

**IN THE SUPERIOR COURT OF CHATHAM COUNTY
 STATE OF GEORGIA**

OLD TOWN TROLLEY TOURS OF SAVANNAH, INC.)	
)	
Plaintiff,)	CIVIL ACTION NO. SPCV20-007667-MO
)	
v.)	
)	
THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH)	
)	
)	
Defendants.)	

NAMED PLAINTIFF’S FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT

COMES NOW Plaintiff Old Town Trolley Tours of Savannah, Inc. (“Named Plaintiff) and makes and files this First Amended Verified Complaint on behalf of itself and prospective class members for tax refund and prejudgment interest pursuant to O.C.G.A. § 48-5-380 to recover taxes unlawfully levied and collected based on violations of Named Plaintiff’s constitutional rights and for attorneys’ fees and costs under O.C.G.A. § 13-6-11, and other relief and representing to the Court as follows:

INTRODUCTION

1.

This is a refund class action under O.C.G.A. § 48-5-380 (the “Refund Statute”) for preservation fees collected under City of Savannah 2020 Revenue Ordinance Article T. §3 (the “Preservation Fee” and the “Preservation Fee Ordinance”) from 2015 to 2020. The Preservation Fee was a speech tax that was levied until its repeal in 2020 exclusively on sightseeing tour services businesses (hereinafter “sightseeing tour companies”), including Named Plaintiff, which conducted narrated tours within the Historic District of Savannah. The Preservation Fee violated Named Plaintiff’s First Amendment rights, violated the Special District Clause of the Constitution

of the State of Georgia and violated the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article 1, Section 1, Paragraph 1 of the Constitution of the State of Georgia.

IDENTIFICATION OF THE PARTIES, JURISDICTION and VENUE

2.

Named Plaintiff Old Town Trolley is a corporation organized and operating under the laws of the State of Georgia, whose principal office is located at 1115 Louisville Road, Savannah, GA 31415.

3.

Defendant the Mayor and Alderman of the City of Savannah is a municipal entity organized under the Constitution and laws of the State of Georgia (“Defendant” or “the City of Savannah”). The City of Savannah may be served by delivering a copy of the Summons and Complaint to the City Council.

4.

Jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

Federal Lawsuit

5.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-4 as if set forth herein verbatim.

6.

A civil rights lawsuit was initiated against the City of Savannah in 2014 by several tour guides who operated in the City of Savannah in an action styled *Freenor, et al. v. Mayor and Aldermen of the City of Savannah*, Civil Action No. 4:14-cv-00247-WTM-GRS, in the United

States District Court for the Southern District of Georgia, Savannah Division (the “Federal Lawsuit”).

7.

The Federal Lawsuit alleged that Savannah Code of Ordinances § 6-1508 which made it unlawful to “act or offer to act as a tour guide within the city” or to “play a role during a tour” without first obtaining a “tour guide permit” from the City of Savannah (the “Tour Guide Licensing Ordinance”) violated the right to free speech as guaranteed by the First Amendment to the United States Constitution.

8.

The Federal Lawsuit also claimed that the Preservation Fee violated the right to free speech as guaranteed by the First Amendment to the United States Constitution.

9.

The District Court for the Southern District of Georgia found that the Tour Guide Licensing Ordinance was not narrowly tailored to serve a significant governmental interest and therefore violated the First Amendment to the United States Constitution. A true and correct copy of the May 20, 2019 Order in the Federal Lawsuit (the “May 2019 Order”) is attached hereto as Exhibit (“Ex.”) “A”.¹

10.

The District Court for the Southern District of Georgia found that the Preservation Fee, which the plaintiffs in the Federal Lawsuit claimed was a speech tax, was a “tax” within the scope of the Tax Injunction Act (the “TIA”), 28 U.S.C. § 1341. A true and correct copy of the July 22,

¹ While cross motions for summary judgment were still pending in the Federal Lawsuit, the City of Savannah repealed the Tour Guide Licensing Ordinance. See Ex. A at p. 6.

2019 Order in the Federal Lawsuit (the “July 22, 2019 Order”) is attached hereto as Exhibit “B” at p. 5.

11.

The District Court for the Southern District of Georgia held that the TIA provided a jurisdictional bar from its consideration of the constitutionality of the Preservation Fee. See Terry v. Crawford, 615 F. App’x 629, 630 (11th Cir. 2015) (“The Tax Injunction Act is a jurisdictional rule and constitutes a broad jurisdictional barrier.”) (Internal citations and punctuation omitted).

