

RESOLUTION NO. 2019 - 2627

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA URGING THE FLORIDA LEGISLATURE TO REPEAL SECTIONS 403.708, 403.7033 AND 500.90, FLORIDA STATUTES, AND REJECT ANY OTHER STATUTES THAT INHIBIT A LOCAL GOVERNMENT'S ABILITY TO REGULATE EXPANDED POLYSTYRENE OR SINGLE-USE PLASTIC BAGS; AND REQUESTING THE SUPPORT OF GOVERNOR RON DESANTIS IN THOSE EFFORTS.

WHEREAS, acknowledging the significant harmful effects of expanded polystyrene on the environment and finding the regulation of expanded polystyrene necessary for the preservation of our environment and the public health, safety, and welfare of the Town of Surfside's ("Town") residents and visitors, in 2015, the Town began the process of regulating this product; and

WHEREAS, the significant negative impact that plastic bags and polystyrene have on the environment and the health, safety, and welfare of the Town's residents and properties prompted the Town to adopt Ordinance No. 2015-1639 on March 10, 2015 (codified in Section 34-9 of the Town Code) prohibiting the sale or use of expanded polystyrene food service articles by Town contractors and special event permittees; and

WHEREAS, on November 10, 2015, the Town further adopted Ordinance No. 2015-1639 (codified in Section 34-10 of the Town Code) prohibiting the sale or use of expanded polystyrene food services articles by food service providers and stores, with exceptions; and

WHEREAS, expanded polystyrene, a petroleum by-product commonly known as Styrofoam, is neither readily recyclable nor biodegradable and can take thousands of years to degrade in the environment. Products made from expanded polystyrene have little value, are not accepted in single stream recycling facilities, and cause serious harm and death to wildlife; and

WHEREAS, like polystyrene, single-use plastic bags are detrimental because they do not fully degrade and create the potential for death of land and marine animals through entanglement and ingestion. The expansive usage of single-use shopping bags and their typical disposal rates create an impediment to the Town's waste reduction and recycling goals, cause unsightly litter in the Town's streets, parks, public places, beaches and waterways, and have a significant adverse impact on coastal waters and marine animals; and

WHEREAS, on July 9, 2019, to address significant environmental concerns related to single-use plastics, and consistent with the Home Rule powers guaranteed to the Town by the Miami-Dade Home Rule Charter and the Florida Constitution, the Town

Commission adopted Ordinance No. 2019-1698 amending Section 34-11 of the Town Code to provide a prohibition on the distribution, sale, or use of single-use plastics, including single-use plastic bags; and

WHEREAS, Ordinance No. 2019-1698 provided for a robust public outreach and educational campaign to engage and educate residents and local businesses on the effects of Ordinance 2019-1698, thereby delaying enforcement of the Ordinance and allowing residents and businesses sufficient time to transition away from use of single-use plastics; and

WHEREAS, on July 15, 2019, the Town received a demand letter from the Florida Retail Federation and the Florida Restaurant and Hotel Lodging Association, providing notice pursuant to Section 57.112, Florida Statutes, and stating that the Town's Ordinance No. 2019-1698 regulating plastic bags is unlawful as the regulation of plastic bags is expressly preempted to the State under Section 403.7033, Florida Statutes. In addition, the Federation requested repeal of the Ordinance within 60 days in order to avoid potential attorney fees, costs and damages in the event of a successful challenge to Ordinance No. 2019-1698; and

WHEREAS, due to legal challenges and newly enacted Section 57.112, Florida Statutes, potentially subjecting the Town to attorneys fees, costs and damages in connection with Ordinance No. 2019-1698 regulating single use plastic bags, the Town Commission on August 13, 2019 directed that a Notice of Repeal of Ordinance No. 2019-1698 be published and that the Town take the necessary steps to repeal the Ordinance; and

WHEREAS, on August 14, 2019, the Third District Court of Appeals (Case No.:3D17-562) entered an order in the case titled *Florida Retail Federation, Inc. and Super Progreso, Inc. v. City of Coral Gables*, ruling that the trial court erred in concluding that the three statutes are unconstitutional and reversed the lower court's ruling, and finding that Sections 403.708(9) and 403.7033, Florida Statutes, relating to plastic bags and packaging constitutional and preempted to the State, and further upholding the constitutionality of Section 550.90, FS and finding that the regulation of polystyrene products is preempted to the State; and

WHEREAS, on August 26, 2019, the Town adopted Ordinance No. 2019-1701 on first reading repealing Ordinance No. 2019-1698 regulating single-use plastics; and

WHEREAS, despite the appellate court's ruling, the Town remains wholly committed to protecting the environment and Home Rule, and urges the Florida Legislature to eliminate and repeal Sections 403.708, 403.7033, and 500.90, Florida Statutes, and any other preemption statutes that inhibit a local government's ability to regulate expanded polystyrene and/or plastic bags; and

WHEREAS, the Town also requests the support of Governor Ron DeSantis, who has demonstrated respect for both the environment and Home Rule through his recent veto

of HB 771, wherein the Legislature attempted to preempt local regulations on single-use plastic straws; and

WHEREAS, in his letter to Secretary of State, Laurel M. Lee, withholding his approval and vetoing HB 771, Governor DeSantis said “A number of Florida municipalities, including Sanibel, Ft. Meyers Beach and Miami Beach, have enacted ordinances prohibiting single-use plastic straws. These measures have not, as far as I can tell, frustrated any state policy or harmed the state’s interest. In fact, the Florida Department of Environmental Protection has encouraged Florida residents, schools and businesses to reduce plastic straw use. Under these circumstances, the State should simply allow local communities to address this issue through the political process. Citizens who oppose plastic straw ordinances can seek recourse by electing people who share their views;” and

WHEREAS, the local regulation of expanded polystyrene and plastic bags is as important and necessary as the regulation of plastic straws and the Town respectfully requests Governor DeSantis to support Home Rule and local efforts to regulate expanded polystyrene and single-use plastic bags.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA.

SECTION 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the Town Commission hereby urges the Florida Legislature to repeal and reject sections 403.708, 403.7033, and 500.90, Florida Statutes, and any other statutes that inhibit a local government’s ability to regulate expanded polystyrene and/or single use plastic bags.

SECTION 3. That the Town Commission hereby requests Governor Ron DeSantis’ support in the efforts to support Home Rule and local efforts to regulate expanded polystyrene and single-use plastic bags.

SECTION 4. That the Town Commission hereby authorizes the Town Mayor to write directly to Governor DeSantis on behalf of the Town Commission to request his assistance in these efforts and take all appropriate action to implement the purposes of this Resolution.

SECTION 5. That this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 10th day of September, 2019.

Moved By: Vice Mayor Gielchinsky

Second By: Commissioner Karukin

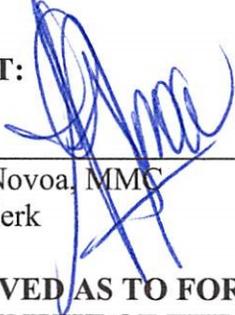
FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	<u>Absent</u>
Commissioner Michael Karukin	<u>Yes</u>
Commissioner Tina Paul	<u>Yes</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 LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



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