

City of Cincinnati

KKF/B

BBM

An Ordinance No. _____ - 2020

MODIFYING Title VIII, "Business Regulations," of the Cincinnati Municipal Code by enacting new Chapter 802, "Regulation of Plastic and Paper Bags," to restrict the distribution of single use bags by food service establishments and restaurants in the City of Cincinnati in order to reduce waste, litter, and pollution; improve the appearance of the urban environment; and preserve the natural environment; and **AMENDING** Title XV, "Code Compliance and Hearings," Section 1501-4, "Class A1 Civil Offenses," and Section 1501-7, "Class C Civil Offenses," to incorporate the regulation of single use bags into existing civil offense compliance and hearing processes.

WHEREAS, Americans on average use one single use plastic bag per person per day, amounting to around 100 billion disposable plastic bags annually; and

WHEREAS, manufacturing single use plastic bags used in the United States alone annually requires some 12 million barrels of oil, a nonrenewable resource; and

WHEREAS, Americans on average recycle just one percent of disposable plastic bags used, with the remainder going to landfills or being released into the environment, where they contribute to litter, clog storm drains, kill wildlife, and create breeding sites for mosquitos and other pests; and

WHEREAS, single use plastic bags in landfills take hundreds of years to biodegrade and may even then release microplastics and toxic substances into the environment; and

WHEREAS, both the United States Environmental Protection Agency and the United Nations Environment Programme have promoted reducing the amount of disposable plastics used in the first place as the most preferred means to prevent environmental pollution; and

WHEREAS, cities and states around the country have successfully implemented restrictions on single use plastics that have reduced their use and prevented the introduction of harmful waste into the environment; and

WHEREAS, requiring minimum charges for reusable bags and recycled content paper bags promotes compliance with the prohibition on single use bags and furthers the related purposes of environmental protection, litter control, and public education regarding single use plastics pollution; and

WHEREAS, requiring the itemization of the charges for bags on customers' receipts promotes transparency and helps ensure that provision of reusable bags and recycled content paper bags is not subsidized by customers who reuse their own bags; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Chapter 802, "Regulation of Plastic and Paper Bags," of Title VIII, "Business Regulations," of the Cincinnati Municipal Code is hereby ordained as follows:

Chapter 802 - Regulation of Plastic and Paper Bags

Sec. 802-1. - Definitions.

For the purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

Sec. 802-1-C. - Customer.

"Customer" shall mean a person obtaining goods, including food, from a food service establishment or restaurant.

Sec. 802-1-E. - Exempt Customer.

"Exempt customer" shall mean any customer participating in the Supplemental Nutrition Assistance Program, 7 U.S.C. ch. 51, the Special Supplemental Food Program for Women, Infants, and Children, 42 U.S.C. ch. 13A, or similar programs that require use of an Electronic Benefits Transfer card issued under 7 U.S.C. § 2016(h). A customer's use of an Electronic Benefits Transfer Card shall be sufficient evidence of participation in a qualifying program.

Sec. 802-1-F. - Food Service Establishment.

"Food service establishment" shall mean a commercial establishment located within the city in a permanent building, operating year-round, that sells foodstuffs, meats, produce, dairy products, or perishable foods to be consumed off the premises where they are sold, and which is not a restaurant. "Food service establishment" does not mean:

(A) Temporary vending establishments; or

(B) Vendors that sell foodstuffs, meats, produce, dairy products, or other perishable items at farmers' markets or similar temporary events.

Sec. 802-1-R. - Recycled Content Paper Bag.

"Recycled content paper bag" shall mean a paper bag that is one hundred percent recyclable and contains a minimum of forty percent post-consumer recycled material, which a food service establishment or restaurant provides to a customer at the point of sale or otherwise for the purpose of carrying goods, including food, out of the food service

establishment or restaurant. The word "Recyclable" shall be legibly printed on the outside of the bag, as well as the name and location of the manufacturer and the percentage of post-consumer recycled material used to manufacture the bag.

Sec. 802-1-R1. - Restaurant.

"Restaurant" shall mean a commercial establishment that is primarily engaged in serving prepared food and beverages to customers for consumption, whether on or off its premises, including but not limited to restaurants, cafeterias, cafes, fast-food outlets, snack bars, food trucks, takeouts, and food delivery businesses.

Sec. 802-1-R2. - Reusable Bag.

"Reusable bag" shall mean a bag specifically designed and manufactured for extensive reuse, which is made of cloth, other machine washable fabric, or durable plastic that is at least 2.25 mils thick, and which a food service establishment or restaurant provides to a customer at the point of sale or otherwise for the purpose of carrying goods, including food, out of the food service establishment or restaurant.

