

ORDINANCE NO. 2019-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 14, “ENVIRONMENTAL PROTECTION” OF THE TOWN CODE OF ORDINANCES TO CREATE SECTION 14-2, “PROHIBITION ON DISTRIBUTION, SALE OR USE OF PLASTIC STRAWS”; AMENDING CHAPTER 8, “CODE ENFORCEMENT,” SECTION 8-10, “SCHEDULE OF CIVIL PENALTIES” TO PROVIDE PENALTIES FOR VIOLATIONS OF SECTION 14-1, “PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES BY TOWN CONTRACTORS” AND SECTION 14-2; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (“Town”) is committed to environmental conscientiousness and leadership, and towards that end has previously adopted ordinances prohibiting the sale or use of polystyrene food service articles by Town contractors and a resolution supporting a County-wide prohibition on plastic straws; and

WHEREAS, the Town finds that it is in the public interest, safety, and welfare to reduce litter and pollutants on the lands and in the waters of the Town; and

WHEREAS, Chapter 14 of the Town’s Code of Ordinances (“Code”) pertains to the environment; and

WHEREAS, discarded plastic straws threaten wildlife and marine life and degrade and litter the beaches and waters off of Florida’s coast, which include areas within the Town; and

WHEREAS, plastic straws constitute a portion of the litter in the Town’s streets, parks, public places, and waterfront areas; and

WHEREAS, the use, sale, and distribution of plastic straws has a detrimental effect on the Town’s environment; and

WHEREAS, the Town Council finds that there are reasonable, environmentally-friendly alternatives to plastic straws; and

WHEREAS, over the last two years, several companies have announced plans to phase out and discontinue the use of plastic straws in their establishments worldwide; various municipalities have adopted their own plastic straw prohibitions; and members of the media and public have expressed their satisfaction and concerns with plastic straw prohibitions; and

WHEREAS, the Town Council wishes to amend Chapter 14 of the Town's Code to create Section 14-2 to prohibit the sale, distribution, and use of plastic straws; and

WHEREAS, the Town Council wishes to amend Chapter 8 of the Town's Code to provide for penalties for violations of Section 14-1, "Prohibitions regarding sale or use of expanded polystyrene food service articles by town contractors" and Section 14-2, "Prohibition on Distribution, Sale or Use of Plastic Straws"; and

WHEREAS, the Town Council finds that this Ordinance is necessary for the preservation and improvement of the environment, public health, safety and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AS FOLLOWS:¹

Section 1. **Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. **Amending Chapter 14 of the Town Code.** The Town Council of the Town of Cutler Bay hereby amends Chapter 14, "Environmental Protection" of the Town Code by creating Section 14-2 as follows:

Chapter 14 – Environmental Protection

Article I. – In General

Section 14-2. Prohibition on Distribution, Sale or Use of Plastic Straws.

(a) *Definitions.* For purposes of this section, the following definitions apply:

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with yellow highlighted ~~double strikethrough~~ and double underline.

- (1) Plastic Straw means a straw or stirrer provided, sold, or distributed for the purpose of imbibing liquids or transferring a beverage from its container to the mouth of the drinker by suction or for the purpose of mixing a beverage, which is made predominantly of plastic derived from one or more of the following: petroleum, a biologically-based source (such as corn or other plants), or polystyrene, polypropylene, or polyethylene, and which is intended for a single-use. A Plastic Straw does not include a straw that is made of non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.
- (2) Special Event Permittee means any person or entity, and their subcontractor(s), issued a special event permit by the Town for a special event on Town property, or in a Town facility, or in the Town's right-of-way.
- (3) Town Facility includes, but is not limited to, any building, structure, park, road, street, right-of-way, or other facility owned, operated or managed by the Town.
- (4) Town Property includes, but is not limited to, any land, water, or air rights owned, operated or managed by the Town.

(b) Plastic Straws Prohibited; Exceptions

- (1) A Plastic Straw shall not be used, sold, or distributed in any commercial establishment or by any mobile vendor or Special Event Permittee at any Town Facility, Town Property or at any other public property.
- (2) Exceptions.
 - a. This prohibition shall not apply to pre-packaged drinks sold at commercial establishments.
 - b. This prohibition shall not apply to medical or dental facilities.
 - c. This prohibition shall not apply to the school district or county, state, or federal governmental entities.
 - d. This prohibition shall not apply where a reasonable accommodation is needed by an individual due to a medical or physical condition.

(c) Enforcement; Penalties

- (1) Following adoption of this Section, the Town shall engage in public education efforts to inform commercial establishments and users of

Town Facilities and Property of the provisions of this Section and to provide assistance with identifying alternatives to Plastic Straws.

- (2) The Town's Code Compliance Department shall enforce the provisions of this Section. Beginning January 1, 2020, the Town's Code Compliance Department shall begin a 60-day period of providing written warnings for violations of this Section. Beginning March 1, 2020, the Department shall enforce this Section.
- (3) Penalties for violations of the provisions of this Section shall be enforced through Chapter 8 of the Town Code.

Secs. 14-23 – 14-18. Reserved.

Section 3. Amending Chapter 8 of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Chapter 8, "Code Enforcement" of the Town Code by amending Section 8-10, "Schedule of civil penalties," as follows:

Chapter 8 – Code Enforcement

Sec. 8-10. - Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended. The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. In the event of a Code revision, the Code section number shall not control and the "description of violation" shall be used to determine the applicable fine. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this chapter, regardless of whether all activities proscribed or required within that particular section are described in the "description of violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined unless otherwise noted a repeat violation shall be charged a civil penalty double the listed civil penalty, not to exceed \$500.00. An "uncorrectable violation" as defined in this chapter shall carry a civil penalty of up to \$5,000.00, regardless of the amount stated below:

TABLE INSET:

Code Section	Description of Violation	Civil Penalty, per occurrence, not to exceed
***	***	***

<u>14-1</u>	<u>Selling or using expanded polystyrene food service articles</u>	<u>\$250.00</u>
<u>14-2</u>	<u>Distributing, selling, or using plastic straws</u>	<u>\$25.00</u>
***	***	***

Section 4. Codification. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 7. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading on the _____ day of June, 2019.

PASSED AND ADOPTED on second reading on the ____ day of _____, 2019.

TIM MEERBOTT
Mayor

ATTEST:

DEBRA E. EASTMAN, MMC
Town Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE SOLE USE OF
THE TOWN OF CUTLER BAY:

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

First Reading:

Moved by: _____

Second by: _____

Second Reading:

Moved by: _____

Second by: _____

FINAL VOTE AT ADOPTION:

Mayor Tim Meerbott _____

Vice Mayor Sue Ellen Loyzelle _____

Council Member Robert "BJ" Duncan _____

Council Member Michael P. Callahan _____

Council Member Roger Coriat _____