

**IN THE COURT OF COMMON PLEAS  
ATHENS COUNTY, OHIO**

State of Ohio,	:	
	:	
Plaintiff,	:	Case No. 23CI0287
	:	
v.	:	
	:	
City of Athens, et al.,	:	Judge Patrick J. Lang
	:	
Defendants.	:	

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**ANSWER OF DEFENDANTS THE CITY OF ATHENS, LISA ELIASON, IN HER  
OFFICIAL CAPACITY AS LAW DIRECTOR, AND ANDY STONE, IN HIS OFFICIAL  
CAPACITY AS SERVICE-SAFETY DIRECTOR**

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The City of Athens, Lisa Eliason, in her official capacity as Law Director, and Andy Stone, in his official capacity as Service Safety-Director (collectively, the “City”), for their Answer to Plaintiff’s Complaint, state as follows:

**ANSWER**

1. The City denies the averments contained in paragraph 1 of the Complaint.
2. The City admits that on May 1, 2023, the City of Athens passed Ordinance 0-25-23 (“the Ordinance”) attached to Plaintiff’s Complaint. The City denies the remaining allegations in paragraph 2.
3. The City denies the City of Athens exceeded its Home Rule authority and denies the Ordinance is in direct conflict with R.C. 3736.021.

4. The City denies a permanent injunction is necessary to enjoin the City of Athens since the City of Athens is exercising its Home Rule authority.

### **JURISDICTION AND VENUE**

5. The City admits the averment contained in paragraph 5 of the Complaint.
6. The City admits the averments contained in paragraph 6 of the Complaint.
7. The City denies that the Ordinance is unconstitutional. The City admits the Ordinance went into effect January 1, 2024. The City is without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments contained in paragraph 7 of the Complaint and therefore denies them.

### **PARTIES**

8. The City is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 8 of the Complaint and therefore denies them.
9. The City admits the averments contained in paragraph 9 of the Complaint.
10. The City admits the averments contained in paragraph 10 of the Complaint.
11. The City denies that the Ordinance is unlawful. The City admits the remaining averments contained in paragraph 11 of the Complaint.

### **FACTUAL AND LEGAL ALLEGATIONS**

12. The City admits the averments contained in paragraph 12 of the Complaint.
13. The City admits the averments contained in paragraph 13 of the Complaint.
14. The City admits the averments contained in paragraph 14 of the Complaint but states that

R.C. 3736.021 is found in Title 37, “Health-Safety-Morals, Chapter 3736 Recycling, Waste Reduction, Litter Prevention.”

15. The City admits the averments in paragraph 15 of the Complaint that R.C. 1.59(C) states that “‘Person’ includes an individual, corporation, business trust, estate, trust, partnership, and association” but states that Athens City Code (“ACC”) 11.13.02 refers to a store or vendor.
16. The City admits the averments contained in paragraph 16 of the Complaint.
17. The City admits the averments contained in paragraph 17 of the Complaint.
18. The City denies the averment that the State enshrined the right to use single-use plastic bags in R.C. 3736.021. The City admits the remainder of the averments contained in paragraph 18 of the Complaint.
19. The City admits the averment contained in paragraph 19 of the Complaint.
20. The City admits the averment contained in paragraph 20 of the Complaint.
21. The City denies the averment in paragraph 21 of the Complaint as the penalty is an administrative fine rather than a criminal penalty.
22. The City admits the averment contained in paragraph 22 of the Complaint, but states that the criminal penalty is for failing to pay the administrative fine and includes an appeals process if the store or vendor believes it has been wrongfully charged the administrative fine.
23. The City admits the averment contained in paragraph 23 of the Complaint.
24. The City denies the averment contained in paragraph 24 of the Complaint.
25. The City denies the averment contained in paragraph 25 of the Complaint and states that approximately 85 to 90 percent of the stores and vendors in Athens have complied with

