



## Legislation Text

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**File #:** 190114., **Version:** 1

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### **Clarifying Definitions and Providing a New Enforcement Date for the Prohibition of Single-Use Carry Out Plastic Bags and Expanded Polystyrene Containers (B)**

Ordinance No. 190114

An ordinance of the City of Gainesville, Florida, amending Sections 27-89 and 27-90 of the City Code of Ordinances, to clarify the definition of single-use carry out plastic bag; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date for this ordinance, but delaying enforcement of this ordinance and Ordinance No. 170487 until 8:00 A.M. on January 2, 2020.

The City Commission (1) consider the newly enacted Section 57.112, Florida Statutes; (2) review the notice letter received by the City; (3) direct the City Attorney to prepare a Resolution (for the August 1st agenda) providing notice of its intent to repeal Ordinance No. 170487; (4) direct the City Attorney to prepare and advertise an ordinance to repeal Ordinance No. 170487 for first reading on August 1 and second reading on August 15; and (5) take no further action on proposed Ordinance No. 190114 at this time.

The City Commission, at its meeting of March 21, 2019, discussed the plastic ban ordinance education campaign and some areas of the current code provisions they may wish to amend. This discussion was continued to the March 28th General Policy Committee meeting. The General Policy Committee, at its meeting of March 28, 2019 discussed these topics further and directed the City Attorney's Office to draft an ordinance to revise the current code provisions.

#### **AGENDA MODIFICATION**

Explanation of modification: This item is being modified to provide the City Commission with additional back-up and to revise the staff recommendation. On July 1, 2019, Section 57.112, Florida Statutes (Chapter Law 2019-151) became effective. A copy of the new statute is provided in the back-up. The new statute states “[i]f a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution of by state law, the court shall assess and award reasonable attorney fees and costs and damages to the prevailing party.” The new statute also provides that if a local government is given written notice that an ordinance is expressly preempted and the local government acts within 30 days to notice an intent to repeal the ordinance and then acts within 30 days to repeal the ordinance, attorney fees and costs may not be awarded. On July 15, 2019, the City received notice from the Florida Retail Federation and the Florida Restaurant & Lodging Association (pursuant to the new statute) requesting that the City repeal Ordinance No. 170487 regarding the prohibition of single-use carry out plastic bags and expanded polystyrene containers as such regulation is expressly preempted to the State by Sections 403.7033 and 500.90, Florida Statutes. A copy of this notice letter is provided in the back-up.

To avoid the risk of exposure for mandatory attorney fees, costs and damages, the City Attorney's Office recommends that the City Commission provide notice of its intent to repeal Ordinance No. 170487, direct the City Attorney to prepare and advertise a repealing ordinance and take no further action on proposed Ordinance No. 190114 at this time. The City Attorney's Office recommends repeal as a prudent step until the status of the State Law preemption is finally resolved. The Commission has been previously advised that there is on-going litigation regarding a similar Coral Gables ordinance and the state preemption statutes and although Coral Gables received a favorable ruling from the 11th Judicial Circuit for Miami-Dade County, that ruling is not binding precedent for the City of Gainesville and is currently on appeal before the Third District Court of Appeals. The Florida Retail Federation has informed the City Attorney that its attorney fees and costs in the Coral Gables litigation currently total \$102,500. This does not include an appeal to the Florida Supreme Court, which they are prepared to take, and does not include monetary damages which are likely to be asserted in future cases on behalf of their members. In addition, as the City was not planning to enforce the prohibitions until January 2, 2020, if the status of the State Law is resolved in a manner that clearly allows local governments to regulate, the City Commission can direct the City Attorney to promptly bring a prohibition ordinance back to the City Commission for adoption.

