

# TOWN OF PALM BEACH

Information for Town Council Meeting on: August 14, 2019

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To: Mayor and Town Council

Via: Kirk W. Blouin, Town Manager

From: Jay Boodheshwar, Deputy Town Manager

Re: Letter from Florida Retail Federation and Florida Restaurant & Lodging Association,  
Objecting to Ordinance No. 24-2019

Date: August 5, 2019

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## **STAFF RECOMMENDATION**

Staff recommends Town Council review the letter dated July 15, 2019, from the Florida Retail Federation and Florida Restaurant & Lodging Association, objecting to the adoption of Ordinance No. 24-2019, and provide direction to staff.

## **GENERAL INFORMATION**

The bullet points below summarize actions Town Council has taken to address environmental concerns related to single-use plastic bags and expanded polystyrene containers in our coastal community.

- Resolution No. 03-2017 was approved at the January 10, 2017, Town Council meeting, strongly encouraging the Florida State Legislature to repeal section 403.7033 of the Florida Statutes so that local governments are no longer preempted from enacting appropriate legislation relating to the regulation of plastic bags and expanded polystyrene containers. A copy of the resolution was subsequently forwarded to the State but no action has been taken by the Legislature.
- On June 12, 2017, the ORS committee continued its discussion regarding a potential ordinance to ban single use plastic bags within the Town of Palm Beach and reviewed regulations that were approved by the City of Coral Gables. See attached Ordinance No. 2017-13, which was approved by Coral Gables and provided for a 1-year phase in period for retail establishments. ORS decided that the Town should monitor legal action against the City of Coral Gables and give consideration to a ban within the Town at a later date.
- On March 20, 2018, an update was provided to the Mayor and Town Council regarding a pending lawsuit from the Florida Retail Association against the City of Coral Gables. Council was advised to await the decision of the Third District Court of Appeal. It was the

consensus of Town Council to take no further action until the legal matter with Coral Gables was resolved.

- On May 14, 2019, Ordinance No. 24-2019, regulating single-use plastic bags and expanded polystyrene containers was presented for first reading as requested by Town Council at its previous meeting on April 9, 2019, meeting.

At said meeting, staff reported that section 403.7033 of the Florida State Statutes required the Florida Department of Environmental Protection ( DEP) to perform an analysis and submit a report to the Legislature by February 1, 2010, regarding the necessity and efficacy of both statewide and local regulation of bags used by consumers to carry products from retail establishments. The statute also provided that until such time that the Legislature adopts the recommendations of DEP, no local or state government may enact any regulation or tax on the use of such retail bags.

Staff reported that although the recommendations of DEP have not been officially adopted, the DEP did in fact determine a need for new or different regulations of bags used by customers to carry products from retail establishments, recommends the implementation of new standards requiring the prohibition of plastic carryout bags and encourages the use of reusable bags to the benefit of the State's environment. Adoption of said regulations are still pending.

After some discussion Ordinance No. 24-2019 was deferred to May 15, 2019, when first reading was subsequently approved.

- On June 11, 2019, Ordinance No. 24-2019 was adopted on second reading and the required public education campaign commenced shortly thereafter to ensure a smooth phase-in period for the community.
- On July 15, 2019, the Town received a letter via email from the Florida Retail Federation and the Florida Restaurant & Lodging Association advising us of their intent to challenge the adoption of Ordinance 24-2019, and seek reimbursement of attorney fees and other expenses as provided for in section 57.112 of the Florida State Statutes.

Subsequent to receiving said letter, staff reached out to the City of Coral Gables to ascertain the status of their lawsuit with the Florida Retail Federation and learned that it was still awaiting a decision from the Third District Court of Appeal. Staff also contacted the City of Gainesville and St. Augustine Beach, who has recently adopted similar ordinances as the Town's and also received a similar letter from the Retail Federation and Restaurant and Lodging Association. Gainesville advised that they intended to recommend rescinding of their ordinance in an abundance of caution and St. Augustine Beach had not reached a conclusion as to how they intend on responding. Staff is seeking direction from Town Council, relative to what actions we should take in response to the letter, if any.

#### Attachments

cc: John C. Randolph, Town Attorney