

Plaintiff represents that all parties to this matter have resolved all the disputed issues in this lawsuit as evidenced by the attached Compromise and Settlement Agreement. As recited in the proposed and submitted Agreed Final Judgment of Dismissal, the parties agree and stipulate that: this is a suit for declaratory and prospective equitable relief; that venue is in Cameron County, Texas; and that the Compromise and Settlement Agreement does not constitute an admission of fault or liability by City, nor does it constitute evidence of any liability or unlawful conduct on the part of the City.

WHEREFORE, Plaintiff moves this Court for dismissal with prejudice and for entry of the Agreed Final Judgment of Dismissal.

Respectfully Submitted,

KEN PAXTON
Attorney General

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY D. STARR
Deputy First Assistant Attorney General

MICHAEL TOTH
Counsel to the First Assistant Attorney
General

ANDREW D. LEONIE
Associate Deputy Attorney General

AUSTIN R. NIMOCKS
Associate Deputy Attorney General



CHARLES K. ELDRED
Assistant Attorney General
Texas Bar No. 00793681
charles.eldred@oag.texas.gov
Office of Special Litigation
ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, MC 009, Capitol Station
Austin, Texas 78711-2548
Tel: 512-475-1743
Fax: 512-478-4013
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, Charles K. Eldred, hereby certify that on this the 11th day of May, 2017, a true and correct copy of the foregoing document was transmitted to all parties or their counsel at the following address:

MARK SOSSI
City Attorney, City of Brownsville
1001 E. Elizabeth Street
Brownsville, TX 78520
Tel: 956-548-6011
Fax: 956-546-4291
ATTORNEY FOR DEFENDANT



CHARLES K. ELDRED
Assistant Attorney General

issues in this lawsuit. The parties request the Court to enter this Agreed Judgment.

The parties stipulate and the Court finds as follows:

1. This is a suit for declaratory and prospective equitable relief challenging the legality of the “environmental fee” in BROWNSVILLE, TEX., CODE § 46-50(b) (2016), on the grounds that it violates TEX. HEALTH & SAFETY CODE § 361.0961(a)(3) and TEX. TAX CODE §§ 321.101 and 321.103, and therefore also violates Article 11, Section 5 of the Texas Constitution.
2. Venue is in Cameron County, Texas.
3. This Court has jurisdiction of the parties and the subject matter.
4. All claims by Plaintiff against Defendants raised in this lawsuit have been compromised and settled as a result of a mutual desire to settle their disputes as evidenced by the attached Compromise and Settlement Agreement.
5. The Compromise and Settlement Agreement does not constitute an admission of fault or liability by City, nor does it constitute evidence of any liability or unlawful conduct on the part of the City, and the State will not represent that it does, nor will it seek to admit this Agreement as an admission of any fault or liability by City in any judicial proceeding or federal or state court or arbitration proceeding.
6. Plaintiff requests that this lawsuit be dismissed with prejudice to re-filing any claim asserted in this lawsuit.

RELIEF GRANTED

7. It is ORDERED that this lawsuit is dismissed with prejudice to refileing any claim asserted in this lawsuit.
8. This Agreed Judgment disposes of all parties, claims, and issues in this lawsuit.
9. Costs of Court are assessed the party incurring same.
10. All relief not expressly granted is denied.


Signed this _____ day of _____ 2017.

JUDGE PRESIDING


Agreed as to form and substance with entry requested:

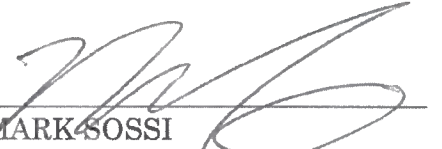
PLAINTIFF
State of Texas

KEN PAXTON
Attorney General
JEFFREY C. MATEER
First Assistant Attorney General
BRANTLEY D. STARR
Deputy First Assistant Attorney
General
MICHAEL TOTH
Counsel to the First Assistant Attorney
General
ANDREW D. LEONIE
Associate Deputy Attorney General
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Station
Austin, Texas 78711-2548
Tel: 512-475-1743
Fax: 512-478-4013
ATTORNEYS FOR PLAINTIFF

DEFENDANT
City of Brownsville

By: 
CHARLIE CABLER
City Manager, City of Brownsville
1001 E. Elizabeth Street
Brownsville, TX 78520
Tel: 956-548-6011
Fax: 956-546-4291


MARK SOSSI
City Attorney, City of Brownsville
1001 E. Elizabeth Street
Brownsville, TX 78520
Tel: 956-548-6011
Fax: 956-546-4291
ATTORNEY FOR DEFENDANT

SETTLEMENT AGREEMENT AND RELEASE

The Settlement Agreement ("the Agreement") is entered into by and between the State of Texas ("State") and the City of Brownsville, Texas ("City"). The "State" and the "City" shall be collectively referred to as the "Parties" through their authorized representatives.

