



## CITY OF MARATHON, FLORIDA

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9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-0033 Fax: (305) 743-3667  
www.ci.marathon.fl.us

### MEMORANDUM

**To:** The Honorable Mayor and Council Members

**From:** David Migut, City Attorney *DM*

**Cc:** Chuck Lindsey, City Manager

**Date:** January 8, 2020

**Re:** Legal Report

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Included below is an update of legal matters relevant to the City of Marathon:

#### **I. Monroe County Prohibition on Single Use Plastic Straws**

On December 11, 2019, the Monroe County Board of County Commissioners approved Ordinance 044-2019, which makes it unlawful for any retail establishment to sell or distribute single use plastic beverage straws. The County will begin enforcement of this ordinance on January 1, 2021, and enforcement will be county-wide, including within any municipal limits, unless a municipality has adopted an ordinance in conflict with the County's ordinance. As a result, County enforcement of this ordinance will include the City of Marathon unless the City decides to pass an ordinance opting out or otherwise in conflict with the County's ordinance prior to the end of this year. A copy of the County's ordinance is attached.

#### **II. Litigation Review**

A summary of the current status of City litigation is included below. As you are aware, due to the sensitive nature of litigation, most litigation updates are provided verbally to maintain confidentiality and no legal strategy is included within these updates.

##### *Zully Hemeyer v. City of Marathon*

A settlement conference was held with the Honorable Jonathan Goodman, Federal Magistrate Judge, in Miami on December 19, 2020. The parties did not reach a settlement and this case will proceed to trial. Trial is currently scheduled to begin on Monday,

February 3, 2020 at the Federal Courthouse in Key West, with the Honorable Jose Martinez, Federal Judge, presiding. The plaintiff alleges the City terminated her employment based on her gender and/or race/national origin. The City vehemently denies such claims.

*Cecilia Mattino v. City of Marathon*

This administrative law case involves a challenge to the City's adoption of a comprehensive plan amendment accepting 300 additional affordable housing units from the State of Florida. It was consolidated with similar challenges against the City of Key West and the Village of Islamorada. A 5-day hearing before an administrative law judge (ALJ) was held the week of December 9, 2019. In accordance with Florida law on administrative procedure cases, all parties will be filing proposed recommended orders with the ALJ in February, and the ALJ will issue a recommended order to the Department of Economic Opportunity, likely in March.

*Rodney Shands v. City of Marathon*

In this takings case, which dates back to 2004, the plaintiff's attorney recently filed a motion to withdraw as counsel. A hearing on that motion will be held on February 11, 2020. The case is currently in the discovery phase, and no further action will likely occur until after the court rules on the motion to withdraw.

*Richard E. Warner v. City of Marathon*

This takings case continues to work its way through the discovery phase. The City is currently compiling documents requested by the plaintiffs. Additionally, the City has requested documents from the plaintiffs and recently filed a motion to compel outstanding discovery requests from the plaintiffs.

*Jesus Mayan v. City of Marathon*

The sole remaining claim against the City is this case, which relates to Ocean Isles Fishing Village, is a request for a declaratory judgment regarding whether the City's substantial damage analysis after Hurricane Irma was proper. The City does not anticipate any economic damages as such issue is now likely moot due to the demolition of the subject structure. After recently receiving overdue discovery responses from the plaintiff, the City intends to notice this case for trial.

As always, I will promptly update you of any key developments in any litigation involving the City.



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### **III. Policy Regarding Entry onto Private Property**

The City is creating a written policy for employee requirements and guidance regarding entry onto private property. There are several instances where City employees, including but not limited to building, code compliance, and utilities employees, must enter onto private property in fulfilling their duties to protect the health, safety, and welfare of the City and its residents. Private property rights must not be compromised as part of this process, and a policy with specific guidance will help ensure all such actions proceed in accordance with law. The Legal Department is working with the City Manager and the law firm of Vernis & Bowling of the Florida Keys to create this policy. The policy is nearing completion and will be provided to City Council as soon as it is available.

I am available at any time to answer any questions or to provide a more in-depth review of any of these items.



