ORDINANCE NO. 2019- 1698 1 2 AN ORDINANCE OF THE TOWN COMMISSION OF THE 3 TOWN OF SURFSIDE, FLORIDA, AMENDING SECTION 4 34-11, "PROHIBITION ON DISTRIBUTION, SALE OR USE 5 OF PLASTIC STRAWS" OF THE TOWN'S CODE OF 6 ORDINANCES BY AMENDING THE TITLE TO BE 7 "PROHIBITION ON DISTRIBUTION, SALE OR USE OF 8 SINGLE-USE PLASTICS," **PROVIDING** FOR 9 DEFINITIONS FOR SINGLE-USE PLASTICS, AND REGULATING SINGLE-USE PLASTICS; PROVIDING 10 FOR CODIFICATION; PROVIDING FOR SEVERABILITY; 11 PROVIDING FOR CONFLICTS; AND PROVIDING FOR 12 AN EFFECTIVE DATE. 13 14 WHEREAS, the Town of Surfside (the "Town") is committed to environmental 15 conscientiousness and leadership and finds that it is in the interest of the public health, safety, 16 and welfare of its residents and visitors to reduce litter and pollutants on the land and the waters 17 of the Town, including its shores and beaches; and 18 WHEREAS, the Town is located on an island surrounded by the Atlantic Ocean and other waterways, all of which support a wide variety of flora and fauna; and 19 20 WHEREAS, on March 13, 2018, the Town Commission adopted Ordinance No. 2018-1676 creating Section 34-11 of the Town Code of Ordinances ("Code") to provide a prohibition 21 22 on the distribution, sale, or use of plastic straws; and 23 WHEREAS, on December 11, 2018, the Town Commission adopted Ordinance No. 24 2018-1690 amending Section 34-11 of the Town Code by clarifying the definition of plastic straws to include plastic stirrers and to specifically define what is not considered a plastic straw; 25 26 and 27 WHEREAS, the Town Commission finds that Section 34-11 of the Town Code should be further amended to define and regulate Single-Use Plastics (including Single-Use Plastic 28 29

Straws and Single Use Plastic Bags as defined in this Ordinance); and

WHEREAS, Single-Use Plastics are neither readily recyclable nor biodegradable and take hundreds of years to degrade; and

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WHEREAS, Single-Use Plastics constitute a portion of the litter in the Town's streets, parks, public places, and waterfront areas; and

WHEREAS, Single-Use Plastics contribute to overburdened landfills, threaten wildlife and marine life, and degrade and litter drainage and sewage systems, as well as the beaches and waters off the Florida coast, which include areas within the Town; and

37 38 39	WHEREAS, Single-Use Plastic Bags are photo-biodegradable and break down into smaller pieces which can make their way into the food chain via such animals as jellyfish and endangered sea turtles; and
40 41	WHEREAS , the sale and distribution of Single-Use Plastics has a detrimental effect on the Town's environment, and that of surrounding jurisdictions; and
42 43 44 45 46	WHEREAS , the City of Coral Gables has adopted a plastic bag prohibition, and in <i>Florida Retail Federation. Inc. and Super Progreso Inc. v. The City of Coral Gables</i> , Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida (Case No. 2016-018370-CA-01), the Court held that Sections 403.708(9) and 403.7033 of the Florida Statutes, relating to plastic bags and packaging, are unconstitutionally vague; and
47 48 49	WHEREAS , the appeal from this decision has been argued in the Third District Court of Appeal (Case No. 3D-2017-562), but no opinion has been released and the effectiveness of the Circuit Court decision has not been stayed; and
50 51 52 53	WHEREAS, the City of Miami Beach has adopted a prohibition on Single-Use Plastic Bags in the City's approved sidewalk cafes and on City property and rights-of-way, and further prohibited use of plastic straws and stirrers by its contractors and special event permittees and use on City property and beaches, all of which have been enforced since February 1, 2019; and
54 55	WHEREAS , the Town Commission finds that there are reasonable, environmentally-friendly alternatives to Single-Use Plastics; and
56 57 58	WHEREAS , the Town Commission wishes to amend Section 34-11 of the Town's Code to provide for additional definitions and to prohibit the distribution, sale, or use of Single-Use Plastics in Commercial Establishments and at Town facilities and properties; and
59 60 61	WHEREAS, the Town Commission finds that this Ordinance is necessary for the preservation and improvement of the environment, public health, safety and welfare of the Town's residents and visitors and future generations.
62 63	NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS: $^{\rm 1}$
64 65	<u>Section 1.</u> <u>Recitals.</u> The above-stated recitals are true and correct and are incorporated herein by this reference.
66 67	Section 2. <u>Town Code Amended.</u> The Code of the Town of Surfside, Florida is hereby amended by amending Section 34-11 as follows:
68	Chapter 34 – Environment
69	Article I. – In General