12.

The District Court for the Southern District of Georgia found that there was a plain, speedy and efficient state remedy under the Refund Statute to challenge the Preservation Fee. See Ex. B, at p. 5.

13.

Accordingly, the District Court for the Southern District of Georgia dismissed the claims regarding the constitutionality of the Preservation Fee without prejudice for lack of subject matter jurisdiction. Id. at pp. 7-8.

Named Plaintiff Paid the Preservation Fee from 2015 to 2020

14.

Named Plaintiff is a local sightseeing tour business that conducts narrated sightseeing tours within the Historic District of the City of Savannah and was subject to and paid the Preservation Fee from 2015 until its repeal in 2020.

15.

In 2015 Named Plaintiff paid \$331,588.56 for the Preservation Fee under Revenue Ordinance Article T. §3.

16.

In 2016 Named Plaintiff paid \$347,865.25 for the Preservation Fee under Revenue Ordinance Article T. §3.

17.

In 2017 Named Plaintiff paid \$390,639.74 for the Preservation Fee under Revenue Ordinance Article T. §3.

18.

In 2018 Named Plaintiff paid \$380,098.83 for the Preservation Fee under Revenue Ordinance Article T. §3.

19.

In 2019 Named Plaintiff paid \$358,259.23 for the Preservation Fee under Revenue Ordinance Article T. §3.

20.

In 2020 Named Plaintiff paid \$52,331.71 for the Preservation Fee under Revenue Ordinance Article T. §3.

The Preservation Fee: Violation of the First Amendment of the Constitution

21.

From 2015 to June 11, 2020 the City of Savannah charged a speech tax, known as the Preservation Fee. The Preservation Fee was a tax because it was “an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as payment for a special privilege or service rendered.” Gunby,

et al v. Yates, 214 Ga. 17, 19, 102 S.E.2d 458, 550 (1958).²

22.

The Preservation Fee charged was \$1.00 per adult audience member on any “[s]ightseeing tours conducted within the Historic District of Savannah.” Revenue Ordinance Article T. §3(A)-(B). A fifty cent (\$0.50) Preservation Fee was charged for children “12 years and under, provided that the tour fee [was] no more than 60% of the adult fare.” Id. at §3(B). No Preservation Fee was charged for children “three years of age and under, provided that no tour fee [was] charged.” Id.

23.

The City of Savannah’s Preservation Fee applied to “local motor vehicle tours, horse drawn carriage tours, walking tours, boat tours, and any other commercial tours...”. Id.

24.

The Preservation Fee, however, did not apply to “persons boarding a tour boat for dining and on-board entertainment purposes where a sightseeing tour is not the focus or emphasis of the event and *where no tour narration is provided.*” Id. at (b) (emphasis provided).

25.

Thus, on its face, the City of Savannah’s Preservation Fee was targeted to speech. That is, whether a tour business was required to pay the tax depended on whether its services included a “tour narration.” Id.

26.

The City of Savannah’s Revenue Ordinance provided that “[a]ny sightseeing tour services business operating within the Historic District of Savannah as defined above, whether on a regular

² Compare a “fee” which the Georgia Supreme Court defines as “a charge fixed by law as compensation for services rendered.” Gunby, 214 Ga. at 19.

or transient basis, shall be liable for payment of the [P]reservation [F]ee.” Revenue Ordinance Article T.§3(C).

27.

Payment of the Preservation Fee was a condition of doing business from 2015 until its repeal in 2020.

28.

The City of Savannah’s Revenue Ordinance provided that “[p]ayment of preservation fees as provided by this ordinance is a condition for doing business within the City as a sightseeing tour business, and failure to pay the fee shall be grounds for suspension from the Visitors Center Parking lot and other sanctions as may be provided by ordinance or contract.” Revenue Ordinance Article T.§3(G).

29.

Each local tour service business in the City of Savannah that was liable for payment of the Preservation Fee was required “on or before the twentieth day of each month transmit to the Revenue Department a return showing the following information for the previous calendar month” which included:

- a) Total number of tours conducted within the Historic District;
- b) Total number of tours originating but not conducted within the Historic District;
- c) Number of adult-fare tour passengers on Historic District tours during the month;
- d) Number of child tour passengers (12 years and under) provided at 60%-fare or less;
- e) Number of child tour passengers (3 years and under) provided at no-fare;
- f) Number of youth field-trip tours and number of your tour

passengers/adult companions;

g) Preservation fees due by category and in total; and

h) Such other information as the Revenue Department may reasonably require to administer and collect preservation fees.

