

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

STATE OF OHIO, :
c/o Ohio Attorney General Dave Yost :
30 East Broad Street, 17th Floor :
Columbus, Ohio 43215 :
 :
Plaintiff, : **Case No.**
 :
v. :
 :
CITY OF ATHENS, :
8 East Washington St. :
Athens, Ohio 45701 :
 :
 : **JUDGE**
LISA ELIASON, in her official capacity as :
City of Athens Law Director :
8 East Washington St. :
Athens, Ohio 45701 :
 :
 :
ANDY STONE, in his official capacity as :
City of Athens Service-Safety Director :
8 East Washington St. :
Athens, Ohio 45701 :
 :
Defendants. :

**COMPLAINT FOR DECLARATORY JUDGMENT
AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff State of Ohio for its Complaint alleges as follows:

INTRODUCTION

1. In 2021, the General Assembly ensured that everyone in Ohio, including stores and vendors operating within its boundaries, has the right to choose whether to use single-use plastic bags for the purpose of commerce or otherwise.

2. Despite this, on May 1, 2023, the City of Athens (“the City”) passed Ordinance 0-25-23 (“the Ordinance”), attached hereto as Exhibit A, which bans all stores and vendors from providing or selling single-use plastic bags to their customers as of January 1, 2024.
3. But the City exceeded its limited Home Rule authority to enact its own laws under the Ohio Constitution by passing the Ordinance as it is in direct conflict with R.C. 3736.021, a general law of this State.
4. A permanent injunction is necessary to enjoin the City from unconstitutionally restricting Athens stores and vendors from using single-use plastic bags that they are otherwise permitted to use under Ohio law.

JURISDICTION AND VENUE

5. This Court has jurisdiction to issue a declaratory judgment under R.C. 2721.01-2721.15 and to grant a permanent injunction under R.C. 2721.03.
6. The City falls solely with Athens County.
7. Jurisdiction and venue are proper also to vindicate and protect the Ohio Constitution from the City’s unconstitutional ordinance, which goes into effect on January 1, 2024.

PARTIES

8. The State of Ohio, as sovereign, has standing to enforce the rights of its citizens and to protect those rights from infringement by a political subdivision of this State. The State also has standing to ensure that political subdivisions of this State do not legislate in contravention of the authority delegated to them.
9. Defendant Lisa Eliason is the law director for the City. She is the legal adviser of, and attorney and counsel for the City, and is responsible for defending the City in complaints filed against it. *See* Athens City Code § 3.03.27. She is named in her official capacity only.

10. Defendant City of Athens is a political subdivision geographically contained in Athens County, Ohio.
11. Defendant Andy Stone is the Service-Safety Director for the City. He is responsible for managing and supervising all public works and undertakings of the City as well as serving as the executive head of the police and fire departments for the City. *See Athens City Code § 3.05.02.* Further, the Ordinance gives Director Stone enforcement authority over the City’s unlawful ban on the transfer or sale of single-use plastic bags by stores and vendors. *See Athens City Code § 11.13.02(D).* He is named in his official capacity only.

FACTUAL AND LEGAL ALLEGATIONS

12. Article XVIII, Section 3 of the Ohio Constitution gives municipalities the “authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”
13. In 2021, the General Assembly passed H.B. 110, which was the 2022-2023 Biennium Budget Bill. In H.B. 110, the General Assembly enacted R.C. 3736.021.
14. R.C. 3736.021 states, in relevant part, “[a] person may use an auxiliary container for purposes of commerce or otherwise.”
15. The term “person” includes “an individual, corporation, business trust, estate, trust, partnership, and association.” R.C. 1.59(C). Thus, stores and vendors are “persons” under R.C. 3736.021.
16. “‘Auxiliary container’ has the same meaning as in section 3767.32 of the Revised Code.” R.C. 3736.01(K).