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

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71	Division 4. Food Service Articles
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73	Section 34-11. Prohibition on Distribution, Sale or Use of Single-Use Plastics Straws.
74	(a) Definitions. For purposes of this section, the following definitions apply:
75 76 77 78	(1) <u>Commercial Establishment</u> means a property used for commercial purposes, such as a hotel, restaurant, café or retail store or vendor, or similar uses located in a multi-family residential building whether or not the use is open to the public, where customers can directly purchase goods and materials.
79	(2) Compostable Carryout Bag means a bag that:
80	a. Conforms to the current ASTM D6400;
81 82	b. <u>Is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and</u>
83 84 85 86	c. Must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds and biomass at a rate consistent with known compostable materials.
87 88 89	(3) <u>Recyclable Paper Bag means a bag that contains a minimum average of 40 percent post-consumer recycled materials and displays the minimum percent of post-consumer content on the outside of the bag.</u>
90 91 92 93 94	(4) <u>Reusable Bag means a bag with handles that is specifically designed and manufactured for multiple reuse and made of durable material specifically designed for and provided to customers with the intention of multiple, long-term use and does not include any film plastic bags. Includes <u>Recyclable Paper Bags</u> and <u>Compostable Carryout Bags</u>.</u>
95	(5) <u>Single-Use Plastics means Single-Use Plastic Bags and Single-Use Plastic</u>
96	Straws as defined herein.
97 98 99	(6) <u>Single-Use Plastic Bag</u> means a bag provided by a company or individual to a customer of a Commercial Establishment, typically at the point of sale, for the purpose of transporting purchases, which is made predominantly of plastic
100	derived from one or more of the following: petroleum, a biologically-based
101 102	source (such as corn or other plants), or polystyrene, polypropylene, or polyethylene. This definition includes bags provided to a customer to

103	transport items provided free of charge, including but not limited to, samples
104	and informational materials. The following shall not be interpreted to be
105	"Single-Use Plastic Bags":
106	a. A Compostable Carryout Bag:
107	b. Any bag without handles provided to a customer;
108 109 110	c. Any bag to protect food or merchandise from being damaged or contaminated by other food or merchandise, when items are placed together in a reusable bag or recyclable bag, including produce bags;
111 112	d. Any bag to hold prescription medications dispensed from a pharmacy or veterinary office;
113 114	e. Any bag designed to be placed over articles of clothing on a hanger, including dry cleaning bags;
115	f. Door hanger bags;
116	g. Newspaper bags;
117	h. Garbage bags;
118	i. Pet waste bags;
119	j. Yard waste bags; and
120 121 122	k. Bags of any type that a customer previously owned and brings to a Commercial Establishment for his or her own use in carrying away store goods.
123 124	(7) <u>Single-Use Plastic Straw</u> means a straw or stirrer provided, sold, or distributed for the purpose of imbibing liquids or transferring a beverage from its
125	container to the mouth of the drinker by suction or for the purpose of mixing a
126	beverage, provided by a company or individual to a customer of a
127	Commercial Establishment, typically at the point of sale, which is made
128	predominantly of plastic derived from one or more of the following:
129	petroleum, a biologically-based source (such as corn or other plants), or
130	polystyrene, polypropylene, or polyethylene, and which is intended for a
131	single-use. A Plastic Straw does not include a straw that is made of non-
132	plastic materials, such as paper, sugar cane, bamboo, or other similar
133	materials.
134	(8) Special Event Permittee means any person or entity, and their
135	subcontractor(s), issued a special event permit by the Town for a special event
136	on Town property, or in a Town facility, or in the Town's right-of-way.

