so vital to the economy of the Town of Palm Beach and the State of Florida; and

WHEREAS, plastic bags and polystyrene are detrimental because they do not fully degrade in our oceans or land environment and they introduce unsafe chemicals into our environment; and

WHEREAS, plastic bags and polystyrene create the potential for death of land and marine animals through entanglement and ingestion; and

WHEREAS, the expansive usage of single-use shopping bags and polystyrene containers and their typical disposal rates creates an impediment to the Town's waste reduction and recycling goals while creating unsightly litter; and

WHEREAS, single-use plastic bags and polystyrene containers are difficult to recycle and frequently contaminate material that is processed through the Town's curbside recycling and composting programs; and

WHEREAS, reusable bags and biodegradable containers are considered to be the best option to reduce waste and litter, protect wildlife and conserve resources; and

WHEREAS, Council acknowledges that some businesses have taken affirmative steps to accomplish this goal and recognizes their proactive efforts; and

WHEREAS, it is in the public interest for the Council to encourage and enable the location of a viable reusable bag manufacturing operation in the State of Florida; and

WHEREAS, it is in the public interest for the Florida Legislature to provide statewide deregulation of the proliferation of single-use shopping bags and polystyrene containers; and

WHEREAS, the Florida Legislature under "The Energy, Climate Change, and Economic Security Act of 2008", enacted House Bill 7135, creating Sections 403.7033 and 500.90, Florida Statutes; and

WHEREAS, Section 403.7033 requires the Florida Department of Environmental Protection (DEP) to perform an analysis and submit a report to the Legislature by February 1, 2010, regarding the necessity and efficacy of both statewide and local regulation of bags used by consumers to carry products from retail establishments; and

WHEREAS, the statute also provides that until such time that the Legislature adopts the recommendations of DEP, no local or state government may enact any regulation or tax on the use of such retail bags; and

WHEREAS, the DEP analysis determined a need for new or different regulations of bags used by customers to carry products from retail establishments and recommends the implementation of new standards requiring the prohibition of plastic carryout bags encourages the use of reusable bags to the benefit of the State's environment; and

WHEREAS, Section 500.90 preempts local regulation of the use or sale of polystyrene products; and

WHEREAS, the Town Council supports the efforts to repeal Sections 403.7033 and 500.90, Florida Statutes, so that local government can enact appropriate legislation relating to the regulation of plastic bags and polystyrene containers.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA:

Section 1. The Mayor and Town Council support efforts to repeal Sections 403.7033 and 500.90, Florida Statutes, so that local governments are no longer preempted from enacting appropriate legislation relating to the regulation of plastic bags and polystyrene containers.

Section 2. The Mayor and Town Council encourages approval of Senate Bill 182 and all companion House Bills eliminating preemption language in Sections 403.7033 and 500.90, Florida State Statutes.

Section 3. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 10th day of October 2019.

Gail L. Coniglio, Mayor

ATTEST:

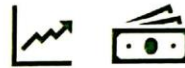
Kathleen Dominguez, CMC
Town Clerk

ATTACHMENT 6



TIPS ON HOW TO BE MORE SUSTAINABLE IN YOUR HOMEOWNER'S ASSOCIATION

Planned communities improve members' quality of life, because they offer choices, lifestyles, amenities and, most importantly, efficiencies that people value. Your homeowner's association offers the opportunity to further empower your association members by fostering and encouraging sustainability initiatives. Community association developers and leaders are increasingly embracing green thinking and design since it compliments neighborhood preferences and is active in allowing for diversity, including the neighborhood's natural environment biodiversity.



go green, see green

UPGRADES THAT INCREASE YOUR HOME VALUE AND CAN
SAVE YOU MONEY

Landscaping: Replacing lawns with native shrubs and trees reduces the need for watering, mowing and lawn chemicals. Xeriscaping, defined as landscaping that reduces or eliminates the need for irrigation, can yield substantial savings. Also, by setting up a compost bin, residents can work together to make soil that is more beneficial for landscaping and gardening.



Water: Help save water by making the switch to WaterSense appliances and using devices, such as aerators and low-flow showerheads, that are low in cost and easy to install. You can also conserve water sources and save money by placing rainwater catchment basins around the community to use for landscaping needs.

Waste and Energy: Encourage residents to reduce waste, reuse what they can, and recycle what is left to help reduce trash. It is also important to understand recycling practices in your area to ensure that your materials do not end up in the landfill. In addition, you can save money on your energy bill by using EnergyStar products and unplugging electronics when they are not in use.



Pollution: You can help improve the quality of air, water and health of your community by reducing pollution. Provide information on electric vehicles and solar panels to homeowners. Plant more trees to provide more shade. Pick up litter to prevent waste from entering our waterways. Also, inform residents about the effects of pesticide application and how to use fertilizer.

CITY OF DELRAY BEACH
OFFICE OF SUSTAINABILITY
434 S. SWINTON AVE
DELRAY BEACH, FL 33444
DELRAYBEACHFL.GOV
561.243.7324