- the Ordinance and have stopped providing or selling single-use plastic bags.
26. The City is without sufficient information to either admit or deny the averments contained in paragraph 26 of the Complaint and therefore denies them.
27. The City is without sufficient information to either admit or deny the averments contained in paragraph 27 of the Complaint and therefore denies them.
28. The City denies the averment in paragraph 28 of the Complaint, and states that Defendant has set aside \$5,000 to assist stores and vendors in their compliance with the Ordinance.
29. The City is without sufficient information to either admit or deny the averments contained in paragraph 29 of the Complaint and therefore denies them.
30. The City admits the averments contained in paragraph 30 of the Complaint, but states that the Defendant has Home Rule authority to enact ACC 11.13, reduction of Single-Use Plastic Bags. In further answer to the averments in paragraph 30 of the Complaint, the City states that the provisions of ACC 11.13 are a valid exercise of the City's authority under R.C. 3736.021 allowing political subdivisions to enact laws and policies regarding environmentally friendly business practices.
31. The City denies the averments contained in paragraph 31 of the Complaint, and states that the irreparable harm at issue is to the environment and the public interest. Plastic does not biodegrade, but rather breaks down into microplastics that contaminate the water, soil, and food chains.<sup>1</sup>
32. The City denies the averments contained in paragraph 32 of the Complaint.
33. The City denies the averments contained in paragraph 33 of the Complaint.

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<sup>1</sup> Chamas et al., *Degradation Rates of Plastics in the Environment*, 8 ACS Sustainable Chem. Eng., 3494, 3494 – 3495 (2020); UN Environment Programme, *Turning off the Tap: How the world can end plastic pollution and create a circular economy*, xv, available at <https://www.unep.org/resources/turning-off-tap-end-plastic-pollution-create-circular-economy>.

## **CAUSE OF ACTION**

34. The City restates and incorporates by reference all prior paragraphs as though fully set forth in this paragraph.
35. The City admits the averment contained in paragraph 35 of the Complaint, but states that ACC 11.13, Reduction of Single Use Plastic Bags does not conflict with R.C. 3736.021, Title 37, "Health-Safety-Morals, Chapter 3736 Recycling, Waste Reduction, Litter Prevention."
36. The City admits the averment contained in paragraph 36 of the Complaint.
37. The City admits the averments contained in paragraph 37 of the Complaint.
38. The City denies the averments contained in paragraph 38 of the Complaint.
39. The City denies the averments contained in paragraph 39 of the Complaint.
40. The City denies the averments contained in paragraph 40 of the Complaint.
41. The City denies the averments contained in paragraph 41 of the Complaint.
42. The City denies the averments in paragraph 42 of the Complaint.
43. The City denies the averments in paragraph 43 of the Complaint.

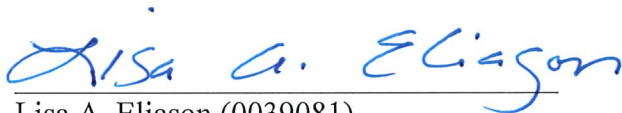
## **CONCLUSION**

44. The City denies the averments in paragraph 44 of the Complaint.
45. The City denies any averments made by Plaintiff to which the City has not specifically admitted.
46. The City respectfully requests that this Court dismiss the Complaint and award the City costs for Plaintiff's lawsuit.

## AFFIRMATIVE AND OTHER DEFENSES

1. House Bill 110, 134th General Assembly, Appropriations FY 2022-2023, which included the enactment of R.C. 3736.021, violates the one-subject rule pursuant to Article II, Section 15(D) of the Ohio Constitution.
2. Lisa Eliason in her official capacity as Law Director and Andy Stone in his official capacity as Service-Safety Director are not proper parties to the Complaint and should be dismissed.
3. The City has been sued by Plaintiff and is in no different position than other jurisdictions that have passed single-use plastic bag legislation, including, but not limited to, Cuyahoga County, the City of Bexley, and the City of Cincinnati, all of which have not been sued by Plaintiff.

Respectfully submitted,



Lisa A. Eliason (0039081)

LAW DIRECTOR

Jesse Branner Hittle (0090497)

ASST. LAW DIRECTOR

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*Council for Defendants the City of Athens,  
Lisa Eliason, Law Director, and  
Andy Stone, Service-Safety Director*

**CERTIFICATE OF SERVICE**

The undersigned certifies that, pursuant to Ohio Civil Rules of Procedure, Rule 5, a true and accurate copy of the foregoing Answer was sent to:

Dave Yost  
Ohio Attorney General  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

and

Julie Pfeiffer  
Counsel of Record  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

and

Michael A. Walton  
Stephen P. Tabotwoski  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

by regular U.S. mail, postage pre-paid, this 23rd day of January, 2024.

  
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Lisa A. Eliason