

MEMORANDUM 2019-09

TO: Mayor and Members of the City Commission

CC: David Hebert, City Manager
Ana Alvarez, Assistant City Manager

FROM: Donald J. Doody, City Attorney *DJD*

DATE: July 19, 2019

RE: City of Oakland Park ("City") / Preemption of the Regulation of Polystyrene products to the Department of Agriculture and Consumer Services

Pursuant to the recent discussions at the July 17th, 2019 City Commission meeting, this memorandum addresses the ability of the City to regulate the sale or use of Styrofoam products.

Styrofoam is a registered trademark of the Dow Chemical Company made out of a synthetic resin called polystyrene.

Effective July 1st, 2016, Section 500.90 of the Florida Statutes entitled "Regulation of polystyrene products preempted to the department" (a copy of which is attached) prevents the City from regulating the sale or use of polystyrene unless the City's ordinances were enacted prior to January 1, 2016. However, this statute does not prohibit the City from enacting ordinances restricting the use of polystyrene by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the City for goods or services, unless otherwise preempted.

Therefore, in order to comply with the Statute, the City can only regulate the use of polystyrene products on public property by individuals and temporary vendors, and/or the use by entities in which the City has a contractual relationship with for goods or services.

Should you have any further questions on Section 500.90 of the Florida Statutes, or on establishing regulations with respect to polystyrene, please do not hesitate to contact us.

DJD:SMS
Enclosures

500.90. Regulation of polystyrene products preempted to department, FL ST § 500.90

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Florida Statutes Annotated
Title XXXIII. Regulation of Trade, Commerce, Investments, and Solicitations (Chapters 494-560)
Chapter 500. Food Products (Refs & Annos)

West's F.S.A. § 500.90

500.90. Regulation of polystyrene products preempted to department

Effective: July 1, 2016

Currentness

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.

Credits

Added by Laws 2016, c. 2016-61, § 7, eff. July 1, 2016.

West's F. S. A. § 500.90, FL ST § 500.90

Current with chapters from the 2019 First Regular Session of the 26th Legislature in effect through October 1, 2019.

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