Revenue Ordinance Article T. §3(D)(1).

30.

The City of Savannah’s Revenue Ordinance provided that “[e]ach tour company shall report monthly totals, shall keep accurate records of the above information on a daily basis, and shall retain such records for a minimum of three years. Daily records shall be made available to City staff...”. Id.

31.

Transient tour operators (motor coaches) were also liable for the Preservation Fee.

32.

The City of Savannah’s Revenue Ordinance provided that “[t]he operator of each transient tour vehicle (motor coach) entering the [C]ity for the purpose of conducting a tour shall pay a preservation fee according to the rate established herein as part of the permitting process *prior* to beginning a tour within the [C]ity.” Revenue Ordinance Article T. §3(D)(2) (emphasis in original).

33.

The City of Savannah charged penalties from 2015 to 2020 for any person or business that failed “to make a return or pay the full amount of the required” Preservation Fee. Id. at T. §3(F). The penalty that was added to the tax was \$25.00 or ten percent (10%), whichever was greater, if the failure was not more than thirty (30) days, plus five percent (5%) penalty interest for each additional thirty (30) days or portion thereof during which the failure continued. Id.

34.

The City of Savannah in the Federal Lawsuit admitted that the tours on which the Preservation Fee were imposed were the same tours where a tour guide was required to obtain a license under the Tour Guide Licensing Ordinance that was declared unconstitutional by the District Court for the Southern District of Georgia. A true and correct copy of selected portions of Plaintiffs' Statement of Undisputed Material Facts and Conclusions of Law Thereof in the Federal Lawsuit is attached as Exhibit "C", ¶108 ("tours' on which [the Preservation Fee] is imposed are the same 'tours' where the guide is required to obtain a license."). A true and correct copy of selected portions of the City of Savannah's Response to Plaintiffs' L.R. 56.1 Statements in the Federal Lawsuit is attached as Exhibit "D", ¶108 (the allegations in Paragraph 108 are not disputed).

The City of Savannah's Justification for the Preservation Fee

35.

The City of Savannah initially justified the enactment of the Preservation Fee "as a way of generating funds for infrastructure preservation and improvement." A true and correct copy of the Official Proceedings of Savannah City Council dated December 9, 1997 produced by the City of Savannah in the Federal Lawsuit (Bates City001562) is attached hereto as Exhibit "E".

36.

Although the City of Savannah only imposed the Preservation Fee on *narrated* tours led by tour guides conducted within the Historic District, the City of Savannah admitted in the Federal Lawsuit that tourists can have an impact on infrastructure preservation and improvement such as the need for maintenance to squares, monuments and infrastructure in the Historic District even if they are not part of a narrated tour. A true and correct copy of selected portions of the City of

Savannah's Responses to Plaintiffs' Second Set of Discovery Requests in the Federal Lawsuit attached as Exhibit "F", Request for Admission No. 7 ("Admit that tourists can have an impact on the need for maintenance to squares, monuments, and infrastructure in the historic district even if the tourists are not in a tour group." The City of Savannah's Response: "Request No. 7 is admitted.").

37.

Many businesses such as restaurants, gift shops and hotels depend on the business that is generated by the scenic beauty of the public squares and monuments to generate revenue, but yet were not required to pay the Preservation Fee that tour businesses were required to pay. See Ex. C at ¶117 ("Many businesses other than guided tours rely on the scenic beauty of the squares and historic monuments to generate revenue, and yet these businesses are not required to pay" the Preservation Fee.); Ex. D. at ¶117 (The City of Savannah "does not dispute that businesses which are not guided tours indirectly depend on business that is generated by the scenic beauty of the public squares ... but yet are not subject to the [P]reservation [F]ee." (Internal punctuation omitted)).

38.

Residents also benefit from the scenic beauty of the public squares and monuments but yet are not required to pay the Preservation Fee that tour businesses were required to pay. See Ex. C at ¶118 ("Residents also benefit from the scenic beauty of the squares and historic monuments, and yet residents are not required to pay the City's tax on tour businesses."); Ex. D at ¶118 ("The allegations contained in paragraph [] 118 are not disputed.").

39.

Therefore, the Preservation Fee – which is only imposed on tourist businesses that

conducted *narrated* tours – is a tax that singles out tour businesses based on speech for a special burden while providing a benefit that is widely shared.

The City of Savannah Could Have Raised Revenue Through a General Tax

40.