Sec. 802-1-S. - Single Use Bag.

"Single use bag" shall mean a bag, whether paper or plastic, other than a reusable bag or a recycled content paper bag, which a food service establishment or restaurant provides to a customer at the point of sale or otherwise for the purpose of carrying goods, including food, out of the food service establishment or restaurant. "Single use bag" does not include: individual product packaging that encloses goods at the time such goods are obtained by a food service establishment or restaurant, and in which the goods are intended to be sold to customers; bags provided by pharmacists that contain prescription drugs; bags provided, not at the point of sale, that are used to separate or contain meat, seafood, produce, cheese, unpackaged confectionaries, unpackaged baked goods, or wholesale unpackaged goods such as flour, grains, nuts, cereals, and similar bulk items; bags used to protect newspapers, laundry, dry cleaning, and similar items from becoming wet or soiled; and bags used to contain flowers, plants, or similar items that may cause damage when bagged with other goods.

Sec. 802-3. - Restrictions on Providing Paper and Plastic Bags.

- (A) A food service establishment or restaurant shall not provide a single use bag to a customer at the point of sale or otherwise.
- (B) A food service establishment or restaurant may provide a recyclable paper bag or a reusable bag to a customer at the point of sale or otherwise only as provided in this chapter.

- (C) Customers may use bags of any type that they bring to a food service establishment or restaurant for the purpose of carrying goods, including food, out of the food service establishment or restaurant.

Sec. 802-5. - Regulation of Recycled Content Paper Bags and Reusable Bags.

- (A) A food service establishment or restaurant may provide recycled content paper bags and reusable bags to customers as provided in this section.
- (B) A food service establishment or restaurant that provides a recycled content paper bag or reusable bag to a customer must collect a minimum charge as provided below:
 - (1) A food service establishment that provides a recycled content paper bag or reusable bag to a customer must charge the customer a minimum charge of five cents for each such bag provided, except as otherwise provided in this chapter. A food service establishment may charge a customer more than the minimum charge for a recycled content paper bag or a reusable bag.
 - (2) A restaurant that provides a recycled content paper bag or reusable bag to a customer must charge the customer a minimum charge of five cents for each such bag provided only if the customer purchases food for consumption off the premises where it is sold, or as otherwise provided in this chapter. A restaurant may charge a customer more than the minimum charge for a recycled content paper bag or a reusable bag.
- (C) A food service establishment or restaurant shall not rebate or otherwise reimburse a customer any portion of the minimum charge required by this section, or otherwise exempt a customer from the minimum charge, except as otherwise provided in this chapter.
- (D) A food service establishment or restaurant must state on the customer's receipt the number of recycled content paper bags or reusable bags provided to the customer and the total amount charged for the bags, including the minimum charge.
- (E) A food service establishment or restaurant may provide reusable bags to customers free of all charges as part of infrequent promotions or educational campaigns that shall not exceed a total of ninety days during any consecutive twelve-month period.
- (F) The minimum charge requirements of this section do not apply to exempt customers. However, a food service establishment or restaurant that provides recycled content paper bags or reusable bags must state on the exempt customer's receipt the number of recycled content paper bags or reusable bags provided to the exempt customer.
- (G) All minimum charges collected by a food service establishment or restaurant from customers under this section shall be retained by the food service establishment or

restaurant and must be used only to pay for the following purposes, at the food service establishment's or restaurant's option:

- (1) costs associated with complying with the requirements of this chapter, including the costs of providing recycled content paper bags or reusable bags to customers and exempt customers;
 - (2) costs associated with facilitating, promoting, and implementing the collection and recycling of single use bags, recycled content paper bags, and reusable bags; or
 - (3) costs associated with the creation or distribution of educational materials, or the conduct of an educational campaign, encouraging the reduction, reuse, or recycling of single use bags, recycled content paper bags, and reusable bags, or related product packaging.
- (H) If a food service establishment or restaurant charges customers more than the minimum charge per recycled content paper bag or reusable bag, such amounts in excess of the minimum charge are not subject to the limitations of this section.
- (I) The minimum charge requirements of this section do not apply if the City Manager waives the charge during a period of health emergency declared by the State of Ohio.

Sec. 802-7. - Reporting on Distribution of Bags and Collection of Charges.