Part I: Preamble

As a preamble to this Agreement, the Parties agree to the following:

- A. The City of Brownsville is home rule city, which derives its power directly from TEX. CONST. art. XI, § 5. The City of Brownsville, as a home rule city has full power of local self-government pursuant to TEX. LOC. GOV'T CODE ANN. §§ 51.071-.072 (Vernon 1999).
- B. The "State" contends that on September 20, 2010 the City of Brownsville enacted Brownsville Ordinance No. 2010-911-F, which included a use fee for plastic bags for groceries and other items purchased at the point of sale. The State contends that this fee was actually an illegal tax and has brought suit to stop said practice. The City's enactment of the use fee within Ordinance No. 2010-911-F, and City's collection and use of said use fee, shall be referred to as "Covered Conduct."
- C. The "City" denies the "States'" contentions, claims, and allegations and denies any related liability or wrongdoing. The "City" maintains that it had full authority to enact the use fee within Ordinance NO. 2010 - 911-F, that the enactment of said use fee constituted a lawful exercise of its power as a home rule city, and denies that the plastic bag user fee made the subject of this litigation constitutes an unlawful tax. This Agreement is a compromise by the Parties of all matters in dispute between them arising from the "Covered Conduct" and any and all



allegations which have been raised in the lawsuit, *The State of Texas vs The City of Brownsville*, Cause Number 2016-DCL-6794-E, pending in the 357th District Court, Cameron County, Texas.

D. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these contentions, claims and allegations, and as a result of a mutual desire to settle their disputes, the Parties have reached a full and final settlement as set forth in this Agreement.

E. This Agreement does not constitute an admission of fault or liability by City, nor does it constitute evidence of any liability or unlawful conduct on the part of the City, and the State will not represent that it does, nor will it seek to admit this Agreement as an admission of any fault or liability by City in any judicial proceeding or federal or state court or arbitration proceeding.

H. The State has concluded that this settlement is in the public interest and is fair, adequate and reasonable under all the circumstances. City also agrees that this settlement is fair, adequate and reasonable.

Part II: Terms and Conditions

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

Incorporation of Representations

- 1) The foregoing Preamble is incorporated herein.



The Settlement; Repeal of the use fee within Ordinance 2010 – 911-F

2) The City agrees to repeal the use fee within Brownsville Ordinance No. 2010-911-F within 30 days of execution of this Release in full settlement of this litigation. The final settlement agreement shall be fully executed by all the necessary and authorized representatives of the City within 45 days after receipt by the City's Attorney of the proposed final settlement agreement from the State of Texas.

State of Texas: Release of City

3) Subject to the City of Brownsville's repeal of the use fee within Brownsville Ordinance, 2010 – 911-F, as required by this agreement, the State of Texas fully releases the City of Brownsville, its Officials, employees, agents and attorneys ("Defendant's Released Parties") from any civil or administrative claim, action, suit or proceeding (including attorney's fees, penalties punitive damages, costs, and expenses of every kind and however denominated) the State of Texas has asserted, could assert or may assert in the future regarding the "Covered Conduct." This specifically includes but is not limited to all claims for restitution, compensatory damages, and attorney's fees relating to the underlying litigation.

City: Release of the State

6) City of Brownsville, conditional on the permanent dismissal of this litigation with prejudice by the State of Texas, fully and finally release the State, its agents, agencies, employees, servants, attorneys and departments from any claims based on events occurring prior to the date of this Agreement (including attorney's fees, costs, and expenses of every kind and however

denominated) which Defendant has asserted, could assert, or may assert in the future against the State, its agents, agencies, employees, servants, attorneys and departments, related to the Covered Conduct and the Plaintiff's investigation and prosecution thereof. This agreement is not intended to release claims or causes of action beyond the Covered Conduct.

No Waiver or Release of Claims Against Other Persons

7) This Agreement is intended to be solely for the benefit of the Parties and persons and entities released and, except as stated herein, the Parties do not by this instrument release any claims against any other person or entity. No word, term, phrase or definition in this Agreement is or may be used for the benefit of any person, entity or litigant who is not a signatory to, or released by this Agreement.

