

RESOLUTION NO. 2019-2579

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, OPPOSING FLORIDA HOUSE BILL 1383 AND SENATE BILL 1720 RELATING TO PROPERTY RIGHTS AND BERT J. HARRIS ACT CLAIMS; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Bert J. Harris Act (“Harris Act”) provides a civil cause of action for private property owners whose current use or vested right in a specific use of real property is “inordinately burdened” by the actions of a governmental entity; and

WHEREAS, the Harris Act authorizes relief, including compensation, to the private property owner for the actual loss to the fair market value of the real property and the burden of proof is on the property owner to show that a governmental entity has inordinately burdened the property; and

WHEREAS, Harris Act claims must be brought within one year of governmental action; and

WHEREAS, the Harris Act defines an inordinate burden as one in which an action of one or more governmental entities has restricted or limited the use of property such that the owner is unable to attain reasonable, investment-backed expectations for the existing use or a vested right in the existing use of the property as a whole, or if the owner is left with uses that are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good, which should be borne by the public at large; and

WHEREAS, House Bill 1383 and Senate Bill 1720 (collectively, the “Bills”) have been filed for consideration during the Florida Legislature’s 2019 session; and

WHEREAS, the Bills could have a serious impact on local government operations and expose cities and counties to substantial liability;

WHEREAS, when faced with a Harris Act claim, cities and counties often choose to settle the claim by offering the aggrieved property owner a variance to the rule or regulation that is inordinately burdening the property, thereby saving taxpayers the expense of paying monetary damages, a process encouraged in the Harris Act;

WHEREAS, the Bills require that when a government entity reaches a settlement on a Harris Act claim regarding a residential property, if the settlement creates a variance, such variance is to be automatically applied by the government entity to all “similarly situated properties” that are subject to the same government rules or regulations; and

WHEREAS, the Bills do not define what a “similarly situated property” is and, therefore, in its broadest sense, the term may include properties outside of the same zoning district, and has no regard for the size or density of the residential property, any historical designations or other zoning overlays differing residential properties may have; and

WHEREAS, the Bills will have a severe chilling effect on the settlement of Harris Act claims as they fail to take into account notice provisions, hearings, or even impacts on neighboring property owners when giving an across the board variance; and

WHEREAS, the Bills fail to consider that there are legal due process procedures in place to protect the property rights of property owners who may be harmed by the issuance of a variance and that a local government cannot provide Harris Act relief to a property owner by abridging the rights of other potentially impacted property owners; and

WHEREAS, the Bills are a thinly veiled attack to cities and counties who have been dealing with Harris Act claims due to the enactment of vacation rental ordinances; however, the

Bills have far-reaching impacts on land use regulations, environmental regulations and code enforcement regulations; and

WHEREAS, the Bills limit the time frame for government entities to respond to Harris Act claims from 150 days to 90 days, and increase the likelihood of paying the property owners' attorney fees; and

WHEREAS, the Bills seek to remove the current attorney fee provisions for the Harris Act that give judges discretion in deciding if they will award attorney fees and allow judges to consider numerous factors in awarding attorney fees, including settlement offers; and

WHEREAS, if these provisions are removed, the attorney fees will be paid to the property owner if they prevail even if the government entity makes a good faith effort to settle the claim; and

WHEREAS, the Town of Surfside ("Town") Commission opposes the Bills and urges the Florida Legislature to vote against the Bills; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Opposition.** That the Town Commission hereby opposes the Bills.

Section 3. **Transmittal.** That the Town Commission hereby directs the Town Clerk to transmit a copy of this Resolution to the Miami-Dade County State Legislative Delegation, the

Speaker of the Florida House of Representatives, the President of the Florida Senate, and the Florida Governor.

Section 4. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED on this 9th day of April, 2019.

Motion By: Commissioner Karukin

Second By: Vice Mayor Gielchinsky

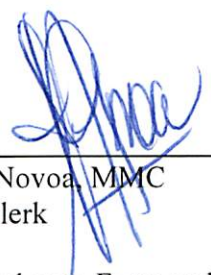
FINAL VOTE ON ADOPTION:

Commissioner Barry Cohen	<u>NO</u>
Commissioner Michael Karukin	<u>YES</u>
Commissioner Tina Paul	<u>ABSENT</u>
Vice Mayor Daniel Gielchinsky	<u>YES</u>
Mayor Daniel Dietch	<u>YES</u>



Daniel Dietch, Mayor

Attest:



Sandra Novoa, MMC
Town Clerk

Approved as to Form and Legal Sufficiency:



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney