

**ORDINANCE NUMBER 2010-911-F**

**AN ORDINANCE AMENDING CHAPTER 46, ARTICLE II "LITTER" OF THE CODE OF ORDINANCES, BY AMENDING SECTIONS 46-47 THRU 46-52 OF THE BROWNSVILLE CITY CODE PROHIBITING THE USE OF PLASTIC BAGS IN THE CITY OF BROWNSVILLE, AND ORDAINING OTHER PROVISIONS RELATING TO THE SUBJECT MATTER.**

**WHEREAS**, the City of Brownsville, acting through its City Commission, prohibited certain plastic shopping bags in the City as of January 1, 2011 in Ordinance 2009-911-E ("Ordinance"); and,

**WHEREAS**, the Ordinance established an Environmental Advisory Committee charged with, among other things, monitoring the effects of the ban on plastic shopping bags; and

**WHEREAS**, the Environmental Advisory Committee has recommended certain changes in the Ordinance as set forth below; and

**WHEREAS**, these recommendations simplify the text of the Ordinance making it much easier for the public to understand and follow;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BROWNSVILLE:**

**THAT**, from and after the passage of this Ordinance Chapter 46, of the Brownsville City Code shall be amended to read as follows:

**Article II. Litter**

**Sec. 46-47. Definitions.**

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.

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

- (a) Sells a limited variety of food/grocery, tobacco, and pharmaceutical items;
- (b) Has off-street parking and/or convenient pedestrian access;
- (c) Has extended hours of operation, with many open 24 hours, seven days a week; and
- (d) 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.

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

- (a) *Permitted material:*
  - (i) Cloth or other washable fabric, or other durable materials (woven or non-woven).
  - (ii) If made of plastic, must have a minimum of 4.0 mil in thickness.
  - (iii) If made of paper, must have a minimum of 65# in basis weight.
- (b) *Miscellaneous:*
  - (i) All reusable bags must have handles for easy carrying.
  - (ii) Reusable bags may be of various sizes, depending on the nature of the business employing them.

**Sec. 46-48. Implementation of a Voluntary Ban on Plastic Checkout Bags beginning January 1, 2010 to December 31, 2010.**

The entire city will promote a voluntary ban of plastic checkout bags throughout the city in preparation for the mandatory ban of plastic checkout bags to begin on January 5, 2011.

**Sec. 46-49. Scope and applicability.**

- (a) Business establishments are prohibited from providing plastic checkout bags as of January 5, 2011 but instead shall only provide reusable bags as checkout bags to their customers with or without charge, except as indicated in Section (b), below.
- (b) The following items are exempt from this Chapter:
  - (i) Paper bags provided by convenience stores;
  - (ii) Paper bags provided by restaurants for food carry-out purposes;
  - (iii) 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;
  - (iv) Paper bags provided for the containment of carry-out beverages;
  - (v) Paper bags commonly provided for liquor sales;
  - (vi) Garment or laundry bags made from any material;
  - (vii) Plastic bags provided to effect food safety for a purchaser of food by preventing contamination from any cooked, chilled or frozen food purchased; and
  - (viii) Plastic bags that are covered by Sec. 46-50, below.

**Sec. 46-50. Provisionary surcharge for plastic bags.**

- (a) The intent of this section is to facilitate the transition by business establishments and consumers to the use of reusable bags and is subject to future revision as provided by Sec. 46-52(b), below.

- (b) To the extent plastic or other non-reusable bags are requested by a customer, an environmental fee of \$1.00 per transaction is hereby established and must be paid to the business establishment at the time the bag is provided to the customer. The environmental fee remitted to or collected by the City shall be used towards environmental programs, recycling, and clean-up initiatives. This fee shall be shown as a separate item on the consumer transaction receipt.
- (c) The environmental fees collected shall be remitted to the City by the business establishment, less a reasonable administrative fee or no more than 5% to remain with the business to offset costs incurred. Rules for remittance shall be promulgated by the City Health Director with the assistance of other departments as may be required.

**Sec. 46-51. Penalty.**

Any violation of this Ordinance is subject to punishment as set forth in Chapter 1, General Provisions, *Sec. 1-13 General Penalty*, of the of the Code of Ordinances of the City of Brownsville.

**Sec. 46-52. Creation of Environmental Advisory Committee.**

- (a) There is hereby created an Environmental Advisory Committee consisting of seven members appointed for indefinite terms by the city commission. Any member of the committee may be removed by the commission at any time and for any reason. To the extent feasible, the members of this committee will be two persons operating a business in the City of Brownsville, one member of the City Commission, two representatives of Healthy Communities of Brownsville, one member of the Brownsville Chamber of Commerce, and one member of the Brownsville Beautification Committee.
- (b) This committee shall monitor the effects of this ordinance, troubleshoot any issues with the application or enforcement of this ordinance, and report to the city commission on its activities from time to time.
- (c) The committee shall monitor the implementation of the policy set forth and make a recommendation six months and twelve months after the effective date to the commission on the viability and sustainability of the policy.
- (d) Unless extended by resolution of the city commission, the Environmental Advisory Committee will cease to exist at the close of business December 31, 2011.

**Sec. 46-53. Severability.**

If any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or unlawful by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the phrases, clauses, sentences, paragraphs, and sections would have been enacted by the city commission without the incorporation in this Ordinance of any such unconstitutional or unlawful phase, clause, sentence, paragraph, or section.

Passed on FIRST READING on this 7th day of September, 2010.

Passed on SECOND AND FINAL reading on this 20th day of September, 2010.

*Pat Ahumada, Jr.*

Patricio Ahumada, Jr.  
Mayor

Attest:

*Estela Von Hatten*

Estela Von Hatten  
City Secretary



Approved as to form and legality this the  
23 day of Sept, 2010

*Mark Sossi*

Mark Sossi, City Attorney