- (A) On a biannual basis to be established by the city manager, a food service establishment or restaurant must report the following information for the previous biannual reporting period to the city manager:
- (1) The total number of recycled content paper bags or reusable bags provided to customers;
 - (2) The total amount of minimum charges collected for providing recycled content paper bags or reusable bags to customers;
 - (3) The total number of recycled content paper bags or reusable bags provided to exempt customers;
 - (4) The dates of any promotional period during which a food service establishment or restaurant provided reusable bags to customers free of all charges and the number of such reusable bags provided to customers;
 - (5) A summary of the food service establishment's or restaurant's use of collected minimum charges for the purposes mandated by this chapter, except those collected minimum charges used to comply with the requirements of this section as provided in Section 802-5(G); and

- (6) Any related information determined to be reportable by the city manager.
- (B) If a food service establishment or restaurant collects from customers more than the required minimum charge per recycled content paper bag or reusable bag, such amounts in excess of the required minimum charge shall not be reported.
 - (C) A food service establishment or restaurant must report the information required by this section through a website designated by the city manager according to the forms and procedures specified therein. A responsible agent or officer of the food service establishment or restaurant must affirm that the information provided is accurate and complete.
 - (D) Each food service establishment or restaurant shall maintain accurate and complete records, including any books, accounts, invoices, or other records, necessary to verify the accuracy and completeness of the reports required by this section. Each food service establishment or restaurant shall keep and preserve all such documents and records, including electronic documents and records, for a period of three years from the end of the reporting period to which such records relate.
 - (E) Upon the request of the city manager, each food service establishment or restaurant shall make its records available for audit during regular business hours for the city to verify compliance with the provisions of this chapter.
 - (F) The city manager is authorized to issue and enforce such rules and regulations as are necessary to carry out the provisions of this chapter and may designate enforcement of the provisions of this chapter to an appropriate department or departments. Such rules and regulations, if adopted, shall be posted on the city's website and shall be available through the website portal designated for the reporting required by this section.
 - (G) All reports required by this section must be submitted no later than thirty days after the end of each reporting period established by the city manager. Any food service establishment or restaurant that fails to submit reports as required by this section shall be subject to the applicable penalties set forth in this chapter, except that a food service establishment or restaurant shall not be subject to the applicable penalties set forth in this chapter if, within thirty days of receipt of notification that a report is defective, it submits a report correcting identified defects.

Sec. 802-9. - Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. City council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more

sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

Sec. 802-11. - Effective Date.

This chapter shall take effect upon the later of January 1, 2021, or the day following the expiration of any legislation passed by the Ohio General Assembly prohibiting local governments from passing or enforcing charges associated with single-use bags if that date is later than January 1, 2021, except that Sections 802-5 and 802-7 shall take effect six months after the effective date of this chapter.

Sec. 802-99. - Penalties.

- (A) Whoever violates any provision of section 802-3 of this chapter, or section 802-5 of this chapter except for paragraph (G) of that section, commits a Class A1 Civil Offense as defined by Section 1505-4 of the Cincinnati Municipal Code. A new violation may be charged on each day during which a food service establishment or restaurant is in violation of these sections.
- (B) Whoever violates any provision of section 802-5(G) or section 802-7 of this chapter commits a Class C Civil Offense as defined by section 1501-5 of the Cincinnati Municipal Code.

Section 2. That existing Sections 1501-4, "Class A1 Civil Offenses," and 1501-7, "Class C Civil Offenses," of Title XV, "Code Compliance and Hearings," of the Cincinnati Municipal Code are hereby amended as follows:

Sec. 1501-4. - Class A1 Civil Offenses.

A person who violates a standard of conduct set forth in a section or chapter of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class A1 Civil Offense. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine specified in § 1501-99 for the first violation of a Class B1 Civil Offense.

a.	§ 714-5	Placement of Litter in Receptacles so as to Prevent Scattering.
b.	§ 714-7	Upsetting Public or Private Receptacles.

c.	§ 714-9	Sweeping Litter into Gutters Prohibited.
d.	§ 714-23	Throwing or Distributing Handbills in Public Places.
e.	§ 714-24	Distributing Tobacco or Other Smoking Products in Public Places.
f.	§ 714-29	Prohibiting Distribution of Handbills Where Posted.
g.	§ 714-31	Distributing Handbills at Inhabited Private Premises.
h.	§ 770-3	Unlawfully Obtaining Streetcar Services.
i.	§ 770-5	Unlawful Interference with Streetcar Services.
j.	<u>§ 802-3</u>	<u>Restrictions on Providing Paper and Plastic Bags.</u>
k.	<u>§802-5</u> (except (G))	<u>Regulation of Recycled Content Paper Bags and Reusable Bags.</u>

Sec. 1501-7. - Class C Civil Offenses.