Funds for “infrastructure preservation and improvement” – which is the City of Savannah’s purported justification for the Preservation Fee – could readily have been raised through a general tax on economic activity rather than singling out tour businesses for a special burden.

41.

In fact, in or about 2015 the City of Savannah was evaluating such a general tax on economic activity within a defined geographical area of downtown. A true and correct copy of selected portions of the Rule 30(b)(6) of the Mayor and Aldermen of the City of Savannah by Bridget Lidy dated April 3, 2015 in the Federal Lawsuit attached hereto as Exhibit “G” at pp.111-113.

42.

Such a general tax on economic activity would have been no less effective as a means of raising revenue to fund the projects paid for by the Preservation Fee that was imposed on tour businesses.

Preservation Fee: Violation of the Special District Clause of the Constitution of the State of Georgia

43.

The Historic District of Savannah, where the Preservation Fee was levied, is a special district as defined under O.C.G.A. §36-42-16 and Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia.

44.

O.C.G.A. §36-42-16 provides that “[p]ursuant to Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia, municipalities may create one or more special districts within the area of operation of a downtown development authority for the purpose of levying and collecting taxes, fees, or assessments to pay the cost of any project or to support the exercise of any other powers which the authority may possess.”

45.

Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia provides in part that “special districts may be created for the provision of local government services within such districts; and fees, assessments, and taxes may be levied and collected within such districts to pay, wholly or partially, the cost of providing such services therein and to construct and maintain facilities therefor. (Emphasis supplied).

46.

In this regard, the City of Savannah Ordinance Section 5-204 provides “[f]or services enumerated above, or any services authorized by this Chapter or the Constitution and general laws of the State of Georgia, the Mayor and Aldermen of the City of Savannah may, by ordinance, create special districts within the corporate limits of the City of Savannah in which it may levy taxes, and/or impose rates, fees or charges, or both, to pay, wholly or partially, the cost of providing such services therein and to construct and maintain facilities therefor[.]” (Emphasis supplied).

47.

In the ordinance creating the Historic District of Savannah as a special district, the City of Savannah explained that “[t]he purpose of the Savannah Downtown Historic Overlay District, referred to herein as ‘Savannah Downtown Historic District,’ is to promote the educational,

cultural, economic, and general welfare of Savannah pursuant to the provisions of the amendment to the Georgia Constitution Article [IX]...”³ Savannah Ordinance, Division II, Part 8, Chapter 3, Article 7, Section 7.8.1.

48.

The boundaries for the Historic District are as follows: “bounded on the north as the Savannah River; on the east by Randolph Street between the Savannah River and Broughton Street and by East Broad Street between Broughton and Gwinnett Streets; on the south by Gwinnett Street; and on the west by West Boundary Street to Indian Street, Indian Street to McGuire Street, extended to the River.” Savannah Ordinance, Division II, Part 8, Chapter 3, Article 7, Section 7.8.2.

49.

From 2015 to 2020 sightseeing tour companies that operated narrated tours within the Historic District of Savannah paid \$4,048,216 in Preservation Fees.

Year	Amount
2015	\$745,223
2016	\$744,017
2017	\$810,284

³ The Special District Clause of the Constitution of the State of Georgia is found at Article IX, Section II, Paragraph VI. There appears to be a typographical error in Savannah Ordinance, Division II, Part 8, Chapter 3, Article 7, Section 7.8.1 as it refers to the authority for establishing the special district for the Historic District in Article XI – rather than Article IX. Article XI of the Constitution of the State of Georgia contains the Miscellaneous Provisions and is nonsensical in the context of providing the City of Savannah with the authority to create special districts.

2018	\$786,292
2019	\$720,000 ⁴
2020	\$242,400 (Estimated) ⁵
Total	\$4,048,216

A true and correct copy of selected portions of the 2015 Service Program and Budget 2015-2019 Capital Improvement Program is attached hereto as Exhibit “H”. A true and correct copy of selected portions of the 2016 Service Program and Budget 2016 Service Program and Budget 2016-2020 Capital Improvement Program is attached hereto as Exhibit “I”. A true and correct copy of selected portions of the 2017 Adopted Budget and Five-Year Capital Improvement Program is attached hereto as Exhibit “J”. A true and correct copy of selected portions of the 2018 Adopted Budget & Strategic Plan is attached hereto as Exhibit “K”. A true and correct copy of selected portions of the 2019 Adopted Budget is attached hereto as Exhibit “L”. A true and correct copy of selected portions of the 2020 Adopted Budget & Capital Improvement Program is attached hereto as Exhibit “M”.⁶

⁴ This is the projected amount of revenue from the Preservation Fee for 2019 as reflected in the City of Savannah 2020 Adopted Budget and Capital Improvement Program.