17. R.C. 3767.32(D)(4) defines “auxiliary container” as “a bag, can, cup, food or beverage service item, container, keg, bottle, or other packaging to which all of the following apply:
- (a) It is designed to be either single use or reusable.
 - (b) It is made of cloth, paper, plastic, foamed or expanded plastic, cardboard, corrugated material, aluminum, metal, glass, postconsumer recycled material, or similar materials or substances, including coated, laminated, or multilayered substrates.
 - (c) It is designed for consuming, transporting, or protecting merchandise, food, or beverages from or at a food service operation, retail food establishment, grocery, or any other type of retail, manufacturing, or distribution establishment.”
18. Despite the State enshrining the right to use single-use plastic bags, the City, on May 1, 2023, passed the Ordinance, which bans stores and vendors from providing or selling “a single-use, plastic carryout bag to a customer at the checkout stand, cash register, point of sale or other location for the purpose of transporting food or merchandise from the store after January 1, 2024.”
19. The Ordinance adds Chapter 11.13 to the Athens City Code.
20. Section 11.13.02(A) of the Athens City Code states, “No store or vendor shall provide or sell a single-use, plastic carryout bag to a customer at the checkout stand, cash register, point of sale or other location for the purposes of transporting food or merchandise from the store after January 1, 2024.”
21. Any store or vendor that violates Section 11.13.02 is subject to an automatic fine of \$150. Athens City Code § 11.13.04.

22. If a store or vendor that was assessed a \$150 fine fails to pay the fine within 30 days, then that store or vendor is issued a citation for a minor misdemeanor. Athens City Code § 11.13.04.
23. Further, any store or vendor that continues to violate Section 11.13.02 after previously receiving a citation “shall be guilty of a minor misdemeanor.” Athens City Code § 11.13.04.
24. Thus, the Ordinance provides for fines and criminal penalties for failing to comply with the provisions therein.
25. Complying with the Ordinance will be detrimental to the City’s stores and vendors.
26. The business owner of Grub-N-Go on Union St. in Athens said rising costs already make it tough to pay the bills. Adding the single-use plastic bag ban on top of this could force him to close his restaurant. Madison Moore, *As Athens considers a plastic bags ban, business owners worry about extra costs*, (April 4, 2023), <https://woub.org/2023/04/04/athens-plastic-bag-ban-costs/>, (last accessed Dec. 20, 2023).
27. Similarly, the General Manager of The College Book Store, located on Court Street in Athens, stated that the store uses approximately 50,000 single-use plastic bags a year and that changing to paper bags will cost the store an additional \$8,500. *Id.*
28. The effects of the Ordinance will not only be limited to additional expenses for Athens’ stores and vendors but also on other aspects of the businesses.
29. The alternative, paper bags are much heavier than the plastic bags and will take up four times as much room to store at The College Book Store. *Id.*
30. R.C. 3736.021 does not prevent political subdivisions like the City of Athens from creating lawful incentives to engage in environmentally friendly business practices. Nor does it

prevent the City from encouraging business to use containers other than single-use plastic bags.

31. But to ban the transfer and sale of single-use plastic bags by stores and vendors and to criminalize such conduct violates the Ohio Constitution, infringes on the rights of its citizens, and causes irreparable harm.
32. The State of Ohio is entitled to a declaratory judgment and a permanent injunction against the City's unconstitutional infringement of Ohioans' rights under R.C. 3736.021.
33. Aside from the relief requested herein, no other adequate remedy at law exists by which to vindicate and protect the Ohio Constitution from the City's unconstitutional ordinance.

CAUSE OF ACTION – Violation of Ohio Const. Art. XVIII, Sec. 3

34. Plaintiff restates and incorporates by reference all prior paragraphs as though fully set forth in this paragraph.
35. Article XVIII, Section 3 of the Ohio Constitution allows municipalities, like the City, to pass certain local laws that do not conflict with a general law of the State.
36. In order to determine whether a statute is a "general law," the Supreme Court of Ohio has developed a four-element test in which the statute must:

“(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.”

City of Canton v. State, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 21.

37. By enacting the Ordinance, namely Athens City Code Section 11.13.02(A), the City has elected to ban the transfer and sale of single-use plastic bags to customers after January 1, 2024.

38. But this Ordinance is in direct conflict with R.C. 3736.021, which guarantees all persons, including stores and vendors, in Ohio the right to use single-use plastic bags for commerce or otherwise.

39. Further, R.C. 3736.021 is a general law of the State of Ohio under the four-element test found in *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.

40. R.C. 3736.021 is but only one statutory provision contained with Chapter 3736 of the Ohio Revised Code, which is concerned with the State's programs related to source reduction, recycling, recycling market development, and litter prevention. Thus, it is part of a comprehensive legislative scheme related to source reduction, recycling, recycling market development, and litter prevention.