A person who violates a standard of conduct set forth in a provision of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class C Civil Offense. If the provision is listed under paragraph (a) below, the otherwise applicable civil fine is reduced by 50% if the person charged shows in accordance with § 1501-15 that the violation has been corrected. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine for the subsequent offense provided below, the amount of which fine is specified in § 1501-99 and is not subject to reduction for correction of the violation.

- (a) Class C Civil Offenses With Civil Fines Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 514-15	Violation and Revocation	Class D
(2)	§ 602-1	Permitting Unclean Habitations	Class D
(3)	§ 602-7	Vacation of Unsanitary Premises	Class D
(4)	§ 604-5	All Improved Premises to be Rat-Proofed	Class D
(5)	§ 606-3	Vaccination of Dogs	Class D
(6)	Chapter 743	Urban Forestry	Class D
(7)	§ 747-3	Limited Franchise Permit Required	Class D
(8)	<u>§ 802-5(G)</u>	<u>Regulation of Recycled Content Paper Bags and Reusable Bags</u>	<u>Class D</u>
(9)	<u>§ 802-7</u>	<u>Reporting on Distribution of Bags and Collection of Charges</u>	<u>Class D</u>
(810)	§ 869-7	Wrecking License Required	Class D
(911)	§ 1201-1	Cincinnati Fire Prevention Code	Class C
(1012)	§ 1201-57	Permits	Class C
(1113)	Chapter 1203	Motor Equipment in Places of Assembly	Class C
(1214)	Chapter 1207	Drills	Class C
(1315)	§ 1209-3	Hazardous Existing Electrical Wiring and Equipment	Class C
(1416)	Chapter 1211	Fire Extinguishers	Class C

			Civil Fine for Subsequent Offense
(1517)	§ 1219-11	Flameproof Decorations	Class C
(1618)	§ 1219-25	Chimneys and Fireplaces	Class C
(1719)	§ 1219-31	Air Conditioning	Class C
(1820)	§ 1219-35	Residential Storage	Class C
(1921)	§ 1219-43	Fire Escapes	Class C
(2022)	§ 1219-57	Restrictions on Parking Motor Vehicles	Class C
(2123)	§ 1219-61	Shaftways	Class C
(2224)	§ 1219-63	Inspection, Safety Provisions	Class C
(2325)	§ 1219-65	Location of Exits	Class C
(2426)	§ 1219-67	Interior Stairway Doors	Class C
(2527)	Chapter 1227	Storage, General Requirements	Class C
(2628)	§ 1229-3	Water Flow Requirements	Class C
(2729)	§ 1229-9	Private Fire Hydrants	Class C
(2830)	§§ 723-5, 723-19	Structures in the Public Right-of-Way	Class D
(2931)	§§ 723-44, 723-50	Mobile Food Vending	Class C
(3032)	§ 723-24	Bike Share Stations	Class C

(b) Class C Civil Offense With Civil Fines Not Subject to 50% Reduction to Correction for Violation:

			Civil Fine for Subsequent Offense
(1)	Chapter 404	Electricity	Class D
(2)	Chapter 405	Telegraph and Telephone	Class D
(3)	Chapter 414	Valet Parking	Class D
(4)	§ 506-63	Driving on Sidewalk Area	Class D
(5)	§ 506-64	Driving on New Pavement	Class D
(6)	§ 718-23	Unlawful Private Use of Streets	Class D
(7)	§ 721-71	Permits for Sidewalk Construction	Class D
(8)	§ 721-81	Sidewalk Construction Without Permit Unlawful	Class D
(9)	§ 729-73	Discharging Noisome Substances	Class D
(10)	§ 729-83	Refrigerators, Abandoning	Class C
(11)	§ 729-89(d)	Improper Disposal of Construction Debris or Hazardous Waste	Class D
(12)	§ 1215-3	Safe Practices	Class C
(13)	§ 1219-17	Misuse of Fire Protection Equipment	Class C
(14)	§ 1231-9	Tampering with Fire Hydrants	Class C
(15)	§ 1231-13	Unlicensed Use of Fire Hydrants Prohibited	Class C
(16)	§ 701-2(B)(2)	Leash Required; Responsibility for Injury (Menacing Fashion)	Class C

			Civil Fine for Subsequent Offense
(17)	§ 701-2(B)(3)	Leash Required; Responsibility for Injury (<i>Injury</i>)	Class C
(18)	§ 856-25(b)	Failure to Obtain a Short Term Rental Registration	Class D
(19)	§ 856-25(e)	Failure of Short Term Rental Housing Platform to Comply with Obligations	Class D

Section 3. That the proper City officials are authorized to do all things necessary and proper to comply with the provisions of Sections 1 and 2 herein.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

New language underscored. Deleted language indicated by strikethrough.