

Plastic Bags & Polystyrene Issues

Date: January 2, 2020

What can City regulate in its proprietary capacity? Polystyrene, but not plastic bags.

City can regulate those with whom we contract and can impose regulations on city property.

- Polystyrene – 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.”
- Plastic Bags - 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.”
 - Sec. 403.7033 preempts local regulation of plastic bags; therefore, any ordinance or policies regarding plastic bag use would not be legally defensible.

Proposed Regulations for Gainesville:

- *Expanded polystyrene product* shall mean food containers, plates, bowls, cups, lids, trays, coolers, ice chests, "clamshells," and all similar articles that consist of expanded polystyrene typically used for food and beverages.
- *Exemptions:*
 - Pre-packaged foods that food service providers distribute to their customers and that have been filled and sealed prior to receipt by the food service provider.
 - Expanded polystyrene products used for the storage of raw meat, pork, poultry, fish, and seafood products by a food service provider.

CONTRACTS

- Examples: Catering food/beverages, construction
 - **Recommendation:**
 - Include ban as term of contract with contractor. Contractor and its employees may not bring polystyrene onto city property while performing work for the city.
 - Add provisions regarding contracts to Purchasing Policy, not ordinance.

LEASES

- Examples: Volta, Downtown parking garage convenience store, Bo Diddley Plaza restaurants, Pop-a-Top at Depot Park
- **Recommendation:**
 - Add ban as a voluntary amendment to current leases. Contract term that lessee may not distribute plastic bags or polystyrene should be added to new leases or renewals of current leases.
 - Add to Real Property Policies (Resolution 100630)

REGULATIONS ON CITY PROPERTY

BUILDINGS

- Examples: City Hall, GRU, Thomas Center, Thelma Boltin
- City Employees
 - **Recommendation:** Institute a rule that city employees may not bring plastic bags/polystyrene onto city property, and make it a disciplinary offense. Add to HR Policies. Consult HR about unionized employees.
- Individuals entering city buildings
 - **Recommendation:** Do not regulate individuals because it would be difficult to communicate and enforce the ban.

PARKS

- Examples: Depot Park, Thomas Center
- Distribution of polystyrene at events that require permits or licenses.
 - **Recommendation:** Require permit/license to include ban on polystyrene as condition of the reservation of space or hosting the event.
 - Enforcement Issues: Citations, or restrict future permits for violations?
- Individuals who bring polystyrene into park.
 - **Recommendation:** We could add the polystyrene ban to list of prohibited activities in the ordinance (section 18-20) and park rules (18-17), but we could have a problem informing the public of the ban. Therefore, recommendation is that no ban be imposed against individuals bringing polystyrene into parks.

INDIVIDUALS ON RIGHT OF WAY

- Examples: Pedestrians returning home from the grocery store, homeless people
 - **Recommendation:** Do not regulate individuals because it could run afoul of the statutory preemption.

ACTIVITIES IN RIGHT OF WAY

- Examples:
 - Spring Arts Festival. 19-1
 - Downtown Arts Festival. 19-3
 - Bo Diddley Plaza. 19-2
 - Farmers Market. 30-5.11
 - Food trucks. 30-5.35
 - Vending Booth Permits. 19-92, 19-93...
 - Food distribution center for the needy. 30-5.12
 - Parades and Assemblies on Streets. 26-189
- **Recommendation:**
 - Add ban as condition of permit, approval to become a vendor, or use the city property for the purposes listed above.
 - Amend ordinances.
 - Enforcement: Upon warning, must stop use. If vendor fails to cease activity, may not apply for a permit for XX months.
- Licenses for Sidewalk Cafes. 30-5.44
 - **Recommendation:** Do not impose ban on licensees of sidewalk cafes because the ban could only apply to the outdoor portion of a restaurant. It would be futile to ban polystyrene on only the outdoor space of the restaurant, but not the indoor space because the restaurant could distribute the take-out food inside.

CITY EVENT (not merely city-sponsored) ON NON-CITY PROPERTY

- Examples:
 - Fan Fare & Fireworks at UF
 - Hoggetowne Medieval Fair
- **Recommendation:** Prohibit vendors at event from distributing polystyrene.