**Kevin Madok, CPA**

Clerk of the Circuit Court & Comptroller – Monroe County, Florida

December 20, 2019

Department of State  
Administrative Code & Register  
500 S Bronough Street  
Tallahassee FL 32399-0250

To Whom It May Concern,

Attached is an electronic copy of Ordinance No. 044-2019 amending Chapter 12 of the Monroe County Code ("*Environmental and Natural Resource Protection*") by creating Article VIII ("*Plastic Straws and Stirrers*") to prohibit the distribution or sale of single-use plastic beverage straws or stirrers countywide, except to the extent of a Municipal Ordinance in conflict; providing for severability; providing for repeal of all Ordinances inconsistent herewith; providing for incorporation into the Monroe County Code of Ordinances; providing for transmittal to the Secretary of State; and providing for an effective date.

This Ordinance was adopted by the Monroe County Board of County Commissioners at a regular meeting, held in formal session, on December 11, 2019. Should you have any questions, please feel free to contact me at (305) 292-3550.

Respectfully Submitted,

Kevin Madok, CPA, Clerk of  
the Circuit Court & Comptroller &  
ex-officio to the Monroe County  
Board of County Commissioners

by: *Pamela G. Hancock, D.C.*

cc: Municipal Code  
County Attorney  
BOCC  
File

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KEY WEST  
500 Whitehead Street  
Key West, Florida 33040  
305-294-4641

MARATHON  
3117 Overseas Highway  
Marathon, Florida 33050  
305-289-6027

PLANTATION KEY  
88820 Overseas Highway  
Plantation Key, Florida 33070  
305-852-7145

PK/ROTH BUILDING  
50 High Point Road  
Plantation Key, Florida 33070  
305-852-7145

**ORDINANCE NO. 044 - 2019**

**AN ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA AMENDING CHAPTER 12. OF THE MONROE COUNTY CODE (“ENVIRONMENT AND NATURAL RESOURCE PROTECTION”) BY CREATING ARTICLE VIII. (“PLASTIC STRAWS AND STIRRERS”) TO PROHIBIT THE DISTRIBUTION OR SALE OF SINGLE-USE PLASTIC BEVERAGE STRAWS OR STIRRERS COUNTYWIDE, EXCEPT TO THE EXTENT OF A MUNICIPAL ORDINANCE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; PROVIDING FOR TRANSMITTAL TO THE SECRETARY OF STATE AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners of Monroe County, Florida (hereinafter “Board”) finds that plastic, non-biodegradable drinking straws and stirrers constitute a portion of the litter on our streets, beaches, stormwater drains, waterways and oceans; and

**WHEREAS**, the Board finds it is in the best interest of public health, safety and welfare of the residents, visitors, and wildlife to reduce litter and pollutants on the land and in the waters surrounding the Florida Keys; and

**WHEREAS**, the board finds that discarded single-use plastic beverage straws and stirrers are neither readily recyclable nor biodegradable; and

**WHEREAS**, the Board finds that in the Florida Keys, as a string of islands surrounded by water, discarded non-biodegradable plastic straws and stirrers easily make their way from being land-based litter into our nearshore waters which can be catastrophic to our protected marine animals including various species of sea turtles and manatees that are endangered and/or protected; and

**WHEREAS**, recognizing the harm non-biodegradable plastic beverage straws and stirrers have on the marine environment, many responsible food and drink vendors throughout the Florida Keys have already converted to plant-based drinking straws responsible; and

**WHEREAS**, the Board finds the inconvenience and potential financial impact of an ordinance prohibiting the sale and distribution of non-biodegradable plastic drinking straws and stirrers is minimal compared to the potential benefit to our marine environment; and

**WHEREAS**, the Board finds implementation of this ordinance is necessary for the preservation of the health of the waters and environmentally sensitive marine environment of the

Florida Keys and in the best interest of the health, safety and welfare of the residents of, and visitors to, the Florida Keys; and

**WHEREAS**, Section 1(f) of Article VIII of the Florida Constitution vests the Board with the authority to enact ordinances having countywide effect that are not inconsistent with state law, provided that such ordinance shall not be effective within a municipality that has adopted an ordinance in conflict with the County ordinance, to the extent of such conflict; and

**WHEREAS**, the State of Florida has not preempted local governments from regulating in the field of single use plastic straws and stirrers; and

