



## Cover Memorandum/Staff Report

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**File #:** 19-1063

**Agenda Date:** 11/5/2019

**Item #:** 7.E.

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**TO:** Mayor and Commissioners  
**FROM:** Lynn Gelin, City Attorney  
**DATE:** November 5, 2019

RESOLUTION NO. 189-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH STRONGLY ENCOURAGING THE STATE LEGISLATURE TO APPROVE SENATE BILL 182 AND ANY COMPANION HOUSE BILLS RELATING TO THE PREEMPTION OF RECYCLABLE AND POLYSTYRENE MATERIALS BY AMENDING SECTION 403.7033 AND SECTION 500.90, FLORIDA STATUTES; REPEALING THE PREEMPTION OF LOCAL LAWS REGARDING THE USE OR SALE OF SINGLE-USE PLASTIC BAGS AND POLYSTYRENE MATERIALS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**Recommended Action:**

Motion to approve Resolution 189-19.

**Background:**

The State of Florida passed the following preemptive laws relating to regulating polystyrene and single-use plastic bags: Florida Statutes 403.7033, 403.708(9) and 500.90. The Miami Dade Circuit Court, acting in its appellate capacity, ruled the preemptions unconstitutional. On February 27, 2017 the Florida Retail Federation and the State of Florida appealed to the 3<sup>rd</sup> District Court of Appeals (DCA), and while oral arguments were heard in December 2017, a ruling was not made until August of 2019. During that time period, several cities passed Ordinances regulating polystyrene. The City of Delray Beach began to develop an Ordinance but held it until a decision was made.

On August 14, 2019 the Third District Court of Appeal issued its opinion related to the appeal of Miami Dade Circuit Court's ruling. The Court reversed the decision and commented on the validity of the preemption in all three statutes.

Senator Stewart has proposed bill 2020 SB 182, which would Amend 403.7033 to delete the preemption language and would repeal 500.90. If approved, the Act would take effect on July 1, 2020.

The Green Implementation Advancement Board (GIAB) considered this issue on October 17, 2019 and voted unanimously to recommend passage of a similar resolution by the City Commission. Please find attached a background document provided to the GIAB by Assistant City Attorney Kelly Brandon.

This motion is in accordance with Code of Ordinances Section 36.02 Commission Approval Required.

**City Attorney Review:**

Approved as to legal form and sufficiency.

**Funding Source/Financial Impact:**

There is no fiscal impact.

**Timing of Request:**

Not applicable.