⁵ The amount of revenue from the Preservation Fee for 2020 is estimated. The 2020 adopted amount of revenue from the Preservation Fee as reflected in the 2020 Adopted Budget and Capital Improvement Program was \$727,200. The City of Savannah repealed the Preservation fee on June 11, 2020 (see infra for detailed discussion on the repeal) so the 2020 Preservation Fee was only collected for January, February, March and April of 2020. The 2020 adopted amount of revenue from the Preservation Fee was estimated for four (4) months in 2020 as follows: \$727,200/12 months = \$60,600 per month x 4 months = \$242,400.

⁶ Complete copies of the budgets can be found on the City of Savannah’s website at <http://savannahga.gov/493/Office-of-Management-Budget>.

50.

The funds that were raised by the Preservation Fee were deposited into the general fund, not into a dedicated account. See Ex. C at ¶114; Ex. D. at ¶114 (The City of Savannah “does not dispute that the funds raised through the [P]reservation [F]ee [were] deposited into the general fund, not a dedicated account.”). See also Ex. H at pp. 62-64; Ex. I at pp. 62-64; Ex. J at pp. 60-62; Ex. K at pp. 239; Ex. L at pp. 85-88; and Ex. M at pp. 68-70.

51.

From 2015 through 2020 there were a number of projects that were funded using the revenue from the Preservation Fee that were not in the Historic District of Savannah, many of which projects provided a significant benefit to residents, tourists who did not participate in a narrated tour, as well as other businesses and residents who were not required to pay the Preservation Fee.

52.

Examples of projects funded by the Preservation Fee that were not located in the Historic District of Savannah for 2015 included but were not limited to: (a) monument conservation at various locations throughout the City of Savannah (funding source: General Fund – Preservation Fee); (b) improvements to parks, squares and medians throughout the City of Savannah (City-wide) (funding source: General Fund – Preservation Fee); (c) improvements to lighting, paving, landscaping and furnishing in square (City-wide) (funding source: General Fund – Preservation Fee); (d) maintain appearance and operation of public fountains (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (e) improve Park and Tree’s maintenance building located at 14 Interchange Court (funding source: General Fund – Preservation Fee); and (f) improve landscape of City entrances and medians (not limited to the

Historic District of Savannah) (funding source: General Fund – Preservation Fee). See Ex. H at pp. 335, 336, 2015-2019 Capital Improvement Summary at pp. 66, 107, 109, 112.

53.

Examples of projects funded by the Preservation Fee that were not located in the Historic District of Savannah for 2016 included but were not limited to: (a) maintain appearance and operation of public fountains (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (b) repair, restore and improve monuments in various locations (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (c) improvements to parks, squares and medians (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (d) make improvements to the lighting, paving, landscaping and furnishing in square (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (e) improve landscape of City entrances and medians City-wide (funding source: General Fund – Preservation Fee); and (f) build a pedestrian walkway on existing public right of way at Montgomery Street Ramp improve landscape of City entrances and medians (funding source: General Fund – Preservation Fee). See Ex. I at 2016-2020 Capital Plan Overview at pp. 341, 343, 2016-2020 Capital Improvement Summary at pp. 98, 101, 104 and 119.

54.

Examples of projects funded by the Preservation Fee that were not located in the Historic District of Savannah for 2017 included but were not limited to: (a) repair, restore and improve monuments in various locations (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (b) improvements to parks, square, medians and irrigation systems (not limited to the Historic District of Savannah) (funding source: General Fund –

Preservation Fee); (c) install and repair lighting of public monuments (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (d) improvements to lighting, paving, landscaping and furnishing in squares (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (e) improve landscape of City entrances and medians City-wide (funding source: General Fund – Preservation Fee); and (f) preserve and maintain fountains City-wide (funding source: General Fund – Preservation Fee). See Ex. J at pp. 330, 2017-2021 Capital Plan Overview at pp. 341, 343, 2016-2020 Capital Improvement Summary at pp. 102, 105 and 108.

55.

Examples of projects funded by the Preservation Fee that were not located in the Historic District of Savannah for 2018 included but were not limited to: (a) improve landscape of City entrances and medians (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (b) preserve and maintain fountains to ensure safe and efficient operation (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (c) repair, restore and improve monuments in various locations (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (d) make improvements to parks, squares, medians and irrigation systems (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (e) install and repair lighting of public monuments (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); and (f) improvements to the lighting, paving, landscaping and furnishing in squares (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee). See Ex. K at pp. 195-196.