137	(9) Town Facility includes, but is not limited to, any building, structure, park,
138	beach, road, street, right-of-way, or other facility owned, operated or managed
139	by the Town.
140	(10) Town Property includes, but is not limited to, any land, water, or air rights
141	owned, operated or managed by the Town.
142	(b) Single-Use Plastics Straws Prohibited; Exceptions
143	(1) A Single-Use Plastics Straw shall not be used, sold, or distributed, sold, or
144	used by or in any eCommercial eEstablishment or at any Town Facility or
145	Town Property or by any Special Event Permittee.
146	(2) Exceptions.
147	a. This prohibition shall not apply to pre-packaged drinks sold at
148	e <u>C</u> ommercial <u>e</u> Establishments.
149	b. This prohibition shall not apply to medical or dental facilities.
150	c. This prohibition shall not apply to the school district or county, state,
151	or federal governmental entities.
152	d. This prohibition shall not apply where a reasonable accommodation is
153	needed by an individual due to a medical or physical condition, or a
154	religious belief.
155	(c) Enforcement; Penalties
156	(1) Following adoption of this Section, the Town shall engage in public education
157	efforts to inform eCommercial eEstablishments and users of Town Facilities
158	and Property of the provisions of this Section and to provide assistance with
159	identifying alternatives to Single-Use Plastics-Straws.
160	(2) The Town's Code Compliance Department shall enforce all provisions of this
161	Section. Enforcement of violations related to Single-Use Plastic Straws shall
162	continue as previously regulated pursuant to Ordinance Nos. 2018-1676 and
163	2018-1690 (as previously codified in Section 34-11). Beginning January 1,
164	2020, the Town's Code Compliance Department shall begin a 60-day period
165	of providing written warnings for all other violations of this Section.
166	Beginning March 1, 2020, the Department shall enforce all provisions of this
167	Section.
168	(3) Penalties for violations of the provisions of this Section shall be enforced
169	through Chapter 15 of the Town Code. Fines shall be in the amounts
170	prescribed in the schedule of civil penalties adopted by resolution.

(d) Reusable Bags. Commercial Establishments are strongly encouraged to educate 171 their staff to promote Reusable Bags and encourage customers to use Reusable 172 173 Bags. Should Commercial Establishments provide carryout bags, they shall be Reusable Bags as defined herein, and offered free of charge or for a fee as 174 175 determined by the merchant. Commercial Establishments may keep any fees charged to offset the cost of providing the Reusable Bag. 176 177 Secs. 34-12 – 34-25. Reserved. 178 Section 3. **Codification.** It is the intent of the Town Commission that the provisions of this ordinance shall become and be made a part of the Town's Code of Ordinances, and that 179 the sections of this Ordinance may be renumbered or relettered, and the word "ordinance" may 180 be changed to "section," "article," "regulation," or such other appropriate word or phrase in 181 182 order to accomplish such intentions. 183 Severability. The provisions of this Ordinance are declared to be Section 4. severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be 184 held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining 185 186 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any 187 part. 188 189 Conflicts. All ordinances or parts of ordinances, resolutions or parts of Section 5. resolutions, in conflict herewith, are repealed to the extent of such conflict. 190 191 Section 6. **Effective Date.** This Ordinance shall become effective immediately upon 192 final adoption on second reading. The Town Manager shall have the discretion to delay enforcement of this Ordinance beyond March 1, 2020 as he may deem necessary. In the event 193 194 that the Florida Statutes are amended to preempt any part of this Ordinance following the 2020 195 Legislative Session, this Ordinance may be repealed to the extent of that preemption by 196 resolution of the Town Commission. **PASSED** on first reading on the 11th day of June, 2019. 197 **PASSED AND ADOPTED** on second reading on the 9th day of July, 2019. 198 On Final Reading Moved By: Mayor Dietch
On Final Reading Second By: Mc Mayor Gieldunsky 199 200 FINAL VOTE ON ADOPTION 201 202 Commissioner Barry Cohen Commissioner Michael Karukin 203

204 205 206 207	Commissioner Tina Paul Vice Mayor Daniel Gielchinsky Mayor Daniel Dietch
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210	Daniel Dietch
211	Mayor
212	ATTEST:
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216	Sandra Novoa, MMC
217	Town Clerk
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219	APPROVED AS TO FORM AND LEGALITY FOR THE USE
220	AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:
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223	- Clarge.
224	Weiss Serota Helfman Cole & Bierman, P.L.
225	Town Attorney