

## **EMERGENCY ORDINANCE NO. 37-2019**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RESCINDING ORDINANCE NO. 24-2019 TITLED PROHIBITION OF POLYSTYRENE CONTAINERS AND SINGLE USE CARRY OUT PLASTIC BAGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 11, 2019, the Town adopted Ordinance No. 24-2019 titled Prohibition of Polystyrene Containers and Single Use Carry Out Plastic Bags; and

WHEREAS, the Florida Retail Federation in a letter dated July 15, 2019 to the Mayor and Town Council served official notice, pursuant to Chapter 57.12, Florida Statutes, informing the Town that Ordinance No. 24-2019 “clearly violates the express preemptions outlined in the Florida Statutes; and

WHEREAS, said letter demanded, pursuant to 57.12 that the Town repeal “this unlawful ordinance within 60 days” stating that “if the ordinance is not repealed within the requisite period, the Town will be responsible for attorney’s fees, costs and damages in the event the ordinance is successfully challenged in court;” and

WHEREAS, on August 14, 2019, the Third District Court of Appeal rendered an opinion that Florida Statutes clearly and unambiguously preempts the regulation of “polystyrene products” and that Sections 403.708(9), 403.7033, and 500.90 relating to same are constitutional, thereby preempting the Town’s ordinance prohibiting polystyrene containers; and

WHEREAS, pursuant to the demands set forth in the Florida Retail Federation letter of July 15, 2019 and the subsequent opinion of the Third District Court of Appeal filed August 14, 2019, the Town Council at a meeting on August 14, 2019, declared its intent to repeal Ordinance No. 24-2019.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY FLORIDA AS FOLLOWS:

Section 1. Ordinance No. 24-2019 is hereby repealed.

Section 2. This Ordinance shall take effect immediately upon its passage on first reading as an emergency ordinance in order to come into compliance with the timelines set forth in Chapter 57.112, Florida Statutes.

Section 3. Severability.

Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 7. Effective Date.

This ordinance shall become effectively immediately upon adoption.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading as an emergency ordinance this 10<sup>th</sup> day of September, 2019.

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Gail L. Coniglio, Mayor

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Danielle H. Moore, Town Council President

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Margaret A. Zeidman, Council President Pro Tem

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Julie Araskog, Town Council Member

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Lewis S.W. Crampton, Town Council Member

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Bobbie Lindsay, Town Council Member

ATTEST:

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Kathleen Dominguez, Town Clerk