56.

Examples of projects funded by the Preservation Fee that were not located in the Historic District of Savannah for 2019 included but were not limited to: (a) monument conservation (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (b) park, square, medians and irrigations improvements (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); (c) public monuments lighting (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee); and (d) fountain conservation (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee). See Ex. L at pp. 266-267.

57.

Examples of projects funded by the Preservation Fee that were not located in the Historic District of Savannah for 2020 included but were not limited to: cemetery improvement projects (not limited to the Historic District of Savannah) (funding source: General Fund – Preservation Fee). See Ex. M at pp. 23.

The City of Savannah Repeals the Preservation Fee Ordinance

58.

On or about June 11, 2020 the City of Savannah repealed the Preservation Fee Ordinance as a result of the District Court for the Southern District of Georgia in the Federal Lawsuit finding the Tour Guide Licensing Ordinance unconstitutional.

59.

Susan W. Broker, Director Special Events, Film and Tourism for the City of Savannah stated in an email dated June 12, 2020 that “the Preservation Fee was repealed yesterday by the City Council as a result of a Court ruling.” A true and correct copy of Susan W. Broker, Director

Special Events, Film and Tourism’s email dated June 12, 2020 is attached hereto as Exhibit “N”.

60.

Ms. Broker went on to state that “[i]f a company would like to file a complaint about Preservation Fees submitted in 2020 or years prior, they may submit their complaint in writing to the City Attorney’s Office.” Id. She also indicated in the email that the City of Savannah would be sending out correspondence to all tour companies notifying them of the repeal of the Preservation Fee Ordinance.

61.

On or about July 14, 2020, Ashley L. Simpson, Revenue Director for the City of Savannah sent out an email regarding the repeal of the Preservation Fee Ordinance. A true and correct copy of Ashley L. Simpson, Revenue Director for the City of Savannah’s email dated July 14, 2020 is attached hereto as Exhibit “O”.

62.

Ms. Simpson advised that “[o]n June 11, 2020, the Savannah City Council passed an ordinance to repeal the Preservation Fee.” Id.

63.

Ms. Simpson explained that the City of Savannah “will no longer process the Preservation Fee returns submitted by tour companies, and asks that returns and payments [not be] submitted moving forward.” Id.

Refunds for the Illegally Levied and Collected Preservation Fee

64.

Taxes assessed by the City of Savannah cannot violate the United States Constitution or the Constitution of the State of Georgia and must satisfy the constitutional and statutory

requirements of uniformity and equalization.

65.

The City of Savannah levied and collected the Preservation Fee in violation of Named Plaintiff's and the prospective class members' right to free speech as guaranteed by the First Amendment of the United States Constitution as incorporated against the States by the Fourteenth Amendment to the United States Constitution resulting in the overpayment of taxes by Named Plaintiff and prospective class members and the collection by the City of Savannah of illegal and erroneous taxes.

66.

The City of Savannah also levied and collected the Preservation Fee in violation of the Special District Clause of the Constitution of the State of Georgia resulting in the overpayment of taxes by Named Plaintiff and prospective class members and the collection by the City of Savannah of illegal and erroneous taxes.

67.

The City of Savannah also levied and collected the Preservation Fee in violation of the constitutional and statutory requirements of uniformity and equalization resulting in the overpayment of taxes by Named Plaintiff and prospective class members and the collection by the City of Savannah of illegal and erroneous taxes.

68.

As a result of the above, Named Plaintiff and prospective class members are entitled to the return of all Preservation Fees and any penalties paid from 2015 through 2020 that were unconstitutionally and illegally levied and collected by the City of Savannah plus interest as provided by Georgia law.

69.

The refund due to Named Plaintiff and the Class for Preservation Fees paid from 2015 through 2020 is \$4,048,216, plus prejudgment interest.

CLASS ACTION ALLEGATIONS

70.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-69 as if set forth herein verbatim.

71.

This action is brought by Named Plaintiff as a class action, on its own behalf and on behalf of all prospective class members, under the provisions of O.C.G.A. § 9-11-23 for damages, and relief incident and subordinate thereto, including attorney's fees and costs.

72.

Named Plaintiff seeks certification of one (1) class. The class is comprised of taxpayers similarly situated, who like Named Plaintiff, paid the Preservation Fee under Revenue Ordinance Article T, §3 from August 28, 2015 through 2020 (hereinafter the "Class").