Dismissal of Action

8) Within seven working days of the repeal of the use fee within Ordinance 2010 – 911- F, the State will execute a Motion to Dismiss and Order (in forms collectively attached hereto as Exhibit B) dismissing with prejudice the Texas Lawsuit against Defendant based on the Covered Conduct.

No Impairment or Creation of Rights

9) Nothing in this Agreement shall be construed to abrogate or alter any future obligation of Defendant pursuant to the law of the State.

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No Waiver of Sovereign Immunity

10) Nothing in this Agreement shall be construed to create a waiver of the Sovereign Immunity of the State of Texas or the City of Brownsville.

Exclusive Venue for Enforcement of Agreement

11) Any party shall be entitled to enforce the terms of this Agreement in the District Court of ^{Cameron} ~~Texas~~ County, Texas, which shall have exclusive jurisdiction and venue over any such action.

Complete Agreement

12) This Agreement, including all exhibits, constitutes the complete agreement between the Parties and may not be amended except by written consent of the Parties.

Costs

13) Each Party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

Choice of Law

14) This Agreement is governed by the laws of the State of Texas.



Notification

15) Unless otherwise stated in writing subsequent to the Effective Date of this Agreement, all notifications and communications made pursuant to the Agreement shall be submitted to the entities listed below:

- (a) State – for all purposes

Ken Paxton
Office of the Attorney General for Texas
Andrew D. Leonie
Associate Deputy Attorney General
P.O. Box 12548, Austin, TX 78711-2548

- (b) City – for all purposes

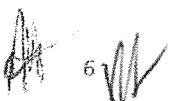
Charlie Cabler
City Manager, City of Brownsville
1001 E. Elizabeth Street
Brownsville, TX 78520

No Duress

16) All parties represent that this Agreement is freely and voluntarily entered into without any degree of duress of compulsion whatsoever.

Authorization

17) The Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their respective signatures. The undersigned individuals signing this Agreement on behalf of the City represent(s) and warrant(s) that they are authorized by City to execute this Agreement. The undersigned State signatories represent that they are signing this

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Agreement in their official capacities and that they are authorized to execute this Agreement.

No Other Representations or Promises

18) The Parties represent and acknowledge that in entering into this Agreement they are not relying on any promises or representations other than those expressly set forth in this Agreement and its exhibits.

Counterparts

19) This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall be deemed to constitute one and the same Agreement. Facsimile or PDF signatures shall be valid signatures as of the date thereof.

Acts Necessary to Effectuate Agreement

20) Each Party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

Captions Are for Convenience Only

21) The bold-faced paragraph captions in this Agreement are for convenience only and do not add to, detract from or change the substantive language or terms of this Agreement.

Effective Date

22) The Effective Date of this Agreement shall be the date upon which all of the Parties below have executed this Agreement.

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DEFENDANT

City of Brownsville



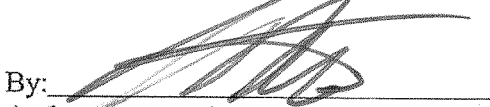
By: _____
Charlie Cabler
City Manager, City of Brownsville
1001 E. Elizabeth Street
Brownsville, TX 78520

Date: 1-12-17

PLAINTIFF

State of Texas

Office of the Attorney General



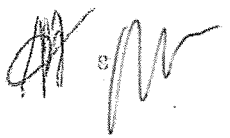
By: _____
Andrew D. Leonie
Associate Deputy Attorney General

Date: 1-13-17



By: _____
Charles Eldred
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Date: 1-13-17



ORDINANCE NO. 2017-911-G

AN ORDINANCE OF THE CITY OF BROWNSVILLE, TEXAS REPEALING SECTIONS 46-48, AND 46-52 AND AMENDING THE REMAINDER OF CHAPTER 46, ARTICLE II OF THE CITY OF BROWNSVILLE CODE OF ORDINANCES AS IT RELATES TO PLASTIC CHECKOUT BAGS

WHEREAS, The City of Brownsville has a substantial interest in protecting its natural environment, including its resacas, lakes, rivers, plants, and wildlife;

WHEREAS, single-use checkout plastic bags have negative effects on the natural environment by, among other impacts, polluting resacas, clogging resaca and other storm drains, and forming 11% of the debris found in international coastal cleanups;

WHEREAS, plastic bags not only negatively affect the natural environment but also are known as a "real killer" of domestic cattle, with plastic ingestion forming a "quiet and painful" way for them to die;