**WHEREAS**, Governor Ron DeSantis, in his veto message of HB 771, which was enacted during the 2019 legislative session, stated that ordinances prohibiting single-use plastic straws have not frustrated any state policy or harmed the state's interests, and that the State should allow local communities to address this issue through the political process.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**SECTION 1.** Chapter 12 of the Monroe County Code of Ordinances entitled “*Environment and Natural Resource Protection*” is hereby amended to create Article VIII. entitled “*Plastics*” to read as follows:

*(Inserted language appears underlined; deleted language appears ~~stricken through~~)*

## **ARTICLE VIII. PLASTIC STRAWS AND STIRRERS**

### **Section 12-190. Definitions.**

- (a) For the purpose of this article, the following terms shall have the ascribed meanings unless expressly stated otherwise:

*Medical or dental facility* means hospitals, skilled nursing facilities, physician offices, dentist offices and other State licensed healthcare facilities.

*Retail Establishment* means any person or entity engaged in the retail sale of food, drinks, or goods. Retail establishment includes any supermarket, grocery store, bar, restaurant, convenience stores, shop, service station, farmer's market vendor, special events vendors, all county-contracted vendors, and any other sales outlet where a customer can directly purchase goods, materials, and products.

*Single-use plastic beverage straw or stirrer* means a tube or stylus, intended for only one-time use, that is made predominantly of plastic derived from either petroleum or a



biologically based polymer, including polymers derived from corn or other plant sources, for stirring or transferring a beverage from its container to the mouth of the drinker. Single-use plastic beverage straws or stirrers include compostable and biodegradable petroleum or biologically based polymer straws, but do not include straws or stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

**Section 12-191. Prohibitions.**

- (1) Except within a municipality which has adopted an ordinance in conflict with this ordinance, it shall be unlawful for any retail establishment to sell or distribute single use plastic beverage straws or stirrers.
- (2) It shall be unlawful for any public institution to distribute plastic straws or stirrers for use.

**Section 12-192. Penalties.** Violations of this ordinance may be punished in any manner as follows:

- (1) Citation.
  - a. A code compliance or law enforcement officer may, upon observation of a violation, issue a notice to appear pursuant to Sec. 8-68.
  - b. Any person or retail establishment found in violation of Sec. 12-191 shall be punishable by a fine of up to \$500.00.
- (2) Administrative Notice of Violation
  - a. A code compliance officer may, upon discovery of a violation, issue a notice of violation pursuant to Sec. 8-28.
  - b. Any person or retail establishment found in violation of Sec. 12-191 may be fined pursuant to Sec. 8-31.

**Section 12-193. Exceptions.**

- (1) The prohibition in Sec. 12-191. shall not apply to:
  - (a) Pre-packaged beverages with plastic straws sold or distributed provided that such beverages are prepared and packaged outside of Monroe County, Florida and are not altered, packaged or repackaged within Monroe County, Florida.

- (b) Medical or dental facilities.
- (c) The use of single-use plastic beverage straws or stirrers by any disabled person who requires or relies on the use of a straw or stirrer to consume beverages and/or food supplements.

**SECTION 2. Severability.** If any section, subsection, sentence, clause, or provision of this ordinance is held by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall not be affected by such invalidity.

**SECTION 3. Conflict.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

**SECTION 4: Effective Date.** This Ordinance shall be filed with the Department of State and shall be effective as provided in Section 125.66(2), Florida Statutes.

**SECTION 5: Enforcement:** To allow time for individuals and retailers to expend their current stock of plastic straws and stirrers and provide time for a transition to reusable, recyclable, or compostable alternatives, as well as to allow for an educational period, enforcement of this ordinance will not commence until January 1, 2021.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 11<sup>th</sup> day of December, 2019.

Mayor Heather Carruthers	<u>Yes</u>
Mayor Pro Tem Michelle Coldiron	<u>Yes</u>
Commissioner District I, Vacant	<u>Vacant</u>
Commissioner David Rice	<u>Yes</u>
Commissioner Sylvia Murphy	<u>Yes</u>

FILED FOR RECORD  
 2019 DEC 20 PM 5:06  
 CLERK CIR. CT.  
 MONROE COUNTY, FL



Attest: KEVIN MADOK, Clerk

By: Kevin Madok  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By: Heather Carruthers  
Mayor Heather Carruthers

MONROE COUNTY ATTORNEY APPROVED AS TO FORM:

Robert B. Shillinger, Jr.  
ROBERT B. SHILLINGER, JR.  
COUNTY ATTORNEY  
Date: 12-11-19