73.

The Class is comprised of two (2) subclasses defined as follows:

(1) Taxpayers who operated sightseeing tours within the Historic District of Savannah and paid the Preservation Fee under Revenue Ordinance Article T, §3 (the "Tour Operator Subclass") from August 28, 2015 through 2020

(2) Participants in sightseeing tours within the Historic District of Savannah who were charged for the Preservation Fee under Revenue Ordinance Article T, §3 by tour operators and paid the Preservation Fee (the "Tour Participants Subclass") from August 28, 2015 through 2020.

74.

The Class so described is comprised of numerous members seeking the following relief for each year at issue: (a) tax refunds under O.C.G.A. § 48-5-380 for the Preservation Fee paid under Revenue Ordinance Article T. §3 from 2015 through 2020; (b) refunds under O.C.G.A. § 48-5-380 for any penalties paid under Revenue Ordinance Article T. §3(F); and (c) prejudgment interest for 2015 through 2020 based on the levying and collecting of the Preservation Fee in violation of the United States Constitution, the Constitution of the State of Georgia and Georgia law.

75.

The members of the Class are so numerous that joinder of individual members herein is impracticable.

76.

There are common questions of law and fact in the action that relate to and affect the rights of members of the Class and the relief sought is common to the members of the Class.

77.

The claims of Named Plaintiff, as set forth herein, who is representative of class members, are typical of the claims of the members of the Class, in that the claims of all members of the Class, including Named Plaintiff, depend on the showing of the acts and/or omissions of Defendant or its agents or instrumentalities giving rise to the right of Named Plaintiff to the relief sought herein. There is no conflict as between Named Plaintiff and class members with respect to this action, or with respect to the claims for relief herein set forth.

78.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(A) because the prosecution of separate actions by individual class members would create

a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for any party opposing the classes.

79.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(B) in that prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

80.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(3) inasmuch as the questions of law and fact common to the classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

81.

Named Plaintiff is the representative party for the Class, and is able to, and will, fairly and adequately protect the interests of class members. Roberts Tate, LLC, one of the firms representing Named Plaintiff, is experienced in class action litigation and has successfully represented claimants in other class litigation. Of the attorneys designated as counsel for Named Plaintiff, those undersigned attorneys will actively conduct and be responsible for Named Plaintiff's case herein as well as the case of all other class members.

COUNT I - VIOLATION OF THE FIRST AMENDMENT

82.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-81 as if set forth herein verbatim.

83.

The Preservation Fee is a speech tax which represents a special tax on the expressive activity of taxpayers like Named Plaintiff and the members of the Class and violates the rights of Named Plaintiff and members of the Class to free speech as guaranteed by the First Amendment of the United States Constitution as incorporated against the States by the Fourteenth Amendment to the United States Constitution.

84.

The Preservation Fee signaled out the First Amendment activity of Named Plaintiff and the members of the Class for “special treatment.” Minneapolis Star and Tribune Company v. Minnesota Commissioner of Revenue, 460 U.S. 575, 582 (1983).

85.

On its face the Preservation Fee targeted speech as the determining factor as to whether the Preservation Fee had to be paid because payment of the Preservation Fee depended on whether there was a “tour narration” provided.

86.

The City of Savannah cannot point to “a counterbalancing interest of compelling importance that it cannot achieve without differential taxation.” Id. at 585.

87.

Named Plaintiff and the members of the Class are entitled to all Preservation Fees paid, which resulted in the voluntary or involuntary overpayment of taxes, that were illegally and erroneously levied and collected in violation of the First Amendment of the United States Constitution.

88.

Accordingly, all taxes collected based on the unconstitutional Preservation Fee Ordinance as well as any penalties paid must be refunded to Named Plaintiff and the members of the Class along with prejudgment interest.

COUNT II - VIOLATION OF THE SPECIAL DISTRICT CLAUSE

89.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-88 as if set forth herein verbatim.

90.

The City of Savannah levied and collected the Preservation Fee in the Historic District of Savannah which is a special district established pursuant to Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia.

91.

The revenue generated by the Preservation Fee was deposited into the general fund of the City of Savannah.

92.

Revenue generated by the Preservation Fee was used by the City of Savannah on projects that were not located in the Historic District of Savannah.

93.

Therefore, the Preservation Fee is unconstitutional because “a tax levied and collected within a special district pursuant to [Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia] can only be used for the cost of providing services within that district.” DeKalb County v. Perdue et al., 286 Ga. 793, 797, 692 S.D. 2d 331, 335 (2010).