41. R.C. 3736.021 applies and operates uniformly throughout the entire state.

42. R.C. 3736.021 sets forth police, sanitary, or similar regulations in that it prescribes what types of containers are permissible in Ohio to use for the purpose of commerce, rather than a mere attempt to limit municipalities' power to set forth their own police, sanitary, or similar regulations.

43. Finally, R.C. 3736.021 prescribes a rule of conduct upon citizens generally in that the statute identifies the subject of the provision as any "person" rather than targeting only a subset of subjects, e.g., limiting the applicability to counties.

CONCLUSION

44. Because the Ordinance is in direct conflict with R.C. 3736.021 and infringes upon a statutory right to use single-use plastic bags for the purpose of commerce, the Ordinance is unconstitutional and unlawful, and permanent injunctive relief is necessary.

PRAYER FOR RELIEF

Accordingly, the State of Ohio respectfully requests that this Court:

- A. Declare that Athens Ordinance 0-25-23, namely Athens City Code Sections 11.13.02(A) and 11.13.04 violate Article XVIII, Section 3 of the Ohio Constitution.
- B. Issue a permanent injunction enjoining Athens Ordinance 0-25-23, namely Athens City Code Sections 11.13.02(A) and 11.13.04.
- C. Issue a permanent injunction against Defendants enjoining them from enforcing Athens Ordinance 0-25-23, namely Athens City Code Section 11.13.02(A).
- D. Award court costs to Plaintiff.
- E. Award all such other relief that this Court deems just and proper.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Julie M. Pfeiffer

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Counsel for Plaintiff State of Ohio

Exhibit A

City of Athens Ordinance 0-25-23

RECORD OF ORDINANCES

Government Forms and Supplies (844) 224-3338 FORM NO. SHTROR11

Ordinance No. 0-25-23

Passed May 1, 2023

Introduced by Alan Swank
City & Safety Services Committee

AN ORDINANCE AMENDING ATHENS CITY CODE, TITLE 11, BUSINESS REGULATIONS, TO ADD CHAPTER 11.13, REDUCTION OF SINGLE-USE PLASTIC BAGS.

WHEREAS, R.C. 715.013(B) states: "No municipal corporation may impose any tax, fee, assessment or other charge on auxiliary containers, on the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of such containers. As used in this division, "auxiliary container" has the same meaning as in section 3767.32 of the Revised Code" which states "Auxiliary container" means a bag...designed to be either single use or reusable;" and

WHEREAS, the Home Rule Amendment, conferred under Ohio Const. art. XVIII, § 3, grants a municipality authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws; and

WHEREAS, numerous studies continue to show the negative environmental and health effects of plastics and the chemicals used to produce them; and

WHEREAS, numerous studies have documented the prevalence of plastic carry-out bags littering the environment, blocking storm drains, being entangled in trees and vegetation, and fouling beaches; and

WHEREAS, studies have shown the presence of micro plastics in terrestrial and marine life systems throughout the planet, resulting in a comprehensive contamination of the food supply due to the proliferation of plastic litter and plastic breakdown products; and

WHEREAS, single-use plastic bags cause operation problems at recycling processing facilities, landfills, and transfer stations, and contribute to litter throughout the City of Athens; and

WHEREAS, numerous states and cities throughout the United States have enacted single-use plastic bag bans resulting in dramatic decreases in plastic waste; and

WHEREAS, major countries throughout the world have banned plastic bags and/or single use plastics; and

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RECORD OF ORDINANCES

Government Forms and Supplies (844) 224-3338 FORM NO. SHTRCR11

Ordinance No. 0-25-23 Page 2 of 4 Passed _____, 20_____

WHEREAS, City Council Resolution 12-16, declared single-use carryout bags an environmental concern, stating single-use plastic bags have a significant impact on the local environment including contributing to litter on streets, sidewalks and public spaces and water pollution; and

WHEREAS, City Council Ordinance 41-17 established a sustainability plan to promote and foster awareness of environmental and sustainability issues in our community; and