WHEREAS, as Brownsville is not only home to 500 species of tropical birds but also lies at the convergence of major migratory flyways, the risk posed to countless birds by plastic bag ingestion and entanglement is significant;

WHEREAS, The City of Brownsville wishes to regulate single-use checkout plastic bags in order to protect the natural environment and animal life from the risks posed by said bags; and

WHEREAS, The City of Brownsville does not by this ordinance regulate any bag, container, or package for solid waste management purposes;

BE IT ORDAINED BY THE CITY OF BROWNSVILLE, TEXAS:

- I. That Chapter 46, Article II of the City of Brownsville Code of Ordinances is hereby amended as follows:

Sec. 46-47. - Definitions pertaining to plastic bag restrictions.

Terms not here defined are to be construed as in everyday, commonly-understood usage.

Business establishment means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships, corporations or any other legal entity whether for profit or not for profit and includes all employees of the business and any independent contractors associated with the business.

Checkout bag means a bag that is provided by a business establishment to a customer typically at the point of sale for the purpose of transporting goods after shopping. **This does not include any bag, container, or package to be used for solid waste management purposes.**

Convenience store means a business establishment, usually of a size of less than 5,000 square feet, which:

- (1) Sells a limited variety of food/grocery, tobacco, and pharmaceutical items;
- (2) Has off-street parking and/or convenient pedestrian access;
- (3) Has extended hours of operation, with many open 24 hours, seven days a week; and
- (4) May or may not sell gasoline.

Plastic checkout bag means a checkout bag made of plastic, which is provided by a business establishment to a customer typically at the point of sale for the purpose of transporting goods after shopping, and which is intended and constructed for single use. This does not include any bag, container, or package to be used for solid waste management purposes.

Reusable bag means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following criteria:

- (1) *Permitted material*:
 - a. Cloth or other washable fabric, or other durable materials (woven or non-woven).
 - b. If made of plastic, must have a minimum of 4.0 mil in thickness.
 - c. If made of paper, must have a minimum of 65# in basis weight.
 - d. Reusable bags may be of various sizes, depending on the nature of the business employing them.

Sec. 46-48. - Scope and applicability of plastic bag restriction.

- (a) Business establishments are prohibited from providing plastic checkout bags April 1, 2017 but instead shall only provide reusable bags as checkout bags to their customers with or without charge, except as indicated in subsection (b), below.
- (b) The following items are exempt from this chapter:
 - (1) Paper bags provided by convenience stores;
 - (2) Paper bags provided by restaurants for food carry-out purposes;
 - (3) Bags provided by pharmaceutical departments of businesses, or by veterinarians, for the purpose of containing medications or other prescriptions, or other medical necessities provided by said pharmacies or veterinarians;
 - (4) Paper bags provided for the containment of carry-out beverages;
 - (5) Paper bags commonly provided for liquor sales;
 - (6) Garment or laundry bags made from any material;
 - (7) Plastic bags provided to contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - (8) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items;

- (9) Plastic bags used to contain or wrap flowers, potted plants, or other items to prevent moisture damage to other purchases; and
- (10) Plastic bags provided to effect food safety for a purchaser of food by preventing contamination from any cooked, chilled or frozen food purchased. ~~and~~

Sec. 46-49. – Inapplicability of Restrictions to Solid Waste Containers or Packages.

Sections 46-47, 46-48, and 46-50 do not apply to and therefore do not restrict or otherwise regulate any types of bags, containers, or packages to be used for solid waste management purposes as governed by the “Solid Waste Disposal Act,” as codified in chapter 361 of the Texas Health and Safety Code.

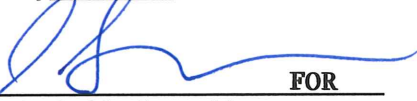
Sec. 46-50. - Penalty.

Any violation of section 46-48 is subject to punishment as set forth in section 1-13 of this Code.

Secs. 46-50—46-75. - Reserved.


II. That this ordinance shall take effect 60 days after its adoption by the City of Brownsville City Commission.

Introduced at a public hearing on February 7th, 2017. Passed at first reading on February 7th, 2017. PASSED at Second and Final Reading and ADOPTED on February 21st, 2017.

By:  **FOR**
Antonio Martinez, Mayor

Attest: 
Michael L. Lopez, City Secretary



“Approved as to Form and Legality
This 23 day of Feb 2017

Title City Attorney
Office of the Brownsville City Attorney”