94.

Named Plaintiff and the members of the Class are entitled to all Preservation Fees paid, which resulted in the voluntary or involuntary overpayment of taxes, that were illegally and erroneously levied and collected in violation of the Special District Clause of the Constitution of the State of Georgia.

95.

Accordingly, all taxes collected based on the unconstitutional Preservation Fee Ordinance as well as any penalties paid must be refunded to Named Plaintiff and the members of the Class along with prejudgment interest.

COUNT III - VIOLATION OF UNIFORMITY REQUIREMENT, DUE PROCESS AND EQUAL PROTECTION

96.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-95 as if set forth herein verbatim.

97.

The City of Savannah levied and collected taxes under the Preservation Fee Ordinance from Named Plaintiff and members of the Class in violation of the constitutional and statutory requirements of uniformity and equalization.

98.

“All taxes shall be levied and collected under general laws and for public purposes only...[A]ll taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” Ga. Const. Art. 7, § 1, ¶ III.

99.

The City of Savannah has violated the constitutional and statutory rights of Named Plaintiff and the members of the Class in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

100.

Named Plaintiff and the members of the Class are entitled to all Preservation Fees paid, which resulted in the voluntary or involuntary overpayment of taxes, that were illegally and erroneously levied and collected in violation of the due process and equal protection clauses of the United States Constitution and the Constitution of the State of Georgia.

101.

Accordingly, all taxes collected based on the unconstitutional Preservation Fee Ordinance as well as any penalties paid must be refunded to Named Plaintiff and the members of the Class along with prejudgment interest.

COUNT IV- REFUND UNDER O.C.G.A. § 48-5-380

102.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-101 as if set forth herein verbatim.

103.

For 2015 through 2020 the City of Savannah levied and collected taxes under the Preservation Fee Ordinance in violation of the First Amendment to the United States Constitution as incorporated against the States by the Fourteenth Amendment to the United States Constitution, in violation of the Special District Clause of the Constitutional of the State of Georgia and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article I Section I Paragraph I of the Constitution of the State of Georgia resulting in the payment of illegally and erroneously levied taxes and the voluntary or involuntary over payment of taxes.

104.

Under O.C.G.A. § 48-5-380, Named Plaintiff and the members of the Class are entitled to a refund of all illegally and erroneously levied taxes or voluntarily or involuntarily over paid taxes for tax years 2015 through 2020. Accordingly, all taxes levied and collected, including any penalties, based on the Preservation Fee Ordinance along with prejudgment interest must be refunded to Named Plaintiff and the members of the Class.

COUNT V- ATTORNEY'S FEES FOR BAD FAITH AND STUBBORN LITIGIOUSNESS

105.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-104 as if set forth herein verbatim.

106.

Defendant has acted in bad faith, been stubbornly litigious and has caused Named Plaintiff unnecessary trouble and expense, entitling Named Plaintiff to recover its costs of this litigation, including reasonable attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, having filed this First Amended Verified Complaint Named Plaintiff prays that:

- a) That process issue and be served on Defendant in accordance with Georgia law;
- b) That Named Plaintiff and the Class recover all illegally and erroneously levied taxes and penalties for 2015 through 2020 plus prejudgment interest as set forth above;
- c) That this Court enter an Order requiring Defendant to pay all of Named Plaintiff's attorney's fees and costs of litigation associated with this action; and
- d) That Named Plaintiff and prospective class members have all other and further relief deemed just and appropriate by this Court.

RESPECTFULLY SUBMITTED, this 25th day of November, 2020.

ROBERTS TATE, LLC

MANLY SHIPLEY, LLP

BY: /s/ James L. Roberts, IV

BY: /s/ John Manly

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ATTORNEYS FOR NAMED
PLAINTIFF

ATTORNEYS FOR NAMED
PLAINTIFF

**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**

OLD TOWN TROLLEY TOURS OF SAVANNAH, INC.)
)
)
Plaintiff,) **CIVIL ACTION NO. SPCV20-007667-MO**
)
v.)
)
THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH)
)
)
Defendants.)

CERTIFICATE OF SERVICE

I, James L. Roberts, IV, of Roberts Tate, LLC, attorneys for Plaintiff, to hereby certify that, on this date, I served a copy of the foregoing First Amended Complaint upon the following parties all parties by delivering a copy of the same via statutory electronic service to:

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Jennifer N. Herman, Deputy City Attorney
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This 25th day of November, 2020.

/s/ James L. Roberts, IV
James L. Roberts, IV