WHEREAS, City Council Resolution 06-19, declared opposition to House Bill 242, as it relates to preemption of local control and the use of disposable single-use plastic, discouraging the wasteful use of disposable single-use plastic and mitigating their negative impact on our environment; and

WHEREAS, City Council Resolution 02-20 declared a climate emergency and the need to restore a safe climate through emergency mobilization efforts; and

WHEREAS, City Council Resolution 15-21, requested the Mayor take all steps necessary to become plastic free by January 2023 to include requiring all events held on city property or sponsored by the city to be "plastic free by '23;"

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Code, Title 11, Business Regulations, is hereby amended to add Chapter 11.13, Reduction of Single-Use Plastic Carryout Bags, to read as follows:

Chapter 11.13 REDUCTION OF SINGLE-USE PLASTIC BAGS

11.13.01 DEFINITIONS.

For the purposes of this chapter, the words and phrases shall have the meanings respectively ascribed to them.

- (A) "Compostable" means a product that has been certified as 100% compostable consistent with the timeline and specifications of the American Society for Testing and Materials (ASTM) standard d6400 or the Biodegradable Products Institute (BPI) or equivalent, and as clearly marked as "compostable."
- (B) "Customer" means a person obtaining goods from a store.
- (C) "Carryout bag" means any bag provided to a customer at the checkout stand, cash register, point of sale or other location for the purpose of transporting food or merchandise from the store.

RECORD OF ORDINANCES

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- (D) "Single-use, plastic carryout bag" means any bag that is made predominately of non-compostable plastic derived from petroleum or bio-based sources, and that is not machine washable and not designed for multiple uses. Single-use, plastic carryout bags do not include produce, meat, or product bags.
- (E) "Store" means any commercial establishment, including a restaurant, operating from a permanent enclosed structure that sells perishable or nonperishable goods including, but not limited to clothing, food and personal items directly to a customer.

11.13.02 CARRYOUT BAG RESTRICTIONS

- (A) No store or vendor shall provide or sell a single-use, plastic carryout bag to a customer at the checkout stand, cash register, point of sale or other location for the purposes of transporting food or merchandise from the store after January 1, 2024.
- (B) No store or vendor shall sell or charge a customer for any carryout bag unless the amount charged for the bag is separately itemized on the sales receipt.
- (C) A store, vendor, or establishment is not responsible for the materials used by a party that may be renting a facility they own or operate.
- (D) Citations for violations of this section shall be issued to a store or vendor by code enforcement officers, police officers, sanitarian, litter control officer, and others assigned by the service-safety director.

11.13.03 PERMITTED BAGS

- (A) Nothing in the ordinance prohibits a customer from using bags of any type that they bring to the store or vendor themselves or from carrying away goods that are not placed in a bag.
- (B) Nothing in this ordinance prohibits or in any way restricts any store or vendor from providing a compostable single-use carryout or compostable reusable bag.

11.13.04 PENALTY

A violation of Section 11.13.02 shall be an administrative offense requiring a fine of \$150.00. Any store or vendor cited with an offense of this section who does not pay the required administrative fine within 30 days shall receive a minor misdemeanor citation into court. Any store or vendor cited with an offense of this section who wishes to appeal the violation shall visit the Athens Police Department and receive a minor misdemeanor citation into court, providing notice and an opportunity to be heard, which shall serve as an

RECORD OF ORDINANCES

Government Forms and Supplies (844) 224-3338 FORM NO. SHTROR11

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appeals process. Any store or vendor who persists in such violation after previously receiving an administrative citation shall be guilty of a minor misdemeanor.

A separate offense shall be deemed committed each day during or on which a violation of noncompliance occurs or continues.

SECTION II: The 2023 Appropriation Ordinance 155-22 is hereby amended by appropriating from the unappropriated balance the sum of Five Thousand Dollars (\$5,000.00) to Athens Enhancement Fund, T.C. 300, in order to provide an assistance program, administered by the Mayor's Office, to support businesses with costs associated with the enactment of this ordinance during calendar year 2023.

SECTION III: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.


Clayton B. Kinsley
President of Council

ATTEST:


Debra L. Walker
Clerk of Council


APPROVED:


Mayor

Certificate of Publication

I certify that Ordinance 25-23 was published in

THE ATHENS NEWS on 5/10/23 & 5/17/23


Debra L. Walker
Clerk of Athens City Council