

Legislative #
190114B



July 15, 2019

Honorable Lauren Poe and Gainesville City Commission
P.O. Box 490
Station 19
Gainesville, FL 32627

RE: Ordinance No. 170487

Dear Mayor and City Commissioners,

The City of Gainesville has enacted Ordinance No. 170487 which bans plastic bags and polystyrene. This ordinance as enacted is unlawful, and we respectfully urge the City to repeal it.

The regulation of plastic bags is expressly preempted to the state under Ch. 403.7033, Florida Statutes, and the regulation of polystyrene is expressly preempted to the state under Ch. 500.90, Florida Statutes. Local regulation of these materials in the manner outlined in Ordinance No. 170487 is not permitted and clearly violates the express preemptions included in the Florida Statutes referenced above.

Under Chapter 57.112, Florida Statutes, if a local government entity violates state law by enacting or attempting to enact an ordinance that contravenes an express preemption of local authority, the local government entity is responsible for paying attorney fees, costs and damages to any person that successfully challenges the unlawful ordinance in a court of law.

Please allow this letter to serve as the official notice required by Chapter 57.112 informing the City of Gainesville that Ordinance No. 170487 clearly violates the express preemptions outlined in the statutes referenced above.

Under Ch. 57.112, you have 60 days to repeal this unlawful ordinance. If the ordinance is not repealed within the requisite period, your city will be responsible for attorney fees, costs and damages in the event the ordinance is successfully challenged in court.

Our organizations welcome the opportunity to work with your city to find other lawful ways to address our concerns on this issue. We all have a vested interest in finding efficient and effective ways of protecting Florida's environment. We assert that lawful and non-punitive mechanisms are present that can help us to achieve our common goals.

We appreciate your time and consideration.

Sincerely,

Lorena Holley
Florida Retail Federation
Vice President & General Counsel

Samantha Hunter Padgett
Florida Restaurant & Lodging Assoc.
General Counsel